

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 305

[Docket No. APHIS–2007–0084]

RIN 0579–AC57

Consolidation of the Fruit Fly Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to consolidate our domestic regulations regarding exotic fruit flies. Currently, these regulations are contained in six separate subparts, each of which covers a different species of fruit fly, and each of these subparts has parallel sections that are substantially the same as the corresponding sections in the other subparts. Therefore, we are proposing to combine these six subparts into a single subpart. We are also proposing to modify the regulations by adding a mechanism through which quarantined areas can be removed from the regulations as quickly as they are added. These proposed changes would eliminate duplication and enhance the flexibility of the regulations.

DATES: We will consider all comments that we receive on or before November 19, 2007.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click “Submit.” In the Docket ID column, select APHIS–2007–0084 to submit or view public comments and to view supporting and related materials available electronically. Information on using [Regulations.gov](http://www.regulations.gov), including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is

available through the site’s “User Tips” link.

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0084, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0084.

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: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, Domestic Coordinator, Fruit Fly Exclusion and Detection Programs, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1234; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) administers regulations in 7 CFR part 301, “Domestic Quarantine Notices,” that are designed to prevent the interstate spread of pests that are new to or not widely distributed within the United States. The regulations in part 301 are currently divided into 23 subparts, each of which addresses a specific plant pest concern. Of those 23 subparts, 6 deal with fruit flies, those being the Mexican, Mediterranean, Oriental, Melon, West Indian, and Sapote fruit flies. All of the fruit fly subparts are constructed in the same manner and consist of 11 sections:

- Restrictions on interstate movement of regulated articles;
- Definitions;
- Regulated articles;
- Quarantined areas;
- Conditions governing the interstate movement of regulated articles from quarantined areas;
- Issuance and cancellation of certificates and limited permits;

- Compliance agreements and cancellation;
- Assembly and inspection of regulated articles;
- Attachment and disposition of certificates and limited permits;
- Costs and charges; and
- Treatments.

With the exception of quarantined area descriptions, regulated article lists, and approved treatments that are specific to a particular fruit fly, there is little to no variation in the content of the six subparts; apart from those exceptions, any differences are more editorial than substantive.

Given the large degree to which the provisions of these six subparts overlap, we are proposing to consolidate them into a single subpart. The new “Subpart—Fruit Flies” would allow us to eliminate the duplicative regulatory text that results from maintaining six separate but similar subparts while allowing us to retain all the necessary distinctions dictated by the differing treatments for and biology, life cycle, and host range of each species of fruit fly. This consolidation would result in 66 sections of regulatory text being condensed into 11 sections, with 7 of those sections being no longer than they currently are in any one of the existing subparts.

Given the May 2006 detection (and the July 2006 eradication) of peach fruit fly (*Bactrocera zonata*) in two counties in California, this proposed rule would also include peach fruit fly within the consolidated regulations. The proposed new subpart is discussed below.

Restrictions on Interstate Movement of Regulated Articles

Proposed § 301.32(a) would establish that the interstate movement of regulated articles from quarantined areas is prohibited except in accordance with the regulations. A footnote in this paragraph would note that the interstate movement of any of the fruit flies regulated under the subpart is subject to the regulations in 7 CFR part 330, which contains the Federal plant pest regulations.

Paragraph (b) of § 301.32 would explain that sec. 414 of the Plant Protection Act (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.

These proposed provisions are all drawn from and consistent with those found in the existing fruit fly subparts.

Definitions

Proposed § 301.32–1 contains definitions of the terms used in the subpart; all the terms and their definitions were drawn from the existing fruit fly subparts. Although some definitions would be modified to reflect the fact that they no longer apply to a specific species of fruit fly, we are proposing to make substantive changes to only two definitions: *Core area* and *day degrees*.

In the Mediterranean, West Indian, and Sapote fruit fly subparts, *core area* is defined as a 1-square-mile area surrounding each property where the particular fruit fly has been detected, whereas the term is defined as “The area within a circle surrounding each detection using a ½ mile radius with the detection as a center point” in the Mexican and Oriental fruit fly subparts (the term is not defined in the melon fruit fly subpart). In proposed § 301.32–1, we use the definition that appears in the Mexican and Oriental fruit fly subparts, as those definitions have both been recently updated to reflect the use of GPS technology, which allows us to more accurately measure the distance from a positive detection site.

The regulations in the Mexican, Mediterranean, West Indian, and Sapote fruit fly subparts currently define the term *day degrees* as a mathematical construct combining average temperature over time that is used to calculate the length of a particular fruit fly’s life cycle. Day degrees are the product of a formula, with all temperatures measured in °F, such as that which appears in the sapote fruit fly regulations: “[Minimum Daily Temp + Maximum Daily Temp]/2 – 54° Day Degrees.” We recently amended the definition of *day degrees* in the Oriental fruit fly subpart to reflect the fact that we can now use weather service data entered into a computer model to more accurately measure day degree accumulation based upon the latest biological information than was previously possible. Therefore, the definition of *day degrees* that appears in proposed § 301.32–1 matches the definition in the Oriental fruit fly subpart, i.e.: “A unit of measurement used to measure the amount of heat required to further the development of

fruit flies through their life cycle. Day-degree life cycle requirements are calculated through a modeling process specific for each fruit fly species.”

Regulated Articles

In proposed § 301.32–2, we have consolidated the lists of regulated articles that appear in each of the six fruit fly subparts and have also included those articles identified as regulated articles for the peach fruit fly. Because there is quite a bit of overlap among the lists, i.e., the same articles are regulated articles in two or more subparts, the list in proposed § 301.32(a) appears in table form, with the articles themselves appearing in the left column and the one or more fruit fly species for which those articles are regulated appearing in the right column.

Quarantined Areas

Proposed § 301.32–3 provides the criteria for the designation of States, or portions of States, as quarantined areas. Apart from the substantive addition we discuss in the following paragraphs, the content of this proposed section has been drawn from, and is consistent with, the corresponding sections in the six existing fruit fly subparts.

