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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 04–127–2]

West Indian Fruit Fly; Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended 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 led us to conclude that these citrus fruits do not present a risk of spreading West Indian fruit fly. This action affirms the elimination of restrictions on the interstate movement of these citrus fruits from areas quarantined because of the West Indian fruit fly.

DATES: The interim rule became effective on April 26, 2005.

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 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 (*Anastrepha obliqua*) 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.

In an interim rule effective and published in the **Federal Register** on April 26, 2005 (70 FR 21325–21326, Docket No. 04–127–1), we amended the regulations by removing grapefruit, sweet lime, sour orange, and sweet orange from the list of regulated articles for West Indian fruit fly because the available information indicates that these fruit do not present a risk of spreading West Indian fruit fly.

Comments on the interim rule were required to be received on or before June 27, 2005. We received one comment by that date. The commenter—a State government official—raised several issues, which are addressed below.

First, the commenter stated that the literature and record review used as the basis of the interim rule not only provides weak support for removing *Citrus* spp. as a host of West Indian fruit fly, but actually substantiates *Citrus* spp. as an occasional host. We disagree with this comment. The literature review examined nine papers that were based on original research and that supported *Citrus* spp. as a host to West Indian fruit fly. A detailed evaluation of these papers' quality led APHIS to conclude that the evidence supported only a low likelihood that *Citrus* spp. are a host. After conducting this review and examining the multi-year interception data included in the report, we do not believe that the low likelihood of *Citrus* spp. being a host is sufficient to support the continued listing of these fruits as regulated articles.

Second, the commenter stated that without formal regulations for West Indian fruit fly and with the lack of a sensitive and effective detection trap, a serious threat is posed for too many commercial and dooryard hosts in Florida, including mango, guava, carambola, avocado, pear, peach, and other tropical fruits. We are making no changes based on this comment. The interim rule did not remove all of the regulations for West Indian fruit fly. Instead, the interim rule simply removed four articles—grapefruit, sweet lime, sour orange, and sweet orange—from the list of regulated articles; the remaining provisions of the regulations will remain intact. In addition, we will continue using our current detection system, which has proven to be an effective method for determining if a population of fruit flies exists.

Third, the commenter stated that the interception records cited do not provide reliable data either due to inadequate identification of specimens or a low interception rate of hosts. The commenter stated that over 3,000 *Anastrepha* spp. larvae per year were intercepted over the period listed in Table 1 of the literature review, which identifies a high rate of risk. We are unclear on the source and context of the number cited by the commenter. Table 1 in the literature review presented interception data from the Greater and Lesser Antilles. Of 17,258 interceptions, only 8 interceptions were reported as occurring in *Citrus* spp. Upon a closer review of these eight reports, most were deemed invalid as proof of infestation—three were reported as on fruit (not in fruit), two were listed as adults, one was listed as on leaves, and one was from citrus obtained in Haiti and intended for use as on-board food on an airline flight that departed from Haiti. The final interception could have been *Anastrepha suspensa,* as this pest is known to use *Citrus* spp. as a host and *Anastrepha obliqua* larvae can not be reliably differentiated from *Anastrepha suspensa* larvae using keys. Given this analysis, the evidence supported a conclusion of low likelihood of the host status of *Citrus* spp.

Finally, the commenter called for additional data and scientific justification for the change in the regulations and suggested that an interactive risk assessment be conducted by APHIS in concert with certain concerned and affected States before further action is taken. We are making no changes based on this comment. We continue to believe that the information contained in the literature review provides a sufficient basis for our determination that there is only a low likelihood that *Citrus* spp. would be a host to West Indian fruit fly. If more research regarding this topic is published, we may reevaluate the host status of *Citrus* spp. with respect to West Indian fruit fly.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

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

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 70 FR 21325–21326 on April 26, 2005.

