

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 03–059–1]

#### Mexican Fruit Fly; Interstate Movement of Regulated Articles

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the Mexican fruit fly regulations by removing a provision that allows regulated articles to be moved interstate from a regulated area without a certificate or limited permit if they are moved into States other than commercial citrus-producing States. Additionally, we are proposing to amend the regulations to remove references to quarantined States and to refer to regulated areas as quarantined areas. We are also proposing to make other changes to the regulations, including clarifying that an entity requiring the services of an inspector is responsible for the costs of services performed outside of normal business hours. These actions appear necessary to prevent the interstate spread of Mexican fruit fly and would make the Mexican fruit fly regulations more consistent with our other domestic fruit fly regulations.

**DATES:** We will consider all comments that we receive on or before April 19, 2004.

**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. 03–059–1, 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. 03–059–1. 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. 03–059–1” 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 regulated areas.

##### Applicability of Restrictions

Under our other fruit fly regulations in part 301 (e.g., Mediterranean fruit fly [§§ 301.78–301.78–10], Oriental fruit fly [§§ 301.93–301.93–10], etc.), regulated articles must meet certain conditions in order to be eligible for interstate movement from quarantined areas, regardless of their destination. Under those regulations, a certificate or limited permit is required in most cases for the interstate movement of regulated

articles; the certificate or limited permit serves to document that the regulated articles have been inspected, treated, or meet other conditions necessary to prevent the interstate spread of the particular fruit fly.

However, under the Mexican fruit fly regulations, the destination of the regulated articles is significant. Specifically, a certificate or limited permit is required only when the regulated articles are to be moved interstate into or through one of the States listed in § 301.64(b), which are States recognized by the Animal and Plant Health Inspection Service (APHIS) as commercial citrus-producing areas. (The States listed in § 301.64(b) are American Samoa, Arizona, California, Florida, Guam, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States.) These provisions allow regulated articles to be moved interstate without restriction under the regulations as long as those articles are not moved into or through any of the commercial citrus-producing States listed in § 301.64(b).

While citrus is an important host of Mexican fruit fly, other potential host material for Mexican fruit fly (e.g., apples, mangoes, and peaches) is present in States that are not commercial citrus-producing States. Thus, the unrestricted movement of regulated articles into those States may allow for the spread of Mexican fruit fly into noninfested areas of the United States.

Therefore, we propose to remove those provisions that make it possible for regulated articles from regulated areas to be moved interstate to States other than commercial citrus-producing States without restriction. In addition to addressing the ongoing risks associated with unrestricted movement, this change would make the Mexican fruit fly regulations consistent with our other fruit fly regulations in part 301.

As a result of this change, all regulated articles that originate within a quarantined area would, when moving interstate from a quarantined area, have to be accompanied by a certificate or limited permit. The regulations in § 301.64–5(a) provide that a certificate will be issued by an inspector for the movement of a regulated article if the inspector determines that certain specified conditions have been met. A

limited permit may be issued by an inspector for interstate movement of a regulated article in lieu of a certificate when, among other things, the inspector determines that the regulated article is to be moved to a specified destination for specified handling, utilization, processing, or treatment that will destroy life stages of the pest. Certificates and limited permits may also be issued by any person who has entered into and is operating under a compliance agreement after an inspector has determined that the article is eligible for a certificate or limited permit under § 301.64–5(a) or (b).

### Regulated Areas

In addition to the differences in interstate movement requirements described above, the Mexican fruit fly regulations also differ from the other fruit fly regulations in part 301 in their two-step approach to the designation of regulated areas. In § 301.64(a), States affected by Mexican fruit fly are designated as quarantined States, then, in § 301.64–3, specific areas within those quarantined States are designated as regulated areas. Our other fruit fly regulations in part 301 simply list regulated areas without designating quarantined States, and refer to those regulated areas as “quarantined areas.” To make the Mexican fruit fly regulations consistent with our other fruit fly regulations, we propose to amend the regulations in part 301 to remove references to quarantined States and to refer to regulated areas as quarantined areas.