The substantive addition we are proposing involves the designation of quarantined areas. The regulations in each of the six subparts, as well as in proposed § 301.32–3(a) in this document, provide APHIS with the ability to temporarily designate any nonquarantined area in a State as a quarantined area when a fruit fly has been found in that area by an inspector, when the Administrator has reason to believe that the fruit fly is present in that area, or when the Administrator considers it necessary to quarantine that area because of its inseparability for quarantine enforcement purposes from localities in which the fruit fly has been found. This temporary designation of a quarantined area is communicated in writing to the owner or person in possession of the nonquarantined area; after that written notice is served, the interstate movement of any regulated article from an area temporarily designated as a quarantined area will be subject to the regulations. As soon as practicable, the area will be added to the list of quarantined areas in the regulations or the temporary designation of a quarantined area may be terminated by the Administrator or an inspector in accordance with the specified criteria for such termination. The owner or person in possession of an area for which designation of a quarantined area is terminated before being added to the

regulations will be given notice of the termination as soon as practicable.

In this document, we are proposing to establish a mechanism that would allow us to take a similar approach to removing areas from quarantine. Under our current procedures, we normally add a quarantined area to the regulations through an interim rule, then, after determining that the fruit fly has been eradicated from that area, we issue a second interim rule that removes the area from the regulations. Even with the comparatively expedited process afforded by using an interim rule to remove a quarantined area from the regulations, there is routinely a period of 2 or more weeks that passes between the time we determine that eradication has been achieved and the time we can publish that second interim rule to relieve restrictions on the interstate movement of regulated articles from the area.

In order to address this situation and enable us to remove restrictions on interstate movement as quickly as possible once we determine they are no longer warranted, proposed § 301.32–3(b)(2) would provide that the Administrator or an inspector may terminate the temporary designation of a quarantined area or the designation of a quarantined area listed in paragraph (c) when the Administrator determines that sufficient time has passed without finding additional flies or other evidence of infestation in the area to conclude that the fruit fly no longer exists in that area. The procedure for quickly removing a quarantined area would mirror the current procedure for quickly adding a quarantined area, i.e., written notice would be given to all individuals in the quarantined area, who would then be permitted to move regulated articles from the previously quarantined area without restriction, and the designation of the area as a quarantined area, if listed in the regulations, would then be removed from the list in paragraph (c) as soon as practicable.

Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas

The provisions in proposed § 301.32–4 were drawn from the provisions that appear in the corresponding sections of each of the six subparts, which do not differ substantively among themselves except in one instance. In § 301.78–4 of the Mediterranean fruit fly subpart, paragraph (b)(2) includes a provision for the movement of a regulated article without a certificate or limited permit if it is moving as air cargo or as a meal intended for in-flight consumption, and

is transiting Los Angeles International Airport in California. Proposed § 301.32–4 would not include this provision, as the more general movement provisions in this section would cover that situation.

Issuance and Cancellation of Certificates and Limited Permits

Proposed § 301.32–5 explains the conditions that must be met in order for a certificate or limited permit authorizing the interstate movement of a regulated article to be issued and provides for the withdrawal of a certificate or limited permit by an inspector under certain circumstances. These proposed provisions are all drawn from and consistent with those found in the existing fruit fly subparts.

Compliance Agreements and Cancellation

Proposed § 301.32–6 provides for the use of and cancellation of compliance agreements, which are provided for the convenience of persons who are involved in the growing, handling, or moving of regulated articles from quarantined areas. These proposed provisions are all drawn from and consistent with those found in the existing fruit fly subparts.

Assembly and Inspection of Regulated Articles

Proposed § 301.32–7 provides instructions for obtaining the services of an inspector when inspection is necessary to secure a certificate or limited permit to move regulated articles interstate. These proposed provisions are all drawn from and consistent with those found in the existing fruit fly subparts.

Attachment and Disposition of Certificates and Limited Permits

Proposed § 301.32–8 provides instructions for attaching certificates or limited permits to regulated articles or their accompanying documentation and requires that copies of the certificate or limited permit be provided to the consignee of the regulated articles upon arrival at their destination. These proposed provisions are all drawn from and consistent with those found in the existing fruit fly subparts.

Costs and Charges

Proposed § 301.32–9 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. These proposed provisions are all drawn from and consistent with those found in the existing fruit fly subparts.

Treatments

In combining the “Treatments” sections found in each subpart, we would omit the treatment schedules that also appear in 7 CFR part 305, “Phytosanitary Treatments.” Proposed new § 301.32–10 would direct the reader to part 305 for the treatment schedules authorized for use against specific fruit flies. Paragraph (a) would set out the treatment schedules for soil within the dripline of plants that are producing or have produced regulated articles, and paragraph (b) would present the premises treatments available for fields, groves, or areas that are located within a quarantined area but outside the infested core area and that produce regulated articles. These treatments have all been drawn from the existing subparts.

We are also proposing to make irradiation available as a treatment option for regulated articles in those cases where it is not already available. The Mexican fruit fly and Mediterranean fruit fly regulations have been amended in recent years to provide for the use of irradiation as a treatment, but the Oriental, Melon, West Indian, and Sapote fruit fly regulations have not been similarly updated. There is an approved irradiation dose listed for each of those species of fruit fly in the irradiation-specific provisions of the phytosanitary treatments regulations in part 305, and the regulations in part 305 currently provide for the use of irradiation as a treatment for imported articles when treatment is necessary to mitigate the risk presented by fruit flies. Our proposed change would allow irradiation to be used to qualify regulated articles for interstate movement as well.

In part 305, § 305.32 contains specific instruction for the use of irradiation as a treatment of regulated fruit to be moved interstate from areas quarantined for Mexican fruit fly, and § 305.33 contains the same information for the treatment of regulated fruit to be moved interstate from areas quarantined for Mediterranean fruit fly. We would amend § 305.32 by replacing specific references to the Mexican fruit fly and the Mexican fruit fly regulations with more general references to fruit flies and the regulations in “Subpart—Fruit Flies.” This change would make the section’s irradiation treatment provisions applicable to all regulated fruit fly species; in addition to making

irradiation available for use against the Oriental, Peach, Melon, West Indian, and Sapote fruit flies, this change would render the Mediterranean fruit fly-specific § 305.33 unnecessary, so we would remove and reserve that section. We would also amend the table of treatment schedules in § 305.2(h)(2)(ii), “Treatment for shipments from U.S. quarantine localities,” to indicate that irradiation is an authorized treatment for regulated articles produced in an area quarantined because of fruit flies under our domestic quarantine regulations.

