

### § 301.91-7

comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(b) Any compliance agreement may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant thereto. If the cancellation is oral, the decision and the reasons therefor shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, to the Deputy Administrator within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

[49 FR 18992, May 4, 1984, as amended at 59 FR 67609, Dec. 30, 1994]

### § 301.91-7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.91-5(c)), who desires to move interstate a regulated article accompanied by a certificate or limited permit shall, as far in advance as possible (should be no less than 48 hours before the desired movement), request an inspector<sup>5</sup> to take any nec-

local offices of the Plant Protection and Quarantine. (Local offices are listed in telephone directories).

<sup>5</sup>Inspectors are assigned to local offices of Plant Protection and Quarantine which are listed in telephone directories. Information concerning such local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations,

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essary action under this subpart prior to movement of the regulated article.

(b) Such articles shall be assembled at such point and in such manner as the inspector designates as necessary to comply with the requirements of this subpart.

[49 FR 18992, May 4, 1984, as amended at 59 FR 67609, Dec. 30, 1994]

### § 301.91-8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, at all times during such movement, shall be securely attached to the outside of the containers containing the regulated article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document; *Provided, however,* That the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill or other shipping documents only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify such article.

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

### § 301.91-9 Costs and charges.

The services of the inspector shall be furnished without cost, except as provided in 7 CFR part 354. The U.S. Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

### Subpart—Oriental Fruit Fly

SOURCE: 58 FR 8521, Feb. 16, 1993, unless otherwise noted.

4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

**§ 301.93 Restrictions on interstate movement of regulated articles.**

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

**§ 301.93-1 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 of the United States Department of Agriculture (APHIS or Service).

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

*Compliance agreement.* A written agreement between the Animal and Plant Health Inspection Service and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart.

*Core area.* The 1 square mile area surrounding each property where Oriental fruit fly has been detected.

*Day degrees.* A mathematical construct combining average temperature over time that is used to calculate the length of an Oriental fruit fly life cycle. Day degrees are the product of the following formula, with all temperatures measured in °F:

$$[(\text{Minimum Daily Temp} + \text{Maximum Daily Temp})/2] - 54^\circ = \text{Day Degrees}$$

*Drip area.* The area under the canopy of a plant.

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

<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, 150ff).

*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 a specified regulated article is eligible for interstate movement in accordance with § 301.93-5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

*Moved (Move, Movement).* Shipped, offered for shipment, received for transportation or transported, carried, or allowed to be moved, shipped, transported, or carried by any means.

*Oriental fruit fly.* The insect known as Oriental fruit fly (*Bactrocera dorsalis* (Hendel)) in any stage of development.

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

*Quarantined area.* Any State, or any portion of a State, listed in § 301.93-3(c) of this subpart.

*Regulated article.* Any article listed in § 301.93-2 of this subpart or otherwise designated as a regulated article in accordance with § 301.93-2(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.93-3(b) of this subpart.

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

[58 FR 8521, Feb. 16, 1993; 58 FR 29028, May 18, 1993]

**§ 301.93-2 Regulated articles.**

The following are regulated articles:

(a) The following fruits, nuts, vegetables, and berries:

Akia (*Wikstromia phylluraefolia*)  
 Alexander laurel (*Calophyllum inophyllum*)  
 Apple (*Malus sylvestris*)  
 Apricot (*Prunus armeniaca*)  
 Avocado (*Persea americana*)  
 Banana (*Musa paradisiaca* var. *sapientum*)  
 (*Musa x paradisiaca*)  
 Banana, dwarf (*Musa nana*)  
 Barbados cherry (*Malpighia glabra*)  
 Bell pepper (*Capsicum annuum*)  
 Brazil cherry (*Eugenia dombeyi*)  
 Breadfruit (*Artocarpus altilis*)