Webb County. The entire county.

* * * * *

Young County. The entire county.

Zavala County. The entire county.

Done in Washington, DC, this 4th day of October 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–25168 Filed 10–10–95; 8:45 am]

BILLING CODE 3410–34–P

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7 CFR Part 301

[Docket No. 94–017–2]

Mediterranean Fruit Fly; Regulated Articles and Treatments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the Mediterranean fruit fly regulations by adding two types of lemons to the list of regulated articles; clarifying the requirement for cleaning and waxing lemon (*Citrus limon*), a regulated article; reducing the rate of technical grade malathion required for treating premises for the Mediterranean fruit fly; and removing the requirement that malathion bait spray treatment be applied by ground equipment. These actions were necessary to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States and to lessen restrictions that might cause an unnecessary economic burden upon the public. The change in this final rule is a technical one to correct the amount of protein hydrolysate to be used in the malathion bait spray and to clarify whether ''ounces'' refers to fluid ounces or ounces by weight.

EFFECTIVE DATE: October 11, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–6600.

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 Medfly regulations at 7 CFR 301.78 through 301.78–10 (referred to below as the regulations) established quarantined areas to prevent the spread of the Medfly to noninfested areas of the United States. The regulations impose conditions on the interstate movement of those articles that, if moved without restrictions, present a significant risk of spreading the Medfly from quarantined areas into or through noninfested areas. These articles, which are designated as regulated articles, may not be moved interstate from quarantined areas except in accordance with conditions specified in §§ 301.78–4 through 301.78–10.

In an interim rule effective May 12, 1994, and published in the **Federal Register** on May 18, 1994 (59 FR 25789–25791, Docket No. 94–017–1), we amended the regulations by adding two types of lemons to the list of regulated articles; clarifying the requirement for cleaning and waxing lemon (*Citrus limon*), a regulated article; reducing the rate of technical grade malathion required for treating premises for the Medfly; and removing the requirement that malathion bait spray treatment be applied by ground equipment. These actions were necessary to prevent the spread of the Medfly into noninfested areas of the United States and to lessen restrictions that might cause an unnecessary economic burden upon the public.

We solicited comments concerning the interim rule for 60 days ending July 18, 1994. We received two comments. They were from a State government and a citrus trade association. We carefully considered both comments. They are discussed below in detail.

Comment: The interim rule amended § 301.78–10 by reducing the rate of malathion bait spray treatment from ''2.4'' ounces to ''1.2'' ounces. However, the interim rule did not change the rate of protein hydrolysate required to arrive at the necessary 10 percent solution of malathion. Also, there was some ambiguity concerning weight/volume interpretations in terms of ''ounces'' by weight and ''fluid ounces.'' Section 301.78–10 should state that, to arrive at the necessary 10 percent solution of malathion, 1 fluid ounce (1.2 ounces by weight) of malathion would have to be mixed with 11 fluid ounces (13.4 ounces by weight) of protein hydrolysate per acre for a total of 12 fluid ounces of malathion and protein hydrolysate per acre.

Response: We agree with the premise of this comment. However, to maintain a higher degree of accuracy in our figures and to be consistent in our references to fluid ounces and ounces by weight, § 301.78–10 will be changed to state that, to arrive at the necessary 10 percent solution of malathion, 1.2 fluid ounces (1.4 ounces by weight) of malathion would have to be mixed with 10.8 fluid ounces (13.2 ounces by weight) of protein hydrolysate per acre for a total of 12 fluid ounces of malathion and protein hydrolysate per acre.

Comment: The supplementary information section of the interim rule explained why the regulations exempt from treatment smooth-skinned lemons destined for commercial packing houses. It stated, ''smooth-skinned lemons harvested for packing by a commercial packing house are harvested while hard and green. At this early stage of development, they are not considered susceptible to attack by the Medfly. These smooth-skinned lemons that are packed in commercial packing houses do not present a significant risk of spreading the Medfly into noninfested areas of the United States.'' However, color should not be considered an indication of susceptibility to Medfly attack, as yellow lemons are also harvested and sent to commercial packing houses. Rather, high acid content, hard-to-puncture rind, and lack of suitability as an environment for Medfly are factors that should be used to determine whether commercial variety lemons (*Citrus limon*) that are not overly mature should be exempt from treatment.

Response: We agree, and believe that the language in § 301.78–2 of the interim rule concerning lemon (*Citrus limon*) accommodates this position. That entry reads: ''Lemon (*Citrus limon*) except smooth-skinned lemons harvested for packing by commercial packing houses''. Therefore, no change to the rule is necessary.

Therefore, based on the rationale set forth in the interim rule and in this document, we are adopting the provisions of the interim rule as a final rule, with the change discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine,

Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, with the following change, the interim rule that amended 7 CFR part 301 and that was published at 59 FR 25789–25791 on May 18, 1994.

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

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.78–10 [Amended]

2. In § 301.78–10, paragraph (c) is amended by revising the last sentence to read: ''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.''

Done in Washington, DC, this 4th day of October 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–25167 Filed 10–10–95; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV95–920–2FIR]

Expenses and Assessment Rate for Marketing Order Covering Kiwifruit Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule authorizing expenditures and establishing an assessment rate under Marketing Order No. 920 for the 1995–96 fiscal year. Authorization of this budget enables the Kiwifruit Administrative Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1995, through July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487–5901, Fax # (209) 487–5906; or Charles Rush, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456; telephone (202) 690–3670, Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 920 (7 CFR part 920), as amended, regulating the handling of kiwifruit grown in California, 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, California kiwifruit are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable California kiwifruit during the 1995–96 fiscal year beginning August 1, 1995, through July 31, 1996. 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 the Secretary 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 the Secretary 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of kiwifruit grown in California who are subject to regulation under the kiwifruit marketing order and approximately 600 producers of kiwifruit in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of kiwifruit producers and handlers may be classified as small entities.

The kiwifruit marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable kiwifruit handled from the beginning of such year. The budget of expenses for the 1995–96 fiscal year was prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are producers of California kiwifruit and one non-industry member. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of kiwifruit. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on June 14, 1995, and unanimously recommended 1995–96 marketing order expenditures of $172,683 and an assessment rate of 1.5 cents per tray or tray equivalent of