Executive Order 12866 and Regulatory Flexibility Act

This proposed 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 are proposing to modify the current regulations controlling exotic fruit flies. Currently, these regulations are contained in 7 CFR part 301 and are divided into separate subparts, each of which covers a different species of fruit fly. Each of these subparts has parallel sections that are substantially similar to the sections in other subparts. Therefore, we are proposing to combine these sections into one subpart that will cover all fruit fly species. We are also proposing to modify the regulations by adding a mechanism through which quarantined areas can be removed from the regulations as quickly as they can be added.

The consolidation of the 66 sections to 11 sections under the new “Subpart—Fruit Flies,” would allow APHIS to eliminate the duplicative regulatory text. This change is an administrative one without any direct economic effect on any entity.

The second change would offer irradiation as one more treatment option for articles regulated because of Oriental, Melon, West Indian, or Sapote fruit flies. There are no areas currently quarantined because of any of these fruit fly species. If there were, the irradiation treatment option may benefit affected entities by providing them with an alternative means of treating regulated articles. We do not know how costs of irradiation treatment may compare to the costs of other treatments, but at least entities would have a broader choice of options.

The third change would affect the interstate movement of regulated articles directly by allowing producers of those commodities in an area that has been under quarantine to more quickly

resume moving articles without first having to obtain a certificate or limited permit. Entities that may benefit from this change include fresh fruit producers, nurserymen and tree growers, and transportation entities such as long distance general freight trucking with storage, scheduled freight air transportation companies, and/or short line railroad transportation companies.

There are no significant alternatives to the rule; however, we do not anticipate that the economic effects of these actions would be significant. Impacts on small entities would be attributable to the availability and the cost of irradiation as a treatment against all regulated fruit flies and to the ability of APHIS to relieve quarantine-related restrictions on the interstate movement of regulated articles more quickly. The overall economic effects of these proposed changes are expected to be positive, if minimal. We cannot estimate how many entities would be affected or what percentage of these entities would be small entities; those numbers depend entirely on the number and size of entities that might be present in a quarantined area at the time these proposed provisions become effective or at any time thereafter. While the number of entities affected may eventually prove to be a large number of entities, most of which are likely to be small entities, the economic effects on those entities, while positive, would not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would 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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) State and local laws and regulations will not be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 7 CFR parts 301 and 305 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 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

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

2. In part 301, by adding a new “Subpart—Fruit Flies,” (§§ 301.32 through 301.32–10) to read as follows:

Subpart—Fruit Flies

Sec.

- 301.32 Restrictions on interstate movement of regulated articles.
- 301.32–1 Definitions.
- 301.32–2 Regulated articles.
- 301.32–3 Quarantined areas.
- 301.32–4 Conditions governing the interstate movement of regulated articles from quarantined areas.
- 301.32–5 Issuance and cancellation of certificates and limited permits.
- 301.32–6 Compliance agreements and cancellation.
- 301.32–7 Assembly and inspection of regulated articles.
- 301.32–8 Attachment and disposition of certificates and limited permits.
- 301.32–9 Costs and charges.
- 301.32–10 Treatments.

Subpart—Fruit Flies

§ 301.32 Restrictions on interstate movement of regulated articles.

(a) No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.¹

(b) Section 414 of the Plant Protection Act (7 U.S.C. 7714) provides that the Secretary of Agriculture may, under certain conditions, hold, seize,

¹ Permit and other requirements for the interstate movement of any of the fruit flies regulated under this subpart are contained in part 330 of this chapter.

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.

§ 301.32–1 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.

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

Commercially produced. Fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Such identification will be based on a variety of indicators, including, but not limited to: Quantity of produce, monocultural practices, pest management programs, good sanitation practices including destruction of culls, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the shipment to a wholesaler or retailer.

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 area within a circle surrounding each site where fruit flies have been detected using a ½ mile radius with the detection site as a center point.

Day degrees. A unit of measurement used to measure the amount of heat required to further the development of fruit flies through their life cycle. Day-degree life cycle requirements are calculated through a modeling process specific for each species of fruit fly.

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 § 301.32–4(c).

Dripline. The line around the canopy of a plant.

Fruit fly (fruit flies). The melon fruit fly, Mexican fruit fly, Mediterranean fruit fly, Oriental fruit fly, peach fruit fly, sapote fruit fly, or West Indian fruit fly, or other species of insects found in the family Tephritidae, collectively.

Infestation. The presence of fruit flies or the existence of circumstances that makes it reasonable to believe that fruit flies are present.

Inspector. Any employee of APHIS or other person authorized by the Administrator to enforce 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 § 301.32–5(b) only to a specified destination and only in accordance with specified conditions.

Mediterranean fruit fly. The insect known as Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), in any stage of development.

Melon fruit fly. The insect known as the melon fruit fly, *Bactrocera*

cucurbitae (Coquillett), in any stage of development.

Mexican fruit fly. The insect known as Mexican fruit fly, *Anastrepha ludens* (Loew), in any stage of development.

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.

Oriental fruit fly. The insect known as Oriental fruit fly, *Bactrocera dorsalis* (Hendel), in any stage of development.

Peach fruit fly. The insect known as peach fruit fly, *Anastrepha zonata* (Saunders), in any stage of development.

Person. Any individual, partnership, corporation, association, joint venture, or other legal entity.

Plant Protection and Quarantine. The organizational unit within the Animal and Plant Health Inspection Service that has been delegated responsibility for enforcing provisions of the Plant Protection Act and related legislation, quarantines, and regulations.

Quarantined area. Any State, or any portion of a State, listed in § 301.32–3(c) or otherwise designated as a

quarantined area in accordance with § 301.32–3(b).

Regulated article. Any article listed in § 301.32–2 or otherwise designated as a regulated article in accordance with § 301.32–2(d).

Sapote fruit fly. The insect known as the sapote fruit fly, *Anastrepha serpentina*, in any stage of development.

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other 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.

§ 301.32–2 Regulated articles.