Done in Washington, DC, this 26th day of September 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–19576 Filed 9–29–05; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–129–5]

Mexican Fruit Fly; Quarantined Areas and Treatments for Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rules as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Mexican fruit fly regulations to provide for the use of irradiation as a treatment for fruits listed as regulated articles. We are also adopting as a final rule, without change, an interim rule that amended those regulations by removing a portion of San Diego County, CA, from the list of quarantined areas. Those interim rules were necessary to provide an additional option for qualifying regulated articles for movement from quarantined areas and to relieve restrictions that were no longer needed to prevent the spread of Mexican fruit fly to noninfested areas of the United States.

DATES: The interim rules became effective on February 20, 2003, and October 22, 2003.

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

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly (*Anastrepha ludens*) is a destructive pest of citrus and many other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas.

In an interim rule effective January 15, 2003, and published in the **Federal Register** on January 21, 2003 (68 FR 2679–2680, Docket No. 02–129–1), we amended the regulations in § 301.64–3 by designating a portion of San Diego County, CA, as a quarantined area for Mexican fruit fly. That action was necessary to prevent the spread of the Mexican fruit fly to noninfested areas of the United States.

We solicited comments concerning the interim rule for 60 days ending March 24, 2003. We received five comments by that date. They were from fruit and vegetable producers and an individual.

One commenter supported the interim rule. The remaining commenters raised questions about the location of the boundary lines for the quarantined area, arguing that the boundary lines were beyond what was necessary for quarantine purposes and requesting that the lines be reexamined and redrawn.

The process for establishing quarantine boundaries is based on our experience and scientific information concerning the Mexican fruit fly's life cycle and its ability to spread, both naturally and by artificial means. For operational and quarantine enforcement reasons, boundaries often follow easily identifiable markers, such as major roads or other county and city lines. We remain sensitive to the needs of producers and make every effort to minimize quarantined areas. Currently, Mexican fruit fly has been eradicated from the designated part of San Diego County, CA, and there are no longer any areas in California quarantined for the Mexican fruit fly.

In a second interim rule effective February 20, 2003, and published in the **Federal Register** on February 26, 2003 (68 FR 8817–8820, Docket No. 02–129–2), we amended the regulations in § 301.64–10 to provide for the use of irradiation as a treatment for fruits that are regulated articles. That change provided an additional option for qualifying those regulated articles for interstate movement from areas quarantined because of Mexican fruit fly.

We solicited comments concerning the interim rule for 60 days ending April 28, 2003. We received three comments by that date. They were from State and Federal government representatives and an individual.

One commenter supported the interim rule, and suggested that we should also consider allowing the use of irradiation as a treatment option for all fruit imported into the United States from Mexico to mitigate the risk posed by Mexican fruit fly.

In the regulations governing the importation of fruits and vegetables (Subpart—Fruits and Vegetables, 7 CFR 319.56 through 319.56–6), § 319.56–2(k) provides that any fruit or vegetable that is required to be treated or subjected to other growing or inspection requirements to control one or more of the 11 species of fruit flies and one species of seed weevil listed in 7 CFR 305.31(a) as a condition of entry into the United States may instead be treated by irradiation in accordance with part 305. The Mexican fruit fly is among the 11 species of fruit flies listed in § 305.31(a), so irradiation is already an option for any fruits or vegetables imported from Mexico that are required to be treated or subjected to other measures to control Mexican fruit fly.

Another commenter stated that the minimum absorbed treatment dose should be reduced from 150 gray to 70 gray, since some fruits may suffer damage as a result of higher dosimetry.

In a proposed rule published in the **Federal Register** on June 10, 2005 (70 FR 33857-33873, Docket No. 03–077–1), we proposed, among other things, to reduce the approved irradiation dose for Mexican fruit fly to 70 gray, consistent with the commenter's recommendation. We are currently considering the comments received on that proposed rule and will finalize the 70 gray dose and the other proposed provisions of that document if our review of the comments leads us to conclude such action is appropriate.

The same commenter also pointed out that the addresses we provided in