

3. Section 330.1102 is revised to read as follows:

**§ 330.1102 Duration.**

This program terminates 1 year after the closing of the Lorton Correctional Complex.

4. Paragraph (b) of § 330.1103 is removed and paragraphs (c), (d) and (e) are redesignated as paragraphs (b), (c) and (d) and revised to read as follows:

**§ 330.1103 Definitions.**

\* \* \* \*

(b) *Vacancy* means any competitive service position, including non-law enforcement positions in the Federal Bureau of Prisons, to be filled for a total of 121 days or more, including all extensions, regardless of whether the agency issues a specific vacancy announcement. This program does not apply to law enforcement positions covered by the Federal Bureau of Prisons Priority Consideration Program.

(c) *Priority consideration* means that a displaced DC DOC employee eligible under this subpart who applies for a vacancy and is determined to be qualified, is accorded similar priority and order of selection as an eligible current or former displaced Federal employee under 5 CFR part 330, subpart G—Interagency Career Transition Assistance for Displaced Employees. Actions which are exempt from the requirements of 5 CFR part 330 subpart G will also be exempt from the requirements of this subpart. Agencies must follow the order of selection in § 330.705(a) in filling vacancies in the Federal Government with candidates from outside their own workforce. DC DOC employees are eligible for this priority consideration without regard to any geographical restrictions.

(d) *Qualified* means an eligible employee who:

(1) Possesses the knowledge, skills, and abilities which meet the basic qualification standards and eligibility requirements for the position, including any medical qualifications, suitability, citizenship, minimum educational and experience requirements, and any applicable selective factors;

(2) Is physically qualified, with reasonable accommodation where appropriate, to perform the essential duties of the position;

(3) Meets any special qualifying condition(s) that OPM has approved for the position; and

(4) Is able to satisfactorily perform the duties of the position upon entry.

5. In § 330.1104, paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (b), (c)(2), (c)(4) and (c)(5) are revised, and a new paragraph (c)(6) is added to read as follows:

**§ 330.1104 Eligibility.**

(a) \* \* \*

(1) Be in receipt of a RIF separation notice, or a similar notice of non-disciplinary termination from the Management Supervisory Service, issued by the DC Department of Corrections in connection with the closure of the Lorton Correctional Complex.

(2) Have not been appointed to a permanent Federal Bureau of Prisons law enforcement position;

(3) Apply for a vacancy within the time frames established by the agency, and include proof of eligibility;

(4) Be found qualified for the specific vacancy.

(b) *Eligibility for priority consideration begins:* on the date the DC DOC employee receives or is issued a specific RIF separation notice, or a similar notice of non-disciplinary termination from the Management Supervisory Service (MSS), issued by the DC DOC due to the closure of the Lorton Correctional Complex.

(c) \* \* \*

(2) When the DC DOC employee is no longer being separated by RIF, or by similar non-disciplinary termination from the Management Supervisory Service, due to the closure of the Lorton Correctional Complex;

\* \* \*

(4) When the DC DOC employee voluntarily separates by resignation or retirement prior to the RIF effective date or the non-disciplinary MSS termination date;

(5) When the DC DOC employee is separated by a non-RIF involuntary separation or disciplinary or other MSS termination not related to the closure of the Lorton correctional complex; or

(6) Eligibility within a specific agency may terminate if the employee:

(i) Declines a permanent appointment offered by the agency (whether competitive or excepted) when the employee applied and was found qualified; or

(ii) Fails to respond within a reasonable period of time to an offer or official inquiry of availability from the agency.

6. Section 330.1105 is revised to read as follows:

**§ 330.1105 Selection.**

(a) If two or more individuals eligible for priority under subpart G of this part (the Interagency Career Transition Assistance Plan), under subpart K of this part (Federal Employment Priority Consideration for Displaced Employees of the District of Columbia Department of Corrections), and/or under subpart L

of this part (Interagency Career Transition Assistance for Displaced Former Panama Canal Zone Employees) apply for a vacancy and are eligible for priority, the agency has the discretion to select any of the individuals.