(a) In the following table, the berry, fruit, nut, or vegetable listed in each row in the left column is a regulated article for each of the fruit fly species listed in that row in the right column, unless the article is canned, dried, or frozen below – 17.8 °C (0 °F):

| Botanical name | Common name(s) | Fruit fly |
|--|-------------------------------|---|
| <i>Abelmoschus esculentus</i> = <i>Hibiscus esculentus</i> | Okra | Melon, Peach. |
| <i>Acca sellowiana</i> = <i>Feijoa sellowiana</i> | Pineapple guava | Mediterranean, Oriental, Peach. |
| <i>Actinidia chinensis</i> | Kiwi | Mediterranean. |
| <i>Aegle marmelos</i> | Indian bael | Peach. |
| <i>Anacardium occidentale</i> | Cashew | Oriental. |
| <i>Annona cherimola</i> | Cherimoya | Mexican, Oriental, Peach. |
| <i>Annona glabra</i> | Pond-apple | Sapote. |
| <i>Annona muricata</i> | Soursop | Melon, Oriental, Peach. |
| <i>Annona reticulata</i> | Custard apple, Annona | Melon, Mexican, Oriental, Peach. |
| <i>Annona squamosa</i> | Custard apple | Peach. |
| <i>Artocarpus altilis</i> | Breadfruit | Oriental. |
| <i>Artocarpus heterophyllus</i> | Jackfruit | Oriental. |
| <i>Averrhoa carambola</i> | Carambola, Country gooseberry | Oriental, West Indian. |
| <i>Benincasa hispida</i> | Melon, Chinese | Melon. |
| <i>Brassica juncea</i> | Mustard, leaf | Melon. |
| <i>Brassica oleracea</i> var. <i>botrytis</i> | Cauliflower | Melon. |
| <i>Brosimum alicastrum</i> | Ramón | West Indian. |
| <i>Byrsonima crassifolia</i> | Nance | Sapote. |
| <i>Calophyllum inophyllum</i> | Alexandrian-laurel, Laurel | Oriental. |
| <i>Cananga odorata</i> | Ylang-Ylang | Oriental. |
| <i>Capsicum annum</i> | Pepper, chili | Mediterranean, Melon, Oriental. |
| <i>Capsicum frutescens</i> | Pepper, tabasco | Mediterranean, Melon. |
| <i>Capsicum frutescens abbreviatum</i> | Oriental bush red pepper | Oriental. |
| <i>Capsicum frutescens</i> var. <i>grossum</i> | Pepper, sweet | Oriental. |
| <i>Carica papaya</i> | Papaya | Mediterranean, Melon, Oriental, Peach. |
| <i>Carissa grandiflora</i> | Natal plum | Oriental. |
| <i>Carissa macrocarpa</i> | Natal plum | Mediterranean. |
| <i>Casimiroa edulis</i> | Sapote, white | Mediterranean. |
| <i>Casimiroa greggii</i> = <i>Sargentia greggii</i> | Sargentia, yellow chapote | Mexican. |
| <i>Casimiroa</i> spp | Sapote. | Mexican. |
| <i>Cereus coeruleus</i> | Cactus | Oriental. |
| <i>Chrysophyllum cainito</i> | Star apple | Oriental, Sapote. |
| <i>Chrysophyllum oliviforme</i> | Caimitillo | Oriental. |
| <i>Citrofortunella japonica</i> | Orange, calamondin | Peach. |
| <i>Citrullus colocynthis</i> | Colocynth | Melon. |
| <i>Citrullus lanatus</i> = <i>Citrullus vulgaris</i> | Watermelon | Melon, Peach. |
| <i>Citrullus</i> spp | Melon | Melon. |
| <i>Citrus aurantiifolia</i> | Lime | Mediterranean, Mexican, ¹ Oriental, Peach. |
| <i>Citrus aurantium</i> | Orange, sour | Mediterranean, Mexican, Oriental, Peach. |
| <i>Citrus jambhiri</i> | Lemon, Rough | Mediterranean. |

