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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97-073-2]

Oriental Fruit Fly; Designation of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by quarantining an additional area in Los Angeles County, CA, and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Oriental fruit fly into noninfested areas of the United States.

DATES: This interim rule is effective September 4, 1997. Consideration will be given only to comments received on or before November 10, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97-073-2, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 97-073-2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134,

Riverdale, MD 20737-1236, (301) 734-8247; or e-mail:

mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, and vegetables. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks and can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93-10 (referred to below as the regulations), were established to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. Section 301.93-3(a) provides that the Administrator will list as a quarantined area each State, or each portion of a State, in which the Oriental fruit fly has been found by an inspector, by which the Administrator has reason to believe that the Oriental fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Oriental fruit fly or its localities in which the Oriental fruit fly has been found. The regulations also impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.93-3(c).

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Oriental fruit fly.

An interim rule effective on August 20, 1997, and published in the **Federal Register** on August 26, 1997 (62 FR 45141-45142, Docket No. 97-073-1), quarantined a portion of Los Angeles County, CA, and restricted the interstate movement of regulated articles from the quarantined area.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) reveal that an additional portion of Los

Angeles County, CA, is infested with the Oriental fruit fly. The Oriental fruit fly is not known to exist anywhere else in the continental United States.

Officials of State agencies of California have begun an intensive Oriental fruit fly eradication program in the quarantined area in California. Also, California has taken action to restrict the intrastate movement of certain articles from the quarantined area.

Accordingly, to prevent the spread of the Oriental fruit fly into other States, we are amending the regulations in § 301.93-3 by adding a new area of Los Angeles County, CA, to the list of quarantined areas. The quarantined areas of Los Angeles County, CA, are described in the rule portion of this document. The area quarantined by this interim rule is the second area described.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Oriental fruit fly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action amends the Oriental fruit fly regulations by adding an additional area of Los Angeles County, CA, to the list of quarantined areas. The regulations restrict the interstate movement of regulated articles from the quarantined areas.

Within the quarantined portion of Los Angeles County, there are approximately 301 entities that will be affected by this rule. All would be considered small entities. These include 4 farmers' markets, 69 growers, 1 community garden, 2 distributors, 183 fruit sellers, 41 nurseries, and 1 swap meet. These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, these small entities sell regulated articles primarily for local intrastate, not interstate, movement so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments, that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for the Oriental fruit fly regulatory program. The site specific environmental assessment provides a basis for the conclusion that implementation of integrated pest management to achieve eradication of the Oriental fruit fly will not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.93–3, paragraph (c), the entry for California is amended by revising the entry for Los Angeles County to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) * * *

CALIFORNIA

Los Angeles County. That portion of Los Angeles County beginning at the intersection of Arrow Highway and Interstate Highway 605; then west along Arrow Highway to Buena Vista Street; then north along Buena Vista Street to Huntington Drive; then east along

Huntington Drive to Foothill Boulevard; then east along Foothill Boulevard to the shoreline of the San Gabriel River; then northeast along the shoreline of the San Gabriel River to State Highway 39 (San Gabriel Canyon Road); then southeast along an imaginary line to the intersection of Sierra Madre Avenue and Glendora Avenue; then south along Glendora Avenue to Alosta Avenue; then east along Alosta Avenue to Lone Hill Avenue; then south along Lone Hill Avenue to Cypress Street; then west along Cypress Street to Badillo Street; then southwest along Badillo Street to Reeder Avenue; then south along Reeder Avenue to Puente Street; then southeast along Puente Street to Via Verde; then southwest along Via Verde to The Mall; then south along The Mall to Interstate Highway 10; then west along Interstate Highway 10 to Grand Avenue; then southeast along Grand Avenue to Amar Road; then west and northwest along Amar Road to Baldwin Park Boulevard; then northeast along Baldwin Park Boulevard to Francisquito Avenue; then northwest along Francisquito Avenue to Ramona Boulevard; then west along Ramona Boulevard to Interstate Highway 605; then northeast along Interstate Highway 605 to the point of beginning.