(b) Agencies will conduct a documented, independent second review whenever an otherwise eligible employee fails to meet the "qualified" requirement. The applicant must be advised in writing of the results of the second review.

7. The heading and paragraphs (a) and (b) of § 330.1106 are revised to read as follows:

**§ 330.1106 Appointment.**

(a)(1) Selectees under this subpart receive noncompetitive appointments to the competitive service under the authority of Public Law 105–274, enacted October 21, 1998.

(2) Agencies must retroactively and noncompetitively convert or correct any excepted appointments made under section 11203(b) of Public Law 105–33 to competitive service appointments under Public Law 105–274. For employees appointed before October 21, 1998, the conversion will be effective on October 21, 1998. For employees appointed on or after October 21, 1998, agencies must correct the record to reflect competitive service appointment as of the original appointment date.

(b) Eligibility for appointment under this subpart expires 1 year after the closing of the Lorton Correctional Complex.

[FR Doc. 01–1487 Filed 1–19–01; 8:45 am]

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**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 301**

[Docket No. 00–110–1]

**West Indian Fruit Fly**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are quarantining part of Cameron County, TX, because of the West Indian fruit fly and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the West Indian fruit fly to noninfested areas of the United States.

**DATES:** This interim rule was effective January 12, 2001. We invite you to comment on this docket. We will consider all comments that we receive by March 23, 2001.

**ADDRESSES:** Please send four copies of your comment (an original and three copies) to: Docket No. 00-110-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 00-110-1.

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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert G. Spaide, Assistant Director, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-8247.

#### SUPPLEMENTARY INFORMATION:

##### Background

We are amending the "Domestic Quarantine Notices" in 7 CFR part 301 by adding a new subpart, "West Indian Fruit Fly" (§§ 301.98 through 301.98-10, referred to below as the regulations). The regulations quarantine part of Cameron County, TX, because of the West Indian fruit fly and restrict the interstate movement of regulated articles from the quarantined area.

The West Indian fruit fly, *Anastrepha obliqua* (Macquart), is a very destructive pest of fruits and vegetables, including carambola, grapefruit, guava, limes, mangoes, oranges, passion fruit, peaches, and pears. This pest can cause serious economic losses by lowering the yield and quality of these fruits and vegetables and, in some cases, by damaging seedlings and young plants. Heavy infestations can result in complete loss of these crops.

Recent trapping surveys near Rio Hondo, TX, have established that part of Cameron County is infested with the West Indian fruit fly.

Officials of the Animal and Plant Health Inspection Service (APHIS) and State and county agencies in Texas have begun an intensive survey and eradication program in the infested area. Also, as explained below, Texas has restricted the intrastate movement of certain articles from the infested area to prevent the spread of the West Indian fruit fly within Texas. However, Federal regulations are necessary to restrict the interstate movement of certain articles from the infested area to prevent the spread of the West Indian fruit fly to noninfested areas of the United States. This interim rule establishes those Federal regulations, which are described below.

##### *Section 301.98—Restrictions on Interstate Movement of Regulated Articles*

Section 301.98 prohibits the interstate movement of regulated articles from quarantined areas except in accordance with the regulations.

##### *Section 301.98-1—Definitions*

Section 301.98-1 contains definitions of the following terms: *Administrator, Animal and Plant Health Inspection Service, certificate, compliance agreement, core area, day degrees, Departmental permit, dripline, infestation, inspector, interstate, limited permit, moved (move, movement), person, Plant Protection and Quarantine, quarantined area, regulated articles, State, and West Indian fruit fly.*

##### *Section 301.98-2—Regulated Articles*

Certain articles present a significant risk of spreading the West Indian fruit fly if they are moved from quarantined areas without restrictions. We call these articles regulated articles. Paragraphs (a) through (e) of § 301.98-2 list the following as regulated articles:

- The West Indian fruit fly;
- Certain fruits and vegetables (fruits or vegetables that are canned or dried or that are frozen below  $-17.8^{\circ}\text{C}$  ( $0^{\circ}\text{F}$ ) are exempted, since the West Indian fruit fly cannot survive such processing);
- Soil within the dripline of plants that produce those fruits or vegetables; and
- Any other product, article, or means of conveyance that an inspector determines to present a risk of spreading the West Indian fruit fly when the inspector notifies the person in possession of the product, article, or means of conveyance that it is subject to the restrictions in the regulations.

