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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206-AI35

Family and Medical Leave

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations on the Family and Medical Leave Act of 1993 to ensure that both employees' and agencies' rights are protected and their responsibilities fulfilled.

EFFECTIVE DATE: June 7, 2000.

FOR FURTHER INFORMATION CONTACT: Jo Ann Perrini, (202) 606-2858, FAX (202) 606-0824, or email to payleave@opm.gov.

SUPPLEMENTARY INFORMATION: Title II of the Family and Medical Leave Act of 1993 (FMLA) (Public Law 103-3, February 5, 1993) provides an eligible Federal employee with a total of 12 administrative workweeks of unpaid leave during any 12-month period for: (a) The birth of a son or daughter and care of the newborn; (b) the placement of a child with the employee for adoption or foster care; (c) the care of the employee's spouse, son or daughter, or parent with a serious health condition; or (d) a serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position. The Office of Personnel Management (OPM) published final regulations (61 FR 64441) in subpart L of part 630 of title 5, Code of Federal Regulations, to implement Title II of the FMLA. The final regulations became effective on January 6, 1997. The Department of Labor (DOL) is responsible for implementing Title I of the FMLA for non-Federal employees,

and its final regulations were published in 29 CFR part 825 (60 FR 2180, January 6, 1995).

On August 13, 1998, OPM published proposed regulations (63 FR 43325) to address the many questions and concerns that continue to be received by OPM on employees' and agencies' obligations under the FMLA. We received comments from five Federal agencies, one professional association, one labor organization, and one individual, for a total of eight comments. In addition, we met with the labor organization to discuss its concerns. A summary of the comments received and the changes made in the regulations are presented below.

Invoking Entitlement to Family and Medical Leave

The proposed regulations stated that an employee may not retroactively invoke his or her entitlement to family and medical leave. Three agencies and the individual strongly supported this change. The labor organization and the professional association opposed the proposed regulations because they viewed them as inconsistent with OPM's regulation at 5 CFR 630.1206, which allows an employee to notify his or her agency as soon as is practicable if the need for FMLA leave is not foreseeable (*e.g.*, a medical emergency). The labor organization explained that in medical emergencies, it may be impracticable to provide notification until after the leave is taken.

As stated in OPM's proposed regulations, there is a major difference between Title I and Title II of the FMLA in terms of the responsibility of an employer versus an employee to invoke entitlement to FMLA leave. Under DOL's regulations implementing Title I of the FMLA for non-Federal employees, the employer is required to designate leave, paid or unpaid, as FMLA leave and to give notice of such designation to the employee. In contrast, under OPM's regulations implementing Title II of the FMLA for Federal employees, the employee is responsible for invoking his or her entitlement to FMLA leave, and the employee may choose whether to substitute paid leave, as appropriate, for leave without pay under the FMLA. Under 5 CFR 630.1203(h), an agency may not subtract leave from the 12-week FMLA leave entitlement unless the agency has obtained confirmation from

the employee of his or her intent to invoke entitlement to FMLA leave.

The requirement that an employee must initiate action to take FMLA leave is consistent with all other Federal leave policies and programs in that the employee is responsible for requesting leave or other time off from work. We believe it is Congress' intent to provide Federal employees with an entitlement to FMLA leave in a fair and equitable manner while minimizing the impact of such leave on an employing agency. The legislative history establishes an intent to authorize the use of leave "to be taken" under the FMLA—*i.e.*, on a prospective basis. If necessary, an employee may invoke his or her entitlement to FMLA leave on the day of the emergency. In the final regulations, we have added a sentence to 5 CFR 630.1203(b) to state that an employee may not retroactively invoke his or her entitlement to family and medical leave.

