

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 99-097-1]

#### Melon Fruit Fly

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

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

**SUMMARY:** We are quarantining part of Los Angeles County, CA, because of the melon fruit fly and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the melon fruit fly to noninfested areas of the United States.

**DATES:** This interim rule was effective February 22, 2000. We invite you to comment on this docket. We will consider all comments that we receive by April 24, 2000. The incorporation by reference provided for by this interim rule is approved by the Director of the Federal Register as of February 22, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 99-097-1, 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. 99-097-1.

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 rules, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael B. Stefan, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-8247.

#### SUPPLEMENTARY INFORMATION:

##### Background

We are amending the "Domestic Quarantine Notices" in 7 CFR part 301 by adding a new subpart 301.97, "Melon fruit fly" (referred to below as the regulations). These regulations quarantine part of Los Angeles County, CA, because of the melon fruit fly and restrict the interstate movement of regulated articles from the quarantined area.

The melon fruit fly, *Bactrocera cucurbitae* (Coquillett), is a very destructive pest of fruits and vegetables, including melons, mangos, peppers, squash, cucumbers, beans, oranges, and peaches. This pest can cause serious economic losses by lowering the yield and quality of these fruits and vegetables and by damaging the seedlings and young plants of squash, melons, and cucumbers. Heavy infestations can result in complete loss of these crops.

Recent trapping surveys near El Monte and Rosemead, CA, have established that part of Los Angeles County is infested with the melon fruit fly.

Officials of the Animal and Plant Health Inspection Service (APHIS) and State and county agencies in California have begun an intensive survey and eradication program in the infested area. Also, as explained below, California has restricted the intrastate movement of certain articles from the infested area to prevent the spread of the melon fruit fly within California. However, Federal regulations are necessary to restrict the interstate movement of certain articles from the infested area to prevent the spread of the melon fruit fly to noninfested areas of the United States. This interim rule establishes those

Federal regulations, which are described below.

#### Section 301.97—Restrictions on Interstate Movement of Regulated Articles

Section 301.97 prohibits the interstate movement of regulated articles from quarantined areas except in accordance with the regulations.

#### Section 301.97-1—Definitions

Section 301.97-1 contains definitions of the following terms: Administrator, Animal and Plant Health Inspection Service, certificate, compliance agreement, Departmental permit, dripline, infestation, inspector, interstate, limited permit, melon fruit fly, moved (move, movement), person, Plant Protection and Quarantine, quarantined area, regulated articles, and State.

#### Section 301.97-2—Regulated Articles

Certain articles present a significant risk of spreading the melon fruit fly if they are moved from quarantined areas without restrictions. We call these articles regulated articles. Paragraphs (a) through (e) of § 301.97-2 list the following as regulated articles:

- The melon fruit fly;
- Certain fruits and vegetables (fruits or vegetables that are canned or dried or that are frozen below  $-17.8^{\circ}\text{C}$  ( $0^{\circ}\text{F}$ ) are exempted, since the melon fruit fly cannot survive such processing);
- Soil within the dripline of plants that produce those fruits or vegetables;
- Certain plants of the family Cucurbitaceae; and
- Any other product, article, or means of conveyance that an inspector determines to present a risk of spreading the melon fruit fly when the inspector notifies the person in possession of the product, article, or means of conveyance that it is subject to the restrictions in the regulations.

The last item listed above, which provides for the designation of "any other product, article, or means of conveyance" as a regulated article, is intended to address the risks presented by, for example, a truck with melon fruit fly pupae in the cracks of its floorboards by enabling an inspector to designate that truck as a regulated article in order to ensure that any necessary risk-mitigating measures are carried out.

*Section 301.97-3—Quarantined Areas*

Paragraph (a) of § 301.97-3 provides the criteria for the inclusion of States, or portions of States, in the list of quarantined areas. Under these criteria, any State or portion of a State in which the melon fruit fly is found by an inspector, or in which the Administrator has reason to believe that the melon fruit fly is present, will be listed as a quarantined area. These criteria also provide that an area will be designated as a quarantined area when the Administrator considers it necessary due to the area's inseparability for quarantine enforcement purposes from localities in which the melon fruit fly has been found.

Paragraph (a) of § 301.97-3 also provides that we will designate less than an entire State as a quarantined area only if we determine that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed on the interstate movement of regulated articles and that the designation of less than the entire State as a quarantined area will prevent the interstate spread of the melon fruit fly. These determinations would indicate that infestations are confined to the quarantined areas and eliminate the need for designating an entire State as a quarantined area.

