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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 95-089-1]

Mexican Fruit Fly Regulations; Addition of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mexican fruit fly regulations by adding California to the list of quarantined States and by designating portions of Los Angeles County and San Diego County, CA, as regulated areas. This action is necessary on an emergency basis to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. This action restricts the interstate movement of regulated articles from the regulated areas in California.

DATES: Interim rule effective January 22, 1996. Consideration will be given only to comments received on or before March 26, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95-089-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 95-089-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT:

Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is a destructive pest of citrus and many other types of fruits. 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 and 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 the regulated areas. Prior to the effective date of this rule, Texas was the only State quarantined for the Mexican fruit fly.

Section 301.64-3 provides that the Deputy Administrator of the Animal and Plant Health Inspection Service (APHIS) for Plant Protection and Quarantine (PPQ) shall list as a regulated area each quarantined State, or each portion of a quarantined State, in which the Mexican fruit fly has been found by an inspector, in which the Deputy Administrator has reason to believe the Mexican fruit fly is present, or that the Deputy Administrator considers necessary to regulate because of its proximity to the Mexican fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mexican fruit fly occurs. Less than an entire quarantined State is designated as a regulated area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine and regulations that impose restrictions on the intrastate movement of the regulated articles that are substantially the same as those with respect to the interstate movement of the articles; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the Mexican fruit fly.

Recent trapping surveys by inspectors of California State and county agencies

and by inspectors of PPQ reveal that portions of Los Angeles County and San Diego County, CA, are infested with the Mexican fruit fly. Specifically, on October 26, 1995, inspectors found one male Mexican fruit fly in a trap in a residential area of Los Angeles County; and, on November 14, 1995, inspectors discovered four Mexican fruit flies in traps set at three separate locations between 1/2 to 1 mile from the site of the October 26th detection. Two of these flies were mated females, indicating that an infestation exists. In San Diego County, inspectors found six Mexican fruit flies between November 29, 1995, and December 4, 1995. The Mexican fruit fly is not known to occur anywhere else in the continental United States, except parts of Texas.

Accordingly, to prevent the spread of the Mexican fruit fly to other States, we are amending the regulations in § 301.64(a) by designating California as a quarantined State and in § 301.64-39(c) by designating as regulated areas portions of Los Angeles County and San Diego County, CA. The regulated areas are described in the rule portion of this document.

There does not appear to be any reason to designate any other portions of the quarantined State of California as a regulated area. Officials of State agencies of California have begun an intensive Mexican fruit fly eradication program in the regulated areas in California. Also, California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of certain articles from the regulated areas that are substantially the same as those with respect to the interstate movement of regulated articles.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mexican fruit fly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication

of this rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

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 process required by Executive Order 12866.

This rule restricts the interstate movement of regulated articles from portions of Los Angeles County and San Diego County, CA. Within the regulated areas there are approximately 931 small entities that may be affected by this rule. These include 579 fruit sellers, 259 distributors, 51 nurseries, 30 swap meets, 5 growers, 4 food banks, 2 community gardens, and 1 processor. These 931 entities comprise less than 1 percent of the total number of similar entities operating in the State of California. Additionally, these small entities sell regulated articles primarily for local intrastate, not interstate movement, so the effect, if any, of this regulation on these entities appears to be minimal.

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 12778

This rule has been reviewed under Executive Order 12778, 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.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for the Mexican fruit fly program. The assessment provides a basis for the conclusion that the methods employed to eradicate the Mexican fruit fly will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This 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, 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. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.64 [Amended]

2. In § 301.64, paragraph (a) is amended by removing the phrase “the State of Texas” and adding “the States of California and Texas” in its place.

3. In § 301.64–3, paragraph (c) is amended by adding an entry for “California” and the description of the regulated areas for Los Angeles County and San Diego County, CA, to read as follows:

§ 301.64–3 Regulated areas.

* * * * *
(c) * * *

California

Los Angeles County. That portion of Los Angeles County in the City Terrace area bounded by a line drawn as follows: Beginning at the intersection of U.S. Highway 101 and State Highway 110; then northeast along State Highway 110 to Via Marisol; then east along Via Marisol to Monterey Road; then south along Monterey Road to Huntington Drive; then east along Huntington Drive to Poplar Boulevard; then east along Poplar Boulevard to Fremont Avenue; then south along Fremont Avenue to Mission Road; then northeast along Mission Road to Atlantic Boulevard; then south along Atlantic Boulevard to Interstate Highway 10; then east along Interstate Highway 10 to Alhambra Avenue; then south along Alhambra Avenue to Graves Avenue; then east along Graves Avenue to Del Mar Avenue; then south along Del Mar Avenue to Hill Drive; then southeast along Hill Drive to Paramount Boulevard; then southwest along Paramount Boulevard to Montebello Boulevard; then southwest along Montebello Boulevard to Montebello Way; then west along Montebello Way to Greenwood Avenue; then southwest along Greenwood Avenue to Gage Avenue; then west along Gage Avenue to Garfield Avenue; then southwest along Garfield Avenue to Florence Avenue; then west along Florence Avenue to Alameda Street; then north along Alameda Street to Vernon Avenue; then west along Vernon Avenue to Central Avenue; then north along Central Avenue to Interstate Highway 10; then northwest along Interstate Highway 10 to Broadway; then northeast along Broadway to U.S. Highway 101; then northwest along U.S. Highway 101 to the point of beginning.

