

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

Docket No. 01-080-1

#### Oriental Fruit Fly; Designation of Quarantined Area

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

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

**SUMMARY:** We are amending the Oriental fruit fly regulations by quarantining a portion of San Bernardino County, CA, 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 Oriental fruit fly into noninfested areas of the United States.

**DATES:** This interim rule was effective August 29, 2001. We invite you to comment on this docket. We will consider all comments that we receive by November 5, 2001.

**ADDRESSES:** Please send four copies of your comment (an original and three copies) to: Docket No. 01-080-1, 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. 01-080-1.

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. Stephen Knight, PPQ, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737-1231; (301) 734-8039.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, vegetables, and berries. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks, which can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93-10 (referred to below as the regulations), were established to prevent the spread of the Oriental fruit fly to noninfested areas of the United States. Section 301.93-3(a) provides that the Administrator will list as a quarantined area each State, or each portion of a State, in which the Oriental fruit fly has been found by an inspector, in which the Administrator has reason to believe the Oriental fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Oriental fruit fly has been found. The regulations impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.93-3(c).

Less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles; and (2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of the Oriental fruit fly.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and

Plant Health Inspection Service (APHIS) reveal that a portion of San Bernardino County, CA, is infested with the Oriental fruit fly. The Oriental fruit fly is not known to exist anywhere else in the continental United States.

State agencies in California have begun an intensive Oriental fruit fly eradication program in the quarantined area in San Bernardino County. Also, California has taken action to restrict the intrastate movement of regulated articles from the quarantined area.

Accordingly, to prevent the spread of the Oriental fruit fly to other States, we are amending the regulations in § 301.93-3 by designating a portion of San Bernardino County, CA, as a quarantined area for the Oriental fruit fly. The quarantined area is described in the rule portion of this document.

##### Emergency Action

This rulemaking is necessary on an emergency basis to prevent the Oriental 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. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action amends the Oriental fruit fly regulations by adding a portion of San Bernardino County, CA, to the list of quarantined areas. The regulations restrict the interstate movement of regulated articles from the quarantined area. County records indicate there are 10 to 15 small growers within the quarantined area who will be affected by this rule. There is no commercial

agricultural acreage nor any flea markets or certified farmers markets within the quarantined area. The number of nurseries and fruit and produce dealers located within the quarantined area is presently unknown.

We expect that any small entities located within the quarantined area that sell regulated articles do so 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 any small entities that may move regulated articles intrastate 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 interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule: (1) Preempts all State or local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties who 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 interim rule. The site-specific environmental assessment provides a basis for the conclusion that the implementation of integrated pest management to eradicate the Oriental fruit fly 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 am. 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 interim 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, we are amending 7 CFR part 301 as follows:

**PART 301—DOMESTIC QUARANTINE NOTICES**

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

**Authority:** 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

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

2. In § 301.93–3, paragraph (c) is revised to read as follows:

**§ 301.93–3 Quarantined areas.**

\* \* \* \* \*

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

**California**

*San Bernardino County.* That portion of the county beginning at the intersection of Interstate Highway 10 and Mills Avenue; then east on Mills Avenue to Haven Avenue; then south on Haven Avenue to Edison Avenue; then west on Edison Avenue to Archibald Avenue; then south on Archibald Avenue to Merrill Avenue; then west on

Merrill Avenue to Carpenter Avenue; then south on Carpenter Avenue to Remington Avenue; then west on Remington Avenue to Grove Avenue; then south on Grove Avenue to Kimball Avenue; then west on Kimball Avenue to El Prado Road; then northwest on El Prado Road to Central Avenue; then southwest on Central Avenue to State Highway 71; then northwest on State Highway 71 to Schaefer Avenue; then east on Schaefer Avenue to East End Avenue; then north on East End Avenue to Grand Avenue; then east on Grand Avenue to Kadota Avenue; then north on Kadota Avenue to Mills Avenue; then northeast on Mills Avenue to the point of beginning.

Done in Washington, DC, this 29th day of August 2001.

**Craig A. Reed,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 01–22241 Filed 9–4–01; 8:45 am]

**BILLING CODE 3410–34–U**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 01–ASO–10]**

**Amendment of Class E5 Airspace; Ocracoke, NC**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends the Class E5 airspace at Ocracoke, NC. On October 12, 1999, the Pamlico Nondirectional Radio Beacon (NDB) was decommissioned, canceling the Standard Instrument Approach Procedure (SIAP) to the Ocracoke Island Airport, served by this NAVAID. Therefore, the airspace legal description must be amended to reflect this change. **EFFECTIVE DATE:** 0901 UTC, November 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

**SUPPLEMENTARY INFORMATION:**

**History**

The Pamlico NDB was decommissioned on October 12, 1999, canceling the SIAP to the Ocracoke Island Airport served by this NAVAID. The extension to the Class E airspace, to accommodate the SIAP, is no longer