The boundary lines that delimit the portion of a State that is designated as a quarantined area are set up approximately 4.5 miles from the locations where melon fruit fly has been detected. The boundary lines may vary due to factors such as the location of melon fruit fly host material, the location of transportation centers such as bus stations and airports, the pattern of persons moving in that State, the number and patterns of distribution of the melon fruit fly, and the use of clearly identifiable lines for the boundaries.

We have determined that it is not necessary to designate the entire State of California as a quarantined area because the melon fruit fly has not been found in any other area of the State, and because California has adopted and is enforcing restrictions on the intrastate movement of regulated articles and those restrictions are substantially the same as those imposed by the regulations on the interstate movement of regulated articles. Therefore, in accordance with the criteria described in the previous paragraph, we have designated the El Monte and Rosemead area of Los Angeles County, CA, as a quarantined area. The boundaries of the quarantined area are described in

§ 301.97-3(c) in the rule portion of this document.

Paragraph (b) of § 301.97-3 provides that we may temporarily designate any nonquarantined area in a State as a quarantined area when we determine that the nonquarantined area meets the criteria for designation as a quarantined area described in § 301.97-3(a). In such cases, we will give the owner or person in possession of the area a copy of the regulations along with written notice of the area's temporary designation as a quarantined area, after which time the interstate movement of any regulated article from the area will be subject to the regulations. This provision is necessary to prevent the spread of the melon fruit fly during the time between the detection of the pest and the time a document quarantining the area can be made effective and published in the **Federal Register**. In the event that an area's designation as a temporary quarantined area is terminated, we will provide written notice of that termination to the owner or person in possession of the area as soon as is practicable.

*Section 301.97-4—Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas*

This section requires most regulated articles moving interstate from quarantined areas to be accompanied by a certificate or a limited permit. The only exceptions are certain articles that move into the quarantined area from outside the quarantined area or that are moved by APHIS or the Department for experimental or scientific purposes.

Except for articles moved by APHIS or the Department, only articles that are moved into the quarantined area from outside the quarantined area and that are accompanied by a waybill that indicates the point of origin may be moved interstate without a certificate or limited permit. Additionally, the articles must be moved in an enclosed vehicle or be completely enclosed so as to prevent access by melon fruit flies. The regulated articles must also move through the quarantined area without stopping (except for refueling, rest stops, emergency repairs, and for traffic conditions such as traffic lights and stop signs), and the regulated articles must not be unpacked or unloaded in the quarantined area.

Also, APHIS or the Department may move regulated articles interstate without a certificate or limited permit if the articles are moved for experimental or scientific purposes. However, the articles must be moved in accordance with a Departmental permit issued by

the Administrator, under conditions specified on the permit to prevent the spread of the melon fruit fly.

*Section 301.97-5—Issuance and Cancellation of Certificates and Limited Permits*

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles when an inspector finds that, because of certain conditions (e.g., the article is free of melon fruit fly), there is no pest risk before movement. Regulated articles accompanied by a certificate may be moved interstate without further restrictions. Limited permits are issued for regulated articles when an inspector finds that, because of a possible pest risk, the articles may be safely moved interstate only subject to further restrictions, such as movement to limited areas and movement for limited purposes. Section 301.97-5 explains the conditions for issuing a certificate or limited permit.

Specifically, § 301.97-5(a) provides that a certificate will be issued by an inspector for the movement of a regulated article if the inspector determines that the article: (1) Is free of the melon fruit fly; has been treated under the supervision of an inspector, who must be present during the treatment, in accordance with § 301.97-10; or comes from a premises of origin that is free of the melon fruit fly; (2) will be moved in compliance with any additional emergency conditions deemed necessary to prevent the spread of the melon fruit fly under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd); and (3) is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to that article.

We have included a footnote (number 4) that provides an address for securing the addresses and telephone numbers of the local Plant Protection and Quarantine offices at which services of inspectors may be requested. We have also included a footnote (number 5) that explains that the Secretary of Agriculture can, under 7 U.S.C. 150dd, take emergency actions to seize, quarantine, treat, destroy, or apply other remedial measures to articles that are, or that he or she has reason to believe are, infested or infected by or contain plant pests.

