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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 02-096-3]

#### 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 Orange County, CA, and restricting the interstate movement of regulated articles from that 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. We are also amending the regulations to provide for the use of spinosad bait spray as an alternative treatment for premises. This new treatment option will provide an alternative to the use of malathion bait spray for premises that produce regulated articles within the quarantined area but outside the infested core area.

**DATES:** This interim rule was effective September 14, 2004. We will consider all comments that we receive on or before November 19, 2004.

**ADDRESSES:** You may submit comments by any of the following methods:

- **EDOCKET:** Go to <http://www.epa.gov/feddoCKET> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 02-096-3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-096-3.

- **E-mail:** Address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-096-3" on the subject line.

- **Agency Web Site:** Go to <http://www.aphis.usda.gov/ppd/rad/cominst.html> for a form you can use to submit an e-mail comment through the APHIS Web site.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

**Reading Room:** 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.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne D. Burnett, National Fruit Fly Program Manager, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-4387.

#### 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 into noninfested areas of the United States.

Section 301.93-3(a) provides that the Administrator will list as a quarantined area each State, or portion of a State, in which the Oriental fruit fly has been found by an inspector, in which the Administrator has reason to believe that 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 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 interstate movement of the 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 reveal that a portion of Orange County, CA, is infested with the Oriental fruit fly.

State agencies in California have begun an intensive Oriental fruit fly eradication program in the quarantined areas of Orange 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 noninfested areas of the United States, we are amending the regulations in § 301.93-3 by designating a portion of Orange County, CA, as a quarantined area for the Oriental fruit fly. The quarantined area is described in the rule portion of this document.

#### Prior Designation of Quarantined Area

In an interim rule effective on January 13, 2004, and published in the **Federal Register** on January 20, 2004 (69 FR 2653-2655, Docket No. 02-096-2), we

quarantined portions of Los Angeles and San Bernardino Counties, CA, and restricted the interstate movement of regulated articles from the quarantined area. Based on trapping surveys by inspectors of California State and county agencies, the State of California lifted its interior quarantine on May 21, 2004, based on the determination that the Oriental fruit fly had been eradicated from the quarantined area. In these types of situations, we normally follow the State's action by lifting the corresponding Federal quarantine on the particular area; however, in this case that did not occur. Therefore, in this interim rule, we are removing the quarantined area established in our January 2004 interim rule. The description of the new quarantined area discussed previously replaces the description of the January 2004 quarantined area in § 301.93–3(c).

#### Treatments

Section 301.93–10 of the regulations lists treatments for regulated articles. Regulated articles treated in accordance with this section may be moved interstate from a quarantined area to any destination. Section 301.93–10 contains treatments for specified fruits, treatments for soil within the treeline of plants producing specified fruits, and treatments for premises (fields, groves, or areas) that are within a quarantined area but outside the infested core area.

Under § 301.93–10(b), premises that are located within the quarantined area but outside the infested core area, and that produce regulated articles, must receive regular treatments with malathion bait spray. We are amending § 301.93–10(b) to include a new alternative chemical treatment for premises. The new chemical treatment is a spinosad bait spray. Without spinosad bait spray, the only treatment made available by the regulations for premises has been malathion bait spray. 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, the mixture may be diluted with water to improve coverage. The spinosad bait spray provisions we are adding to the regulations in § 301.93–10(b) are the same as those currently found in the Mexican fruit fly regulations in § 301.64–10(c), the West Indian fruit fly regulations in § 301.98–10(b), and the sapote fruit fly regulations in § 301.99–10(c).

#### 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 and to provide an alternative treatment for premises. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to 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 we receive during the comment period for this interim rule (*see DATES* above). 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.

#### 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 under Executive Order 12866.

This rule amends the Oriental fruit fly regulations by adding a portion of Orange County, CA, to the list of quarantined areas. The regulations restrict the interstate movement of regulated articles from a quarantined area. This rule also amends the regulations by including a new alternative chemical treatment for premises located within the quarantined area but outside the infested core area.

The quarantined area encompasses a relatively small area of Orange County, CA, covering approximately 116 square miles. County records indicated there are 9 growers, 4 nurseries, 24 mobile vendors, 3 farmers markets, 8 fruit sellers, 1 distributor, 2 haulers, 2 processors, 1 swap meet, and 34 yard and tree maintenance firms within the quarantined area that may be affected by this rule.

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 those entities appears to be minimal. The effect on any small entities that may move regulated articles interstate 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.