We realize that unique situations may require some flexibility in meeting this requirement. Therefore, 5 CFR 630.1203(b) of the final regulations provides that if an employee or his or her personal representative is physically or mentally incapable of invoking the employee's entitlement to FMLA leave during the entire period in which the employee is absent from work for an FMLA-qualifying purpose, the employee may retroactively invoke his or her entitlement to FMLA leave within 2 workdays after returning to work. (This change is consistent with DOL's regulations at 29 CFR 825.208(e)(1).) In such cases, the incapacity of the employee must be documented by a written medical certification from a health care provider. In addition, the employee must provide documentation acceptable to the agency explaining the inability of the personal representative to contact the agency and invoke the employee's entitlement to FMLA leave during the entire period in which the employee was absent from work for an FMLA-qualifying purpose.

The professional association objected to the current practice of requiring employees to provide 30 calendar days' notice of their intent to take FMLA leave. The association further stated that by not allowing employees to seek entitlement to FMLA leave retroactively, OPM is barring employees from using

FMLA leave when they need it most, e.g., in a family medical emergency.

Under 5 U.S.C. 6382(e), if the need for leave is foreseeable, employees are required to provide not less than 30 calendar days' notice of their intent to use leave under the FMLA. If leave needs to begin in less than 30 calendar days, the employee must give such notice as is practicable. OPM's regulations at 5 CFR 630.1206 require an employee to provide 30 calendar days' notice when the need for leave is foreseeable (e.g., an expected birth or planned medical treatment). If the need for leave is not foreseeable (e.g., a medical emergency or the unexpected availability of a child for adoption or foster care), and the employee cannot provide 30 calendar days' notice of his or her need for leave, the employee must provide notice within a reasonable period of time appropriate to the circumstances involved. Finally, if the need for leave is not foreseeable and the employee is unable, due to circumstances beyond his or her control, to provide notice of his or her need for leave, the FMLA leave cannot be denied or delayed. Since the law and current regulations require notification of the need for FMLA leave and allow flexibility for emergency situations, no substantive changes were made in the final regulations. However, we have modified 5 CFR 630.1206 (a), (c), and (d) to make clear that "days" refers to "calendar days."

Additional Evidence

The proposed regulations would have permitted an agency to require that a request for leave under the FMLA be supported by evidence that is administratively acceptable to the agency. This provision was proposed in response to agency requests to obtain additional evidence to support a claim that an employee cared for a spouse, son or daughter, or parent with a serious health condition during an absence coinciding with the period in which the employee requested FMLA leave. Existing OPM regulations permit an agency to require an employee to provide evidence that is administratively acceptable when requesting leave for (1) the birth of a son or daughter of the employee and the care of such son or daughter and (2) the placement of a son or daughter with the employee for adoption or foster care.

Two agencies fully supported this change. The individual recommended that all requests for FMLA leave be supported by medical evidence, if at all possible. In contrast, the professional association and the labor organization opposed our proposal because they

believe the phrase "administratively acceptable to the agency" is too broad and leaves the door open for agency abuse. Both the professional association and the labor organization stated that this change would present an additional hardship for employees undergoing a major crisis. The labor organization believes OPM's regulations at 5 CFR 630.1207 already establish a medical certification process through which an agency may require an employee to submit evidence in support of requested leave for an employee's serious health condition or that of a family member. The labor organization further noted that under 5 U.S.C. 6307, a medical certification that meets the requirements of the statute "shall be deemed sufficient."

After careful consideration, we agree that the regulations should not permit an agency to require an employee to submit documentation that may be overly burdensome and beyond what is deemed sufficient by statute. When an agency suspects employee fraud, it may contact its Office of the Inspector General for further investigation. The changes proposed in 5 CFR 630.1206(f) were not adopted.

Medical Certification

The proposed regulations would have required an employee to provide written medical certification of a serious health condition no later than 15 workdays after the date the agency requests such medical certification. Section 630.1207(g) of the proposed regulations provided that if an employee was unable to provide the requested medical certification before FMLA leave must begin, the agency would be required to grant provisional leave pending final written medical certification that was to be received no later than 15 workdays after the date the FMLA leave began. OPM proposed these time limits to ensure that the entitlements provided under the FMLA are provided to all Federal employees in a fair and consistent manner.