### Interstate Movement of Regulated Articles From Quarantined Areas

The regulations in § 301.64–4 provide that regulated articles may be moved interstate from regulated areas if they are accompanied by a certificate or limited permit issued and attached in accordance with §§ 301.64–5 and 301.64–8. Regulated articles that are moved from outside regulated areas and that are accompanied by a waybill that indicates the point of origin may be moved interstate through a regulated area without a certificate or limited permit provided that they are moved directly through the regulated area without stopping except for refueling, rest stops, emergency repairs, and for traffic conditions, such as traffic lights or stop signs.

We propose to amend § 301.64–4 to provide that regulated articles may also be moved interstate from regulated areas by the U.S. Department of Agriculture for experimental or scientific purposes. Such articles would be moved in accordance with a departmental permit

issued by the Administrator, under conditions specified on the permit to prevent the spread of the Mexican fruit fly. These provisions for interstate movement with a departmental permit are present in our other fruit fly regulations in part 301, so we are proposing to add them to our Mexican fruit fly regulations to make those regulations consistent with our other fruit fly regulations.

### Costs and Charges

Section 301.64–9 provides that the services of an inspector shall be furnished without cost. However, inspectors are available without cost only during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays). At all other times, the user is responsible for all costs and charges arising from the inspection process. This is stated explicitly in other fruit fly regulations in part 301, but not in § 301.64–9. Therefore, we propose to amend § 301.64–9 to clarify this fact.

### Miscellaneous

In several places in the regulations, we provide addresses to which persons may write to obtain forms or information regarding compliance agreements, inspection services, or approvals related to the use of irradiation as a treatment for regulated articles. The addresses currently provided in the regulations are no longer accurate, so we are proposing to amend the regulations to bring those addresses up to date.

We propose to add a definition for *departmental permit* to the list of definitions in § 301.64–1 in order to make the Mexican fruit fly regulations consistent with our other fruit fly regulations.

Finally, in § 301.64–10(g)(9), we incorrectly identify the Mexican fruit fly as the Mediterranean fruit fly. We propose to correct that error.

### Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The proposed rule would amend the Mexican fruit fly regulations by removing a provision that allows regulated articles to be moved interstate from a regulated area without a certificate or limited permit if they are moved into States other than commercial citrus-producing States.

Currently, only Cameron, Hidalgo, and Willacy Counties in Texas are designated as regulated areas in the regulations.

The Regulatory Flexibility Act requires that agencies specifically consider the economic effects of their rules on small entities. We expect that the entities most likely to be affected by the proposed changes would be citrus growers and packinghouses located within quarantined areas. In 1997, the latest census year, citrus fruit was produced on 531 farms in Texas. Approximately 98 percent of citrus farms had gross sales of less than \$750,000 and thus are considered small entities according to the size standards set by the Small Business Administration (SBA).

### Impact on Affected Industries in Texas

As noted previously, three counties in the Lower Rio Grande Valley of Texas—Cameron, Hidalgo, and Willacy—are designated as regulated areas. The Mexican fruit fly protocol for Texas calls for a trapping program to monitor those areas; under the protocol, the detection of one wild Mexican fruit fly triggers the application of bait sprays or the aerial release of sterile flies around the fly capture. Fruit destined for shipment to commercial citrus-producing States must be certified as free of the Mexican fruit fly, either through inspection or following the application of an authorized post-harvest treatment.

Within the regulated area of Texas there are approximately 540 citrus growers operating on 30,000 acres producing \$31 million worth of citrus annually, and 5 packinghouses.<sup>1</sup> Seventy five percent of the citrus growers produce grapefruit while the remaining 25 percent produce oranges. Approximately 80 percent of all citrus growers use one of the 5 packinghouses, while the remaining 20 percent sell their citrus locally. The 5 packinghouses currently ship approximately 35 percent of the citrus to California and 65 percent to States that are not commercial citrus-producing States.<sup>2</sup> Currently only 5 to 10 percent of all citrus shipped annually to citrus-producing regions (mainly California) are treated for Mexican fruit flies using methyl bromide fumigation. The cost of treatment generally comprises less than 4 percent of the citrus wholesale value.<sup>3</sup>

<sup>1</sup> Texas Crop Production Summary with Values 2001–2002. NASS USDA report, Jerry Ramirez.