Paragraph (b) of § 301.97-5 provides for the issuance of a limited permit (in lieu of a certificate) by an inspector for interstate movement of a regulated article if the inspector determines that the article is to be moved to a specified

destination for specified handling, utilization or processing, and that the movement will not result in the spread of the melon fruit fly.

Paragraph (c) of § 301.97-5 allows any person who has entered into and is operating under a compliance agreement to issue a certificate or limited permit for the interstate movement of a regulated article after an inspector has determined that the article is eligible for a certificate or limited permit under § 301.97-5(a) or (b).

Also, § 301.97-5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector if the inspector determines that the holder of the certificate or limited permit has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact in the event that the person wishes to appeal the cancellation.

#### *Section 301.97-6—Compliance Agreements and Cancellation*

Section 301.97-6 provides for the issuance and cancellation of compliance agreements. Compliance agreements are provided for the convenience of persons who are involved in interstate shipments of regulated articles from quarantined areas. A compliance agreement will be issued when an inspector has determined that the person requesting the compliance agreement is knowledgeable regarding the requirements of the regulations, and the person has agreed to comply with those requirements. This section contains a footnote (number 7) that explains how compliance agreements may be arranged.

Section 301.97-6 also provides that an inspector may cancel the compliance agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact in the event that the person wishes to appeal the cancellation.

#### *Section 301.97-7—Assembly and Inspection of Regulated Articles*

Section 301.97-7 provides that any person (other than a person authorized to issue certificates or limited permits under § 301.97-5(c)) who desires a certificate or limited permit to move regulated articles must request, at least 48 hours before the desired interstate

movement, that an inspector issue a certificate or limited permit. The regulated articles must be assembled in a place and manner directed by the inspector.

#### *Section 301.97-8—Attachment and Disposition of Certificates and Limited Permits*

Section 301.97-8 requires the certificate or limited permit issued for movement of the regulated article to be attached, during the interstate movement, to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill. Further, the section requires that the carrier must furnish the certificate or limited permit to the consignee at the destination of the regulated article.

These provisions are necessary for enforcement purposes and to ensure that persons desiring inspection services can obtain them before the intended movement date.

#### *Section 301.97-9—Costs and Charges*

Section 301.97-9 explains the APHIS policy that the services of an inspector that are needed to comply with the regulations are provided without cost between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, to persons requiring those services, but that we will not be responsible for any other costs or charges (such as overtime costs for inspections conducted at times other than between 8 a.m. to 4:30 p.m., Monday through Friday, except holidays).

#### *Section 301.97-10—Treatments*

Section 301.97-10 sets forth treatment schedules that qualify soil and regulated articles for issuance of certificates and limited permits as provided in § 301.97-5. For instance, it has been determined, based on research by the Agricultural Research Service, that the following diazinon treatment would destroy the melon fruit fly in soil:

Soil within the dripline of plants that are producing or have produced the fruits and vegetables listed in § 301.97-2(a) of this subpart: Apply diazinon at the rate of 5 pounds active ingredient per acre to the soil within the dripline with sufficient water to wet the soil to a depth of at least ½ inch.

Treatments authorized for use in destroying the melon fruit fly on regulated articles are listed in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at 7 CFR 300.1, "Materials incorporated by reference."

### **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 melon 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 this action effective less than 30 days after publication. 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**. The document 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 quarantines part of Los Angeles County, CA, because of the melon fruit fly and restricts the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the melon fruit fly to noninfested areas of the United States.

Within the regulated area there are approximately 413 small entities that may be affected by this rule. These include 3 distributors, 250 fruit sellers, 27 growers, 126 nurseries, 1 processor, 3 community gardens, 2 swap meets, and 1 farmers market. These 413 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 rule on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate from the quarantined area will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate will 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 interim 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.

#### National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The assessment provides a basis for the conclusion that the implementation of integrated pest management to achieve eradication of the melon fruit fly will not have a significant impact on human health and the natural 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), as amended (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

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0088 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Docket No. 99–097–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. Please state that your comments refer to Docket No. 99–097–1 and send your comments within 60 days of publication of this rule.

