

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS–2006–0151]

#### Oriental Fruit Fly; Addition and Removal of Quarantined Areas in California

**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 adding the Santa Ana area of Orange County, CA, to the list of quarantined areas and restricting the interstate movement of regulated articles from that area. In addition, we are removing a portion of San Bernardino County, CA, from the list of quarantined areas and removing restrictions on the interstate movement of regulated articles from that area. These actions are necessary to prevent the artificial spread of Oriental fruit fly to noninfested areas of the United States and to remove restrictions that are no longer necessary on the interstate movement of regulated articles from areas where Oriental fruit fly has been eradicated.

**DATES:** This interim rule is effective January 22, 2006. We will consider all comments that we receive on or before March 23, 2007.

**ADDRESSES:** You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click “Submit.” In the Docket ID column, select APHIS–2006–0151 to submit or view public comments and to view supporting and related materials available

electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link.

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0151, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0151.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

**Other Information:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne D. Burnett, National Coordinator, Fruit Fly Exclusion and Detection Programs, APHIS, 4700 River Road Unit 137, Riverdale MD 20737–1234; (301) 734–6553.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, vegetables, and berries. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks, which 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. Paragraph (a) of § 301.93–3 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,

in 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 inseparability for quarantine enforcement purposes from localities in which the Oriental fruit fly has been found. The regulations 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: (1) 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 (2) the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Oriental fruit fly.

#### Addition of Quarantined Areas

Recent trapping surveys by inspectors of California State and county agencies reveal that the Santa Ana area of Orange County, CA, is infested with the Oriental fruit fly.

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

Accordingly, to prevent the spread of the Oriental fruit fly into noninfested areas of the United States, we are amending the regulations in § 301.93–3(c) by designating the Santa Ana area of Orange County, CA, as a quarantined area for the Oriental fruit fly. The quarantined area is described in the regulatory text at the end of this document.

#### Removal of Quarantined Areas

In an interim rule published in the **Federal Register** on November 17, 2006 (71 FR 66831–66833, Docket No. APHIS–2006–0151), we quarantined a portion of San Bernardino County, CA, and restricted the interstate movement of regulated articles from the quarantined area.

Based on trapping surveys conducted by inspectors of California State and county agencies, we have determined that the Oriental fruit fly has been

eradicated from the quarantined portion of San Bernardino County. The last finding of Oriental fruit fly in this quarantined area was August 29, 2006.

Since then, no evidence of Oriental fruit fly infestation has been found in this area. Based on our experience, we have determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that the Oriental fruit fly no longer exists in San Bernardino County, CA. Therefore, we are removing the entry for San Bernardino County, CA, from the list of quarantined areas in § 301.93–3(c).

#### Emergency Action

This rulemaking is necessary on an emergency basis to prevent the Oriental fruit fly from spreading to noninfested areas of the United States and is warranted to relieve restrictions that are no longer necessary. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

#### 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 under Executive Order 12866.

This rule amends the Oriental fruit fly regulations by adding the Santa Ana area of Orange County, CA, to the list of quarantined areas. The regulations restrict the interstate movement of regulated articles from a quarantined area.

County records indicate that there are 11 farmers markets, 15 fruit sellers, 4 growers, 2 nurseries, 14 swapmeets, 1 mobile vendor, and 1 yard maintenance company within the quarantined area. We expect that any small entities located within the quarantined area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears to be minimal. The effect on any small entities that may 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.

This rule also amends the Oriental fruit fly regulations by removing San Bernardino County, CA, from the list of quarantined areas. County records indicate there are approximately 18 nurseries, 96 yard maintenance companies, 2 growers, 1 mobile vendor, 5 food banks, and 34 fruit sellers within the quarantined area that may be affected by the lifting of the quarantine in this interim rule.

We expect that the effect of this interim rule on the small entities referred to above will be minimal. Small entities located within the quarantined area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears likely to be minimal. In addition, the effect on any small entities that may move regulated articles interstate has been minimized during the quarantine period by the availability of various treatments that allow these small entities, in most cases, to move regulated articles interstate with very little additional cost. Thus, just as the previous interim rule establishing the quarantined area in San Bernardino County, CA, had little effect on the small entities in the area, the lifting of the quarantine in this interim rule will also have little effect.

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.

