

Rules and Regulations

Federal Register

Vol. 72, No. 235

Friday, December 7, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2007–0133]

Mediterranean Fruit Fly; Add Portions of Santa Clara and Solano Counties, CA, to the List of Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding portions of Santa Clara and Solano Counties, CA, to the list of quarantined areas and restricting the interstate movement of regulated articles from those areas. We are also amending the definitions of the terms *core area* and *day degrees* and adding blueberries (*Vaccinium* spp.) to the list of articles regulated for Mediterranean fruit fly. These actions are necessary to prevent the artificial spread of Mediterranean fruit fly to noninfested areas of the United States and to update the regulations to reflect current science and practices.

DATES: This interim rule is effective December 7, 2007. We will consider all comments that we receive on or before February 5, 2008.

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–2007–0133 to submit or view public comments and to view supporting and related materials available electronically. Information on using 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–2007–0133, 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–2007–0133.

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 Mediterranean fruit fly (Medfly, *Ceratitis capitata* [Wiedemann]) is one of the world’s most destructive pests of numerous fruits and vegetables. The short life cycle of the Medfly allows rapid development of serious outbreaks, which can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Mediterranean fruit fly regulations, contained in 7 CFR 301.78 through 301.78–10 (referred to below as the regulations), were established to prevent the spread of Medfly into noninfested areas of the United States. Section 301.78–3(a) provides that the Administrator will list as a quarantined area each State, or each portion of a State, in which Medfly has been found by an inspector, in which the Administrator has reason to believe that Medfly is present, or that the

Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which Medfly has been found. The regulations impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.78–3(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 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 Medfly.

Recent trapping surveys by inspectors of California State and county agencies have revealed that portions of Santa Clara and Solano Counties, CA, are infested with Medfly.

State agencies in California have begun an intensive Medfly eradication program in the quarantined areas in Santa Clara and Solano Counties. Also, California has taken action to restrict the intrastate movement of regulated articles from the quarantined areas.

Accordingly, to prevent the spread of Medfly into noninfested areas of the United States, we are amending the regulations in § 301.78–3 by designating portions of Santa Clara and Solano Counties, CA, as quarantined areas for Medfly. The quarantined areas are described in the regulatory text at the end of this document.

Section 301.78–1 of the regulations currently defines the term *core area* as “the 1 square mile area surrounding each property where Mediterranean fruit fly has been detected.” We have determined that it is necessary to amend the definition of *core area* because the use of GPS technology allows us to more accurately measure the distance from a positive detection site of Medfly. Therefore, we are revising the definition of the term *core area* to read “the area within a circle surrounding each detection using a ½-mile radius with the detection as a center point.”

The regulations currently define the term *day degrees* as a mathematical construct combining average temperature over time that is used to calculate the length of a Mediterranean

fruit fly life cycle. Day degrees are the product of the following formula, with all temperatures measured in °F.: [(Minimum Daily Temp + Maximum Daily Temp)/2] – 54° = Day Degrees. We have determined that it is necessary to amend the definition of *day degrees* because the use of weather service data entered into a computer model enables us to more accurately measure day degree accumulation based upon the latest biological information than was previously possible. Therefore, we are revising the definition of *day degrees* to read “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.”

We are also adding blueberries (*Vaccinium* spp.) to the regulated articles list in § 301.78–2 because recent scientific information supports the conclusion that blueberries are susceptible to infestation by Medfly; therefore, the movement of blueberry fruit from infested areas poses a pest risk. Supporting documentation regarding the host status of blueberries can be found at: http://www.aphis.usda.gov/plant_health/plant_pest_info/fruit_flies/index.shtml.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent Medfly 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 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 Medfly regulations by adding portions of Santa Clara and Solano Counties, CA, to the list of quarantined areas. The

regulations restrict the interstate movement of regulated articles from the quarantined areas. Within the quarantined areas there are approximately 251 small entities that may be affected by this rule. These include 125 markets (including swap meets and farmer's markets), 53 growers, 24 shippers, 23 nurseries, 17 yard maintenance firms, 8 packers/processors, and 1 green waste hauler. These 251 entities comprise less than 1 percent of the total number of similar entities operating in the State of California. Additionally, few of these small entities move regulated articles interstate during the normal course of their business, nor do consumers of products purchased from those entities generally move those products interstate.

The effect on those few entities that do 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.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new 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, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 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. Section 301.78–1 is amended by revising the definitions of *core area* and *day degrees* to read as follows:

§ 301.78–1 Definitions.

* * * * *

Core area. The area within a circle surrounding each detection using a 1/2-mile radius with the detection 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 fruit fly species.