This interim rule quarantines a part of Los Angeles, CA, because of the melon fruit fly and restricts the interstate movement of regulated articles from the quarantined area. Its implementation will require us to engage in certain information collection activities, in that certain articles may not be moved interstate from the quarantined area unless they are accompanied by a certificate or a limited permit. A certificate or limited permit may be issued by an inspector (*i.e.*, an APHIS employee or other person authorized by the APHIS Administrator to enforce the regulations), or by a person who has entered into a written compliance agreement with APHIS. We are soliciting comments from the public concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of

information technology; *e.g.*, permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average .04049 hours per response.

*Respondents:* State and county cooperators (inspectors); and producers, handlers, and movers of regulated fruit and vegetables in Los Angeles County, California.

*Estimated annual number of respondents:* 10.

*Estimated annual number of responses per respondent:* 32.1.

*Estimated annual number of responses:* 321.

*Estimated total annual burden on respondents:* 13 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, 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. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. Part 301 is amended by adding a new “Subpart—Melon Fruit Fly,” §§ 301.97 through 301.97–10, to read as follows:

#### Subpart—Melon Fruit Fly

Sec.

301.97 Restrictions on interstate movement of regulated articles.

301.97–1 Definitions.

301.97–2 Regulated articles.

301.97–3 Quarantined areas.

301.97–4 Conditions governing the interstate movement of regulated articles from regulated areas.

301.97–5 Issuance and cancellation of certificates and limited permits.

301.97–6 Compliance agreements and cancellation.

301.97–7 Assembly and inspection of regulated articles.

301.97–8 Attachment and disposition of certificates and limited permits.

301.97–9 Costs and charges.

301.97–10 Treatments.

**Subpart—Melon Fruit Fly****§ 301.97 Restrictions on interstate movement of regulated articles.**

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart<sup>1</sup>

**§ 301.97-1 Definitions.**

**Administrator.** The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

**Animal and Plant Health Inspection Service.** The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture.

**Certificate.** A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of melon fruit fly and may be moved interstate to any destination.

**Compliance agreement.** A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with this subpart.

**Departmental permit.** A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.97-4(d) of this subpart.

**Dripline.** The line around the canopy of a plant.

**Infestation.** The presence of the melon fruit fly or the existence of circumstances that makes it reasonable to believe that the melon fruit fly is present.

**Inspector.** Any employee of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person authorized by the Administrator to enforce this subpart.

**Interstate.** From any State into or through any other State.

**Limited permit.** A document in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.97-5(b) of this subpart only to a specified

destination and only in accordance with specified conditions.

**Melon fruit fly.** The insect known as the melon fruit fly, *Bactrocera cucurbitae* (Coquillett), in any stage of development.

**Moved (move, movement).** Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

**Person.** Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

**Plant Protection and Quarantine.** Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture.

**Quarantined area.** Any State, or any portion of a State, listed in § 301.97-3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.97-3(b) of this subpart.

**Regulated article.** Any article listed in § 301.97-2 or otherwise designated as a regulated article in accordance with § 301.97-2(e).

**State.** The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

**§ 301.97-2 Regulated articles.**

The following are regulated articles:

- (a) Melon fruit flies.<sup>2</sup>
- (b) The following fruits and vegetables:

Apple (*Malus sylvestris*)  
 Apple, custard (*Annona reticulata*)  
 Avocado (*Persea americana*)  
 Bean, hyacinth (*Dolichos lablab*)  
 Bean, lima (*Phaseolus lunatus* = *Phaseolus limensis*)  
 Bean, mung (*Phaseolus vulgaris*)  
 Cantaloupe (*Cucumis melo* and *Cucumis melo* var. *Cantalupensis*)  
 Cauliflower (*Brassica oleracea* var. *botrytis*)  
 Chayote (*Sechium edule*)  
 Colocynth (*Citrullus colocynthis*)  
 Cowpea (*Vigna unguiculata*)  
 Cucumber (*Cucumis sativus*)  
 Cucumber, bur (*Sicyes* sp.)  
 Cucurbit (*Cucumis pubescens* and *Cucumis trigonus*)  
 Date palm (*Phoenix dactylifera*)  
 Eggplant (*Solanum melongena*)  
 Fig (*Ficus carica*)  
 Gourds  
 (*Coccinia* spp.)  
 (*Crescentia* spp.)  
 (*Lagenaria* spp.)  
 (*Luffa* spp.)

