

Rules and Regulations

Federal Register

Vol. 70, No. 124

Wednesday, June 29, 2005

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 03–059–3]

Mexican Fruit Fly; Interstate Movement of Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending 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 amending the regulations to remove references to quarantined States and to refer to regulated areas as quarantined areas. We are also making 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 are necessary to prevent the interstate spread of Mexican fruit fly and make the Mexican fruit fly regulations more consistent with our other domestic fruit fly regulations.

DATES: Effective July 29, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Burnett, National Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

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.

On February 18, 2004, we published in the **Federal Register** (69 FR 7607–7611, Docket No. 03–059–1) a proposal to amend the 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 proposed to amend the regulations to remove references to quarantined States and to refer to regulated areas as quarantined areas. We also proposed 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.

We solicited comments concerning our proposal for 60 days ending April 19, 2004. We subsequently extended the deadline for comments until May 17, 2004, in a document published in the **Federal Register** on April 15, 2004 (69 FR 19950, Docket No. 03–059–2). We received 10 comments by the close of the extended comment period. They were from State government officials, growers, industry associations, and an attorney. One commenter strongly supported the proposal, while the remaining nine commenters raised specific issues or objections. They are discussed below by topic.

Pest Pathways and Hosts

Three commenters stated that a pest risk assessment should first be prepared relative to the potential spread of Mexican fruit fly from Texas into States other than commercial citrus-producing States.

We do not believe a pest risk assessment is necessary in this case since Mexican fruit fly hosts are well known and known to be present in States other than commercial citrus-producing States. For these reasons, we did not find that a specific pest risk assessment was necessary to support our proposal.

In 2001, we prepared a document entitled “Identification of Susceptible Areas for the Establishment of *Anastrepha* spp. Fruit Flies in the United States and Analysis of Selected

Pathways” (Sequeira, R., L. Millar, and D. Bartels 2001) in connection with another rule. In that document, we thoroughly catalogue and analyze the risks associated with the shipment of potential Mexican fruit fly hosts, including citrus, from infested areas. The document is available on the Internet at <http://www.aphis.usda.gov/ppq/avocados/ISA.pdf>.

One commenter said that northern States are not at risk for Mexican fruit fly infestation because of their cooler climates. The commenter further stated that the State of Texas is located at the northernmost extreme of the Mexican fruit fly’s potential habitat.

While it is true that the Mexican fruit fly cannot exist year-round in northern States, there is potential for Mexican fruit fly survival in all States, particularly during the spring and summer months. Further, fruit found on the list of regulated articles at § 301.64–2 may be present in all States between April 15 and October 30. If infested regulated articles are shipped during this timeframe from a quarantined area into a State other than a commercial citrus-producing State where alternate Mexican fruit fly hosts are grown, those other host fruits could potentially become infested and subsequently be shipped to any State, including commercial citrus-producing States, without restriction, thereby increasing the risk of Mexican fruit fly being spread to an area with a climate more favorable to the year-round establishment of that pest.

The quarantined area in the State of Texas is located in the Rio Grande Valley, in the southern portion of the State. Conditions exist that could support damaging populations of Mexican fruit fly in the southern parts of Alabama, Arizona, California, Florida, Georgia, Louisiana, and Mississippi as well. With the exception of certain portions of Florida, all of these susceptible areas lie north of the quarantined area in Texas. Further, the States of Alabama, Georgia, and Mississippi, where conditions are such that Mexican fruit fly could become established, are not listed as commercial citrus-producing States at § 301.64(b).

One commenter stated that the Animal and Plant Health Inspection Service (APHIS) needs to fully develop scientifically based lists of Mexican fruit

fly hosts before proposing such a change to the regulations.

There is a comprehensive list of Mexican fruit fly hosts at § 301.64–2(a). This represents our most complete and scientific determination of the various Mexican fruit fly host fruits.

Treatments

Two commenters stated that the proposed change to the treatment and shipping requirements will cause sizable economic harm to producers and treatment facilities as a result of the inability of fumigation facilities to expand sufficiently to meet demand for their services.

We agree that this is a legitimate concern; however, methyl bromide fumigation is not the only treatment option available to producers of citrus and other regulated articles located in quarantined areas. The regulations at § 301.64–10 list several approved treatment options for citrus and other regulated articles from quarantined areas. They are as follows:

- Cold treatment in accordance with 7 CFR part 305;
- A field, grove, or area located within the quarantined area but outside the infested core area must receive regular treatments with either malathion or spinosad bait spray. These treatments must take place at 6- to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest);
- High temperature forced air in accordance with 7 CFR part 305; or
- Irradiation, carried out in accordance with the provisions listed at § 301.64–10(g).