Two agencies agreed with OPM's proposed change. The individual remarked that 10 workdays would be preferable to 15 because 10 days would coincide with a biweekly pay period and payroll start dates. In contrast, both the professional association and the labor organization stated that OPM's 15-workday time limit was too stringent. The labor organization also objected that the proposed regulation would not guarantee an employee at least 15 workdays to provide medical certification. The labor organization noted that in cases where the health care provider does not complete the

medical certification even after repeated efforts, the employee would be penalized for circumstances that are beyond his or her control. The labor organization further suggested that OPM adopt DOL's regulation at 29 CFR 825.305(b), which states that an "employee must provide the requested certification to the employer (which must allow at least 15 calendar days after the employer's request) unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts." The professional association believes the agency should be prohibited from requesting medical certification until the "emergency" situation has ceased.

We believe it is Congress' intent that, in all circumstances, employees be required to provide complete medical certification, when requested by an agency, within a reasonable period in view of the circumstances involved. We recognize that the proposed regulation would not permit any flexibility for an employee who was unable to provide medical certification within 15 workdays due to circumstances beyond his or her control. Therefore, as suggested by the labor organization, we have revised our regulation to model DOL's regulation. We have revised 5 CFR 630.1207(g) to require employees to provide medical certification of a serious health condition no later than 15 calendar days after the date the agency requests the medical certification. However, to accommodate situations in which more flexibility may be needed, we have added a sentence to 5 CFR 630.1207(g) to provide that if it is not practicable under the particular circumstances to provide the requested medical certification within 15 calendar days after the date requested by the agency despite the employee's diligent, good faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the medical certification was requested by the agency.

In most cases, we believe 15 calendar days constitutes an ample amount of time within which an employee can obtain written medical certification. Establishing a time limit of 30 calendar days in all cases for which an employee must provide medical certification provides a needed balance between guaranteeing employees ample time to provide required medical certification and affirming agencies' authority to determine whether FMLA leave is appropriate. If an employee does not provide the requested medical certification, the absence is not FMLA

leave and the agency may charge the employee as absent without leave (AWOL) or allow the employee to request annual leave, sick leave, or leave without pay, as appropriate, for the period of absence.

The labor organization also suggested that OPM revise its regulations to require an agency to request medical certification at the time the employee gives notice of the need for leave or within 2 business days thereafter, or, in the case of unforeseen leave, within 2 business days after the leave commences. The labor organization believes this would put both the employer and the employee on notice of the time frame during which a request for medical certification would normally be appropriate. The labor organization believes this addition would strike an appropriate balance between the obligations and rights of the employer and the employee.

The requirement to provide medical certification for a serious health condition within 15 calendar days cannot begin until after the date the agency requests such medical certification. Employees will *not* receive any additional benefits from requiring agencies to request medical certification within 2 workdays after the employee's notice of FMLA leave. Therefore, we do not believe this additional requirement is necessary.

Insufficient Notification and Medical Certification

The proposed regulations stated that an employee who does not comply with the notification requirements in § 630.1206, and who does not provide medical certification signed by the health care provider that includes all the information required by law and OPM's regulations at § 630.1207(b), is not entitled to FMLA leave. Further, the employee would not receive any of the employment and benefit protections of the FMLA. Two agencies fully supported this proposal. The labor organization stated that it would support this section if employees' interests were adequately protected as reflected in the organization's other recommendations. The labor organization believes this provision will put employees on notice of the consequences of their failure to meet their responsibilities. We believe the changes we have discussed above will provide adequate protection to all employees. Therefore, we have revised 5 CFR 630.1208(l) to state that a employee who does not comply with the notification requirements in § 630.1206, and who does not provide medical certification signed by the

health care provider that includes all the information required by law and OPM's regulations at § 630.1207(b), is not entitled to FMLA leave.