| Botanical name | Common name(s) | Fruit fly |
|--|--|---|
| <i>Citrus latifolia</i> | Lime, Persian | Oriental. |
| <i>Citrus limon</i> | Lemon | Mediterranean, ² Mexican, ³ Oriental, Peach. |
| <i>Citrus limon</i> × <i>reticulata</i> | Lemon, Meyer | Mediterranean. |
| <i>Citrus madurensis</i> = × <i>Citrofortunella mitis</i> | Orange, Panama | Sapote. |
| <i>Citrus maxima</i> = <i>Citrus grandis</i> | Pummelo or Shaddock | Mediterranean, Mexican, Oriental, Peach. |
| <i>Citrus medica</i> | Citrus citron | Mediterranean, Mexican, Peach. |
| <i>Citrus paradisi</i> | Grapefruit | Mediterranean, Melon, Mexican, Oriental, Peach. |
| <i>Citrus reticulata</i> | Mandarin orange, tangerine | Mediterranean, Mexican, Oriental, Peach. |
| <i>Citrus reticulata</i> var. <i>Unshu</i> | Orange, Unshu | Mediterranean, Oriental. |
| <i>Citrus reticulata</i> × <i>C. sinensis</i> = <i>Citrus nobilis</i> | Orange, king | Mediterranean, Melon, Oriental, Peach. |
| <i>Citrus reticulata</i> × <i>Fortunella</i> | Orange, calamondin | Mediterranean, Mexican, Oriental. |
| <i>Citrus sinensis</i> | Orange, sweet | Mediterranean, Melon, Mexican, Oriental, Peach. |
| <i>Citrus</i> spp | Citrus | Sapote. |
| <i>Clausena lansium</i> | Wampi | Oriental. |
| <i>Coccinia</i> spp | Gourds | Melon, Peach. |
| <i>Coccoloba uvifera</i> | Seagrape | Oriental. |
| <i>Coffea arabica</i> | Coffee, Arabian | Oriental. |
| <i>Crescentia</i> spp | Gourds | Melon, Peach. |
| <i>Cucumis melo</i> and <i>Cucumis melo</i> var. <i>Cantalupensis</i> | Cantaloupe | Melon, Peach. |
| <i>Cucumis melo</i> var. <i>conomon</i> | Melon, oriental pickling | Melon. |
| <i>Cucumis pubescens</i> and <i>Cucumis trigonus</i> | Cucurbit | Melon. |
| <i>Cucumis sativus</i> | Cucumber | Melon, Oriental, Peach. |
| <i>Cucumis utilissimus</i> | Melon, long | Peach. |
| <i>Cucurbita maxima</i> | Squash | Melon. |
| <i>Cucurbita moschata</i> | Pumpkin, Canada | Melon. |
| <i>Cucurbita pepo</i> | Pumpkin | Melon. |
| <i>Cydonia oblonga</i> | Quince | Mexican, Mediterranean, Oriental, Peach, Sapote. |
| <i>Cyphomandra betaceae</i> | Tomato, tree | Melon. |
| <i>Diospyros digyna</i> | Black sapote | Sapote. |
| <i>Diospyros discolor</i> | Velvet apple | Oriental. |
| <i>Diospyros khaki</i> | Japanese persimmon | Mediterranean, Oriental. |
| <i>Diospyros</i> spp | Sapote | Sapote, West Indian. |
| <i>Dovyalis hebecarpa</i> | Kitembilla | Oriental, Sapote, West Indian. |
| <i>Dracena draco</i> | Dragon tree | Oriental. |
| <i>Elaeocarpus angustifolius</i> | Blue marbletree; New Guinea quandong | Peach. |
| <i>Elaeocarpus grandiflorus</i> | Lily of the valley tree | Peach. |
| <i>Elaeocarpus madopetalus</i> | Ma-kok-nam | Peach. |
| <i>Eriobotrya japonica</i> | Loquat | Mediterranean, Oriental, Peach, West Indian. |
| <i>Eugenia brasiliensis</i> = <i>E. dombeyi</i> | Brazil-cherry, grumichama | Mediterranean, Oriental, Peach. |
| <i>Eugenia malaccensis</i> | Malay apple | Oriental. |
| <i>Eugenia uniflora</i> | Surinam cherry | Mediterranean, Oriental, Peach. |
| <i>Euphoria longan</i> | Longan | Oriental. |
| <i>Ficus benghalensis</i> | Fig, Banyan | Peach. |
| <i>Ficus carica</i> | Fig | Mediterranean, Melon, Oriental, Peach. |
| <i>Ficus macrophylla</i> | Fig, Moreton Bay | Peach. |
| <i>Ficus retusa</i> | Fig, glossy leaf | Peach. |
| <i>Ficus rubiginosa</i> | Fig, Port Jackson | Peach. |
| <i>Ficus</i> spp | Fig | Peach. |
| <i>Fortunella japonica</i> | Chinese Orange, Kumquat | Mediterranean, Oriental, Peach. |
| <i>Garcinia celebica</i> | Gourka | Oriental. |
| <i>Garcinia mangostana</i> | Mangosteen | Oriental. |
| <i>Grewia asiatica</i> | Phalsa | Peach. |
| <i>Jubaea chilensis</i> = <i>Jubaea spectabilis</i> | Syrup palm | Oriental. |
| <i>Juglans hindsii</i> | Walnut | Oriental. |
| <i>Juglans regia</i> | Walnut, English | Oriental. |
| <i>Juglans</i> spp | Walnut with husk | Mediterranean. |
| <i>Lablab purpureus</i> subsp. <i>purpureus</i> = <i>Dolichos lablab</i> | Bean, hyacinth | Melon. |
| <i>Lagenaria</i> spp | Gourds | Melon, Peach. |
| <i>Luffa acutangula</i> | Gourd, ribbed or ridged, luffa | Peach. |
| <i>Luffa aegyptiaca</i> | Gourd, smooth luffa, sponge | Peach. |
| <i>Luffa</i> spp | Gourds | Melon, Peach. |
| <i>Luffa vulgaris</i> | Gourd | Peach. |
| <i>Lychee chinensis</i> | Lychee nut | Oriental. |
| <i>Lycopersicon esculentum</i> | Tomato | Mediterranean, Melon, ⁴ Oriental, ⁴ Peach. ⁴ |
| <i>Madhuca indica</i> = <i>Bassia latifolia</i> | Mahua, mowra-buttertree | Peach. |
| <i>Malpighia glabra</i> | Cherry, Barbados | Oriental, West Indian. |
| <i>Malpighia punicifolia</i> | West Indian cherry | Oriental. |
| <i>Malus sylvestris</i> | Apple | Mediterranean, Melon, Mexican, Oriental, Sapote, Peach. |