The last item listed above, which provides for the designation of "any other product, article, or means of conveyance" as a regulated article, is

intended to address the risks presented by, for example, a truck with West Indian fruit fly pupae in the cracks of its floorboards, thus enabling an inspector to designate that truck as a regulated article in order to ensure that any necessary risk-mitigating measures are carried out.

##### *Section 301.98-3—Quarantined Areas*

Paragraph (a) of § 301.98-3 provides the criteria for the inclusion of States, or portions of States, in the list of quarantined areas. Under these criteria, any State or portion of a State in which the West Indian fruit fly is found by an inspector, or in which the Administrator has reason to believe that the West Indian fruit fly is present, will be listed as a quarantined area. These criteria also provide that an area will be designated as a quarantined area when the Administrator considers it necessary due to the area's inseparability for quarantine enforcement purposes from localities in which the West Indian fruit fly has been found.

Paragraph (a) of § 301.98-3 also provides that we will designate less than an entire State as a quarantined area only if we determine that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed on the interstate movement of regulated articles and that the designation of less than the entire State as a quarantined area will prevent the interstate spread of the West Indian fruit fly. These determinations would indicate that infestations are confined to the quarantined areas and eliminate the need for designating an entire State as a quarantined area.

The boundary lines that delimit the portion of a State that is designated as a quarantined area are set up approximately 4.5 miles from the locations where West Indian fruit fly has been detected. The 4.5 mile radius distance for regulated areas from the trapping sites for West Indian fruit fly is based upon several factors, including: Previous experience with fruit fly eradication programs, estimated efficacy of trapping grids, available data on natural dispersal, and recommendations from fruit fly experts familiar with the biology and behavior of the West Indian fruit fly. The boundary lines may vary due to factors such as the location of West Indian fruit fly host material, the location of transportation centers such as bus stations and airports, the pattern of persons moving in that State, the number and patterns of distribution of the West Indian fruit fly, and the use of clearly identifiable lines for the boundaries.

We have determined that it is not necessary to designate the entire State of Texas as a quarantined area. The West Indian fruit fly has not been found in any area of the State other than a portion of Cameron County, and Texas has adopted and is enforcing restrictions on the intrastate movement of regulated articles from that area that are substantially the same as those we are imposing on the interstate movement of regulated articles. Therefore, in accordance with the criteria described in the previous paragraph, we have designated part of the Rio Hondo area of Cameron County, TX, as a quarantined area. The boundaries of the quarantined area are described in § 301.98-3(c) in the rule portion of this document.

Paragraph (b) of § 301.98-3 provides that we may temporarily designate any nonquarantined area in a State as a quarantined area when we determine that the nonquarantined area meets the criteria for designation as a quarantined area described in § 301.98-3(a). In such cases, we will give the owner or person in possession of the area a copy of the regulations along with written notice of the area's temporary designation as a quarantined area, after which time the interstate movement of any regulated article from the area will be subject to the regulations. This provision is necessary to prevent the spread of the West Indian fruit fly during the time between the detection of the pest and the time a document quarantining the area can be made effective and published in the **Federal Register**. In the event that an area's designation as a temporary quarantined area is terminated, we will provide written notice of that termination to the owner or person in possession of the area as soon as is practicable.

#### *Section 301.98-4—Conditions Governing the Interstate Movement of Regulated Articles from Quarantined Areas*

This section requires most regulated articles moving interstate from quarantined areas to be accompanied by a certificate or a limited permit. APHIS or the U.S. Department of Agriculture (the Department) may move regulated articles interstate without a certificate or limited permit if the articles are moved for experimental or scientific purposes. However, the articles must be moved in accordance with a Departmental permit issued by the Administrator, under conditions specified on the permit to prevent the spread of the West Indian fruit fly.

