

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 02-129-2]

#### Mexican Fruit Fly; Treatments

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

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

**SUMMARY:** We are amending the Mexican fruit fly regulations to allow the use of irradiation as a treatment for fruits listed as regulated articles. This action will provide an additional option for qualifying those regulated articles for movement from regulated areas.

**DATES:** This interim rule was effective February 20, 2003. We will consider all comments that we receive on or before April 28, 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. 02-129-2, 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. 02-129-2. 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. 02-129-2" 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/webpor.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:** 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.

We are amending the Mexican fruit fly regulations to include irradiation as a treatment for those fruits that are listed as regulated articles in § 301.64-2(a) of the regulations. Without irradiation, the only treatments for fruit made available by the regulations have been cold treatment, fumigation, or high-temperature forced air, and those treatments have been made available for only some of the fruits listed as regulated articles. The addition of irradiation provides a treatment option for use on those regulated articles for which treatments have been available, as well as for those regulated articles for which no treatments have been listed in the regulations.

To accommodate the inclusion of irradiation as an authorized treatment under the Mexican fruit fly regulations, we are amending § 301.64-10, "Treatments," by adding the irradiation provisions as a new paragraph (g).

The provisions we are adding to the Mexican fruit fly regulations for the use of irradiation as a treatment are, for all practical purposes, the same as those

provided in § 301.78-10(c) of "Subpart-Mediterranean Fruit Fly" (7 CFR 301.78 through 318.78-10), which provides for the use of irradiation as a treatment for nuts, berries, fruits, and vegetables grown in areas quarantined because of the Mediterranean fruit fly (*Ceratitis capitata*). The irradiation provisions we have added to the Mexican fruit fly regulations differ from those of § 301.78-10(c) in only two substantive respects: (1) The pest (*A. ludens* rather than *C. capitata*) and commodities for which irradiation is an approved treatment and (2) the prescribed irradiation dose rate. These two differences are discussed below.

With respect to the first difference cited above-the commodities for which irradiation is an authorized treatment-the irradiation provisions we are adding to the Mexican fruit fly regulations will provide for the use of irradiation to treat several commodities that are listed as regulated articles in the Mexican fruit fly regulations that are not also listed as regulated articles under the Mediterranean fruit fly regulations. Those additional commodities are as follows:

Cherimoya (*Annona cherimola*)  
Custard apple (*Annona reticulata*)  
Mamey (*Mammea americana*)  
Sapota, Sapodilla (*Sapotaceae*)  
Sargentia, yellow chapote (*Sargentia greggii*)  
Spanish plum, purple mombin or Ciruela (*Spondias spp.*)

As noted in APHIS' policy statement regarding the application of irradiation to phytosanitary problems (published in the **Federal Register** on May 15, 1996, 61 FR 24433-24439, Docket No. 95-088-1), the U.S. Department of Agriculture's (USDA's) Agricultural Research Service (ARS) conducted exhaustive research to determine commodity-generic irradiation dose rates that will provide an acceptable level of quarantine security with regard to certain pests. Given that a commodity-generic dose rate has been established for Mexican fruit fly, we believe that it is appropriate to provide the prescribed irradiation treatment as an option for growers of any of the fruits listed as regulated articles in § 301.64-2(a) who wish to obtain certification for the interstate movement of their commodities on the basis of treatment.

The second difference cited above pertains to the prescribed irradiation dose rate. The commodity-generic dose rate established by ARS for Mexican fruit fly is 150 Gray (15 krad), so we have established 150 Gray as the prescribed dose rate in the Mexican fruit fly regulations, rather than the 225 Gray (22.5 krad) prescribed in § 301.78–10(c) of the Mediterranean fruit fly regulations.

The remaining provisions of § 301.78–10(c) of the Mediterranean fruit fly regulations—*i.e.*, those provisions regarding approved facilities, treatment monitoring, packaging, dosimetry systems, certification based on treatment, recordkeeping, requests for approval and inspection of facilities, denial and withdrawal of approval, and the USDA's non-responsibility for loss or damage resulting from treatment—have been carried over to § 301.64–10(g) of the Mexican fruit fly regulations and serve the same purpose as in § 301.78–10(c).

#### Emergency Action

This rulemaking is necessary on an emergency basis to provide an additional option for qualifying regulated articles for movement from regulated areas. 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 amends the Mexican fruit fly regulations by allowing the use of irradiation as a treatment for fruits listed as regulated articles. This action will provide an additional option for qualifying those regulated articles for movement from regulated areas.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are

currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

#### 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.

#### Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0215 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 02–129–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 02–129–2 and send your comments within 60 days of publication of this rule.

This interim rule allows for the use of irradiation as a treatment for those fruits that are listed as regulated articles in § 301.64–2(a) of the regulations. This action provides an additional option for qualifying regulated articles for movement from regulated areas. Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of regulated articles under § 301.64–6. The compliance agreement is a written

agreement between a person engaged in those previously mentioned activities and Plant Protection and Quarantine, wherein the person agrees to comply with the provisions set forth in § 301.64–6. We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the 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 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 .6399 hours per response.

*Respondents:* Growers and State plant regulatory officials.

