

Done at Washington, DC., this 3rd day of November 1997.

Dan Glickman,

Secretary of Agriculture.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96-061-2]

RIN 0579-AA85

Interstate Movement of Imported Plants and Plant Parts

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are establishing a new generic domestic quarantine notice. This domestic quarantine notice provides that, subsequent to their importation, foreign plants and plant parts prohibited under our foreign quarantine notices from being imported into certain States or areas are also prohibited from being moved interstate into those States or areas. This action will clarify and strengthen our ability to enforce restrictions on the movement in commerce of imported plants and plant parts that present a risk of introducing foreign plant pests and diseases. In conjunction with this action, we are also removing a domestic quarantine notice that prohibits certain interstate movements of Unshu oranges, subsequent to their importation into the United States, because the new domestic quarantine notice makes a specific one for Unshu oranges unnecessary.

EFFECTIVE DATE: December 17, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8899.

SUPPLEMENTARY INFORMATION:

Background

The regulations at title 7, part 301, of the Code of Federal Regulations (CFR) contain domestic quarantine notices designed to prevent the spread of certain plant pests and diseases through the interstate movement of regulated articles. The regulations at 7 CFR 319 contain foreign quarantine notices designed to prevent the introduction of foreign plant pests and diseases through

the importation of regulated articles into the United States.

Some of the foreign quarantine notices in part 319 include destination restrictions for specified imported plants and plant parts. That is, these notices allow specified foreign plants or plant parts to be imported into some parts of the United States but not into other specified States or areas because movement into those States or areas could present a plant pest or disease risk. However, only one domestic quarantine notice (7 CFR 301.83, "Subpart-Unshu Oranges") prohibits the subsequent movement of an imported plant or plant part into or through certain portions of the United States based on importation restrictions specified in a foreign quarantine notice (7 CFR 319.28, "Subpart-Citrus Fruit").

On October 2, 1996, we published in the **Federal Register** (61 FR 51376-51377, Docket No. 96-061-1) a proposal to amend the regulations in title 7 by establishing a new generic domestic quarantine notice in part 301. We stated that the proposed quarantine notice would prohibit the subsequent interstate movement of imported plants and plant parts into or through areas identified in a foreign quarantine notice as being a prohibited destination for the imported plants and plant parts.

In conjunction with the action just described, we also proposed to remove the domestic quarantine notice, "Subpart-Unshu Oranges," contained in § 301.83. As mentioned previously, that subpart serves to reinforce the destination restrictions for imported Unshu oranges specified in the foreign quarantine notice "Subpart-Citrus Fruit." The establishment of the generic domestic quarantine notice described above would make the prohibitions in "Subpart-Unshu Oranges" redundant and, therefore, no longer necessary.

We solicited comments concerning our proposal for 45 days ending November 18, 1996. We received four comments by that date. They were from an industry group, a scientific organization, and two State governments.

While we will discuss specific comments below, we believe several of the concerns expressed in the comments stemmed from confusion about the language we used in the proposed domestic quarantine notice. We regret any misunderstanding that resulted from the proposal as written and will attempt to explain more clearly in this document our goal in promulgating this regulation. We also are revising the proposed regulatory language to clarify it.

To begin, we would like to emphasize that this generic domestic quarantine notice adds no new quarantine restrictions; it simply reiterates in the domestic quarantine notices (title 7, part 301) restrictions that are already stated in the foreign quarantine notices (title 7, part 319). Therefore, this notice will have no effect on the legal importation or interstate transport of foreign plants or plant parts. What this domestic quarantine notice will do is clarify that shipping an imported plant or plant part interstate to an area of the United States that is a prohibited destination for that plant or plant part under a foreign quarantine notice is a violation of Federal regulations. Because this notice clearly states that such interstate movement of certain imported plants and plant parts is prohibited, we believe that this notice strengthens our ability to take regulatory action against persons who engage in such prohibited interstate transport.

This new quarantine notice logically places any regulations setting forth restrictions on the interstate movement of imported plants and plant parts in the domestic quarantine notices in part 301 of the regulations instead of in the foreign quarantine notices in part 319. Any member of the public who might check the CFR to determine whether the domestic movement of an imported plant or plant part is prohibited or restricted could not reasonably be expected to look for that information in the foreign quarantine notices. Placing this quarantine notice and prohibition on interstate movement in a more logical position in the CFR will increase public awareness of and accessibility to these restrictions in the regulations.