(*Momordica* spp.)  
 (*Trichosanthis* spp.)  
 Grape (*Vitis trifolia*)  
 Guava (*Psidium guajava*)  
 Guava, cattley (*Psidium cattlelanum*)  
 Lemon, water (*Passiflora laurifolia*)  
 Mango (*Mangifera indica*)  
 Melon (*Citrullus* spp.)  
 Melon, Chinese (*Benincasa hispida*)  
 Melon, oriental pickling (*Cucumis melo* var. *conomon*)  
 Mustard, leaf (*Brassica juncea*)  
 Okra (*Hibiscus esculentus*)  
 Orange, king (*Citrus nobilis*)  
 Orange, mandarin (*Citrus reticulata*)  
 Orange, sweet (*Citrus sinensis*)  
 Papaya (*Carica papaya*)  
 Passion fruit (*Passiflora edulis*)  
 Peach (*Prunus persica*)  
 Pear (*Pyrus communis*)  
 Pepper (*Capsicum annum*)  
 Pepper, chile (*Capsicum annum*)  
 Pepper, tobasco (*Capsicum frutescens*)  
 Pumpkin (*Cucurbita pepo*)  
 Pumpkin, Canada (*Cucurbita moschata*)  
 Scarlet wisteria tree (*Sesbania grandiflora*)  
 Soursop (*Annona muricata*)  
 Squash (*Cucurbita maxima*)  
 Tomato (*Lycopersicon esculentum*)  
 Tomato, tree (*Cyphomandra betaceae*)  
 Watermelon (*Citrullus lanatus* = *Citrullus vulgaris*)

Any fruits or vegetables that are canned or dried or frozen below -17.8 °C. (0 °F.) are not regulated articles.

(c) Soil within the dripline of plants that are producing or have produced the fruits or vegetables listed in paragraph (b) of this section.

(d) Plants of the following species in the family Cucurbitaceae:

Cantaloupe (*Cucumis melo*)  
 Chayote (*Sechium edule*)  
 Colocynth (*Citrullus colocynthis*)  
 Cucumber (*Cucumis sativus*)  
 Cucumber, bur (*Sicyos* sp.)  
 Cucurbit, wild (*Cucumis trigonus*)  
 Gherkin, West India (*Cucumis angaria*)  
 Gourd, angled luffa (*Luffa acutangula*)  
 Gourd, balsam apple (*Momordica balsamina*)  
 Gourd, ivy (*Coccinia grandis*)  
 Gourd, kakari (*Momordica dioica*)  
 Gourd, serpent cucumber (*Trichosanthis anguina*)  
 Gourd, snake (*Trichosanthis cucumeroides*)  
 Gourd, sponge (*Luffa aegyptiaca*)  
 Gourd, white flowered (*Lagenaria siceraria*)  
 Melon, Chinese (*Benincasa hispida*)  
 Melon, long (*Cucumis utilissimus*)  
 Pumpkin (*Cucurbita pepo*)  
 Pumpkin, Canada (*Cucurbita moschata*)  
 Squash (*Cucurbita maxima*)  
 Watermelon (*Citrullus lanatus* = *Citrullus vulgaris*)

<sup>1</sup> Any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd and 150ff).

<sup>2</sup> Permit and other requirements for the interstate movement of melon fruit flies are contained in part 330 of this chapter.

(e) Any other product, article, or means of conveyance not listed in paragraphs (a) through (d) of this section that an inspector determines presents a risk of spreading the melon fruit fly, when the inspector notifies the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

#### § 301.97-3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State, or each portion of a State, in which the melon fruit fly has been found by an inspector, in which the Administrator has reason to believe that the melon fruit fly is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which the melon fruit fly has been found. 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 by this subpart 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 the melon fruit fly.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice for the temporary designation to the owner or person in possession of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

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

#### California

*Los Angeles County.* That portion of Los Angeles County bounded by a line drawn as follows: Beginning at the intersection of Atlantic Boulevard and

Huntington Drive; then northeast along Huntington Drive to Sierra Madre Boulevard; then north along Sierra Madre Boulevard to Interstate Highway 210; then east along Interstate Highway 210 to Buena Vista Street; then south along Buena Vista Street to Arrow Highway; then east along Arrow Highway to Interstate Highway 605; then south along Interstate Highway 605 to Live Oak Avenue; then east along Live Oak Avenue to Baldwin Park Boulevard; then south and southwest along Baldwin Park Boulevard to Francisquito Avenue; then southeast along Francisquito Avenue to Puente Avenue; then southwest along Puente Avenue to Valley Boulevard; then southeast along Valley Boulevard to 5th Street; then southwest along 5th Street to Lomitas Avenue; then southwest along an imaginary line to the intersection of Interstate Highway 605 and Beverly Boulevard; then west along Beverly Boulevard to Garfield Avenue; then north along Garfield Avenue to Garvey Avenue; then west along Garvey Avenue to Atlantic Boulevard; then north along Atlantic Boulevard to the point of beginning.