Except for articles moved by APHIS or the Department, only articles that are moved into the quarantined area from

outside the quarantined area and that are accompanied by a waybill that indicates the point of origin may be moved interstate from the quarantined area without a certificate or limited permit. Additionally, the articles must be moved in an enclosed vehicle or be completely enclosed so as to prevent access by West Indian fruit flies. The regulated articles must also be moved through the quarantined area without stopping (except for refueling, rest stops, emergency repairs, and for traffic conditions such as traffic lights and stop signs), and the regulated articles must not be unpacked or unloaded in the quarantined area.

#### *Section 301.98-5—Issuance and Cancellation of Certificates and Limited Permits*

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles when an inspector finds that, because of certain conditions (e.g., the article is free of West Indian fruit fly), there is no pest risk before movement. Regulated articles accompanied by a certificate may be moved interstate without further restrictions. Limited permits are issued for regulated articles when an inspector finds that, because of a possible pest risk, the articles may be safely moved interstate only subject to further restrictions, such as movement to limited areas and movement for limited purposes. Section 301.98-5 explains the conditions for issuing a certificate or limited permit.

Specifically, § 301.98-5(a) provides that a certificate will be issued by an inspector for the movement of a regulated article if the inspector determines that the article: (1) Is free of the West Indian fruit fly; has been treated in the presence of an inspector in accordance with § 301.98-10; or comes from a premises of origin that is free of the West Indian fruit fly; (2) will be moved in compliance with any additional emergency conditions deemed necessary to prevent the spread of the West Indian fruit fly under section 414 of the Plant Protection Act (Title IV, Pub. L. 106-224, 114 Stat. 444, 7 U.S.C. 7714); and (3) is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to that article.

We have included a footnote (number 4) that provides an address for securing the addresses and telephone numbers of the local Plant Protection and Quarantine offices at which services of inspectors may be requested. We have also included a footnote (number 5) that

explains that the Secretary of Agriculture can, under the Plant Protection Act, take emergency actions to seize, quarantine, treat, destroy, or apply other remedial measures to articles that are, or that he or she has reason to believe are, infested or infected by or contain plant pests.

Paragraph (b) of § 301.98-5 provides for the issuance of a limited permit (in lieu of a certificate) by an inspector for interstate movement of a regulated article if the inspector determines that the article is to be moved to a specified destination for specified handling, utilization or processing, and that the movement will not result in the spread of the West Indian fruit fly.

Paragraph (c) of § 301.98-5 allows any person who has entered into and is operating under a compliance agreement to issue a certificate or limited permit for the interstate movement of a regulated article after an inspector has determined that the article is eligible for a certificate or limited permit under § 301.98-5(a) or (b).

Also, § 301.98-5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector if the inspector determines that the holder of the certificate or limited permit has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact in the event that the person wishes to appeal the cancellation.

#### *Section 301.98-6—Compliance Agreements and Cancellation*

Section 301.98-6 provides for the issuance and cancellation of compliance agreements. Compliance agreements are provided for the convenience of persons who are involved in interstate shipments of regulated articles from quarantined areas. A compliance agreement will be issued when an inspector has determined that the person requesting the compliance agreement is knowledgeable regarding the requirements of the regulations and the person has agreed to comply with those requirements. This section contains a footnote (number 7) that explains how compliance agreements may be arranged.

Section 301.98-6 also provides that an inspector may cancel the compliance agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for

cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact in the event that the person wishes to appeal the cancellation.

*Section 301.98-7—Assembly and Inspection of Regulated Articles*

Section 301.98-7 provides that any person (other than a person authorized to issue certificates or limited permits under § 301.98-5(c)) who desires a certificate or limited permit to move regulated articles must request, at least 48 hours before the desired interstate movement, that an inspector issue a certificate or limited permit. The regulated articles must be assembled in a place and manner directed by the inspector.