*Estimated annual number of respondents:* 722.

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

*Estimated annual number of responses:* 722.

*Estimated total annual burden on respondents:* 462 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 interim 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 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 § 301.64-10, a new paragraph (g) is added to read as follows:

#### § 301.64-10 Treatments.

\* \* \* \* \*

(g) *Approved irradiation treatment.* Irradiation, carried out in accordance with the provisions of this paragraph, is approved as a treatment for any fruit listed as a regulated article in § 301.64-2(a).

(1) *Approved facility.* The irradiation treatment facility and treatment protocol must be approved by the Animal and Plant Health Inspection Service. In order to be approved, a facility must:

(i) Be capable of administering a minimum absorbed ionizing radiation dose of 150 Gray (15 krad) to the fruit;<sup>8</sup>

(ii) Be constructed so as to provide physically separate locations for treated and untreated fruit, except that fruit traveling by conveyor directly into the irradiation chamber may pass through an area that would otherwise be separated. The locations must be separated by a permanent physical barrier such as a wall or chain link fence 6 or more feet high to prevent transfer of cartons;

(iii) Complete a compliance agreement with the Animal and Plant Health Inspection Service as provided in § 301.64-6; and

(iv) Be certified by Plant Protection and Quarantine for initial use and annually for subsequent use. Recertification is required in the event that an increase or decrease in radioisotope or a major modification to

equipment that affects the delivered dose. Recertification may be required in cases where a significant variance in dose delivery is indicated.

(2) *Treatment monitoring.* Treatment must be carried out under the monitoring of an inspector. This monitoring must include inspection of treatment records and unannounced inspection visits to the facility by an inspector. Facilities that carry out continual irradiation operations must notify an inspector at least 24 hours before the date of operations. Facilities that carry out periodic irradiation operations must notify an inspector of scheduled operations at least 24 hours before scheduled operations.<sup>9</sup>

(3) *Packaging.* Fruits and vegetables that are treated within a quarantined area must be packaged in the following manner:

(i) The cartons must have no openings that will allow the entry of fruit flies and must be sealed with seals that will visually indicate if the cartons have been opened. They may be constructed of any material that prevents the entry of fruit flies and prevents oviposition by fruit flies into the fruit in the carton.<sup>10</sup>

(ii) The pallet-load of cartons must be wrapped before it leaves the irradiation facility in one of the following ways:

(A) With polyethylene sheet wrap;

(B) With net wrapping; or

(C) With strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap.

(iii) Packaging must be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment.

(4) *Dosage.* The fruits and vegetables must receive a minimum absorbed ionizing radiation dose of 150 Gray (15 krad).<sup>11</sup>

(5) *Dosimetry systems.* (i) Dosimetry mapping must indicate the dose needed to ensure the fruit will receive the minimum dose prescribed.

(ii) Absorbed dose must be measured using an accurate dosimetry system that ensures that the absorbed dose meets or exceeds 150 Gray (15 krad).

(iii) When designing the facility's dosimetry system and procedures for its operation, the facility operator must address guidance and principles from

<sup>9</sup> Inspectors are assigned to local offices of the Animal and Plant Health Inspection Service, which are listed in telephone directories.

<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 the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Oxford Plant Protection Center, 901 Hillsboro St., Oxford, NC 27565.

<sup>11</sup> See footnote 8.

American Society for Testing and Materials (ASTM) standards.<sup>12</sup>

(6) *Records.* Records or invoices for each treated lot must be made available for inspection by an inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays). An irradiation processor must maintain records as specified in this section for a period of time that exceeds the shelf life of the irradiated food product by 1 year, and must make these records available for inspection by an inspector. These records must include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation.

(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 the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Oxford Plant Protection Center, 901 Hillsboro St., Oxford, NC 27565. 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.

(8) *Denial and withdrawal of approval.* (i) The Administrator will withdraw the approval of any irradiation treatment facility when the irradiation processor requests in writing the withdrawal of approval.

(ii) The Administrator will deny or withdraw approval of an irradiation treatment facility when any provision of this section is not met. Before withdrawing or denying approval, the Administrator will inform the irradiation processor in writing of the reasons for the proposed action and provide the irradiation processor with an opportunity to respond. The Administrator will give the irradiation processor an opportunity for a hearing regarding any dispute of a material fact, in accordance with rules of practice that will be adopted for the proceeding. However, the Administrator will suspend approval pending final determination in the proceeding, if he or she determines that suspension is necessary to prevent the spread of any dangerous insect infestation. The suspension will be effective upon oral

<sup>12</sup> Designation ISO/ASTM 51261-2002(E), "Standard Guide for Selection and Calibration of Dosimetry Systems for Radiation Processing," American Society for Testing and Materials, *Annual Book of ASTM Standards*.

<sup>8</sup> The maximum absorbed ionizing radiation dose and the irradiation of food are regulated by the Food and Drug Administration under 21 CFR part 179.

or written notification, whichever is earlier, to the irradiation processor. In the event of oral notification, written confirmation will be given to the irradiation processor within 10 days of the oral notification. The suspension will continue in effect pending completion of the proceeding and any judicial review of the proceeding.