#### § 301.97-4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area<sup>3</sup> only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.97-5 and 301.97-8 of this subpart;

(b) Without a certificate or limited permit if:

(1) The regulated article originated outside the quarantined area and is either moved in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by melon fruit flies (such as canvas, plastic, or other closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is indicated on the waybill.

(c) Without a certificate or limited permit if:

(1) The regulated article originated outside any quarantined area and is moved through (without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs) the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by melon fruit flies (such

as canvas, plastic, or other closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is indicated on the waybill and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

(d) Without a certificate or limited permit if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a Departmental permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the spread of the melon fruit fly; and

(4) With a tag or label bearing the number of the Departmental permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container.

(Approved by the Office of Management and Budget under control number 0579-0088)

#### § 301.97-5 Issuance and cancellation of certificates and limited permits.

(a) A certificate may be issued by an inspector<sup>4</sup> for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with § 301.97-10 of this subpart; or

(ii) Based on inspection of the premises of origin, the premises are free from the melon fruit fly; or

(iii) Based on inspection of the regulated article, the regulated article is free of melon fruit flies; and

(2) The regulated article will be moved through the quarantined area in an enclosed vehicle or will be completely enclosed by a covering adequate to prevent access by the melon fruit fly; and

(3) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 105 of the Federal Plant Pest Act

<sup>4</sup> Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 134, Riverdale, MD 20737-1236.

<sup>3</sup> Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

(7 U.S.C. 150dd)<sup>5</sup> to prevent the spread of the melon fruit fly; and

(4) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) An inspector<sup>6</sup> will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) The regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the melon fruit fly because life stages of the melon fruit fly will be destroyed by the specified handling, processing, or utilization;

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) to prevent the spread of the melon fruit fly; and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for the interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if an inspector has determined that the regulated article is eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn, either orally or in writing, by an inspector if he or she determines that the holder of the certificate or limited permit has not complied with all conditions in this subpart for the use of the certificate or limited permit. If the

withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0088)

#### **§ 301.97-6 Compliance agreements and cancellation.**

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands this subpart and agrees to comply with its provisions.<sup>7</sup>

(b) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

<sup>7</sup> Compliance agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 134, Riverdale, MD 20737-1236, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories.

#### **§ 301.97-7 Assembly and inspection of regulated articles.**

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.97-5(c)) who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector<sup>8</sup> as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

#### **§ 301.97-8 Attachment and disposition of certificates and limited permits.**

(a) A certificate or limited permit required for the interstate movement of a regulated article must, at all times during the interstate movement, be:

(1) Attached to the outside of the container containing the regulated article, or

(2) Attached to the regulated article itself if not in a container, or

(3) Attached to the consignee's copy of the accompanying waybill. If the certificate or limited permit is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article.

(Approved by the Office of Management and Budget under control number 0579-0088)

#### **§ 301.97-9 Costs and charges.**

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside normal business hours.

#### **§ 301.97-10 Treatments.**

Treatment schedules listed in the Plant Protection and Quarantine Treatment Manual to destroy the melon fruit fly are authorized for use on regulated articles. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference." The following treatments also may be used for the regulated articles indicated:

<sup>8</sup> See footnote 4 to § 301.97-5(a).

<sup>5</sup> Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides that the Secretary of Agriculture may, under certain conditions, seize, quarantine, treat, destroy, or apply other remedial measures to articles that are, or that the Administrator has reason to believe are, infested or infected by or contain plant pests.

<sup>6</sup> See footnote 4 to § 301.97-5(a).



(a) *Soil within the dripline of plants that are producing or have produced the fruits and vegetables listed in § 301.97-2(a) of this subpart.* Apply diazinon at the rate of 5 pounds active ingredient per acre to the soil within the dripline with sufficient water to wet the soil to at least a depth of ½ inch.

(b) [Reserved]

Done in Washington, DC, this 1st day of February 2000.