| Botanical name | Common name(s) | Fruit fly |
|--|---|---|
| <i>Mammea americana</i> | Mammy apple | Mexican, Oriental, Peach, Sapote. |
| <i>Mangifera foetida</i> | Mango, Bachang | Peach. |
| <i>Mangifera indica</i> | Mango | All. |
| <i>Mangifera odorata</i> | Kuine | Peach. |
| <i>Manilkara hexandra</i> | Sapodilla, balata | Peach. |
| <i>Manilkara jaimiqui</i> subsp. <i>emarginata</i> | Sapodilla, wild | Peach. |
| <i>Manilkara zapota</i> | Sapodilla, chiku | Oriental, Peach, Sapote, West Indian. |
| <i>Mimusops elengi</i> | Spanish cherry | Mediterranean, Oriental. |
| <i>Momordica balsamina</i> | Balsam apple, hawthorn | Peach. |
| <i>Momordica charantia</i> | Balsam pear, bitter melon | Peach. |
| <i>Momordica cochinchinensis</i> | Balsam apple, gac | Peach. |
| <i>Momordica</i> spp | Gourds | Melon, Peach. |
| <i>Morus nigra</i> | Mulberry | Oriental. |
| <i>Murraya exotica</i> | Mock orange | Mediterranean, Oriental. |
| <i>Musa</i> × <i>paradisiaca</i> = <i>Musa paradisiaca</i> subsp. <i>sapientum</i> . | Banana | Oriental. |
| <i>Musa acuminata</i> = <i>Musa nana</i> | Banana, dwarf | Oriental. |
| <i>Ochrosia elliptica</i> | Orange, bourbon | Peach. |
| <i>Olea europea</i> | Olive | Mediterranean. |
| <i>Opuntia ficus-indica</i> = <i>Opuntia megacantha</i> | Prickly pear | Oriental. |
| <i>Opuntia</i> spp | Opuntia cactus | Mediterranean. |
| <i>Passiflora edulis</i> | Passionflower, passionfruit, yellow lilikoi | Melon, Oriental, West Indian. |
| <i>Passiflora laurifolia</i> | Lemon, water | Melon. |
| <i>Passiflora ligularis</i> | Granadilla, sweet | Oriental. |
| <i>Passiflora quadrangularis</i> | Granadilla, giant | West Indian. |
| <i>Passiflora tripartita</i> var. <i>mollissima</i> | Passionflower, softleaf | Oriental. |
| <i>Persea americana</i> | Avocado | Mediterranean, Melon, Mexican, Oriental, Peach, Sapote. |
| <i>Phaseolus lunatus</i> = <i>Phaseolus limensis</i> | Bean, lima | Melon. |
| <i>Phaseolus vulgaris</i> | Bean, mung | Melon. |
| <i>Phoenix dactylifera</i> | Date palm | Mediterranean, Melon, Oriental, Peach. |
| <i>Planchonia careya</i> = <i>Careya arborea</i> | Patana oak, kumbhi | Peach. |
| <i>Pouteria caimito</i> | Abiu | Sapote. |
| <i>Pouteria campechiana</i> | Eggfruit tree | Oriental, Sapote. |
| <i>Pouteria obovata</i> | Lucmo | Sapote. |
| <i>Pouteria viridis</i> | Sapote, green | Sapote. |
| <i>Prunus americana</i> | Plum, American | Mediterranean, Mexican, Oriental, Peach. |
| <i>Prunus armeniaca</i> | Apricot | Mediterranean, Mexican, Oriental, Peach. |
| <i>Prunus avium</i> | Sweet cherry | Mediterranean, Peach. |
| <i>Prunus cerasus</i> | Sour cherry | Mediterranean, Peach. |
| <i>Prunus domestica</i> | Plum, European | Mediterranean, Mexican, Oriental, Peach. |
| <i>Prunus dulcis</i> = <i>P. amygdalus</i> | Almond with husk | Mediterranean, Peach. ⁵ |
| <i>Prunus ilicifolia</i> | Cherry, Catalina | Oriental, Peach. |
| <i>Prunus lusitanica</i> | Cherry, Portuguese | Oriental, Peach. |
| <i>Prunus persica</i> | Peach | All. |
| <i>Prunus persica</i> var. <i>nectarine</i> | Nectarine | Mediterranean, Mexican, Oriental, Peach. |
| <i>Prunus salicina</i> | Japanese plum | Mediterranean, Mexican, Peach, West Indian. |
| <i>Prunus salicina</i> × <i>Prunus cerasifera</i> | Methley plum | Peach. |
| <i>Psidium cattleianum</i> | Strawberry guava, Cattley guava | Mediterranean, Melon, Oriental. |
| <i>Psidium cattleianum</i> var. <i>cattleianum</i> f. <i>lucidum</i> | Yellow strawberry guava | Peach. |
| <i>Psidium cattleianum</i> var. <i>littorale</i> | Red strawberry guava | Oriental, West Indian, Peach. |
| <i>Psidium guajava</i> | Guava | All. |
| <i>Punica granatum</i> | Pomegranate | Mediterranean, Mexican, Oriental, Peach. |
| <i>Pyrus communis</i> | Pear | All. |
| <i>Pyrus pashia</i> | Kaeuth | Peach. |
| <i>Pyrus pyrifolia</i> | Pear, sand | Peach. |
| <i>Rhodomyrtus tomentosa</i> | Myrtle, downy rose | Oriental. |
| <i>Sandoricum koetjape</i> | Santol | Oriental. |
| <i>Santalum album</i> | Sandalwood, white | Oriental. |
| <i>Santalum paniculatum</i> | Sandalwood | Oriental. |
| <i>Sapotaceae</i> | Sapota, Sapodilla | Mexican. |
| <i>Sechium edule</i> | Chayote | Melon. |
| <i>Sesbania grandiflora</i> | Scarlet wisteria tree | Melon. |
| <i>Sicyes</i> sp. | Cucumber, bur | Melon. |
| <i>Solanum aculeatissimum</i> | Nightshade | Peach. |
| <i>Solanum mauritanium</i> = <i>S. auriculatum</i> | Tobacco, wild | Peach. |
| <i>Solanum melongena</i> | Eggplant | Mediterranean, ⁶ Melon, Peach. |
| <i>Solanum muricatum</i> | Pepino | Oriental, Peach. |
| <i>Solanum pseudocapsicum</i> | Jerusalem cherry | Oriental, Peach. |
| <i>Solanum seaforthianum</i> | Nightshade, Brazilian | Peach. |
| <i>Solanum verbascifolium</i> | Nightshade, Mullein | Peach. |
| <i>Spondias dulcis</i> = <i>Spondias cytherea</i> | Otaheite apple, Jew plum | Oriental, West Indian. |
| <i>Spondias mombin</i> | Hog-plum | Sapote, West Indian. |
| <i>Spondias purpurea</i> | Red mombin | Sapote, West Indian. |

| Botanical name | Common name(s) | Fruit fly |
|---|--|--|
| <i>Spondias</i> spp | Spanish plum, purple mombin or Ciruela | Mexican. |
| <i>Spondias tuberosa</i> | Imbu | Oriental. |
| <i>Syzygium aquem</i> | Water apple, watery roseapple | Peach. |
| <i>Syzygium cumini</i> | Java plum, jambolana | Peach. |
| <i>Syzygium jambos</i> = <i>Eugenia jambos</i> | Rose apple | Mediterranean, Mexican, Oriental, Peach, West Indian. |
| <i>Syzygium malaccense</i> = <i>Eugenia malaccensis</i> | Mountain apple, Malay apple | Mediterranean, Peach, West Indian. |
| <i>Syzygium samarangense</i> | Java apple | Peach. |
| <i>Terminalia bellirica</i> | Myrobalan, belleric | Peach. |
| <i>Terminalia catappa</i> | Tropical almond | Oriental, Peach. |
| <i>Terminalia chebula</i> | Myrobalan, black or chebulic | Mediterranean, Oriental, Peach. |
| <i>Thevetia peruviana</i> | Yellow oleander | Mediterranean, Oriental. |
| <i>Trichosanthis</i> spp | Gourds | Melon, Peach. |
| <i>Vigna unguiculata</i> | Cowpea | Melon. |
| <i>Vitis</i> spp | Grapes | Mediterranean, Oriental. |
| <i>Vitis trifolia</i> | Grape | Melon. |
| <i>Wikstroemia phillyreifolia</i> | Akia | Oriental. |
| <i>Ziziphus mauritiana</i> | Chinese date, jujube | Peach. |

¹ Sour limes are not regulated articles for Mexican fruit fly.