Specific Concerns

One commenter expressed concern that the language in the proposed domestic quarantine notice was "vague and confusing and could easily result in misinterpretation as to its intent, especially where it states that the limited distribution areas are essentially quarantined areas."

As our proposal was worded, areas of the United States into which a plant or plant part may be imported under part 319 would be quarantined with respect to that plant or plant part; all other areas of the United States would not be quarantined with respect to that plant or plant part, and movement of the plant or plant part would be prohibited into nonquarantined areas.

We recognize that designating as "quarantined areas" the States and areas into which the foreign plants or plant parts may move could be confusing to some people. Under many plant pest

quarantines, certain articles may not be moved from a quarantined area because there is an infestation in that area. The States and areas quarantined for a particular plant or plant part under the generic domestic quarantine notice will be "quarantined" because of the way in which our authorizing statute is written. According to 7 U.S.C. 161, the Secretary of Agriculture is authorized and directed to quarantine any portion of the United States he deems necessary to prevent the spread of a dangerous plant disease or insect infestation that is new to or not widely prevalent within the United States. Further, 7 U.S.C. 161 prohibits the interstate movement of any plants, plant parts, or other articles capable of carrying the disease or insect pest from any quarantined portion of the United States into or through any other part of the United States, except as prescribed by the Secretary of Agriculture.

We would like to illustrate how this authority is used in regard to the foreign quarantine notices in part 319. The purpose of the destination restrictions in the foreign quarantine notices that have such restrictions is to prevent the movement of an imported article that presents a risk of carrying a foreign plant pest or disease into an area of the United States where the pest or disease could become established. In the case of imported Unshu oranges, for example, all areas of the United States except for American Samoa, Arizona, California, Florida, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States are quarantined. The listed States and territories are the primary citrus-producing areas of the United States. Because we want to prevent the possibility that imported Unshu oranges could introduce citrus canker (a disease of citrus) into the United States, we prohibit these oranges from being moved into U.S. citrus-production areas, where the disease could become established. Therefore, according to 7 CFR 301.83 and 319.28, imported Unshu oranges grown in Japan or on Cheju Island, Republic of Korea, may be moved only into quarantined areas of the United States (all areas of the United States except for American Samoa, Arizona, California, Florida, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States).

Because of the way in which our statutory authority is written, the generic domestic quarantine notice will work in the same way as the Unshu orange quarantine: The areas into which a foreign plant or plant part *may* be moved are quarantined with respect to

that plant or plant part, and any subsequent movement of the imported plant or plant part into nonquarantined areas is prohibited. However, as a result of the confusion generated by the language in the proposal, we are adding some introductory text to the quarantine notice in an attempt to make the rule more clear.

Some of the commenters expressed concern regarding the development of the destination restrictions on imported plants and plant parts contained in the foreign quarantine notices. One commenter questioned how the "protected" States and areas would be selected. Another commenter wanted us to make provision for several actions: Allowing exemptions to the restrictions for research purposes, consulting the scientific community during the selection process, conducting risk assessments of the imported plants and plant parts and associated plant pests, conducting periodic reviews of such plants and pests, and conducting reviews of taxonomic classifications.

We want to make clear that the process we follow to add a foreign plant or plant part to part 319 to allow the plant's or plant part's importation with or without destination restrictions will not change as a result of this rule. Moreover, we will not add to part 301 lists of plants or plant parts with domestic movement restrictions as a result of this rule. As stated previously, this proposed quarantine notice adds no new regulatory requirements; it simply restates in part 301 restrictions on interstate movement of plants and plant parts that have always been prohibited through the destination restrictions in part 319.

Before we add a foreign plant or plant part to part 319 to allow the plant's or plant part's importation, we publish in the **Federal Register** for public comment a proposal explaining our reasons for believing the plant or plant part could be imported under certain conditions without presenting a threat to the health of U.S. agriculture. All comments submitted are then carefully considered before we issue a final rule. If, after evaluating the comments received and all available scientific data, we believe the foreign plant or plant part presents a plant pest or disease risk to certain areas of the United States only, we may choose to add the plant or plant part to part 319 with destination restrictions and other risk-mitigation measures. (Destination restrictions are always only one part of a systems approach to pest and disease exclusion.) As part of this rulemaking process, we conduct periodic reviews and risk assessments of foreign plants and plant pests, track

changes in taxonomy, and issue permits for movement of plants and plant parts for research purposes.

A couple of commenters raised concerns about enforcement of the proposed generic quarantine notice. The commenters were concerned that no additional enforcement mechanisms were provided in the notice and that enforcement would become the responsibility of the States.

