

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 02–129–3]

#### Mexican Fruit Fly; Addition of Regulated Area

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

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

**SUMMARY:** We are amending the Mexican fruit fly regulations by adding a portion of San Diego County, CA, to the existing regulated area and restricting the interstate movement of regulated articles from that area. This action is necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States.

**DATES:** This interim rule was effective March 4, 2003. We will consider all comments that we receive on or before May 9, 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. 02–129–3, 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. 02–129–3. 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. 02–129–3” 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, PPD, 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 the regulated areas.

In an interim rule effective on January 15, 2003, and published in the **Federal Register** on January 21, 2003 (68 FR 2679–2680, Docket No. 02–129–1), we amended the regulations by adding a portion of San Diego County, CA, as a regulated area. In this interim rule, we are designating an additional portion of San Diego County, CA, as a regulated area.

Section 301.64–3 provides that the Deputy Administrator for Plant Protection and Quarantine, Animal and Plant Health Inspection Service (APHIS), shall list as a regulated area each quarantined State, or each portion of a quarantined State, in which the Mexican fruit fly has been found by an inspector, in which the Deputy Administrator has reason to believe the Mexican fruit fly is present, or that the Deputy Administrator considers necessary to regulate because of its

proximity to the Mexican fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mexican fruit fly occurs.

Less than an entire quarantined State is designated as a regulated area only if the Deputy Administrator determines that the State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of the regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of the articles and the designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the Mexican fruit fly.

Recent trapping surveys by inspectors of California State and county agencies and by APHIS inspectors reveal that an additional portion of San Diego County, CA, is infested with the Mexican fruit fly.

Accordingly, to prevent the spread of the Mexican fruit fly to noninfested areas of the United States, we are amending the regulations in § 301.64–3 by adding that portion of San Diego County, CA, to the existing regulated area for the Mexican fruit fly. The addition is described in detail in the rule portion of this document. The Deputy Administrator has determined that it is not necessary to designate the entire State of California as a regulated area.

As noted previously, the regulations in § 301.64–3 refer to the listing of regulated areas within quarantined States. Quarantined States are listed in § 301.64(a). When we published an interim rule quarantining a portion of Los Angeles County, CA, because of Mexican fruit fly (*see* 67 FR 78127–78128, Docket No. 02–021–1, published December 23, 2002), we should have amended § 301.64(a) to designate California as a quarantined State, but did not. (Prior to that December 2002 interim rule, the only areas regulated for the Mexican fruit fly were portions of Texas.) Therefore, in this rule we are amending § 301.64(a) to designate California as a quarantined State for Mexican fruit fly.

#### Emergency Action

This rulemaking is necessary on an emergency basis to prevent the Mexican fruit fly from spreading to noninfested areas of the United States. 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 designating an additional portion of San Diego County, CA, as a regulated area and restricting the interstate movement of regulated articles from that area. This action is necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States.

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.

#### **National Environmental Policy Act**

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The site-specific environmental assessment provides a basis for the conclusion that the implementation of integrated pest management to eradicate the Mexican fruit fly will not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this document). In addition, copies may be obtained from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

#### **Paperwork Reduction Act**

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

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

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

#### **PART 301—DOMESTIC QUARANTINE NOTICES**

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

**Authority:** 7 U.S.C. 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).

#### **§ 301.64 [Amended]**

2. In § 301.64, paragraph (a) is amended by removing the words “State of” and adding the words “States of California and” in their place.

3. In § 301.64–3, paragraph (c), under the heading “California”, the entry for San Diego County is revised to read as follows:

#### **§ 301.64–3 Regulated areas.**

\* \* \* \* \*  
(c) \* \* \*

#### **California**

\* \* \* \* \*

*San Diego County:* That portion of San Diego County in the Valley Center area bounded by a line as follows: Beginning at the intersection of State Highway 76 and Rice Canyon Road; then north on Rice Canyon Road to Huntley Road; then northeast on Huntley Road to Alex Road; then northeast on Alex Road to Rainbow Crest Road; then north, northwest, and north on Rainbow Crest Road to Rainbow Heights Road; then north on Rainbow Heights Road to Arouba Road; then southeast on Arouba Road to Aruba Road; then northeast on Aruba Road to Pala Temecula Road; then north on Pala Temecula Road to the San Diego County boundary line; then east along the San Diego County boundary line to the Cleveland National Forest boundary line; then south, east, south, east, south, east, south, northeast, and southeast along the Cleveland National Forest boundary line to Nate Harrison Grade Road; then southwest, northwest, southeast, west, southeast, and southwest on Nate Harrison Grade Road to Mesa Drive North; then southeast, northeast, southwest, northeast, and southwest on Mesa Drive North to State Highway 76; then east on State Highway 76 to Valley Center Road; then south and west on Valley Center Road to North Lake Wohlford Road; then south on North Lake Wohlford Road to Woods Valley Road; then west on Woods Valley Road to Valley Center Road; then north on Valley Center Road to Mirar De Valle Road; then west on Mirar De Valle Road to Alps Way; then west on Alps Way to Cougar Pass Road; then northwest on Cougar Pass Road to Meadow Glen Way East; then west, north, west, and southwest on Meadow Glen Way East to Mountain Meadow Road; then north on Mountain Meadow Road to Glenmeade Way; then west and southwest on Glenmeade Way to Sage Hill Way; then west on Sage Hill Way to Meadow Glen Way West; then north, west, and