<sup>2</sup> John McClung, Texas Citrus Growers Association. Personal communications, June 28, 2003.

<sup>3</sup> It is estimated that it costs \$0.25 to treat a 40 pound carton of citrus with a worth of

The proposed rule would require that all citrus and other host crops moved interstate to States that are not commercial citrus-producing States be accompanied by a limited permit or certificate issued by an APHIS inspector, just as is currently required for host crops moved to commercial citrus-producing States. The provisions of this proposed rule would primarily affect the packinghouses in the regulated area in that any overtime cost that is incurred by APHIS inspectors for supervising post-harvest treatments at the packinghouses would now have to be paid for by owners of the facilities. Currently, as a result of the small number of inspectors working overtime, this cost is borne by APHIS. It is estimated that one APHIS inspector will be required at each of the five Texas packinghouses for approximately 16 weeks during the citrus harvest period. APHIS has estimated that each of these inspectors will work approximately 53 hours in overtime supervision during this 16-week period. At \$28.11 per hour, each citrus packinghouse will be responsible for, on average, \$1,500 in overtime charges for the inspectors. Assuming these charges stay constant with more stringent interstate movement requirements, we estimate

that the five Texas packinghouses would incur approximately \$7,500 per year in total overtime charges for citrus fruits moving to commercial citrus-producing States.

Similarly, additional charges may also be incurred by producers or packinghouses for the services of an APHIS inspector in monitoring the post-harvest treatment of citrus for shipment to States other than commercial citrus-producing States if services are provided beyond the normal working hours. If, as estimated above, the overtime costs associated with the interstate movement of the 35 percent of fruit moving to commercial citrus-producing States would be \$7,500, then a rough estimate of the overtime charges that may be incurred in connection with the interstate movement of the remaining 65 percent of fruit would be \$14,000. The total overtime cost to the producers or packinghouses for APHIS supervision would be approximately \$21,500 per year.

Producers of host crops may also incur additional costs for post-harvest treatment if they wish to send their fruit to States other than commercial citrus-producing States and their fruit is found to be infested. Under the proposed rule, host crops moving interstate to such

States, like fruit moved to commercial citrus-producing States, would be subject to treatment if found to be infested with Mexican fruit flies. The current fumigation facilities in place can treat approximately 5 to 20 percent of the citrus moving interstate. The amount of fruit that may require treatment as a condition of movement to States other than commercial citrus-producing States is not known and would vary with the infestation levels. However, assuming that (1) 65 percent of the \$31 million worth of citrus is shipped to these States, (2) that the proportion of these fruits that would require treatment would be the same percentage as that of fruits currently shipped to commercial citrus-producing States (about 5–10 percent), and (3) that treatment costs comprise less than 4 percent of the wholesale value of citrus, the additional cost of treatment to producers is estimated to be \$40,000 to \$80,000. In sum, based on past infestation rates, the impact of this proposed rule on the Texas citrus industry could range between \$61,500 and \$101,500 in additional yearly treatment costs and APHIS overtime costs for pre- and post-harvest monitoring (table 1).