*Section 301.98-8—Attachment and Disposition of Certificates and Limited Permits*

Section 301.98-8 requires the certificate or limited permit issued for movement of the regulated article to be attached, during the interstate movement, to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill. Further, the section requires that the carrier must furnish the certificate or limited permit to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

These provisions are necessary for enforcement purposes and to ensure that persons desiring inspection services can obtain them before the intended movement date.

*Section 301.98-9—Costs and Charges*

Section 301.98-9 explains the APHIS policy that the services of an inspector that are needed to comply with the regulations are provided without cost between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, to persons requiring those services, but that we will not be responsible for any other costs or charges (such as overtime costs for inspections conducted at times other than between 8 a.m. to 4:30 p.m., Monday through Friday, except holidays).

*Section 301.98-10—Treatments*

Section 301.98-10 lists treatments that qualify soil and regulated articles for interstate movement with a certificate as provided in § 301.98-5.

Paragraph (a) provides that fruits and vegetables originating inside the quarantined area that are to be moved outside the quarantined area must be treated with an applicable treatment listed in the Plant Protection and Quarantine Treatment Manual, which is

incorporated by reference at 7 CFR 300.1, "Materials incorporated by reference."

Paragraph (b) provides that soil within the dripline of plants that are producing or have produced the fruits and vegetables listed in § 301.98-2(a) of this subpart may be treated with diazinon at the rate of 5 pounds active ingredient per acre with sufficient water to wet the soil to a depth of at least ½ inch. Research by the Agricultural Research Service has determined that this diazinon treatment would destroy the West Indian fruit fly in soil.

Paragraph (c) provides that premises that are located within the regulated area but outside the infested core area, and that produce regulated articles, may receive regular treatments with 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 West Indian fruit fly. Determination of the time period must be based on the day degrees model for West Indian fruit fly. Since the length of fruit fly life cycles vary according to the temperature of their environment, the day degrees model is used to project the duration of the life cycle of the fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 oz of technical grade malathion and 9.6 oz of protein hydrolysate per acre. 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 of Spinosad, the mixture may be diluted with water to improve coverage. After the treatment cycle is complete, regulated articles produced on the premises will be eligible for interstate movement with a certificate as provided in § 301.98-5.

**Emergency Action**

This rulemaking is necessary on an emergency basis to prevent the West Indian fruit fly 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 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**. The document 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. 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.

This rule quarantines part of Cameron County, TX, because of the West Indian fruit fly and restricts the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the West Indian fruit fly to noninfested areas of the United States.

Within the regulated area there are approximately 22 small entities that may be affected by this rule. These include 5 fruit sellers and 17 growers. These 22 entities comprise less than 1 percent of the total number of similar entities operating in the State of Texas. Additionally, these small entities sell regulated articles 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 those few entities that do move regulated articles interstate from the quarantined area 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

An environmental assessment and finding of no significant impact have been prepared for the West Indian Fruit Fly Cooperative Eradication Program. The assessment provides a basis for the conclusion that the implementation of this interim rule will not have a significant impact on human health and 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 assessment and finding 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).

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

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0170 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503, and (2) Docket No. 00–110–1, 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. 00–110–1 and send your comments within 60 days of publication of this rule.

This interim rule quarantines a part of Cameron, TX, because of the West Indian fruit fly and restricts the interstate movement of regulated articles from the quarantined area. Its implementation will require us to engage in certain information collection activities, in that certain articles may not be moved interstate from the quarantined area unless they are accompanied by a certificate or a limited permit. A certificate or limited permit may be issued by an inspector (*i.e.*, an APHIS employee or other person authorized by the APHIS Administrator to enforce the regulations) or by a person who has entered into a written compliance agreement with APHIS. We are soliciting comments from the public concerning our information collection and recordkeeping requirements. These comments will help us:

- (1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;
- (2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 1 hour per response.