**Bobby R. Acord,**

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

[FR Doc. 00-4030 Filed 2-18-00; 8:45 am]

BILLING CODE 3410-34-U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 98-NM-339-AD; Amendment 39-11582; AD 2000-03-22]

RIN 2120-AA64

#### **Airworthiness Directives; Boeing Model 747-100, -200, and 747SP Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-100, -200, and 747SP series airplanes, that requires repetitive detailed visual and ultrasonic inspections to detect missing, damaged, or broken taperlock bolts in the diagonal brace underwing fittings; and corrective actions, if necessary. This AD also requires eventual replacement of the aft 10 taperlock bolts with new bolts, which constitutes terminating action for the repetitive inspections. This amendment is prompted by reports of damaged, broken, and corroded taperlock bolts of the diagonal brace underwing fittings on the outboard strut due to stress corrosion cracking. The actions specified by this AD are intended to prevent loss of the underwing fitting load path due to missing, damaged, or broken taperlock bolts, which could result in separation of the engine and strut from the airplane.

**DATES:** Effective March 28, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 28, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained

from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### **FOR FURTHER INFORMATION CONTACT:**

Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2771; fax (425) 227-1181.

#### **SUPPLEMENTARY INFORMATION:**

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747-100, -200, and 747SP series airplanes was published in the **Federal Register** on August 31, 1999 (64 FR 47440). That action proposed to require repetitive detailed visual and ultrasonic inspections to detect missing, damaged, or broken taperlock bolts in the diagonal brace underwing fittings; and corrective actions, if necessary. That action also proposed to require eventual replacement of the aft 10 taperlock bolts with new bolts as terminating action for the repetitive inspections.

#### **Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

#### **Support for the Proposal**

One commenter supports the proposed rule.

#### **Request to Reference Other Terminating Action**

One commenter requests that the FAA revise the notice of proposed rulemaking (NPRM) to reference accomplishment of Boeing Service Bulletin 747-57-2288 as terminating action for the repetitive inspection requirements proposed in the NPRM. The commenter states that accomplishment of the replacement of the diagonal brace underwing fitting in accordance with Figures 5 through 9 of that service bulletin, or the clearance adjustment in accordance with Figure 10 of that service bulletin, includes replacement of the same taperlock bolts with new bolts as described in the NPRM and in Boeing Alert Service Bulletin 747-57A2308, dated August 6, 1998 (which was referenced as the

appropriate source of service information for the actions proposed in the NPRM). The commenter states that if the taperlocks that are the subject of this AD have already been replaced with the same new bolts that are specified in this AD, the operator should not be required to do the inspections proposed in the NPRM or apply for approval of an alternative method of compliance. The commenter states that if its request is granted and incorporated in the final rule, operators and the FAA will not have to process as many applications for alternative methods of compliance.

The FAA concurs with the commenter's request. The FAA finds that accomplishment of the replacement of the diagonal brace underwing fitting or the clearance adjustment described in Boeing Service Bulletin 747-57-2288, Revision 1, dated June 26, 1997, is acceptable for compliance with the requirements of paragraph (d) of this AD. Accordingly, a new NOTE 3 has been added to this final rule. However, the FAA finds that accomplishment of such replacement or clearance adjustment in accordance with the original issue of Boeing Service Bulletin 747-57-2288, dated September 15, 1994, is not acceptable for compliance with paragraph (d) of this AD, because that service bulletin does not specify to replace the taperlock bolts that are subject to this AD.

#### **Request to Clarify "Spares" Paragraph**

One commenter requests that the FAA revise paragraph (e) of the NPRM to change the words "on any airplane" to "on any Boeing 747 airplane that is listed in the effectivity of [Boeing Service Bulletin] 747-57A2308." The commenter states that an operator was confused about the meaning of the paragraph as it is phrased in the NPRM.

The FAA concurs with the intent of the commenter's request. The FAA acknowledges that the language used in the NPRM may confuse some operators. Therefore, paragraph (e) of this final rule has been revised to state that, "... no person shall install a bolt, part number BACB30PE() \* (), or any other bolt made of 4340, 8740, or PH13-8 Mo steel, in the locations specified in this AD, on any airplane listed in the applicability of this AD."

#### **Request to Revise Estimated Cost of Terminating Action**

One commenter requests that the FAA revise the estimated cost of the terminating action, as quoted in the proposed rule. The commenter points out that the number of work hours for accomplishment of the terminating action stated in the NPRM (*i.e.*, 8 work