TABLE 1.—POSSIBLE TEXAS OVERTIME AND TREATMENT COSTS

|   | Yearly costs          |
|---|-----------------------|
| Current pre- and post-harvest APHIS monitoring (for movement to commercial citrus-producing States) ..... | \$7,500               |
| Future pre- and post-harvest APHIS monitoring (for movement of citrus to non-citrus States) .....         | 14,000                |
| Treatment (methyl bromide) .....  | 40,000–80,000         |
| <b>Total cost .....</b>   | <b>61,500–101,500</b> |

**Summary**

This proposed rule could potentially have a negative impact on the Texas citrus industry, as producers who wish to move regulated articles, including citrus fruit, to any State—not just commercial citrus-producing States—would now have to obtain a certificate or limited permit before moving the articles interstate. Producers and/or packinghouses would have to incur the cost of fumigation treatment along with overtime costs incurred by APHIS in monitoring treatments. The extent of the impact would depend on the level of pest infestation. It is expected that the percentage (5–10 percent) of citrus fruits requiring treatment for movement to

States that are not commercial citrus-producing States would be the same as that of fruits currently shipped to commercial citrus-producing States. The impact on the industry is expected to be small (\$40,000 to \$80,000 annual treatment costs), as the treatment costs comprise less than 4 percent of the wholesale value of the citrus and only 5 to 10 percent of the citrus require treatment.<sup>4</sup>

The Texas citrus industry would also have to incur the estimated \$7,500 per year in overtime costs associated with PPQ treatment supervision at the 5 packinghouses for fruit moved to commercial citrus-producing States. These costs will either be absorbed by

the industry or passed on to consumers of the fruit. Additionally, it is estimated that producers of citrus fruit moving to States other than commercial citrus-producing States could also incur overtime costs of \$14,000. In sum, based on past infestation rates, the impact of this proposed rule on the Texas citrus industry could range between \$61,500 and \$101,500 in additional treatment costs and overtime charges for APHIS pre- and post-harvest monitoring.

The forgone costs or benefits of averting a Mexican fruit fly outbreak are substantial. The establishment of the Mexican fruit fly in the United States could cost producers and exporters about \$900 million in losses annually.<sup>5</sup>

approximately \$7.50 to \$9.00. Source: Robert Martin, Texas Citrus packing facility owner. Personal communications, June 28, 2003.

<sup>4</sup> It is estimated that 65 percent of the \$31 million worth of Texas citrus produced is transported to

States that are not commercial citrus producing States. Approximately 5 to 10 percent of the \$20.15 million worth of fruit may require treatment based on past infestation levels. The total treatment cost is about 4 percent of the \$1 to 2 million, or \$40,000 to \$81,000.

<sup>5</sup> Lottie Erikson (2000). "Economic Analysis of Options for Eradicating Mexican Fruit Fly (*Anastrepha ludens*) from the Lower Rio Grande Valley of Texas." Policy and Program Development.

Continued

This amount is comprised of (1) field control costs, (2) field losses after Malathion use, (3) cost of quarantine compliance treatments, and (4) losses due to quarantine treatment damage. The costs associated with the proposed additional restrictions on the interstate movement of regulated articles are surpassed by the benefits of averting a large scale Mexican fruit fly outbreak.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would 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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 03-059-1. Please send a copy of your comments to: (1) Docket No. 03-059-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 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. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to amend the Mexican fruit fly regulations by

removing a provision that allows regulated articles to be moved interstate from a regulated area without a certificate or limited permit if they are moved into States other than commercial citrus-producing States. We are also proposing to make other changes to the regulations, including clarifying that an entity requiring the services of an inspector is responsible for the costs of services performed outside of normal business hours. Implementation of this proposed rule 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 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 (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed 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 0.64 hours per response.

*Respondents:* Texas citrus growers and State plant health officials.

*Estimated annual number of respondents:* 825.

*Estimated annual number of responses per respondent:* 1.

*Estimated annual number of responses:* 825.

*Estimated total annual burden on respondents:* 528 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual

number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

#### Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

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

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 301 as follows:

#### PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

**Authority:** 7 U.S.C. 7701-7772; 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. Section 301.64 would be revised to read as follows:

#### § 301.64 Restrictions on interstate movement of regulated articles.

No person shall move any regulated article interstate from any quarantined area except in accordance with this subpart.<sup>1 2</sup>

3. Section 301.64-1 would be amended by removing the definition of *regulated area* and by adding, in alphabetical order, definitions for *departmental permit* and *quarantined area*, to read as follows:

<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 sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

<sup>2</sup> Regulations concerning the movement of plant pests, including live Mexican fruit flies, in interstate commerce are contained in part 330 of this chapter.