*Respondents:* State and county cooperators (inspectors); and producers, handlers, and movers of regulated fruit and vegetables in Cameron County, TX.

*Estimated annual number of respondents:* 37.

*Estimated annual number of responses per respondent:* 1.

*Estimated annual number of responses:* 37.

*Estimated total annual burden on respondents:* 37 hours.

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

#### 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:** Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166; 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, and Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. Part 301 is amended by adding a new “Subpart—West Indian Fruit Fly,” §§ 301.98 through 301.98–10, to read as follows:

##### Subpart—West Indian Fruit Fly

Sec.

- 301.98 Restrictions on interstate movement of regulated articles.
- 301.98–1 Definitions.
- 301.98–2 Regulated articles.
- 301.98–3 Quarantined areas.
- 301.98–4 Conditions governing the interstate movement of regulated articles from quarantined areas.
- 301.98–5 Issuance and cancellation of certificates and limited permits.
- 301.98–6 Compliance agreements and cancellation.
- 301.98–7 Assembly and inspection of regulated articles.
- 301.98–8 Attachment and disposition of certificates and limited permits.
- 301.98–9 Costs and charges.
- 301.98–10 Treatments.

##### Subpart—West Indian Fruit Fly

#### § 301.98 Restrictions on interstate movement of regulated articles.

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.<sup>1</sup>

#### § 301.98–1 Definitions.

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

*Animal and Plant Health Inspection Service.* The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture.

<sup>1</sup> Any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 414 of the Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 444, 7 U.S.C. 7714).

**Certificate.** A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of West Indian fruit fly and may be moved interstate to any destination.

**Compliance agreement.** A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with this subpart.

**Core area.** The 1-square-mile area surrounding each property where West Indian fruit fly has been detected.

**Day degrees.** A mathematical construct combining average temperature over time that is used to calculate the length of a West Indian fruit fly life cycle. Day degrees are the product of the following formula, with all temperatures measured in °F: (Minimum Daily Temp+ Maximum Daily Temp)/2) – 54°=Day Degrees.

**Departmental permit.** A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.98–4(c) of this subpart.

**Dripline.** The line around the canopy of a plant.

**Infestation.** The presence of the West Indian fruit fly or the existence of circumstances that makes it reasonable to believe that the West Indian fruit fly is present.

**Inspector.** Any employee of the APHIS, U.S. Department of Agriculture, or other person authorized by the Administrator to perform the duties required under this subpart.

**Interstate.** From any State into or through any other State.

**Limited permit.** A document in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.98–5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

**Moved (move, movement).** Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

**Person.** Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

**Plant Protection and Quarantine.** Plant Protection and Quarantine, Animal and Plant Health Inspection

Service, United States Department of Agriculture.

**Quarantined area.** Any State, or any portion of a State, listed in § 301.98–3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.98–3(b) of this subpart.

**Regulated article.** Any article listed in § 301.98–2 or otherwise designated as a regulated article in accordance with § 301.98–2(d).

**State.** The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

**West Indian fruit fly.** The insect known as the West Indian fruit fly, *Anastrepha obliqua* (Macquart), in any stage of development.

#### § 301.98–2 Regulated articles.

The following are regulated articles:

(a) West Indian fruit flies.<sup>2</sup>

(b)(1) The following fruits and vegetables:

Barbados cherry (*Malpighia glabra*)  
Carambola (*Averrhoa carambola*)  
Grapefruit (*Citrus paradisi*)  
Granadilla, giant (*Passiflora quadrangularis*)  
Guava (*Psidium guajava*)  
Guava, strawberry (*Psidium littorale*)  
Hog-plum (*Spondias mombin*)  
Japanese plum (*Prunus salicina*)  
Jew plum (*Spondias cytherea*)  
Ketembilla (*Dovyalis hebecarpa*)  
Lime, sweet (*Citrus aurantifolia*)  
Loquat (*Eriobotrya japonica*)  
Malay-apple (*Syzygium malaccense*)  
Mango (*Mangifera indica*)  
Orange, sour (*Citrus aurantium*)  
Orange, sweet (*Citrus sinensis*)  
Passion fruit (*Passiflora edulis*)  
Peach (*Prunus persica*)  
Pear (*Pyrus communis*)  
Ramón (*Brosimum alicastrum*)  
Red mombin (*Spondias purpurea*)  
Rose-apple (*Syzygium jambos*)  
Sapodilla (*Manilkara zapota*)  
Sapote (*Diospyros* spp.)