Currently, growers must treat premises that are within the quarantined area but outside the infested core area and that produce regulated articles with regular

treatments of malathion bait spray. This rule provides for the use of spinosad bait spray for these premises as an alternative to malathion. Spinosad bait spray has been added to the list of approved treatment methods to help meet the requirements of organic growers. Growers and nurseries in regulated areas that choose to use spinosad bait spray may be affected by this change, as the costs of applying spinosad bait spray are greater than the costs of applying malathion bait spray. No growers or nurseries will be required to use spinosad bait spray as a result of its addition to the regulations.

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 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 the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), 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).

The environmental assessment and finding of no significant impact are available for viewing on the Internet at <http://www.aphis.usda.gov/ppq/ep/ff>. Copies of the environmental assessment and finding of no significant impact are also available for public inspection in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this proposed rule). 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. 7701–7772; 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**

*Orange County.* That portion of Orange County in the Santa Ana area bounded by a line as follows: Beginning at the intersection of South Euclid Street and West Broadway; then east on West Broadway to East Broadway; then east on East Broadway to South East Street; then northwest on South East Street to East Lincoln Avenue; then east on East Lincoln Avenue to West Lincoln Avenue; then east on West Lincoln Avenue to East Lincoln Avenue; then east on East Lincoln Avenue to Nohl Ranch Road; then east and northeast on

Nohl Ranch Road to South Imperial Highway; then south and southwest on South Imperial Highway to Edison Ridge Road; then east and northeast on Edison Ridge Road to Nohl Ranch Road; then southeast on Nohl Ranch Road to Serrano Avenue; then southwest on Serrano Avenue to northern boundary of Santiago Oaks Regional Park; then east, southwest, west, south, and west along the park boundary line to Santiago Creek; then southeast along Santiago Creek to the boundary of Irvine Regional Park; then northeast, southeast, south, southeast, northeast, southeast, south, southwest, and northwest along the park boundary line to Peters Canyon Road; then south and southwest on Peters Canyon Road to Santiago Canyon Road; then southeast on Santiago Canyon Road to the Eastern Transportation Corridor; then south along an imaginary line from the intersection of Santiago Canyon Road and the Eastern Transportation Corridor to the northernmost point of Culver Drive; then southwest on Culver Drive to Walnut Avenue; then northwest on Walnut Avenue to Jamboree Road; then southwest on Jamboree Road to Alton Parkway; then northwest on Alton Parkway to Red Hill Avenue; then southwest on Red Hill Avenue to Macarthur Boulevard; then northwest on Macarthur Boulevard to State Highway 55; then southwest on State Highway 55 to Interstate Highway 405; then west and northwest on Interstate Highway 405 to Magnolia Street; then north on Magnolia Street to McFadden Avenue; then west on McFadden Avenue to Newland Street; then north on Newland Street to Garden Grove Boulevard; then east on Garden Grove Boulevard to Magnolia Street; then north on Magnolia Street to Magnolia Avenue; then north on Magnolia Avenue to South Magnolia Avenue; then north on South Magnolia Avenue to West Ball Road; then east on West Ball Road to Ball Road; then east on Ball Road to South Euclid Street; then north on South Euclid Street to the point of the beginning.

■ 3. In § 301.93–10, paragraph (b) is revised to read as follows:

**§ 301.93–10 Treatments.**

\* \* \* \* \*

(b) *Premises.* A field, grove, or area that is located within the quarantined area but outside the infested core area, and that produces regulated articles, must receive regular treatments with either 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 Oriental fruit fly. Determination of the time period must be based on the day degrees model for the Oriental 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 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 14th day of September, 2004.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04–21084 Filed 9–17–04; 8:45 am]

**BILLING CODE 3410–34–P**

**DEPARTMENT OF AGRICULTURE**

**Commodity Credit Corporation**

**Natural Resources Conservation Service**

**7 CFR Part 1469**

**Conservation Security Program**

**AGENCY:** Commodity Credit Corporation and the Natural Resources Conservation Service, USDA.

**ACTION:** Interim final rule; extension of public comment period.

**SUMMARY:** The Conservation Security Program (CSP) is authorized by Title XII, Chapter 2, Subchapter A, of the Food Security Act of 1985, as amended by the Farm Security and Rural Investment Act of 2002. The Natural Resources Conservation Service (NRCS) published an Interim Final Rule for CSP on June 21, 2004, (69 FR 34502), with a comment period expiring September 20, 2004. By this document, NRCS is extending the period during which it will accept public comment on the Interim Final Rule for CSP to October 5, 2004. This extension is to give the public additional time to comment on key issues that have been raised regarding the implementation of the program.

**DATES:** Comments must be postmarked by midnight October 5, 2004.

**ADDRESSES:** Send comments in writing, by mail, to Financial Assistance