**§ 301.64–1 Definitions.**

\* \* \* \* \*

*Departmental permit.* A document issued by the Administrator in which he or she affirms that the 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 § 301.64–4(b) of this subpart.

\* \* \* \* \*

*Quarantined area.* Any State, or any portion of a State, listed in § 301.64–3(c) or otherwise designated as a quarantined area in accordance with § 301.64–3(b).

\* \* \* \* \*

**§ 301.64–3 [Amended]**

4. Section 301.64–3 would be amended as follows:

a. In the section heading, by removing the word “Regulated” and adding the word “Quarantined” in its place.

b. In paragraph (a), introductory text, by removing the word “quarantined” each time it appears, and by removing the word “regulated” each time it appears and adding the word “quarantined” in its place.

c. In paragraph (a)(2), by removing the word “regulated” and adding the word “quarantined” in its place.

d. In paragraph (b), by removing the word “quarantined”, by removing the word “nonregulated” both times it appears and adding the word “nonquarantined” in its place, and by removing the words “regulated area” and adding the words “quarantined area” in their place.

e. In paragraph (c), introductory text, by removing the word “regulated” and adding the word “quarantined” in its place.

5. In § 301.64–4, the section heading, the introductory text of the section, and paragraph (b) would be revised and a new paragraph (c) would be added to read as follows:

**§ 301.64–4 Conditions governing the interstate movement of regulated articles from quarantined areas.**

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

\* \* \* \* \*

(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 Mexican fruit flies (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is clearly 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; and

(3) The regulated article is moved through the quarantined area without stopping except for refueling or for normal traffic conditions, such as traffic lights or stop signs; or

(c) 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 Mexican 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 the container.

6. In § 301.64–6(a), footnote 6 would be revised to read as follows:

**§ 301.64–6 Compliance agreement and cancellation thereof.**

(a) \* \* \* 6

<sup>6</sup> Compliance agreement forms are available without charge from local offices of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine. Local offices are listed in telephone directories, or on the Internet at <http://www.aphis.usda.gov/ppq/>.

7. In § 301.64–7(a), footnote 7 would be revised to read as follows:

**§ 301.64–7 Assembly and inspection of regulated articles.**

(a) \* \* \* 7

<sup>7</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 on the Internet at <http://www.aphis.usda.gov/ppq/>.

\* \* \* \* \*

8. Section 301.64–9 would be revised to read as follows:

**§ 301.64–9 Costs and charges.**

The services of an 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.

9. Section 301.64–10 would be amended as follows:

a. In paragraph (g)(3)(i), by revising footnote 10 to read as set forth below.

b. By revising paragraph (g)(7) to read as set forth below.

c. In paragraph (g)(9), by removing the word “Mediterranean” and adding the word “Mexican” in its place.

**§ 301.64–10 Treatments.**

\* \* \* \* \*

(g) \* \* \*

(3) \* \* \*

(i) \* \* \* 10

<sup>10</sup> If there is a question as to the adequacy of a carton, send a request for approval of the carton, together with a sample carton, to a local office of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine. Local offices are listed in telephone directories, or on the Internet at <http://www.aphis.usda.gov/ppq/>.

\* \* \* \* \*

(7) *Request for approval and inspection of facility.* Persons requesting approval of an irradiation treatment facility and treatment protocol must submit the request for approval in writing to a local office of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine. Local offices are listed in telephone directories, or on the Internet at <http://www.aphis.usda.gov/ppq/>. Before the Administrator determines whether an irradiation facility is eligible for approval, an inspector will make a personal inspection of the facility to determine whether it complies with the standards of paragraph (g)(1) of this section.

\* \* \* \* \*

Done in Washington, DC, this 11th day of February 2004.

**Kevin Shea,**

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

[FR Doc. 04–3429 Filed 2–17–04; 8:45 am]

**BILLING CODE 3410–34–P**

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