northwest on Meadow Glen Way West to Welk Highland Drive; then northwest on Welk Highland Drive to Welk View Drive; then west, north, southwest, north, southwest, and west on Welk View Drive to Champagne Boulevard; then north on Champagne Boulevard to Old Highway 395; then north on Old Highway 395 to Dulin Road; then northeast on Dulin Road to Shearer Crossing; then north on Shearer Crossing to Pankey Road; then north on Pankey Road to State Highway 76; then northeast on State Highway 76 to the point of beginning.

\* \* \* \* \*

Done in Washington, DC, this 4th day of March 2003.

**Kevin Shea,**

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

[FR Doc. 03-5594 Filed 3-7-03; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9043]

RIN 1545-AY26

#### Disallowance of Deductions and Credits for Failure To File Timely Return

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations relating to the disallowance of deductions and credits for nonresident alien individuals and foreign corporations (collectively, foreign taxpayers) that fail to file a timely U.S. income tax return. The regulations affect foreign taxpayers that fail to file a return by the appropriate deadlines.

**DATES:** *Effective Date:* These regulations are effective March 10, 2003.

*Applicability Date:* For dates of applicability, see §§ 1.874-1(b)(4) and 1.882-4(a)(3)(iv) of these regulations.

**FOR FURTHER INFORMATION CONTACT:** Nina E. Chowdhry, (202) 622-3880 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains amendments to 26 CFR part 1. On January 29, 2002, final and temporary regulations (TD 8981) relating to the disallowance of

deductions and credits for foreign taxpayers that fail to file a timely U.S. income tax return under sections 874 and 882 of the Internal Revenue Code (Code) were published in the **Federal Register** (67 FR 4173). A notice of proposed rulemaking (REG-107100-00) cross-referencing the temporary regulations was also published in the **Federal Register** (67 FR 4217). No public hearing was requested or held. No written or electronic comments responding to the notice of proposed rulemaking were received. The proposed regulations are adopted by this Treasury decision, and the corresponding temporary regulations are removed.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

#### Drafting Information

The principal author of these regulations is Nina Chowdhry of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by removing the entries for “Section 1.874-1T” and “Section 1.882-4T” and adding entries in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

Section 1.874-1 also issued under 26 U.S.C. 874. \* \* \*

Section 1.882-4 also issued under 26 U.S.C. 882(c). \* \* \*

**Par. 2.** Section 1.874-1, paragraphs (b)(2) through (b)(4) are revised to read as follows:

#### § 1.874-1 Allowance of deductions and credits to nonresident alien individuals.

\* \* \* \* \*

(b) \* \* \*

(2) *Waiver.* The filing deadlines set forth in paragraph (b)(1) of this section may be waived if the nonresident alien individual establishes to the satisfaction of the Commissioner or his or her delegate that the individual, based on the facts and circumstances, acted reasonably and in good faith in failing to file a U.S. income tax return (including a protective return (as described in paragraph (b)(6) of this section)). For this purpose, a nonresident alien individual shall not be considered to have acted reasonably and in good faith if the individual knew that he or she was required to file the return and chose not to do so. In addition, a nonresident alien individual shall not be granted a waiver unless the individual cooperates in determining his or her U.S. income tax liability for the taxable year for which the return was not filed. The Commissioner or his or her delegate shall consider the following factors in determining whether the nonresident alien individual, based on the facts and circumstances, acted reasonably and in good faith in failing to file a U.S. income tax return—

(i) Whether the individual voluntarily identifies himself or herself to the Internal Revenue Service as having failed to file a U.S. income tax return before the Internal Revenue Service discovers the failure to file;

(ii) Whether the individual did not become aware of his or her ability to file a protective return (as described in paragraph (b)(6) of this section) by the deadline for filing the protective return;

(iii) Whether the individual had not previously filed a U.S. income tax return;

(iv) Whether the individual failed to file a U.S. income tax return because, after exercising reasonable diligence (taking into account his or her relevant experience and level of sophistication), the individual was unaware of the necessity for filing the return;

(v) Whether the individual failed to file a U.S. income tax return because of intervening events beyond the individual's control; and

(vi) Whether other mitigating or exacerbating factors existed.