We are aware that facilities for cold treatment, forced air treatment, and irradiation are not currently available in the three Texas counties currently quarantined because of Mexican fruit fly (*i.e.*, Cameron, Hidalgo, and Willacy Counties), however the option of premises treatments with malathion or spinosad bait spray is available and serves to relieve the citrus industry of the economic burden of building additional fumigation chambers.

One commenter questioned why, in discussing the amount of citrus that may require treatment from year to year, APHIS assumes an average infestation rate instead of considering each infestation individually.

It is impossible to predict the amount of citrus that will require treatment from year to year due to the variability of Mexican fruit fly infestations. We acknowledge that this infestation rate may differ from year to year, but historical data shows that, on average, 5 to 10 percent of citrus will require

treatment due to Mexican fruit fly infestation. Treatments based on the average infestation rate could cost the citrus industry \$40,000 to \$80,000, which is less than 0.5 percent of the value of the \$20 million worth of citrus that will require treatment. The worst case scenario, or 100 percent infestation, would cost the citrus industry \$806,000 in treatment costs. This amount represents less than 4 percent of the value of the \$20 million worth of citrus that would require treatment.

The commenter also stated that there was a need to investigate the potential impacts of the rule on the organic citrus industry in Texas.

We have already considered these impacts to organic citrus producers. They are included in our estimation of the total impact to the Texas citrus industry (\$40,000 to \$80,000 annually). Since fumigation is not an available treatment option for organic producers and we assume the average infestation rate of 5 to 10 percent, treatment of organic citrus would cost approximately \$12,000 to \$25,000 annually for premises treatment using spinosad bait spray.

We consider “significant impact” to mean that the cost of a given action is equal to or greater than the small business’s profit margin (5 to 10 percent of annual sales). By these standards, given the size and profitability of the citrus industry in Texas, this action does not represent a significant impact on a substantial number of small entities.

Two commenters added that, apart from the associated economic issues, Texas packinghouses will not be able to expand their operations adequately to fumigate citrus moving interstate, as prescribed in the regulations, because many of these entities are located near urban areas where air quality standards prohibit such expansion. One commenter additionally stated that fumigation degrades the quality of the fruit, thus affecting its marketability, and that some markets will not accept fruit that has undergone fumigation.

As previously stated, methyl bromide fumigation is not the only treatment option available to producers of citrus and other regulated articles located in quarantined areas. The alternative treatments available are listed above.

Regulatory Procedure

One commenter said that changes should not be made to the regulations solely in response to possible infestation of other hosts or transshipment. The commenter pointed out that no past infestations have occurred in commercial citrus-producing States as a

result of regulated articles that originated in Texas.

The changes we are making to the regulations are precautionary in nature. As stated in the proposed rule, all of our other fruit fly regulations in 7 CFR part 301 (*e.g.*, Mediterranean fruit fly [§§ 301.78–301.78–10], Oriental fruit fly [§§ 301.93–301.93–10], etc.), have interstate shipment requirements identical to those listed in this document for Mexican fruit fly. In the past several years, infestations of Mexican fruit fly in California and Florida have emphasized the need for revision to the regulations.

One commenter stated that the current practice of marking containers as non-eligible for shipment to commercial citrus-producing States is sufficient to prevent transshipment.

We disagree with this assessment. According to the California Department of Food and Agriculture, fruit repacked in Nevada is routinely intercepted at border inspection stations in California. Mexican fruit fly larvae have also been discovered in grapefruit that had been purchased in Oregon and moved into California. We are also concerned with mailed containers of potentially infested fruits, particularly those used in gourmet and specialty fruit packages, since our regulations have not covered some fruits shipped by such retailers. The amended regulations are intended to eliminate those potential pest pathways.

One commenter pointed out that different regulatory processes are necessary given the differing circumstances in the growing areas within quarantined areas in Texas. The commenter argued that the regulatory system in Texas must necessarily differ from those in other States such as California, Florida, and Arizona where temporary infestations of Mexican fruit fly have historically occurred given that the quarantined areas in Texas are adjacent to areas in Mexico that are continually infested with many types of fruit fly, including Mexican fruit fly.

As previously stated in this document and in the proposed rule, the aim of this action is to make our Mexican fruit fly regulations equivalent to our other fruit fly regulations. The pest risk associated with the movement of regulated articles from those areas of Texas where Mexican fruit fly is established is equivalent to the pest risk associated with the movement of regulated articles from areas in California, Florida, or other States where Mexican fruit fly or other fruit flies may have been introduced. We have found that a uniform approach to quarantine and treatment is most effective in preventing

the spread of various types of injurious fruit flies to noninfested areas of the United States.