(2) Any fruits or vegetables that are canned or dried or frozen below –17.8 °C. (0 °F.) are not regulated articles.

(c) Soil within the dripline of plants that are producing or have produced the fruits or vegetables listed in paragraph (b) of this section.

(d) Any other product, article, or means of conveyance not listed in paragraphs (a) through (c) of this section that an inspector determines presents a risk of spreading the West Indian fruit fly, when the inspector notifies the person in possession of the product, article, or means of conveyance that it

is subject to the restrictions of this subpart.

#### § 301.98–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State, or each portion of a State, in which the West Indian fruit fly has been found by an inspector, in which the Administrator has reason to believe that the West Indian fruit fly is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which the West Indian fruit fly has been found. 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 by this subpart 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 West Indian fruit fly.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice for the temporary designation to the owner or person in possession of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

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

Texas

**Cameron County.** That portion of Cameron County bounded by a line drawn as follows: Beginning at the intersection of FM 106 and Robertson Road; then north on Robertson Road to Fernando Road; then east on Fernando Road to Alexander Road; then north on Alexander Road to Taubert Road; then east on Taubert Road to FM 2925; then north on FM 2925 to Johnson Road; then east on Johnson Road to North Olimeto

<sup>2</sup>Permit and other requirements for the interstate movement of West Indian fruit flies are contained in part 330 of this chapter.

Road; then east along an imaginary line to FM 1847; then south on FM 1847 to FM 510; then west on FM 510 to Casey Road; then north on Casey Road to Bean Road; then west on Bean Road to FM 345; then north on FM 345 to Glenview Road; then west on Glenview Road to Robertson Road; then north on Robertson Road to the point of beginning.

**§ 301.98-4 Conditions governing the interstate movement of regulated articles from quarantined areas.**

Any regulated article may be moved interstate from a quarantined area<sup>3</sup> only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.98-5 and 301.98-8 of this subpart;

(b) Without a certificate or limited permit if:

(1) The regulated article originated outside the quarantined area and is either moved in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by West Indian fruit flies (such as canvas, plastic, or other closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is indicated on the waybill, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area; and

(3) The regulated article is moved through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs.

(c) Without a certificate or limited permit if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a Departmental permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the spread of the West Indian fruit fly; and

(4) With a tag or label bearing the number of the Departmental permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container.

(Approved by the Office of Management and Budget under control number 0579-0170)

<sup>3</sup> Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

**§ 301.98-5 Issuance and cancellation of certificates and limited permits.**

(a) A certificate may be issued by an inspector<sup>4</sup> for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with § 301.98-10 of this subpart; or

(ii) Based on inspection of the premises of origin, the premises are free from the West Indian fruit fly; or

(iii) Based on inspection of the regulated article, the regulated article is free of West Indian fruit flies; and

(2) The regulated article will be moved through the quarantined area in an enclosed vehicle or will be completely enclosed by a covering adequate to prevent access by the West Indian fruit fly; and

(3) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (Title IV, Pub. L. 106-224, 114 Stat. 444, 7 U.S.C. 7714)<sup>5</sup> to prevent the spread of the West Indian fruit fly; and

(4) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) An inspector<sup>6</sup> will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) The regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the West Indian fruit fly because life stages of the West Indian fruit fly will be destroyed by the

<sup>4</sup> Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 134, Riverdale, MD 20737-1236, or the APHIS web site at <http://www.aphis.usda.gov/travel/aqui.html>.