Holidays

The proposed regulations stated that any holiday that occurs during the period in which an employee is on family and medical leave will be counted toward the 12-week FMLA entitlement. One agency supported this proposal and recommended adding the phrase "and any periods of administrative dismissal" to include all periods of authorized absence. One agency and the labor organization objected to this proposal because no other employee is charged leave on a holiday. The labor organization remarked that a Federal employee has a separate entitlement to Federal holidays and that to count holidays toward the 12-week FMLA period would diminish the employee's entitlement to those holidays. The labor organization also expressed the view that counting holidays within an employee's FMLA leave period would have a disproportionate impact on those employees who need FMLA leave for a continuous period of weeks as compared to those who use FMLA leave intermittently.

DOL's regulations permit the counting of holidays against the 12-week entitlement to FMLA leave. In 29 CFR 825.200(f), DOL's regulations provide that for purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, DOL's regulations further explain that if an employer's business activity has temporarily ceased and employees are not expected to report for work (e.g., a school closing 2 weeks for the Christmas/New Year's holiday or an employer closing a plant for retooling or repairs), the days the employer's activities have ceased do not count against an employee's 12-week entitlement to FMLA leave.

The law (5 U.S.C. 6302(a)) provides that days of leave are days on which an employee would otherwise work and receive pay and are exclusive of holidays and nonworkdays established by Federal statute, Executive order, or administrative order. Upon further consideration, we have determined that FMLA leave may be charged only on days on which an employee is scheduled to be in a duty status. Therefore, we have revised 5 CFR 630.1203(e) to state that any holidays authorized under 5 U.S.C. 6103 or by

Executive order and nonworkdays established by Federal statute, Executive order, or administrative order that occur during the period in which the employee is on family and medical leave will *not* be counted toward the 12-week entitlement to family and medical leave. OPM's regulations are consistent with Congress' intent to better enable Federal employees to benefit from the leave provided by the FMLA.

"Stacking" of Leave

An agency requested guidance on an employee's entitlement to annual and sick leave in addition to leave under the FMLA—i.e., the "stacking" of leave. The 12 workweeks of unpaid leave under the FMLA are in addition to any annual leave, sick leave, or other paid leave or compensatory time off available to an employee, and an employee may choose to take FMLA leave in combination with any other available leave. We have advised agencies that the best way to manage the "stacking" of leave is to encourage communication between supervisors and employees. A supervisor must inform employees of their entitlements and responsibilities under the FMLA. When an employee requests leave for a personal or family medical situation, the supervisor may want to ask up front whether the employee is invoking his or her entitlement to FMLA leave.

Although a supervisor generally cannot deny sick leave if the employee provides medical certification, he or she can deny annual leave or leave without pay if there is a need for the employee to be at work. While the taking of annual leave is a right of an employee, it is subject to the right of the supervisor to schedule the time at which annual leave may be taken. If an employee requests leave for any of the four FMLA-qualifying purposes, the supervisor may ask whether the employee is invoking his or her entitlement to FMLA leave. If the employee invokes entitlement to FMLA leave, he or she may choose to substitute his or her annual leave, or sick leave as appropriate, for leave without pay under the FMLA. As a result, both the supervisor and the employee are successful in meeting their needs.

SF-71, Request for Leave or Approved Absence

One agency recommended that the SF-71, Request for Leave or Approved Absence, include a block for granting FMLA provisional leave pending receipt of final medical certification and that the block should also include a statement that the employee must provide the requested medical

certification not later than 15 workdays after the date the agency requests the certification. The agency believes this would further assist employees and supervisors in meeting their obligations under the FMLA.

In our continuing effort to improve the Federal leave system and in response to agencies' recommendations, OPM is considering further improvements in the SF-71. We will provide agencies with information on the availability of revised forms through OPM's web site at <http://www.opm.gov>.

Miscellaneous Changes

Sections 630.1201(b)(1)(ii)(B) and (b)(3)(i) of title 5, Code of Federal Regulations, are being revised as requested by the Department of Veterans Affairs to identify employees of the Veterans Health Administration who are covered by Title II of the FMLA.