One commenter said that the APHIS-approved preventative release program using sterile insect technique that is being used within the quarantined areas in Texas is sufficient to prevent the spread of Mexican fruit fly to those States that are not commercial citrus-producing States.

The preventative release programs (PRP) described by the commenter are important tools in our efforts to protect noninfested areas from Mexican fruit fly infestation. The current PRP in Texas is part of a systems approach that is designed to mitigate the risk associated with the movement of host commodities. However, at the current sterile fly release levels, the PRP alone does not provide sufficient protection against the spread of the Mexican fruit fly. APHIS has submitted a request for increased funding for these sterile release programs as part of the Agency's 2006 budget in an effort to increase the sterile release rates in order to eradicate the Mexican fruit fly from Texas. The procedure outlined in this document provides necessary and immediate protection against the spread of Mexican fruit fly to noninfested areas of the United States.

Mexican Citrus

Two commenters stated that we should focus our efforts primarily on bringing Mexico's fruit fly programs into equivalency with U.S. programs. An additional commenter said that no importation of citrus from Mexico or any other country should be allowed unless the phytosanitary programs in the country of origin are equivalent to those used in quarantined areas of the United States.

We have developed a preventative release program with sterile insect technique in Mexico. The United States Department of Agriculture (USDA), in cooperation with the Mexican Government, has initiated a sterile fly release program along the Rio Grande River as well as in nearby urban areas. The program features consolidated U.S./Mexican recordkeeping, which will enable us to more effectively synchronize our Mexican fruit fly programs on both sides of the U.S./Mexico border.

In addition, we have drafted a series of foreign fruit fly systems approach guidelines that are based primarily on our domestic fruit fly programs. This document is a draft intended for broad ranging international consideration. It is available on the Internet at <http://>

www.aphis.usda.gov/ppq/manuals/pdf_files/FF%20Guidelines.pdf.

Further, available treatment options make it possible for fruit to be exported to the United States from countries without equivalent eradication programs where fruit flies are present. Those importation standards and procedures are described in our regulations governing the importation of fruits and vegetables at 7 CFR 319.56–2(e) through (h) and 319.56–2(j) through (k).

One commenter objected to our proposal as a result of his understanding of consideration we may be giving to proposals from Argentina, Chile, and Mexico to ship untreated citrus to States other than citrus-producing States, as well as his understanding that we are poised to grant these requests.

When fruit flies are the only pest of concern, shipments of citrus from any citrus-producing country or area could be eligible for importation in two ways: Fruit from non-fruit-fly-free areas may be imported subject to approved treatments, as mentioned previously, and fruit from areas that we have determined to be free of a number of fruit flies, including Mexican fruit fly, may be imported without treatment. Under our import regulations at 7 CFR 319.56–2(e) through (g), fruits and vegetables, except those restricted to certain countries and districts by special quarantine, may be imported under a permit issued once the Administrator determines that certain conditions in the country of origin have been met. Among other things, the Administrator must determine that the fruit or vegetable is being imported from an area that is free of the pest or pests in accordance with the criteria for establishing freedom found in International Standard for Phytosanitary Measures Publication No. 4, "Requirements for the Establishment of Pest Free Areas," which is incorporated by reference into the regulations at 7 CFR 300.5. APHIS must approve the survey protocol used to determine freedom from the pests of concern.

We are considering no such proposals as described by the commenter from Argentina or Chile. However, we are considering a proposal that would allow untreated citrus from specified areas in Mexico to enter into areas of the United States that are quarantined because of Mexican fruit fly for processing. However, under the proposal we are considering, those areas in Mexico would be required to be operating under a systems approach for Mexican fruit fly that is the same as our domestic programs. Any action on this proposal would come only after we published a

proposed rule for public comment in the **Federal Register**.

Miscellaneous

One commenter characterized the changes we proposed as "removing restrictions" and stated that there is a need instead for additional restrictions, including more quarantine stations.

We disagree with the commenter's characterization of the changes we are making in this final rule. These changes will provide more, not less, protection against the interstate spread of the Mexican fruit fly.

Although we are making no changes in this final rule in response to the comments discussed above, this final rule does not include two editorial changes that had been part of the proposed rule. Specifically, we had proposed to update an address that appeared in two places in § 301.64–10(g); because that address has been changed in another final rule, it is not necessary to follow through with the proposed change in this final rule.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This 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.