* * * * *

§ 301.78–2 [Amended]

■ 3. In § 301.78–2, paragraph (a) is amended by adding, in alphabetical order, an entry for “Blueberry (*Vaccinium* spp.)”.

■ 4. In § 301.78–3, paragraph (c) is revised to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

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

California

Santa Clara County. That portion of Santa Clara County in the San Jose area bounded by a line as follows: Beginning at the intersection of Interstate 880 and Montague Expressway; then northeast and east on Montague Expressway to Trade Zone Boulevard; then southeast and northeast on Trade Zone Boulevard to Cropley Avenue; then northeast on Cropley Avenue to Old Piedmont Road; then northwest on Old Piedmont Road to Berryessa Creek; then northeast, east, southeast, northeast, southeast, northeast, east, and northeast along Berryessa Creek to its intersection with Berryessa Creek Branch; then southeast from Berryessa Creek Branch along an imaginary line to the intersection of Sierra Road and the City of San Jose boundary line; then northeast, southeast, southwest, southeast, northeast, southeast, southwest, and southeast along the City of San Jose boundary line to Alum Rock Falls Road;

then southeast, northeast, southeast, southwest, southeast, northeast, southeast, northeast, east, southeast, southwest, northwest, southwest, southeast, southwest, northwest, southwest, southeast, southwest, northwest, west, southeast, northwest, west, and southwest on Alum Rock Falls Road to State Highway 130; then southeast on State Highway 130 to Quimby Road; then southwest, northwest, southwest, northwest, southwest, and south on Quimby Road to Buckeye Ranch; then southeast and southwest on Buckeye Ranch to its southwesternmost point; then southwest from that point along an imaginary line to the northeasternmost point of Fowler Road; then southwest, southeast, east, southeast, northwest, southwest, southeast, south, west, northwest, and west on Fowler Road to Yerba Buena Road; then south and west on Yerba Buena Road to San Felipe Road; then southeast on San Felipe Road to Farnsworth Drive; then southwest, northwest, and southwest on Farnsworth Drive to Silver Creek Valley Road; then southwest, southeast, southwest, and west on Silver Creek Valley Road to Blossom Hill Road; then west and southwest on Blossom Hill Road to State Highway 82; then northwest on State Highway 82 to Southside Drive; then southeast from the intersection of State Highway 82 and Southside Drive along an imaginary line to the northeasternmost point of Hillsdale Drive; then southwest on Hillsdale Drive to Hillsdale Avenue; then west on Hillsdale Avenue to State Highway 87; then northwest on State Highway 87 to Interstate 880; then northeast and north on Interstate 880 to the point of beginning.

Solano County. That portion of Solano County in the Dixon area bounded by a line as follows: Beginning at the intersection of Boyce Road and Putah Creek Road; then northeast, southeast, and northeast on Putah Creek Road to Stevenson Bridge Road; then northeast and northwest on Stevenson Bridge Road to Putah Creek; then southeast along Putah Creek to the south fork of Putah Creek; then southeast along the south fork of Putah Creek to Old Davis Road; then south, west, and south on Old Davis Road to Tremont Road; then east on Tremont Road to Bulkley Road; then south on Bulkley Road to Midway Road; then west on Midway Road to Sikes Road; then south on Sikes Road to Swan Road; then west on Swan Road to Bunker Station Road; then south on Bunker Station Road to Binghamton Road; then west on Binghamton Road to State Highway 113;

then north on State Highway 113 to Hawkins Road; then west on Hawkins Road to Lewis Road; then north on Lewis Road to Weber Road; then west and northwest on Weber Road to North Meridian Road; then northwest and north on North Meridian Road to Sweeney Road; then west on Sweeney Road to Halley Road; then north, southwest, and northwest on Halley Road to Wolfskill Road; then southwest on Wolfskill Road to Boyce Road; then northwest on Boyce Road to the point of beginning.

Done in Washington, DC, this 30th day of November 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7-23770 Filed 12-6-07; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Docket No. AMS-FV-07-0082; FV07-983-1 IFR]

Pistachios Grown in California; Changes in Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the handling requirements currently authorized under the California pistachio marketing order (order). The order regulates the handling of pistachios grown in California and is administered locally by the Administrative Committee for Pistachios (committee). This rule suspends the minimum quality requirements, including maximum defects and minimum sizes, for California pistachios. This will reduce handler costs and provide handlers more flexibility in meeting customer needs.

DATES: Effective December 10, 2007; comments received by February 5, 2008 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: [http://](http://www.regulations.gov)

www.regulations.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Terry Vawter, Senior Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or Email: Terry.Vawter@usda.gov or Kurt.Kimmel@usda.gov.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 983 (7 CFR part 983), regulating the handling of pistachios grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on