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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99-075-1]

Mexican Fruit Fly Regulations; Addition of Regulated Area

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 designating an area in San Bernardino and Riverside Counties, CA, as a regulated area. 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 area in California.

DATES: This interim rule was effective September 22, 1999. We invite you to comment on this docket. We will consider all comments that we receive by November 29, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 99-075-1, 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. 99-075-1.

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 Staff, 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 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 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, the only areas in the United States regulated for the Mexican fruit fly were portions of Texas.

Section 301.64-3 provides that the Deputy Administrator for Plant Protection and Quarantine (PPQ), 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 inspectors of PPQ reveal that a portion of San Bernardino County, CA, is infested with the Mexican fruit fly. Specifically, on August 20, 26, and 27, 1999, inspectors found three Mexican fruit flies in a residential area in San Bernardino County, CA.

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(c) by designating an area in San Bernardino and Riverside Counties, CA, as a regulated area. A portion of Riverside County, CA, is included in the regulated area because of its proximity to the finding sites in San Bernardino County, CA. The regulated area is described in the rule portion of this document.

There does not appear to be any reason to designate any other portion of the quarantined State of California as a regulated area. Officials of State agencies of California are conducting an intensive Mexican fruit fly eradication program in the regulated area in California. Also, California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of certain articles from the regulated area that are substantially the same as those imposed 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 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 restricts the interstate movement of regulated articles from an area in San Bernardino and Riverside Counties, CA. Within the regulated area there are approximately 106 small entities that may be affected by this rule. These include 2 distributors, 62 fruit sellers, 19 growers, 1 landfill, 18 nurseries, 1 packer, 1 processor, and 2 swapmeets. These 106 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 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 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, as amended (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 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. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.64–3, paragraph (c) is amended by adding an entry for

California, in alphabetical order, to read as follows:

§ 301.64–3 Regulated areas.

* * * * *

(c) * * *

California

San Bernardino and Riverside Counties.

That portion of San Bernardino and Riverside Counties in the Bloomington area bounded by a line drawn as follows: Beginning at the intersection of Sierra Avenue and Foothill Boulevard; then east along Foothill Boulevard to Meridian Avenue; then south along Meridian Avenue to Mill Street; then east along Mill Street to Rancho Avenue; then south along Rancho Avenue to Laurel Street; then east along Laurel Street to Eighth Street; then south along Eighth Street to La Cadena Drive; then south along La Cadena Drive to Interstate Highway 10; then east along Interstate Highway 10 to Mount Vernon Avenue; then south along Mount Vernon Avenue to Interstate Highway 215; then southwest along Interstate Highway 215 to State Highway 91; then southwest along State Highway 91 to Mission Inn Avenue; then northwest along Mission Inn Avenue to Buena Vista Avenue; then northwest along Buena Vista Avenue to Mission Boulevard; then northwest along Mission Boulevard to Riverview Drive; then southwest along Riverview Drive to Limonite Avenue; then southwest along Limonite Avenue to Camino Real; then north along Camino Real to Red Mountain Drive; then west along Red Mountain Drive to Longs Peak Drive; then southwest along Longs Peak Drive to Tyrolite Street; then north along Tyrolite Street to Galena Street; then west along Galena Street to Agate Street; then north along Agate Street to Mission Boulevard; then west along Mission Boulevard to Pedley Road; then north along Pedley Road to Granite Hill Drive; then north along an imaginary line to the intersection of Cherry Avenue and Live Oak Avenue; then north along Live Oak Avenue to Boyle Avenue; then north along an imaginary line to the intersection of Washington Drive and Live Oak Avenue; then north along Live Oak Avenue to Valley Boulevard; then east along Valley Boulevard to Fontana Avenue; then northeast along Fontana Avenue to Citrus Avenue; then north along Citrus Avenue to Arrow Boulevard; then east along Arrow Boulevard to Sierra Avenue; then north along Sierra Avenue to the point of beginning.

* * * * *

Done in Washington, DC, this 22nd day of September 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–25178 Filed 9–27–99; 8:45 am]

BILLING CODE 3410–34–U