

# Rules and Regulations

Federal Register

Vol. 70, No. 79

Tuesday, April 26, 2005

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. 04–127–1]

#### West Indian Fruit Fly; Regulated Articles

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

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

**SUMMARY:** We are amending the West Indian fruit fly regulations by removing grapefruit, sweet lime, sour orange, and sweet orange from the list of regulated articles. A review of available scientific literature and other information has led us to conclude that these citrus fruits do not present a risk of spreading West Indian fruit fly. This action eliminates restrictions on the interstate movement of these citrus fruits from areas quarantined because of the West Indian fruit fly.

**DATES:** This interim rule is effective April 26, 2005. We will consider all comments that we receive on or before June 27, 2005.

**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. 04–127–1, 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. 04–127–1.

- **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 on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

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

The West Indian fruit fly regulations, contained in 7 CFR 301.98 through 301.98–10 (referred to below as the regulations), restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of West Indian fruit fly to noninfested areas of the United States. Regulated articles are listed in § 301.98–2, and quarantined areas are listed in § 301.98–3(c). There are currently no areas in the continental United States quarantined for the West Indian fruit fly.

Currently, the list of regulated articles includes four citrus fruits: Grapefruit, sweet lime, sour orange, and sweet orange. When we established the regulations in 2001 (see 66 FR 6429–6436), we included these citrus fruits on

the list after considering the information contained in the literature available to us at the time. However, we have recently concluded, based on an analysis of the scientific literature, interception records, and identification of larvae in fruits from Mexico intercepted at border stations in California and Texas, that West Indian fruit fly has a low likelihood of infesting *Citrus* spp. Our analysis is documented in a report titled “Host Status of *Citrus* spp. for *Anastrepha obliqua* (Diptera: Tephritidae),” which may be viewed on the Internet at <http://www.aphis.usda.gov/ppq/ep/ff/>. The report may also be viewed on the EDOCKET Web site (see **ADDRESSES** above for instruction for accessing EDOCKET).

Based on the conclusions and recommendations of the analysis described above, we are amending the regulations by removing grapefruit, sweet lime, sour orange, and sweet orange from the list of regulated articles in § 301.98–2(b)(1). By making this change, this interim rule lifts restrictions on these fruits that no longer appear to be necessary.

This change will not affect any current program operations, as there are no areas in the continental United States under quarantine for the West Indian fruit fly at this time. However, current State and Federal cooperative emergency preparedness action plans focusing on the West Indian fruit fly may need to be modified to amend host lists.

##### Immediate Action

Immediate action is warranted to relieve restrictions that no longer appear to be necessary on the interstate movement of grapefruit, sweet lime, sour orange, and sweet orange from areas quarantined because of West Indian fruit fly. 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 action 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

For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

The Animal and Plant Health Inspection Service is removing grapefruit, sweet lime, sour orange, and sweet orange from the list of regulated articles in 7 CFR 301.98–2(b). Currently, the regulations restrict the interstate movement of these commodities from areas quarantined because of West Indian fruit fly.

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small entities. The Small Business Administration (SBA) has established size standards for determining which economic entities are considered small. Entities that could potentially be affected by this rule include orange, sweet lime, and grapefruit growers. Growers of these fruits are considered small businesses by the SBA if their annual receipts are not more than \$750,000. According to the 2002 Census of Agriculture, 18,927 farms in the United States were growing the affected commodities for a total production value of \$1,830 million. About 98 percent of these farms were considered small, and large growers accounted for 54 percent of production.

Currently, no States or counties are quarantined for West Indian fruit fly. Therefore, the rule would have no impact on any potentially affected entity or on the supply or price of commodities. Instead, the rule will simply update the regulation.

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 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).

#### § 301.98–2 [Amended]

■ 2. In § 301.98–2, the list in paragraph (b)(1) is amended by removing the entries for “Grapefruit (*Citrus paradisi*)”, “Lime, sweet (*Citrus aurantifolia*)”, “Orange, sour (*Citrus aurantium*)”, and “Orange, sweet (*Citrus sinensis*)”.

Done in Washington, DC, this 20th day of April 2005.

**Elizabeth E. Gaston,**

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

[FR Doc. 05–8303 Filed 4–25–05; 8:45 am]

**BILLING CODE 3410–34–P**

#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 05–011–1]

#### Asian Longhorned Beetle; Removal of Regulated Areas

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

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

**SUMMARY:** We are amending the Asian longhorned beetle regulations by removing portions of Cook and DuPage Counties, IL, from the list of

quarantined areas and removing restrictions on the interstate movement of regulated articles from those areas. We have determined that the Asian longhorned beetle no longer presents a risk of spread from those areas and that the quarantine and restrictions are no longer necessary.

**DATES:** This interim rule was effective April 21, 2005. We will consider all comments that we receive on or before June 27, 2005.

**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. 05–011–1, 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. 05–011–1.

- **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 on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael B. Stefan, Director, Pest Detection and Management Programs, Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–7338.

#### SUPPLEMENTARY INFORMATION:

#### Background

The Asian longhorned beetle (ALB) (*Anoplophora glabripennis*), an insect native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of