Also, that portion of Los Angeles County beginning at the intersection of Interstate Highway 10 and Gateway Boulevard; then east along Interstate Highway 10 to its second intersection with National Boulevard; then east along National Boulevard to Jefferson Boulevard; then east along Jefferson Boulevard to La Cienega Boulevard; then south along La Cienega Boulevard to Rodeo Road; then east along Rodeo Road to Martin Luther King Jr. Boulevard; then southeast along Martin Luther King Jr. Boulevard to Crenshaw Boulevard; then south along Crenshaw Boulevard to Slauson Avenue; then east along Slauson Avenue to Van Ness Avenue; then south along Van Ness Avenue to Rosecrans Avenue; then west along Rosecrans Avenue to Inglewood Avenue; then south along Inglewood Avenue to Manhattan Beach Boulevard; then west along Manhattan Beach Boulevard to the Manhattan Beach Municipal Pier; then west along the Manhattan Beach Municipal Pier to the Pacific Ocean coastline; then northwest along the Pacific Ocean coastline to a point due west of the west end of Ocean Park Boulevard; then east along an imaginary line drawn from that point to the west end of Ocean Park Boulevard; then northeast along Ocean Park Boulevard to Gateway Boulevard; then

northeast along Gateway Boulevard to the point of beginning.

Done in Washington, DC, this 4th day of September 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-23949 Filed 9-9-97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97-056-5]

Mediterranean Fruit Fly; Additions to Quarantined Areas and Treatments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding a portion of Sarasota County, FL, to the list of quarantined areas and by expanding the boundaries of the quarantined area in Polk County, FL, due to the detection of Mediterranean fruit fly infestations in those new areas. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States. We are also amending the regulations to provide for the use of irradiation as a treatment for berries, fruits, nuts, and vegetables that are regulated articles. This action will provide an additional option for qualifying those regulated articles for movement from quarantined areas.

DATES: This interim rule is effective September 4, 1997. Consideration will be given only to comments received on or before November 10, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97-056-5, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 97-056-5. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78-10, referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States.

In an interim rule effective on June 16, 1997, and published in the **Federal Register** on June 20, 1997 (62 FR 33537-33539, Docket No. 97-056-2), we added a portion of Hillsborough County, FL, to the list of quarantined areas and restricted the interstate movement of regulated articles from that quarantined area, and added eggplant, other than commercially produced eggplant, to the list of regulated articles. In a second interim rule effective on July 3, 1997, and published in the **Federal Register** on July 10, 1997 (62 FR 36976-36978, Docket No. 97-056-3), we expanded the quarantined area in Hillsborough County, FL, and added areas in Manatee and Polk Counties, FL, to the list of quarantined areas. In a third interim rule effective on August 7, 1997, and published in the **Federal Register** on August 13, 1997 (62 FR 43269-43272, Docket No. 97-056-4), we further expanded the quarantined area by adding new areas of Hillsborough County, FL, and an area in Orange County, FL, to the list of quarantined areas. In that third interim rule, we also revised the entry for Manatee County, FL, to make the boundary lines of the quarantined area more accurate.

Recent trapping surveys by inspectors of Florida State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that infestations of Medfly have occurred in an additional area in Polk County and in a portion of Sarasota County, FL.

The regulations in § 301.78-3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Medfly. The boundary lines for a portion of a State being designated as quarantined are set up approximately 4.5 miles from the detection sites. The boundary lines may vary due to factors such as the location of Medfly host material, the location of transportation centers such as bus stations and airports, the pattern of persons moving in that State, the number and patterns of distribution of the Medfly, and the use of clearly identifiable lines for the boundaries.

In accordance with those criteria and the recent Medfly findings described above, we are quarantining a new area in Polk County, FL, and an area in Sarasota County, FL. Those new areas are included in the description of quarantined areas contained in § 301.78-3 in the rule portion of this document. We have also changed the manner in which the previously quarantined areas in Hillsborough and Polk Counties are described. Those areas had been described in two entries, one for "Hillsborough County" and one for "Hillsborough and Polk Counties." The joint "Hillsborough and Polk Counties" entry has been eliminated and the quarantined areas that had been described in that entry have been incorporated into the appropriate entry for Hillsborough County or Polk County.

Irradiation Treatment

We are also amending the Medfly regulations to include irradiation as a treatment for those berries, fruits, nuts, and vegetables that are listed as regulated articles in § 301.78-2(a) of the regulations. Without irradiation, the only treatments made available by the regulations have been vapor heat for bell peppers, fumigation or vapor heat for tomatoes, and fumigation, fumigation