It is true that no new enforcement mechanisms are included in the notice. They were not necessary, and no new enforcement responsibilities will devolve upon the States as a result of this action. Our goal in promulgating this action was simply to clarify our authority to take enforcement action, should the need arise, against persons who have moved imported plants or plant parts interstate in violation of destination restrictions in a foreign quarantine notice.

One commenter opposed the general concept of using limited distribution of an article as a means of mitigating pest or disease risk because enforcing restrictions on the distribution of commodities is difficult. We realize that some prohibited shipments, most often small shipments made by private citizens, may take place as the result of either ignorance of the regulations or purposeful deceit. However, limited distribution of a foreign plant or plant part is never the sole measure used to mitigate the pest or disease risks associated with importing the plant or plant part; destination restrictions are one of usually a series of risk-mitigation measures, or multiple safeguards, used to reduce a commodity's pest or disease risk to a negligible level. Moreover, we believe that the vast majority of commercial shippers try to abide by Federal requirements and that unscrupulous distributors are the exception rather than the norm.

One commenter requested that the proposed quarantine notice include a requirement that the shipping containers for plants and plant parts covered by the quarantine be labeled to indicate that reshipment to the restricted areas is prohibited. While the proposal includes no additional labeling requirements, the majority of foreign quarantine notices that have destination restrictions require that the containers carrying the product be labeled "not for distribution in" the restricted areas.

One commenter expressed concern that the proposed generic quarantine notice could infringe on a State's authority to restrict the entry from other States of plants and plant parts that present a plant pest risk to that State.

This quarantine notice will have no effect on a State's authority to regulate the interstate movement of domestic plants or plant parts. The Plant Quarantine Act (7 U.S.C. 151 *et seq.*) allows a State to regulate the interstate movement of plants and plant parts coming into that State from a State where a plant pest or disease exists until the Secretary of Agriculture promulgates a quarantine or regulation regarding the plant pest or disease. Once the Secretary acts by promulgating a quarantine or regulation regarding a plant pest or disease, the States are precluded, or preempted, from regulating for that particular plant pest or disease, except that they may have regulations that parallel the Federal quarantine or regulations. However, the new domestic quarantine notice does not establish any new quarantine or regulations affecting the interstate movement of domestic plants or plant parts.

With respect to imported plants and plant parts, our new domestic quarantine notice prohibits the subsequent interstate movement of imported plants or plant parts into States or areas named in part 319 as States or areas into which the plants or plant parts may not be imported. If part 319 allows a foreign plant or plant part to be imported into a State, that State does not have authority to refuse the plant or plant part entry, either directly from the port of arrival, or from another State. The Federal Government retains jurisdiction over all plants and plant parts while they are in foreign commerce. If the Secretary of Agriculture does not prohibit or restrict the importation of a plant or plant part, any such prohibition or restriction is deemed to be unnecessary. When foreign commerce ceases is a question of fact that must be addressed in each individual case. However, the Department of Agriculture has taken the position that fresh fruits and vegetables imported into the United States for immediate distribution and sale remain in foreign commerce until they are sold to the ultimate consumer. Other questions regarding when foreign commerce ceases must be addressed on a case-by-case basis and will be resolved based on the facts in each particular case.

For these reasons, a State may not legally prohibit the interstate movement of a foreign plant or plant part into the State if the plant or plant part is allowed importation into the State under part 319, whether or not the plant or plant part is considered to be in foreign commerce or in interstate commerce. If an imported plant or plant part is deemed to be in interstate commerce

(which could happen with plants and plant parts other than fresh fruits and vegetables), a State may not enforce regulations that are different from the Department's regulations. Any State that believes it should or should not be included as a restricted destination in part 319 should present its case to the Administrator of the Animal and Plant Health Inspection Service (APHIS).

One commenter expressed concern that a State wishing to be included as a restricted destination in part 319 might be required first to conduct surveys to establish that the State is free of the pest of concern and then establish an official control program to prevent interstate movement of the pest into the State. The commenter was further concerned that this process could require funding and other resources that the State might not have.

We have no plans to require that, before a State may be considered for inclusion as a restricted destination in part 319, the State would need to conduct surveys to prove that it is free of a particular foreign pest or establish an official control program to prevent interstate movement of that pest into its jurisdiction. Any decision to include a State as a restricted destination in part 319 is based upon a risk assessment, conducted by the Department, that indicates that destination restrictions appear warranted to reduce the pest risk to susceptible crops within that State. The establishment of an official control program by a State would not be a prerequisite to a State's being listed as a restricted destination in part 319.

