

# Rules and Regulations

Federal Register

Vol. 71, No. 29

Monday, February 13, 2006

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS–2005–0116]

#### Mediterranean Fruit Fly; Add Portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, to the List of Quarantined Areas

**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 portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, to the list of quarantined areas and restricting the interstate movement of regulated articles from those 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 spinosad bait spray as an alternative treatment for premises. This new treatment option will provide an alternative to the use of malathion bait spray for premises that produce regulated articles within the quarantined area but outside the infested core area.

**DATES:** This interim rule was effective February 7, 2006. We will consider all comments that we receive on or before April 14, 2006.

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the “Search for Open Regulations” box, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click on “Submit.” In the Docket ID column,

select APHIS–2005–0116 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the “Advanced Search” function in Regulations.gov.

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2005–0116, 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–2005–0116.

**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 Fruit Fly Program Manager, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4387.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Mediterranean fruit fly (Medfly, *Ceratitidis capitata* [Wiedemann]) is one of the world’s most destructive pests of numerous fruits and vegetables. The 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, contained in 7 CFR 301.78 through 301.78–10 (referred to below as the regulations), were established to prevent the spread of Medfly into noninfested areas of the United States. Section 301.78–3(a) provides that the Administrator will list as a quarantined area each State, or each portion of a State, in which Medfly has been found by an inspector, in which the

Administrator has reason to believe that Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which Medfly has been found. The regulations impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.78–3(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 equivalent to 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 Medfly.

Recent trapping surveys by inspectors of California State and county agencies have revealed that portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, are infested with Medfly.

State agencies in California have begun an intensive Medfly eradication program in the quarantined areas in Los Angeles, San Bernardino, and Santa Clara Counties. Also, California has taken action to restrict the intrastate movement of regulated articles from the quarantined areas.

Accordingly, to prevent the spread of Medfly into noninfested areas of the United States, we are amending the regulations in § 301.78–3(c) by designating portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, as quarantined areas.

#### Treatments

Section 301.78–10 of the regulations lists treatments for regulated articles. Regulated articles treated in accordance with this section may be moved interstate from a quarantined area to any destination. Section 301.78–10 contains treatments for specified fruits and vegetables, treatments for citrus fruit that has been harvested, treatments for soil within the drip area of plants that are producing or have produced specified berries, fruits, nuts, and vegetables, and treatments for premises (fields, groves, or areas) that are within a quarantined area but outside the infested core area.

Under § 301.78–10(d), premises that are located within the quarantined area but outside the infested core area, and that produce regulated articles, must receive regular treatments with malathion bait spray. We are amending § 301.78–10(d) to include a new alternative chemical treatment for premises. The new chemical treatment is a spinosad bait spray. Without spinosad bait spray, the only treatment made available by the regulations for premises has been malathion bait spray. Spinosad bait spray must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications, the mixture may be diluted with water to improve coverage. The spinosad bait spray provisions we are adding to the regulations in § 301.78–10(d) are the same as those currently found in the Mexican fruit fly regulations in § 301.64–10(c), the West Indian fruit fly regulations in § 301.98–10(b), the sapote fruit fly regulations in § 301.99–10(c), and the Oriental fruit fly regulations in § 301.93–10(b).

#### Emergency Action

This rulemaking is necessary on an emergency basis to prevent the Medfly from spreading to noninfested areas of the United States. 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 restricts the interstate movement of regulated articles from those portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, that have been designated as quarantined areas. Within the quarantined areas there are approximately 297 small entities that may be affected by this rule. These

include 127 yard maintenance firms, 110 fruit sellers, 22 nurseries, 15 growers, 4 distributors, 4 haulers, 3 certified farmers' market, 3 processors, 2 harvesters, 2 packers, 2 recyclers, 1 food bank, 1 producer, and 1 swapmeet. These 297 entities comprise less than 1 percent of the total number of similar entities operating in the State of California. Additionally, few of these small entities move regulated articles interstate during the normal course of their business, nor do consumers of products purchased from those entities generally move those products interstate.

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

We have prepared two environmental assessments for this interim rule. The site-specific environmental assessments and the programmatic Medfly environmental impact statement provide a basis for our conclusion that the implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health or 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 assessments and findings of no significant impact were

prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (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).

The environmental assessments and findings of no significant impact may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the environmental assessments and findings of no significant impact by calling or writing to the person 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, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 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 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.78–3, paragraph (c) is revised to read as follows:

#### § 301.78–3 Quarantined areas.

\* \* \* \* \*

(c) The following areas are designated as quarantined areas: California  
*Los Angeles/San Bernardino Counties.* Rancho Cucamonga area: That portion of the counties bounded by a line drawn as follows: Beginning at the intersection of the southern border of the Angeles National Forest and the southern border of the San Bernardino National Forest; then northeast along the southern border of the San Bernardino National Forest to East