² Smooth-skinned lemons harvested for packing by commercial packinghouses are not regulated articles for Mediterranean fruit fly.

³ Eureka, Lisbon, and Villa Franca cultivars (smooth-skinned sour lemon) are not regulated articles for Mexican fruit fly.

⁴ Only pink and red ripe tomatoes are regulated articles for melon, Oriental, and peach fruit flies.

⁵ Harvested almonds with dried husks are not regulated articles for peach fruit fly.

⁶ Commercially produced eggplants are not regulated articles for Mediterranean fruit fly.

(b) Plants of the following species in the family Curcubitaceae are regulated articles for the melon fruit fly only:

Cantaloupe (*Cucumis melo*)

Chayote (*Sechium edule*)

Colocynth (*Citrullus colocynthis*)

Cucumber (*Cucumis sativus*)

Cucumber, bur (*Sicyes* spp.)

Cucurbit (*Cucumis pubescens* and *C. trigonus*)

Cucurbit, wild (*Cucumis trigonus*)

Gherkin, West India (*Cucumis angaria*)

Gourds (*Coccinia*, *Crescentia*, *Lagenaria*, *Luffa*, *Momordica*, and *Trichosanthis* spp.)

Gourd, angled luffa (*Luffa acutangula*)

Gourd, balsam apple (*Momordica balsamina*)

Gourd, ivy (*Coccinia grandis*)

Gourd, kakari (*Momordica dioica*)

Gourd, serpent cucumber (*Trichosanthis anguina*)

Gourd, snake (*Trichosanthis cucumeroides*)

Gourd, sponge (*Luffa aegyptiaca*)

Gourd, white flowered (*Lagenaria siceraria*)

Melon, Chinese (*Benincasa hispida*)

Melon, long (*Cucumis utilissimus*)

Pumpkin (*Cucurbita pepo*)

Pumpkin, Canada (*Cucurbita moschata*)

Squash (*Cucurbita maxima*)

Watermelon (*Citrullus lanatus* = *Citrullus vulgaris*)

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

(d) Any other product, article, or means of conveyance not listed in paragraphs (a), (b), or (c) of this section that an inspector determines presents a

risk of spreading fruit flies, 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.

§ 301.32-3 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 a fruit fly subject to the regulations in this subpart has been found by an inspector, or in which the Administrator has reason to believe that the 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 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 equivalent to 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 fruit fly.

(b)(1) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section for listing such area. The Administrator will give a written notice of this temporary designation and a

copy of these regulations 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 is subject to the regulations in this subpart. As soon as practicable, the area will be added to the appropriate list in paragraph (c) of this section or the temporary designation of the quarantined area may be terminated by the Administrator or an inspector in accordance with the criteria specified in paragraph (b)(2) of this section. The owner or person in possession of an area for which designation as a quarantined area is terminated will be given notice of the termination as soon as practicable.

(2) The Administrator or an inspector may terminate the temporary designation of a quarantined area or the designation of a quarantined area listed in paragraph (c) of this section when the Administrator determines that sufficient time has passed without finding additional flies or other evidence of infestation in the area to conclude that the fruit fly no longer exists in that area. The Administrator will give written notice of this termination to the owner or person in possession of the area that has been quarantined; thereafter, the interstate movement of regulated articles from the area will no longer be subject to the regulations in this subpart. As soon as practicable, the area listed in paragraph (c) will be removed from the list in paragraph (c) of this section.

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

(1) *Mediterranean fruit fly*. There are no areas in the continental United States quarantined for the Mediterranean fruit fly.

(2) *Melon fruit fly*. There are no areas in the continental United States quarantined for the melon fruit fly.

(3) *Mexican fruit fly*. The following areas in Texas are quarantined for the Mexican fruit fly:

Cameron County. The entire county.

Hidalgo County. The entire county.

Willacy County. The entire county.

(4) *Oriental fruit fly*. There are no areas in the continental United States quarantined for the Oriental fruit fly.

(5) *Peach fruit fly*. There are no areas in the continental United States quarantined for the peach fruit fly.

(6) *Sapote fruit fly*. There are no areas in the continental United States quarantined for the sapote fruit fly.

(7) *West Indian fruit fly*. There are no areas in the continental United States quarantined for the West Indian fruit fly.

§ 301.32-4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area² only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.32-5 and 301.32-8;

(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 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 permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the permit and found by the Administrator

to be adequate to prevent the spread of fruit flies; and

(4) With a tag or label bearing the number of the 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.

§ 301.32-5 Issuance and cancellation of certificates and limited permits.

(a) A certificate may be issued by an inspector³ 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 § 301.32-10; or

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

(iii) Based on inspection of the regulated article, the regulated article is free of 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 fruit flies; 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 (7 U.S.C. 7714) to prevent the spread of fruit flies; 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 inspector⁴ 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 fruit flies because life stages of the fruit flies will be destroyed by the 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 (7 U.S.C. 7714) to prevent the spread of fruit flies; 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.

§ 301.32-6 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 is aware of this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.⁵

²Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

³Services of an inspector may be requested by contacting local PPO offices, which are listed in telephone directories.

⁴See footnote 3.

⁵Compliance agreement forms are available without charge from the Animal and Plant Health

(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 any of the conditions of this subpart or with any of the provisions of the compliance agreement. 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.

§ 301.32-7 Assembly and inspection of regulated articles.