We are amending 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 amending the regulations to remove references to quarantined States and to refer to regulated areas as quarantined areas. We are also making 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 are necessary to prevent the interstate spread of Mexican fruit fly and make the Mexican fruit fly regulations more consistent with our other domestic fruit fly 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 changes will be citrus growers and

packinghouses located within quarantined areas. Currently, only Cameron, Hidalgo, and Willacy Counties in Texas are designated as quarantined areas in the regulations. In 2002, the latest census year, citrus fruit was produced on 1,053 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 quarantined 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 quarantined area of Texas there are approximately 540 citrus growers operating on 30,000 acres producing \$31 million worth of citrus annually, and 5 packinghouses.¹ 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 five packinghouses, while the remaining 20 percent sell their citrus locally. The five packinghouses currently ship approximately 35 percent of the citrus to California and 65 percent to States that are not commercial citrus-producing States.² 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.³

This rule requires 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 rule will primarily affect the packinghouses in the quarantined area in that any overtime cost that is incurred by APHIS inspectors for supervising post-harvest treatments at the packinghouses will 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 will 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 will 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 rule, host crops moving interstate to such States, like fruit moved to commercial citrus-producing States, will 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 will 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 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-commercial citrus-producing States)	14,000
Treatment (methyl bromide) ¹	40,000–80,000
Total cost	61,500–101,500

¹ For some producers, pre-harvest premises treatment with either malathion or spinosad bait spray is required under § 301.64–10(c); this pre-harvest treatment eliminates the need for post-harvest treatment with methyl bromide. The cost of malathion treatment is \$5.50 per acre, with an average of 20 treatments required (a total per acre cost of \$110). The cost of spinosad treatment is \$18.50 per acre, with an average of 20 treatments required (a total per acre cost of \$368).

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

² John McClung, Texas Citrus Growers Association. Personal communication, June 28, 2003.

³ It is estimated that it costs \$0.25 to treat a 40-pound carton of citrus with a worth of approximately \$7.50 to \$9.00. Source: Robert Martin, Texas Citrus packing facility owner. Personal communication, June 28, 2003.

Summary

This rule could potentially have a negative economic 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—will now have to obtain a certificate or limited permit before moving the articles interstate. Producers and/or packinghouses will have to incur the cost of treatment along with overtime costs incurred by APHIS in monitoring treatments. The extent of the impact will depend on the level of pest infestation.

It is expected that the percentage 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 (*i.e.*, 5–10 percent). The impact on the industry is expected to be small (\$40,000 to \$80,000 in 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 requires treatment.⁴

The Texas citrus industry will also have to incur the estimated \$7,500 per year in overtime costs associated with PPQ treatment supervision at the five 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 packinghouses for fruit moved 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

⁴ 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.

substantial. The establishment of the Mexican fruit fly in the United States could cost producers and exporters about \$900 million in losses annually.⁵ 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 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 final 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 the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0238.

⁵ 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, APHIS, USDA.

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 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.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are amending 7 CFR part 301 as follows:

■ 1. The authority citation for part 301 continues 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 is 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.^{1,2}

■ 3. Section 301.64–1 is amended by removing the definition of *regulated area*

¹ 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).

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

and by adding, in alphabetical order, definitions for *departmental permit* and *quarantined area* to read as follows:

§ 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(c).

* * * * *

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 is 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) are revised and a new paragraph (c) and an OMB citation at the end of the section are 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:³

* * * * *

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

(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.

(Approved by the Office of Management and Budget under control number 0579-0238).

- 6. In § 301.64-6(a), footnote 6 is revised to read as follows:

§ 301.64-6 Compliance agreement and cancellation thereof.

(a) * * * 6

⁶Compliance 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 is revised to read as follows:

§ 301.64-7 Assembly and inspection of regulated articles.

(a) * * * 7

⁷Inspectors 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 is 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.

§ 301.64-10 [Amended]

- 9. In § 301.64-10, paragraph (g)(9) is amended by removing the word "Mediterranean" and adding the word "Mexican" in its place.

Done in Washington, DC, this 23rd day of June 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05-12814 Filed 6-28-05; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

United States Standards for Milled Rice; Correction

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations 7 CFR part 868, which were published in the *Federal Register* of September 30, 2002. The regulations related to changes to the U.S. Standards for Milled Rice which established a new level of milling degree, "hard milled", to the existing milling requirements and eliminated reference to "lightly milled" from the milling requirements of U.S. Standards for Milled Rice.

DATES: Effective June 29, 2005.

FOR FURTHER INFORMATION CONTACT: Vicki Lacefield, at her e-mail address: Vicki.A.Lacefield@usda.gov or telephone her at (202) 720-0252.

SUPPLEMENTARY INFORMATION: On September 30, 2002, the Grain Inspection, Packers and Stockyards Administration (GIPSA) published in the *Federal Register* (67 FR 61249) a direct final rule that revised the United States Standards for Milled Rice to establish a new level of milling degree, "hard milled," to the existing milling requirements and to eliminate reference to "lightly milled" from the milling