<sup>5</sup> Section 414 of the Plant Protection Act (Title IV, Pub. L. 106-224, 114 Stat. 444, 7 U.S.C. 7714) provides that the Secretary of Agriculture may, under certain conditions, hold, seize, quarantine, treat, apply other remedial measures to destroy or otherwise dispose of any plant, plant pest, plant product, article, or means of conveyance that is moving, or has moved into or through the United States or interstate if the Secretary has reason to believe the article is a plant pest or is infested with a plant pest at the time of movement.

<sup>6</sup> See footnote 4 to § 301.98-5(a).

specified handling, processing, or utilization;

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (Title IV, Pub. L. 106-224, 114 Stat. 444, 7 U.S.C. 7714) to prevent the spread of the West Indian fruit fly; and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for the interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if an inspector has determined that the regulated article is eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn, either orally or in writing, by an inspector if he or she determines that the holder of the certificate or limited permit has not complied with all conditions in this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0170)

**§ 301.98-6 Compliance agreements and cancellation.**

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.<sup>7</sup>

(b) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

**§ 301.98-7 Assembly and inspection of regulated articles.**

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.98-5(c)) who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector<sup>8</sup> as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

**§ 301.98-8 Attachment and disposition of certificates and limited permits.**

(a) A certificate or limited permit required for the interstate movement of a regulated article must, at all times during the interstate movement, be:

(1) Attached to the outside of the container containing the regulated article; or

(2) Attached to the regulated article itself if not in a container; or

(3) Attached to the consignee's copy of the accompanying waybill. If the certificate or limited permit is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

(Approved by the Office of Management and Budget under control number 0579-0170)

**§ 301.98-9 Costs and charges.**

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside normal business hours.

**§ 301.98-10 Treatments.**

Treatment schedules listed in the Plant Protection and Quarantine Treatment Manual to destroy the West Indian fruit fly are authorized for use on regulated articles. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference." The following treatments also may be used for the regulated articles indicated:

(a) *Soil within the dripline of plants that are producing or have produced the fruits and vegetables listed in § 301.98-2(a) of this subpart.* Apply diazinon at the rate of 5 pounds active ingredient per acre to the soil within the dripline with sufficient water to wet the soil to at least a depth of ½ inch.

(b) *Premises.* Fields, groves, or areas that are located within a quarantined area but outside the infested core area and that produce regulated articles may receive regular treatments with either malathion or spinosad bait spray as an alternative to treating fruits and vegetables as provided in the Plant Protection and Quarantine Treatment Manual. 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 development of West Indian fruit fly egg and larvae. Determination of

the time period must be based on the day degrees model for West Indian fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 oz of technical grade malathion and 9.6 oz of protein hydrolysate 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 12th day of January 2001.

**Craig A. Reed,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 01-1618 Filed 1-19-01; 8:45 am]

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**DEPARTMENT OF JUSTICE****8 CFR Parts 3, 212, and 240**

[EOIR No. 127P; AG Order No. 2358-2001]

RIN 1125-AA29

**Executive Office for Immigration Review; Section 212(c) Relief for Certain Aliens in Deportation Proceedings Before April 24, 1996**

**AGENCY:** Executive Office for Immigration Review, Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule creates a uniform procedure for applying the law as enacted by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). This rule allows certain aliens in deportation proceedings that commenced before April 24, 1996, to apply for relief pursuant to section 212(c) of the Immigration and Nationality Act (INA). In addition, this rule makes several technical amendments to an earlier regulation relating to the streamlining authority of the Board of Immigration Appeals.

**EFFECTIVE DATE:** This final rule is effective January 22, 2001.

**FOR FURTHER INFORMATION CONTACT:** Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041, telephone (703) 305-0470.

**SUPPLEMENTARY INFORMATION:****Why Is the Department Issuing This Final Rule?**

Before the comprehensive revision of the INA by the Illegal Immigration

<sup>7</sup> Compliance agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 134, Riverdale, MD 20737-1236, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories.

<sup>8</sup> See footnote 4 to § 301.98-5(a).