An agency suggested that 5 CFR 630.1203(a) be revised to clarify that medical conditions associated with pregnancy or childbirth must meet the requirements for using FMLA leave for a serious health condition. Under 5 CFR 630.1203(a), an employee has an absolute entitlement to unpaid leave under the FMLA for the birth of a child and care of the newborn. In addition, paragraph (1)(ii)(B) of the definition of "serious health condition" in 5 CFR 630.1202 specifically includes pregnancy and prenatal care. Finally, if an employee elects to substitute sick leave for unpaid leave under the FMLA, OPM's regulation at 5 CFR 630.401 authorizes the use of sick leave for pregnancy and childbirth. For these reasons, we have not adopted the agency's suggestion in the final regulations.

An agency suggested that in order to avoid confusion, OPM should specify throughout 5 CFR part 630, subpart L, whether "days" means workdays or calendar days. We agree and have edited the regulations to state "calendar days," where appropriate.

An agency suggested that OPM require that the medical certification be signed personally by the health care provider. We believe this suggestion may place an unnecessary burden on the employee and the health care provider. Therefore, we have not adopted this suggestion.

Finally, we are taking this opportunity to correct an improper citation and to clarify § 630.1207(i).

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities

because they will affect only Federal employees and agencies.

Family Assessment Certification

I certify that these regulations would strengthen the stability of the family, help families meet their responsibilities, and increase the disposable income of families in accordance with section 654 of the Treasury and General Government Appropriations Act, 1999, as contained in section 101(h) of Public Law 105-277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.

List of Subjects in 5 CFR Part 630

Government employees.
U.S. Office of Personnel Management.
Janice R. Lachance,
Director.

Accordingly, OPM is amending part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.301 also issued under Pub. L. 103-356, 108 Stat. 3410; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102-484, 106 Stat. 2722, and Pub. L. 103-337, 108 Stat. 2663; subpart D also issued under Pub. L. 103-329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100-566, 102 Stat. 2834, and Pub. L. 103-103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100-566, and Pub. L. 103-103; subpart K also issued under Pub. L. 105-18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103-3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102-25, 105 Stat. 92.

Subpart L—Family and Medical Leave

2. Sections 630.1201(b)(1)(ii)(B) and 630.1201(b)(3)(i) are revised to read as follows:

§ 630.1201 Purpose, applicability, and administration.

* * * * *

- (b) * * *
- (1) * * *
- (ii) * * *

(B) An employee of the Veterans Health Administration appointed under title 38, United States Code, in occupations listed in 38 U.S.C. 7401(1);

* * * * *

- (3) * * *

(i) An employee of the Veterans Health Administration appointed under

title 38, United States Code, in occupations listed in 38 U.S.C. 7401(1) is governed by the terms and conditions of regulations prescribed by the Secretary of Veterans Affairs;

* * * * *

3. In § 630.1203, paragraph (b) is revised, a new sentence is added at the end of paragraph (e), and the first sentence in paragraph (h) is revised to read as follows:

§ 630.1203 Leave entitlement.

* * * * *

(b) An employee must invoke his or her entitlement to family and medical leave under paragraph (a) of this section, subject to the notification and medical certification requirements in §§ 630.1206 and 630.1207. An employee may not retroactively invoke his or her entitlement to family and medical leave. However, if an employee and his or her personal representative are physically or mentally incapable of invoking the employee's entitlement to FMLA leave *during the entire period* in which the employee is absent from work for an FMLA-qualifying purpose under paragraph (a) of this section, the employee may retroactively invoke his or her entitlement to FMLA leave within 2 workdays after returning to work. In such cases, the incapacity of the employee must be documented by a written medical certification from a health care provider. In addition, the employee must provide documentation acceptable to the agency explaining the inability of his or her personal representative to contact the agency and invoke the employee's entitlement to FMLA leave during the entire period in which the employee was absent from work for an FMLA-qualifying purpose. An employee may take only the amount of family and medical leave that is necessary to manage the circumstances that prompted the need for leave under paragraph (a) of this section.