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

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We do not anticipate that this action will have a significant economic impact on any small entities. Imported plants and plant parts, including fruits and vegetables, that are prohibited from being imported into specified States or areas under our foreign quarantine notices are, under those same notices, prohibited from being distributed in those States or areas. This action clarifies and strengthens the agency's ability to enforce these restrictions.

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 information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

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

2. A new subpart, Subpart-Imported Plants and Plant Parts, is added to part 301 to read as follows:

Subpart—Imported Plants and Plant Parts

Sec.

301.10 Definitions.

301.11 Notice of quarantine; prohibition on the interstate movement of certain imported plants and plant parts.

Subpart—Imported Plants and Plant Parts**§ 301.10 Definitions.**

Move (moved, movement). Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved.

State. Any State, territory, district, or possession of the United States.

§ 301.11 Notice of quarantine; prohibition on the interstate movement of certain imported plants and plant parts.

(a) In accordance with part 319 of this chapter, some plants and plant parts may only be imported into the United States subject to certain destination restrictions. That is, under part 319, some plants and plant parts may be imported into some States or areas of the United States but are prohibited from being imported into, entered into, or distributed within other States or areas, as an additional safeguard against the introduction and establishment of foreign plant pests and diseases.

(b) Under this quarantine notice, whenever any imported plant or plant part is subject to destination restrictions under part 319:

(1) The State(s) or area(s) into which the plant or plant part is allowed to be imported is quarantined with respect to that plant or plant part; and

(2) No person shall move any plant or plant part from any such quarantined State or area into or through any State or area not quarantined with respect to that plant or plant part.

Subpart—Unshu Oranges—[Removed and Reserved]

3. Subpart-Unshu Oranges, consisting of § 301.83, is removed and reserved.

Done in Washington, DC, this 10th day of November 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-30107 Filed 11-14-97; 8:45 am]

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DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****7 CFR Part 301**

[Docket No. 97-113-1]

Mexican Fruit Fly Regulations; Addition of Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mexican fruit fly regulations by adding California to the list of quarantined States and by designating a portion of Los Angeles County, CA, as a regulated area. This action is necessary on an emergency basis to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. This action restricts the interstate movement of regulated articles from the regulated area in California.

DATES: Interim rule effective November 10, 1997. Consideration will be given only to comments received on or before January 16, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97-113-1, 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. 97-113-1. 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) 734-8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:**Background**

The Mexican fruit fly, *Anastrepha ludens* (Loew), is a destructive pest of citrus and many other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

The Mexican fruit fly regulations (contained in 7 CFR 301.64 through 301.64-10 and referred to below as the regulations) were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from the regulated areas. Prior to the effective date of this rule, Texas was the only State quarantined for the Mexican fruit fly.

Section 301.64-3 provides that the Deputy Administrator of the Animal

and Plant Health Inspection Service (APHIS) for Plant Protection and Quarantine (PPQ) shall list as a regulated area each quarantined State, or each portion of a quarantined State, in which the Mexican fruit fly has been found by an inspector, in which the Deputy Administrator has reason to believe the Mexican fruit fly is present, or that the Deputy Administrator considers necessary to regulate because of its proximity to the Mexican fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mexican fruit fly occurs. Less than an entire quarantined State is designated as a regulated area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of the regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of the articles; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the Mexican fruit fly.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of PPQ reveal that portions of Los Angeles County, CA, are infested with the Mexican fruit fly. Specifically, on October 10, 1997, inspectors found one female Mexican fruit fly in a trap in a residential area of Los Angeles County; on October 20, 1997, inspectors found one male Mexican fruit fly in the same area; and, on October 22, 1997, inspectors detected larvae in the same area as the adult finds, indicating that an infestation exists. The Mexican fruit fly is not known to occur anywhere else in the continental United States except parts of Texas.

Accordingly, to prevent the spread of the Mexican fruit fly to other States, we are amending the regulations in § 301.64(a) by designating California as a quarantined State and in § 301.64-3(c) by designating as a regulated area a portion of Los Angeles County, CA. The regulated area is described in the rule portion of this document.

There does not appear to be any reason to designate any other portions of the quarantined State of California as a regulated area. Officials of State agencies of California have begun an intensive Mexican fruit fly eradication program in the regulated area in California. Also, California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of certain articles from the regulated area that are substantially the same as