(9) *Department not responsible for damage.* This treatment is approved to assure quarantine security against Mediterranean fruit fly. From the literature available, the fruits authorized for treatment under this section are believed tolerant to the treatment; however, the facility operator and shipper are responsible for determination of tolerance. The Department of Agriculture and its inspectors assume no responsibility for any loss or damage resulting from any treatment prescribed or supervised. Additionally, the Nuclear Regulatory Commission is responsible for ensuring that irradiation facilities are constructed and operated in a safe manner. Further, the Food and Drug Administration is responsible for ensuring that irradiated foods are safe and wholesome for human consumption.

(Approved by the Office of Management and Budget under control number 0579-0215.)

Done in Washington, DC, this 20th day of February 2003.

**Bobby R. Acord,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03-4526 Filed 2-25-03; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF JUSTICE

### 28 CFR Part 65

[INS No. 2241-02; AG Order No. 2659-2003]

RIN 1115-AG84

#### Abbreviation or Waiver of Training for State or Local Law Enforcement Officers Authorized To Enforce Immigration Law During a Mass Influx of Aliens

**AGENCY:** Immigration and Naturalization Service, Justice.

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

**SUMMARY:** This rule amends Department of Justice regulations to authorize the Attorney General to waive normally required training requirements in the event that the number of State or local law enforcement officers available to respond in an expeditious manner to urgent and quickly developing events during a declared mass influx of aliens

is insufficient to protect public safety, public health, or national security. This action is necessary to provide the Attorney General with the tools and flexibility to address any unanticipated situations that might occur during a mass influx of aliens.

**DATES:** *Effective date:* This interim rule is effective February 26, 2003.

*Comment date.* Written comments must be submitted on or before April 28, 2003.

**ADDRESSES:** Please submit written comments to the Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2241-02 on your correspondence. You may also submit comments electronically at [insregs@usdoj.gov](mailto:insregs@usdoj.gov). When submitting comments electronically you must include "INS No. 2241-02" in the subject box to ensure that the comments are properly routed to the appropriate office for review. Comments are available for public inspection at the above address by calling (202) 514-3291 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:**

Ronald W. Dodson, Supervisory Special Agent, Director, Evaluation and Support Branch, Headquarters Office of Investigations, Immigration and Naturalization Service, 425 I Street, NW., Room 1000, Washington, DC 20536, telephone (202) 514-2998.

**SUPPLEMENTARY INFORMATION:** Section 372 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, Div. C., 110 Stat. 3009-646, amended section 103(a) of the Immigration and Nationality Act ("Act"), 8 U.S.C. 1103(a), to permit the Attorney General to authorize any State or local law enforcement officer, with the consent of the head of the department, agency, or establishment under whose jurisdiction the individual is serving, to perform or exercise any of the powers, privileges, or duties conferred or imposed by the Act or implementing regulations upon officers or employees of the Immigration and Naturalization Service ("Service") during a period of a mass influx of aliens. Under section 103(a)(8) of the Act, the Attorney General may authorize State or local law enforcement officers to perform such powers, privileges, or duties only if the Attorney General determines that "an actual or imminent mass influx of aliens arriving off the coast of the United States, or near a land border, presents urgent circumstances requiring an immediate Federal response." 8 U.S.C. 1103(a)(8).

The Department of Justice has published a final rule implementing this authority. See 67 FR 48354 (July 24, 2002). The rule detailed the procedures the Attorney General must follow when seeking assistance from a State or local government during a declared mass influx of aliens. In accordance with the rule, the Attorney General is required to execute written agreements with appropriate State or local officials that set forth the terms and conditions of the assistance before the State or local law enforcement officer may exercise immigration law enforcement authorities pursuant to section 103(a)(8) of the Act. The regulations also permit the Attorney General to enter into written contingency agreements prior to the declaration of a mass influx of aliens. All of the written agreements must include a requirement that State or local law enforcement officers cannot exercise any authorized functions of Service officers or employees under 8 U.S.C. 1103(a)(8) until they have successfully completed and been certified in a Service-prescribed course of instruction in basic immigration law, immigration law enforcement fundamentals and procedures, civil rights law, and sensitivity and cultural awareness issues. See 28 CFR 65.84(a)(3)(iv). Because of the need to respond quickly in the event of a mass influx of aliens, most of these State and local law enforcement officers likely will be trained pursuant to contingency agreements in place prior to any declared mass influx of aliens.

The Department recognizes the desirability for all State or local law enforcement officers to receive training prior to being authorized to exercise immigration law enforcement authority pursuant to section 103(a)(8) of the Act during a mass influx of aliens. Indeed, the Department fully anticipates that all State or local law enforcement officers authorized to exercise immigration law enforcement authority under the Act will have been certified in basic immigration law, immigration law enforcement fundamentals and procedures, civil rights law, and sensitivity and cultural awareness issues. While drafting the final rule, however, the Department realized that unanticipated situations might arise during a declared mass influx of aliens in which the number of State or local law enforcement officers trained pursuant to a written agreement would be insufficient to respond in an expeditious manner in order to protect public safety, public health, or national security. As a result of this concern, the Attorney General has determined that,