

**Subpart—Imported Plants and Plant Parts****§ 301.10 Definitions.**

*Move (moved, movement).* Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved.

*State.* Any State, territory, district, or possession of the United States.

**§ 301.11 Notice of quarantine; prohibition on the interstate movement of certain imported plants and plant parts.**

(a) In accordance with part 319 of this chapter, some plants and plant parts may only be imported into the United States subject to certain destination restrictions. That is, under part 319, some plants and plant parts may be imported into some States or areas of the United States but are prohibited from being imported into, entered into, or distributed within other States or areas, as an additional safeguard against the introduction and establishment of foreign plant pests and diseases.

(b) Under this quarantine notice, whenever any imported plant or plant part is subject to destination restrictions under part 319:

(1) The State(s) or area(s) into which the plant or plant part is allowed to be imported is quarantined with respect to that plant or plant part; and

(2) No person shall move any plant or plant part from any such quarantined State or area into or through any State or area not quarantined with respect to that plant or plant part.

**Subpart—Unshu Oranges—[Removed and Reserved]**

3. Subpart-Unshu Oranges, consisting of § 301.83, is removed and reserved.

Done in Washington, DC, this 10th day of November 1997.

**Terry L. Medley,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 97-30107 Filed 11-14-97; 8:45 am]

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**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****7 CFR Part 301**

[Docket No. 97-113-1]

**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 adding California to the list of quarantined States and by designating a portion of Los Angeles County, 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:** Interim rule effective November 10, 1997. Consideration will be given only to comments received on or before January 16, 1998.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 97-113-1, 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. 97-113-1. 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; or e-mail: mstefan@aphis.usda.gov.

**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, 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 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

(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, CA, are infested with the Mexican fruit fly. Specifically, on October 10, 1997, inspectors found one female Mexican fruit fly in a trap in a residential area of Los Angeles County; on October 20, 1997, inspectors found one male Mexican fruit fly in the same area; and, on October 22, 1997, inspectors detected larvae in the same area as the adult finds, indicating that an infestation exists. 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 § 301.64-3(c) by designating as a regulated area a portion of Los Angeles 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 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 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 the rule 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 a portion of Los Angeles County, CA. Within the regulated area there are approximately 804 small entities that may be affected by this rule. These include 1 farmers' market, 2 community gardens, 298 distributors, 1 food bank, 440 fruit sellers, 5 growers, 4 haulers, 27 nurseries, 11 packers, 7 processors, 1 swap meet, and 7 transient load carriers. These 804 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 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 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, Incorporation by reference, 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 in alphabetical order an entry for “California” to read as follows:

#### **§ 301.64–3 Regulated areas.**

\* \* \* \* \*

(c) \* \* \*

**California**

*Los Angeles County.* That portion of Los Angeles County in the Boyle Heights area bounded by a line drawn as follows: Beginning at the intersection of Interstate Highway 101 and Alvarado Street; then northeast along Alvarado Street to Sunset Boulevard; then southeast along Sunset Boulevard to Echo Park Avenue; then northeast along Echo Park Avenue to Morton Avenue; then northeast along Morton Avenue to Morton Place; then southeast along Morton Place to Academy Road; then east along Academy Road to State Highway 110; then northeast along State Highway 110 to Via Marisol Avenue; then east along Via Marisol Avenue to Monterey Road; then south along Monterey Road to Huntington Drive; then northeast along Huntington Drive to Poplar Boulevard; then east along Poplar Boulevard to Fremont Avenue; then south along Fremont Avenue to Interstate Highway 10; then east along Interstate Highway 10 to Atlantic Boulevard; then south along Atlantic Boulevard to Newmark Avenue; then east along Newmark Avenue to Garfield Avenue; then south along Garfield Avenue to Slauson Avenue; then west along Slauson Avenue to Eastern Avenue; then south along Eastern Avenue to Gage Avenue; then west along Gage Avenue to Interstate Highway 710; then south along Interstate Highway 710 to Florence Avenue; then west along Florence Avenue to Central Avenue; then north along

Central Avenue to Slauson Avenue; then west along Slauson Avenue to Interstate Highway 110; then north along Interstate Highway 110 to Jefferson Boulevard; then northwest along Jefferson Boulevard to Hoover Street; then north along Hoover Street to Alvarado Street; then northeast along Alvarado Street to the point of beginning.

\* \* \* \* \*

Done in Washington, DC, this 10th day of November 1997.