Etiwanda Creek; then southeast along East Etiwanda Creek to Wilson Avenue; then east on Wilson Avenue to Summit Avenue; then east on Summit Avenue to Cherry Avenue; then south on Cherry Avenue to U.S. Interstate 15; then southwest on U.S. Interstate 15 to East Avenue; then south on East Avenue to State Highway 66; then east on State Highway 66 to Cherry Avenue; then south on Cherry Avenue to Slover Avenue; then west on Slover Avenue to South Mulberry Avenue; then south on South Mulberry Avenue to Jurupa Avenue; then southwest on Jurupa Avenue to North Etiwanda Avenue; then south on North Etiwanda Avenue to Philadelphia Street; then west on Philadelphia Street to South Milliken Avenue; then south on South Milliken Avenue to East Riverside Drive; then west on East Riverside Drive to South Haven Avenue; then south on South Haven Avenue to East Edison Avenue; then west on East Edison Avenue to Edison Avenue; then west on Edison Avenue to Cucamonga Creek; then south on Cucamonga Creek to Eucalyptus Avenue; then northwest on Eucalyptus Avenue to San Antonio Avenue; then north on San Antonio Avenue to Edison Avenue; then west on Edison Avenue to Grand Avenue; then northwest on Grand Avenue to South Grand Avenue; then north on South Grand Avenue to East Badillo Street; then northeast on East Badillo Street to Badillo Street; then northeast on Badillo Street to West Covina Street; then east on West Covina Street to State Highway 57; then north on State Highway 57 to State Highway 210; then east on State Highway 210 to North Towne Avenue; then north on North Towne Avenue to its intersection with the shoreline of Thompson Creek; then east along an imaginary line from the intersection of North Towne Avenue and the shoreline of Thompson Creek to its intersection with Miller Ranch Road and the eastern border of Marshall Canyon County Park; then northeast along the eastern border of Marshall Canyon County Park to the southern border of the Angeles National Forest; then east along the southern border of the Angeles National Forest to the point of beginning.

**Santa Clara County.** San Jose area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Camden Avenue and Hillside Avenue; then northeast on Hillside Avenue to Meridian Avenue; then the northwest on Meridian Avenue to Dry Creek Road; then northeast on Dry Creek Road to Hicks Avenue; then northwest on Hicks Avenue to Robsheal Drive; then northeast on Robsheal Drive

to Simpson Way; then southeast on Simpson Way to Clark Way; then northeast on Clark Way to Lincoln Avenue; then northwest on Lincoln Avenue to Byerley Street; then northeast on Byerley Street to Byerley Avenue; then northeast on Byerley Avenue to Bird Avenue; then southeast on Bird Avenue to Malone Road; then northeast on Malone Road to Almaden Road; then northeast on Almaden Road to San Jose Avenue; then northeast on San Jose Avenue to Monterey Highway; then southeast on Monterey Highway to Tully Road; then northeast on Tully Road to South King Road; then southeast on South King Road to Aborn Road; then northeast on Aborn Road to San Felipe Road; then southeast on San Felipe Road to Silver Creek Road; then south along an imaginary line from the intersection of San Felipe Road and Silver Creek Road to the intersection of U.S. Highway 101 and Metcalf Road; then southwest on Metcalf Road to Monterey Highway; then southeast on Monterey Highway to Bailey Avenue; then southwest on Bailey Avenue to McKean Road; then southwest along an imaginary line from the intersection of Bailey Avenue and McKean Road to the intersection of Mine Hill Road and Alamitos Road; then southwest on Alamitos Road to Hicks Road; then northwest and northeast on Hicks Road to Camden Avenue; then northwest on Camden Avenue to the point of beginning.

■ 3. In § 301.78–10, paragraph (d) is revised to read as follows:

**§ 301.78–10 Treatments.**

\* \* \* \* \*

(d) *Premises.* A field, grove, or area that is located within the quarantined area but outside the infested core area, and that produces regulated articles, must receive regular treatments with either malathion or spinosad bait spray. These treatments must take place at 6 to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for completion of egg and larvae development of the Mediterranean fruit fly. Determination of the time period must be based on day degrees. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied at a rate of 1.2 fluid ounces of technical grade malathion (1.4 ounces by weight) and 10.8 fluid ounces of protein hydrolysate (13.2 ounces by weight) per acre, for a total of 12 fluid ounces per acre. The spinosad bait spray treatment must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation

and 48 oz of protein hydrolysate per acre. For ground applications, the mixture may be diluted with water to improve coverage.

\* \* \* \* \*

Done in Washington, DC, this 7th day of February 2006.

**Kevin Shea,**

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

[FR Doc. 06–1302 Filed 2–10–06; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 993

[Docket No. FV02–993–610 REVIEW]

#### Dried Prunes Produced in California; Section 610 Review

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

**ACTION:** Confirmation of regulations.

**SUMMARY:** This action summarizes the results under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA), of an Agricultural Marketing Service (AMS) review of Marketing Order No. 993, regulating the handling of dried prunes produced in California.

**ADDRESSES:** Interested persons may obtain a copy of the review. Requests for copies should 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; or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov).

#### FOR FURTHER INFORMATION CONTACT:

Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; Telephone: (559) 487–5902; Fax: (559) 487–5906; E-mail:

[Terry.Vawter@usda.gov](mailto:Terry.Vawter@usda.gov); or George Kelhart, Technical Advisor, 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; E-mail: [George.Kelhart@usda.gov](mailto:George.Kelhart@usda.gov).

**SUPPLEMENTARY INFORMATION:** Marketing Order No. 993, as amended (7 CFR Part 993), regulates the handling of dried prunes produced in California. The marketing order is effective under the Agricultural Marketing Agreement Act