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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 95-063-1]

Imported Fire Ant Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the imported fire ant regulations by designating all or portions of the following as quarantined areas: The entire State of Mississippi; Mecklenburg County in North Carolina; Bradley, Hamilton, McMinn, and Wayne Counties in Tennessee; and Brooks, Cameron, Delta, Dimmit, Duval, Jack, Kenedy, Kinney, Lamar, Mason, McCulloch, Montague, San Saba, Webb, Young, and Zavala Counties in Texas. This action expands the quarantined areas and imposes certain restrictions on the interstate movement of quarantined articles from those areas. This action is necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

DATES: Interim rule effective October 11, 1995. Consideration will be given only to comments received on or before December 11, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95-063-1, 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. 95-063-1. 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 Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-5235.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81-10, and referred to below as the regulations) quarantine infested States or infested areas within States and impose restrictions on the interstate movement of certain regulated articles for the purpose of preventing the artificial spread of the imported fire ant.

Imported fire ants, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, are aggressive, stinging insects that, in large numbers, can seriously injure or even kill livestock, pets, and humans. The imported fire ant feeds on crops and builds large, hard mounds that damage farm and field machinery. The imported fire ant is not native to the United States. The regulations prevent the imported fire ant from spreading throughout its ecological range within this country.

The regulations in § 301.81-3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, that is infested with imported fire ants. The Administrator will designate less than an entire State only under the following conditions: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81-2 that are equivalent to the interstate movement restrictions imposed by the regulations; and (2) designating less than the entire State will prevent the spread of the imported fire ant. The Administrator may include uninhabited acreage within a quarantined area due to its proximity to an infestation or its inseparability from the infested locality for quarantine purposes.

We are amending § 301.81-3(e) by designating all or portions of the following counties as quarantined areas: Mecklenburg County in North Carolina;

Bradley, Hamilton, McMinn, and Wayne Counties in Tennessee; and Brooks, Cameron, Delta, Dimmit, Duval, Jack, Kenedy, Kinney, Lamar, Mason, McCulloch, Montague, San Saba, Webb, Young, and Zavala Counties in Texas. We are also designating the entire State of Mississippi as a quarantined area. We are taking this action because recent surveys conducted by APHIS and State and county agencies reveal that the imported fire ant has spread to these areas. See the rule portion of this document for specific descriptions of the new quarantined areas.

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 artificial spread of imported fire ant 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 publication in the **Federal Register**. 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 affects the interstate movement of regulated articles from specified areas in Mississippi, North Carolina, Tennessee, and Texas. Affected entities include nurserymen, sod and hay growers, farm equipment dealers, construction companies, and others who sell, process, or move regulated articles interstate. Based on information compiled by the Department, we have determined that approximately 74 small entities within the newly regulated areas could be

affected by this interim rule. However, most of the sales for these entities are local intrastate or within the regulated area, and would not be affected by this regulation.

The effect on those entities that do move regulated articles interstate is minimized by the availability of various treatments that, in most cases, will permit the movement of regulated articles with very little additional cost. The projected annual economic impact from this action is estimated to be approximately \$187,976.

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 12778

This rule has been reviewed under Executive Order 12778, 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 this program. The assessment provides a basis for the conclusion that the methods employed to regulate the imported fire ant will not significantly affect the quality of the human 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 part 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 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. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.81–3, paragraph (e), the list of quarantined areas is amended as follows:

a. By adding, in alphabetical order, entries for Bradley, Hamilton, and McMinn Counties in Tennessee; and Brooks, Cameron, Delta, Dimmit, Jack, Kenedy, Kinney, Lamar, McCulloch, Montague, San Saba, and Zavala Counties in Texas to read as set forth below.

b. By revising the entry for Mississippi to read as set forth below.

c. By revising the entries for Mecklenburg County in North Carolina; Wayne County in Tennessee; and Duval, Mason, Webb, and Young Counties in Texas to read as set forth below.

§ 301.81–3 Quarantined areas.

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(e) * * *

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MISSISSIPPI

The entire State.

NORTH CAROLINA

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Mecklenburg County. That portion of the county from the Union/McKlenburg

County line west along the Cabarrus/Mecklenburg County line to NC State Road 2459; then south on NC State Road 2459 to State Highway 115, and south to Interstate Highway 77; on Interstate Highway 77 the quarantine will continue to the junction of Interstate Highway 77 with Interstate Highway 85; then southwest on Interstate Highway 85 to the North Carolina/South Carolina State line.

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TENNESSEE

Bradley County. That portion of the county southeast of Interstate Highway 75, southwest of the Hiwassee River, northwest of U.S. Highway 11, and northeast of Tennessee State Highway 308.

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Hamilton County. That portion of the county lying east of U.S. Highway 27, south of Interstate Highway 24 and west of Interstate Highway 75. That part also of the county lying south of U.S. Highways 41, 64, and 72, and west of Tennessee State Road 38.

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McMinn County. That portion of the county southeast of Interstate Highway 75, southwest of Tennessee State Highway 163, northwest of U.S. Highway 11, and northeast of the Hiwassee River.

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Wayne County. That portion of the county lying south of U.S. Highway 64, and west of Longitude 87° 55'.

TEXAS

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Brooks County. The entire county.

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Cameron County. The entire county.

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Delta County. The entire county.

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Dimmit County. The entire county.
Duval County. The entire county.

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Jack County. The entire county.

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Kenedy County. The entire county.

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Kinney County. The entire county.

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Lamar County. The entire county.

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Mason County. The entire county.

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McCulloch County. The entire county.

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Montague County. The entire county.

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San Saba County. The entire county.

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Webb County. The entire county.

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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

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,