* * * * *

(e) * * * Any holidays authorized under 5 U.S.C. 6103 or by Executive order and nonworkdays established by Federal statute, Executive order, or administrative order that occur during the period in which the employee is on family and medical leave may not be counted toward the 12-week entitlement to family and medical leave.

* * * * *

(h) An agency may not put an employee on family and medical leave and may not subtract leave from an employee's entitlement to leave under paragraph (a) of this section unless the agency has obtained confirmation from the employee of his or her intent to

invoke entitlement to leave under paragraph (b) of this section. * * *

§ 630.1206 [Amended]

4. In § 630.1206, paragraphs (a), (c), and (d), the word "calendar" is added before the words "days" and "days'."

5. In § 630.1207, the second sentence in paragraph (a) is removed; paragraphs (h), (i) and (j) are redesignated as paragraphs (i), (j), and (k); a new paragraph (h) is added; and the newly redesignated paragraph (j) is revised to read as follows:

§ 630.1207 Medical certification.

* * * * *

(h) An employee must provide the written medical certification required by paragraphs (a), (d), (e), and (g) of this section, signed by the health care provider, no later than 15 calendar days after the date the agency requests such medical certification. If it is not practicable under the particular circumstances to provide the requested medical certification no later than 15 calendar days after the date requested by the agency despite the employee's diligent, good faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the agency requests such medical certification.

* * * * *

(j) At its own expense, an agency may require subsequent medical recertification on a periodic basis, but not more than once every 30 calendar days, for leave taken for purposes relating to pregnancy, chronic conditions, or long-term conditions, as these terms are used in the definition of *serious health condition* in § 630.1202.

* * * * *

6. In § 630.1208, paragraph (l) is added to read as follows:

§ 630.1208 Protection of employment and benefits.

* * * * *

(l) An employee who does not comply with the notification requirements in § 630.1206 and does not provide medical certification signed by the health care provider that includes all of the information required in § 630.1207(b) is not entitled to family and medical leave.

[FR Doc. 00-11385 Filed 5-5-00; 8:45 am]

BILLING CODE 6325-01-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99-076-2]

Oriental Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by removing the quarantine on a portion of Los Angeles County, CA, and by removing the restrictions on the interstate movement of regulated articles from that area. This action is necessary to relieve restrictions that are no longer needed to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from this portion of Los Angeles County, CA, and that the quarantine and restrictions are no longer necessary. This portion of Los Angeles County, CA, was the last remaining area in California quarantined for the Oriental fruit fly. Therefore, as a result of this action, there are no longer any areas in the continental United States quarantined for the Oriental fruit fly.

DATES: This interim rule was effective May 2, 2000. We invite you to comment on this docket. We will consider all comments that we receive by July 7, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99-076-2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 99-076-2.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

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

www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Wilmer E. Snell, Operations Officer, Invasive Species and Pest Management Staff, PPD, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-8747.

SUPPLEMENTARY INFORMATION:

Background

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

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93-10 (referred to below as the regulations), restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of the Oriental fruit fly to noninfested areas of the United States. The regulations also designate soil and a large number of fruits, nuts, vegetables, and berries as regulated articles.

In an interim rule effective on September 22, 1999, and published in the **Federal Register** on September 28, 1999 (64 FR 52213-52214, Docket No. 99-076-1), we quarantined a portion of Los Angeles County, CA, and restricted the interstate movement of regulated articles from the quarantined area.

Based on trapping surveys conducted by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the Oriental fruit fly has been eradicated from the quarantined portion of Los Angeles County, CA. The last finding of Oriental fruit fly in this area was October 19, 1999.

Since then, no evidence of Oriental fruit fly infestation has been found in this area. Based on our experience, we have determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that the Oriental fruit fly no longer exists in Los Angeles County, CA. Therefore, we are removing Los Angeles County, CA, from the list of quarantined areas in § 301.93-3(c). Oriental fruit fly infestations are not known to exist anywhere else in the continental United States.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for