**Terry L. Medley,**

*Administrator, Animal and Plant Health Inspection Service.*

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## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### 7 CFR Part 650

#### Protection of Wetlands

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to Government Performance Results Act, the Natural Resources Conservation Service (NRCS) is removing obsolete, unnecessary, or redundant regulations from the Code of Federal Regulations. This action removes the regulations found at 7 CFR 650.26 concerning the NRCS wetland technical assistance policy.

**EFFECTIVE DATE:** November 17, 1997.

**FOR FURTHER INFORMATION CONTACT:** Warren M. Lee (202) 720-3534.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This document does not meet the criteria for a significant regulatory action as specified in E.O. 12866.

##### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because NRCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

##### Environmental Evaluation

This final rule will have no significant effect on the human environment and is categorically exempt under 7 CFR 1b.3(a)(6), therefore neither an environmental assessment nor an environmental impact statement is required.

## Paperwork Reduction Act

This rule does not contain reporting or record keeping requirements subject to the Paperwork Reduction Act.

## Background

Pursuant to the Administration effort to review existing agency regulations and remove unnecessary regulations from the Code of Federal Regulations, the NRCS has determined that the regulation found at 7 CFR part 650.26, "Protection of Wetlands," is unnecessary because the regulation addresses a matter of internal agency policy, does not regulate any member of the public, conflicts with agency implementation of the wetland conservation provisions of the Food Security Act of 1985, as amended, 16 U.S.C. 3801 *et seq.*, and utilizes a superseded classification of wetlands.

## Executive Order 11990

Wetlands provide fish and wildlife habitats, maintain ground water supplies and water quality, protect shorelines from erosion, store floodwaters and trap sediments, and provide recreational and educational opportunities. Historically, wetlands have been converted at a rapid rate with the concomitant loss of the functions and values that they provide to the Nation. In some cases, activities of the Federal government contributed to the loss of the Nation's wetlands. To minimize adverse impacts on wetlands resulting from Federally-sponsored activities, President Carter in 1977 issued an Executive Order to protect wetlands. Executive Order 11990 established the policy that, to the extent authorized by law, the Executive Branch would avoid direct or indirect support of new construction in wetlands wherever there exists a practicable alternative.

Pursuant to the Soil Conservation and Domestic Allotment Act of 1935, 16 U.S.C. 590a *et seq.*, the Soil Conservation Service (SCS) of the United States Department of Agriculture provided technical assistance to landowners for the protection of natural resources on private lands. Technical assistance included the personnel and support resources needed to conduct planning and conservation practice survey, layout, design, installation and certification. Among activities conducted prior to 1977, SCS provided technical assistance related to the construction of drainage ditches and other structures that resulted in the conversion of wetlands.

Section 6 of Executive Order 11990 requires agencies to issue or amend

their existing procedures to comply with the policies of the order, and accordingly, SCS revised its policy regarding technical assistance in 1977. These changes restricted the situations in which SCS employees could provide technical assistance to clients related to new construction in wetlands. In 1979, SCS codified the wetland technical assistance policy at 7 CFR 650.26. SCS modified this regulation in 1982 to enable SCS employees to provide assistance for new construction in wetlands when denial of such assistance would lead to "detrimental consequences on soil and water resources or on human welfare and safety." 47 FR 34111 (August 6, 1982).

Since 1982, SCS updated its technical assistance policy several times, but such updates did not require amendments to the regulation at 7 CFR 650.26. Pursuant to Departmental reorganization in 1994, SCS was abolished and the Natural Resources Conservation Service (NRCS) assumed most of the statutory and regulatory responsibilities of the SCS, including the provision of technical assistance on private lands.

## The Conflict With the Wetland Conservation Provisions

The wetland conservation provisions of the Food Security Act of 1985 (the 1985 Act), as amended, 16 U.S.C. 3801 *et seq.*, encourage participants in United States Department of Agriculture (USDA) programs to adopt land management measures that protect wetland functions and values by linking eligibility for USDA program benefits to farming practices on converted wetlands. In particular, the wetland conservation (WC) provisions of the 1985 Act provide that after December 23, 1985, a program participant is ineligible for certain USDA program benefits for the production of an agricultural commodity on a converted wetland, or after November 28, 1990, for the conversion of a wetland that makes the production of an agricultural commodity possible. The 1985 Act, however, affords relief to program participants who meet certain conditions identified under the 1985 Act by exempting such actions from the ineligibility provisions.

The current version of the wetland technical assistance rule, 7 CFR 650.26, allows NRCS to provide technical assistance to a producer that could place the producer in violation of the WC provisions. In particular, the rule allows NRCS personnel to provide technical assistance for certain construction in types 1 and 2 wetlands under the Circular 39 classification of wetlands. The wetland classification system in