San Diego County. That portion of San Diego County in the National City area bounded by a line drawn as follows: Beginning at the intersection of State Highway 15 and State Highway 94; then northeast along State Highway 94 to Federal Boulevard; then northeast

along Federal Boulevard to San Miguel Avenue; then east along San Miguel Avenue to Massachusetts Avenue; then south along Massachusetts Avenue to Canton Drive; then southeast along Canton Drive to Skyline Drive; then south along Skyline Drive to Jamacha Road; then east along Jamacha Road to County Highway S17; then south and southwest along County Highway S17 to Otay Lakes Road; then southeast along Otay Lakes Road to H Street; then southwest along H Street to Paseo Del Rey; then south along Paseo Del Rey to Telegraph Canyon Road; then northwest along Telegraph Canyon Road to Oleander Avenue; then south along Oleander Avenue to East Naples Street; then west along East Naples Street to Naples Street; then west along Naples Street to Industrial Boulevard; then north along Industrial Boulevard to L Street; then west along L Street to Interstate Highway 5; then north along Interstate Highway 5 to Harbor Drive; then northwest along Harbor Drive to 32nd Street; then north along 32nd Street to Wabash Boulevard; then northeast along Wabash Boulevard to State Highway 15; then north along State Highway 15 to the point of beginning.

* * * * *

Done in Washington, DC, this 22nd day of January 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96-1414 Filed 1-25-96; 8:45 am]

BILLING CODE 3410-34-P

Agricultural Marketing Service

7 CFR Part 999

[FV95-999-1FIR]

Specialty Crops; Import Regulations—Exemption of Brine Dried Prunes From Import Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which exempted brine dried prunes from import requirements by specifying that brine dried prunes do not fall within the definition of prunes in the import regulation. This rule is implemented in accordance with section 8e of the Agricultural Marketing Agreement Act of 1937. Section 8e requires imports of prunes to meet the same or comparable requirements as

those implemented under Federal Marketing Order No. 993, regulating the handling of dried prunes produced in California. The Department has determined that brine dried prunes are different from those normally handled by California prune handlers and that such prunes shall not be subjected to Section 8e import requirements.

EFFECTIVE DATE: February 26, 1996.

FOR FURTHER INFORMATION CONTACT: Valerie L. Emmer, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: 202-205-2829.

SUPPLEMENTARY INFORMATION: This rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) (Act). Section 8e provides that whenever certain specified commodities, including prunes, are regulated under a Federal marketing order, imports of those commodities must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodities.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, 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.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Import regulations issued under section 8e of the Act are based on regulations established under Federal marketing orders for fresh fruits, vegetables, and specialty crops, like

prunes. Thus, import regulations also have small entity orientation and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

There are approximately 10 importers who may be affected by this final rule. Small agricultural service firms, which include importers of dried prunes, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000. A majority of the importers may be classified as small entities.

Prior to publication of the interim final rule in the Federal Register on November 24, 1995 (60 FR 57910), sulfur-bleached prunes, commonly known as silver prunes, and high moisture plums were exempt from import requirements. The interim final rule added brine dried prunes as an additional exemption under the import regulation. This rule finalizes that interim final rule.

Brine dried prunes are different in form and character from those prunes regulated under the order, and were never intended to be subject to section 8e import requirements. Therefore, it is appropriate that they be exempt from the dried prune import regulation specified in § 999.200. Brine dried prunes are imported under International Harmonized Tariff Schedule No. 0813.20.1000. All prunes now regulated under the order are imported under Harmonized Tariff Schedule No. 0813.20.2000.

To exempt brine dried prunes from import regulation requirements, the definition of "prunes" in paragraph (a)(1) of § 999.200, was amended to add brine dried prunes as an exclusion from that definition. Brine dried prunes are defined as prunes that have been impregnated with brine or salt during the dehydration process to the extent that they have lost their form and character as prunes and cannot be reconstituted to permit economic use of the individual fruits as prunes.

The change to the import regulation was published in the Federal Register as an interim final rule on November 24, 1995 (60 FR 57910). That rule provided that interested persons could file comments through December 26, 1995. No comments were received.

In accordance with section 8e of the Act, the United States Trade Representative (USTR) has concurred with the issuance of this rule.

Based on available information, the Administrator of the AMS has determined that the issuance of this rule will not have a significant economic