

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 02-121-2]

#### Mexican Fruit Fly; Addition of Regulated Area

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

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

**SUMMARY:** We are revising the Mexican fruit fly regulations by adding a portion of Los Angeles County, CA, to the existing regulated area and restricting the interstate movement of regulated articles from that area. This action is necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States.

**DATES:** This interim rule was effective January 17, 2003. We will consider all comments that we receive on or before March 25, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-121-2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-121-2. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-121-2" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building,

14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen A. Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-8247.

#### 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 the regulated areas.

In an interim rule effective on December 13, 2002, and published in the **Federal Register** on December 23, 2002 (67 FR 78127-78128, Docket No. 02-121-1), we amended the regulations by adding a portion of Los Angeles County, CA, as a regulated area. Prior to the effective date of that rule, the only areas regulated for the Mexican fruit fly were portions of Texas. In this interim rule, we are designating an additional portion of Los Angeles County, CA, as a regulated area.

Section 301.64-3 provides that the Deputy Administrator for Plant Protection and Quarantine, Animal and Plant Health Inspection Service (APHIS), 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 the State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of the regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of the articles and 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 APHIS inspectors reveal that an additional portion of Los Angeles County, CA, is infested with the Mexican fruit fly.

Accordingly, to prevent the spread of the Mexican fruit fly to noninfested areas of the United States, we are amending the regulations in § 301.64-3 by adding that portion of Los Angeles County, CA, to the existing regulated area for the Mexican fruit fly. The addition is described in detail in the rule portion of this document. The Deputy Administrator has determined that it is not necessary to designate the entire State of California as a regulated area.

#### Emergency Action

This rulemaking is necessary on an emergency basis to prevent the Mexican fruit fly from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). 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.

#### **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 under Executive Order 12866.

This rule restricts the interstate movement of regulated articles from an area in Los Angeles County, CA. Within the regulated area there are approximately 389 small entities that may be affected by this rule. These include 351 fruit sellers, 3 growers, 33 nurseries, 1 certified farmers' market, and 1 swapmeet. These 389 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 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 12988**

This 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 site-specific environmental assessment provides a basis for the conclusion that the implementation of integrated pest management to eradicate the Mexican

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 in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this document). In addition, copies may be obtained from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

#### **Paperwork Reduction Act**

This interim 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, 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. 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, 7754, and 7760; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.64–3, paragraph (c), under the heading “California”, the entry for Los Angeles County is revised to read as follows:

#### **§ 301.64–3 Regulated areas.**

\* \* \* \* \*

(c) \* \* \*

#### **California**

*Los Angeles County.* That portion of the county in the South Pasadena and Monterey Park areas bounded by a line as follows: Beginning at the intersection of Valley Boulevard and Peck Road; then south on Peck Road to Workman Mill Road; then southwest on Workman Mill Road to Norwalk Boulevard; then southwest on Norwalk Boulevard to Whittier Boulevard; then northwest on Whittier Boulevard to Passons Boulevard; then southwest on Passons Boulevard to Washington Boulevard; then northwest on Washington Boulevard to Paramount Boulevard; then southwest on Paramount Boulevard to East Slauson Avenue; then west on East Slauson Avenue to U.S. Interstate 710; then northwest on U.S. Interstate 710 to U.S. Interstate 5; then northwest on U.S. Interstate 5 to South Indiana Street; then north on South Indiana Street to North Indiana Street; then north on North Indiana Street to Cesar Chavez Avenue; then northwest on Cesar Chavez Avenue to North Soto Street; then north on North Soto Street to Valley Boulevard; then west on Valley Boulevard to North Main Street; then west on North Main Street to Daly Street; then north on Daly Street to Pasadena Avenue; then north on Pasadena Avenue to North Figueroa Street; then southwest on North Figueroa Street to Cypress Avenue; then northwest on Cypress Avenue to Eagle Rock Boulevard; then northeast on Eagle Rock Boulevard to Colorado Boulevard; then east on Colorado Boulevard to West Colorado Boulevard; then northeast on West Colorado Boulevard to State Highway 710; then north on State Highway 710 to U.S. Interstate 210; then north on U.S. Interstate 210 to West Washington Boulevard; then east on West Washington Boulevard to East Washington Boulevard; then southeast on East Washington Boulevard to East Sierra Madre Boulevard; then east on East Sierra Madre Boulevard to Sierra Madre Villa Avenue; then south on Sierra Madre Villa Avenue to North Rosemead Boulevard; then southeast on North Rosemead Boulevard to Rosemead Boulevard; then south on Rosemead Boulevard to Longden Avenue; then east on Longden Avenue to Encinita Avenue; then south on Encinita Avenue to Las Tunas Drive; then east on Las Tunas Drive to Temple City Boulevard; then south on Temple City Boulevard to Olive Street; then east on Olive Street to Baldwin Avenue; then south on Baldwin Avenue to Lower Azusa Road; then east on Lower Azusa Road to Arden Drive; then south on Arden Drive to Valley Boulevard; then southeast on Valley Boulevard to the point of beginning.

\* \* \* \* \*

Done in Washington, DC, this 17th day of January 2003.

**Kevin Shea,**

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

[FR Doc. 03–1609 Filed 1–23–03; 8:45 am]

**BILLING CODE 3410–34–P**