#### 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, 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. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.93–3, paragraph (c) is revised to read as follows:

#### § 301.93–3 Quarantined areas.

\* \* \* \* \*

(c) The areas described below are designated as quarantined areas:

#### CALIFORNIA

*Orange County.* That portion of Orange County in the Santa Ana area bounded by a line as follows: Beginning at the intersection of Brookhurst Street and State Highway 22; then east on State Highway 22 to Euclid Street; then north on Euclid Street to Chapman Avenue; then east on Chapman Avenue to S. Harbor Boulevard; then north on S. Harbor Boulevard to W. Katella Avenue; then east on W. Katella Avenue to E. Katella Avenue; then east, northeast, east, and northeast on E. Katella Avenue to W. Katella Avenue; then east on W. Katella Avenue to N. Glassell Street; then south on N. Glassell Street to E. Collins Avenue; then east on E. Collins Avenue to State Highway 55; then south on State Highway 55 to E. Chapman Avenue; then east on E. Chapman Avenue to Crawford Canyon Road; then south and southeast on Crawford Canyon Road to Newport Avenue; then southwest on Newport Avenue to Foothill Boulevard; then southeast, south, southwest, and south on Foothill Boulevard to Skyline Drive; then northeast, south, and southeast on Skyline Drive to Racquet Hill Drive; then southeast on Racquet Hill Drive to its southernmost point; then southeast from that point along an imaginary line to the intersection of Tustin Ranch Road

and Portola Parkway; then southeast on Portola Parkway to State Highway 261; then southwest on State Highway 261 to Irvine Boulevard; then southeast on Irvine Boulevard to Culver Drive; then southwest on Culver Drive to U.S. Interstate 5; then southeast on U.S. Interstate 5 to Jeffery Road; then southwest on Jeffery Road to University Drive; then southwest, west, and southwest on University Drive to State Highway 73; then northwest on State Highway 73 to Irvine Avenue; then southwest, west, and southwest on Irvine Avenue to 22nd Street; then northwest on 22nd Street to Victoria Street; then west on Victoria Street to Harbor Boulevard; then north on Harbor Boulevard to Adams Avenue; then west on Adams Avenue to Brookhurst Avenue; then north on Brookhurst Avenue to the point of beginning.

Done in Washington, DC, this 16th day of January 2007.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E7-801 Filed 1-19-07; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 982

[Docket No. AMS-FV-06-0175; FV07-982-1 IFR]

#### **Hazelnuts Grown in Oregon and Washington; Establishment of Final Free and Restricted Percentages for the 2006-2007 Marketing Year**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule establishes final free and restricted percentages for domestic inshell hazelnuts for the 2006-2007 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The final free and restricted percentages are 8.2840 percent and 91.7160 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market (free) and the quantity of domestically produced hazelnuts that must be disposed of in outlets approved by the Board (restricted). Volume regulation is intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts with the goal of providing

producers with reasonable returns. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

**DATES:** Effective January 23, 2007. This interim final rule applies to all 2006-2007 marketing year restricted hazelnuts until they are properly disposed of in accordance with marketing order requirements. Comments received by March 23, 2007 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; *Fax:* (202) 720-8938, *E-mail:* [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov), or *Internet:* <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

#### **FOR FURTHER INFORMATION CONTACT:**

Barry Broadbent or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, OR 97204; *Telephone:* (503) 326-2724, *Fax:* (503) 326-7440, or *E-mail:* [Barry.Broadbent@usda.gov](mailto:Barry.Broadbent@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; *Telephone:* (202) 720-2491, *Fax:* (202) 720-8938, or *E-mail:* [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 115 and Marketing Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended that this action

apply to all merchantable hazelnuts handled during the 2006-2007 marketing year beginning July 1, 2006. This action applies to all 2006-2007 marketing year restricted hazelnuts until they are properly disposed of in accordance with marketing order requirements. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule establishes free and restricted percentages which allocate the quantity of domestically produced hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which must be exported, shelled, or otherwise disposed of by handlers (restricted). The Board met and, after determining that volume regulation would tend to effectuate the declared policy of the Act, developed a marketing policy to be employed for the duration of the 2006-2007 marketing year. Volume regulation is intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts with the goal of providing producers with reasonable returns. Based on an estimate of the domestic inshell trade demand and total supply of domestically produced hazelnuts available for the 2006-2007 marketing year, the Board voted unanimously at their November 15, 2006, meeting to recommend to USDA that the final free and restricted percentages for the 2006-2007 marketing year be established at 8.2840 percent and 91.7160 percent, respectively.

The Board's authority to recommend volume regulation and use computations to determine the allocation of hazelnuts to individual markets is specified in § 982.40 of the