(a) Any person, other than a person authorized to issue certificates or limited permits under § 301.32-5(c), who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector⁶ 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.

§ 301.32-8 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: Provided, however, that 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.

§ 301.32-9 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.

§ 301.32-10 Treatments.

Treatment schedules listed in part 305 of this chapter to destroy fruit flies are authorized for use on regulated articles. 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 regulated articles listed § 301.32(a) or (b).* The following soil treatments may be used for the fruit fly species indicated:

| | |
|---|---|
| Mexican fruit fly | Drench the soil under the host plants with 5 lb a.i. diazinon per acre (0.12 lb or 2 oz avdp per 1,000 ft ²) mixed with 130 gal of water per acre (3 gal per 1,000 ft ²). Apply at 14- to 16-day intervals as needed. Repeat applications if infestations become established. In addition to the above, follow all label directions for diazinon. |
| Oriental and Mediterranean fruit flies. | 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 0.5 inch. Both immersion and pour-on treatment procedures are also acceptable. |
| All other fruit flies | 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 0.5 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 part 305 of this chapter. 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 fruit fly egg and larvae. Determination of the time period must be based on the day degrees model for the specific 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.

Subpart—Mexican Fruit Fly Quarantine and Regulations [Removed]

3. Subpart—Mexican Fruit Fly Quarantine and Regulations, consisting of §§ 301.64 through 301.64-10, is removed.

Subpart—Mediterranean Fruit Fly [Removed]

4. Subpart—Mediterranean Fruit Fly, consisting of §§ 301.78 through 301.78-10, is removed.

Subpart—Oriental Fruit Fly [Removed]

5. Subpart—Oriental Fruit Fly, consisting of §§ 301.93 through 301.93-10, is removed.

Subpart—Melon Fruit Fly [Removed]

6. Subpart—Melon Fruit Fly, consisting of §§ 301.97 through 301.97-10, is removed.

Inspection Service, Plant Protection and Quarantine, Emergency and Domestic Programs, 4700 River Road Unit 134, Riverdale, MD 20737-

1236, and from local PPQ offices, which are listed in telephone directories.

⁶ See footnote 3 to § 301.32-5(a).

Subpart—West Indian Fruit Fly [Removed]

7. Subpart—West Indian Fruit Fly, consisting of §§ 301.98 through 301.98–10, is removed.

Subpart—Sapote Fruit Fly [Removed]

8. Subpart—Sapote Fruit Fly, consisting of §§ 301.99 through 301.99–10, is removed.

PART 305—PHYTOSANITARY TREATMENTS

9. The authority citation for part 305 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

10. In § 305.2, the table in paragraph (h)(2)(ii) is amended by removing, in the entry for “Areas in the United States

under Federal quarantine for the listed pest”, the entries for “Any fruit listed in § 301.64–2(a) of this chapter” and “Any article listed in § 301.78–2(a) of this chapter” and adding a new entry in their place to read as set forth below.

§ 305.2 Approved treatments.

- * * * * *
- (h) * * *
- (2) * * *
- (ii) * * *

| Location | Commodity | Pest | Treatment schedule |
|--|---|--|--------------------|
| Areas in the United States under Federal quarantine for the listed pest. | | | |
| * * * * * | * * * * * | * * * * * | * * * * * |
| | Any fruit or article listed in § 301.32–2(a) of this chapter. | All fruit fly species of the Family Tephritidae. | IR. |
| * * * * * | * * * * * | * * * * * | * * * * * |

* * * * *

§ 305.32 [Amended]

11. Section 305.32 is amended as follows:

a. In the introductory text, by removing the word “fruit” and adding the words “berry, fruit, nut, or vegetable” in its place, and by removing the citation “§ 301.64–2(a)” and adding the citation “§ 301.32–2(a)” in its place.

b. In paragraph (a)(1), by removing the words “Mexican fruit fly” and adding the words “the fruit fly of concern” in their place, and by removing the words “the fruit” and adding the words “the regulated articles” in their place.

c. In paragraph (a)(2), by removing the words “fruit, except that fruit” and adding the words “regulated articles, except that articles” in their place.

d. In paragraph (a)(3), by removing the citation “§ 301.64–6” and adding the citation “§ 301.32–6” in its place.

e. In paragraph (d), by removing the words “Mexican fruit fly” and adding the words “the fruit fly of concern” in their place.

f. In paragraph (e)(2), by removing the words “Mexican fruit fly” and adding the words “the fruit fly of concern” in their place.

g. In paragraph (i), by removing the words “Mexican fruit fly” and adding the words “fruit flies” in their place, and by adding the words “and vegetables” after the word “fruits”.

§ 305.33 [Removed and reserved]

12. Section 305.33 is removed and reserved.

Done in Washington, DC, this 12th day of September 2007.

Kevin Shea,
Acting Administrator, Animal and Plant Health Inspection Service.
 [FR Doc. E7–18316 Filed 9–17–07; 8:45 am]
BILLING CODE 3410–34–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327
RIN 3064–AD19

Assessment Dividends

AGENCY: Federal Deposit Insurance Corporation (FDIC).
ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: The FDIC is seeking comments on alternative methods for allocating dividends as part of a permanent final rule to implement the dividend requirements of the Federal Deposit Insurance Reform Act of 2005 (Reform Act) and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Amendments Act). The existing FDIC regulations on assessment dividends will expire on December 31, 2008.

DATES: Comments must be submitted on or before November 19, 2007.

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

- *Agency Web Site:* <http://www.fdic.gov/regulations/laws/federal>. Follow instructions for submitting comments on the Agency Web Site.
- *E-mail:* Comments@FDIC.gov. Include “ANPR on Assessment

Dividends” in the subject line of the message.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal> including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: Munsell W. St. Clair, Senior Policy Analyst, Division of Insurance and Research, (202) 898–8967 or mstclair@fdic.gov; Missy Craig, Senior Program Analyst, Division of Insurance and Research, (202) 898–8724 or mcraig@fdic.gov; or Joseph A. DiNuzzo, Counsel, Legal Division, (202) 898–7349 or jdinuzzo@fdic.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In October 2006, the FDIC issued a temporary final rule to implement the dividend requirements of the Reform