

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 97-056-12]

#### Mediterranean Fruit Fly; Addition to Quarantined Area

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

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

**SUMMARY:** We are amending the Mediterranean fruit fly regulations by adding a portion of Lake and Marion Counties, FL, to the list of quarantined areas and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the continental United States.

**DATES:** Interim rule effective May 13, 1998. Consideration will be given only to comments received on or before July 20, 1998.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 97-056-12, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 97-056-12. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs,

PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247; or e-mail:

mstefan@aphis.usda.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The regulations in 7 CFR 301.78 through 301.78-10 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States.

Recent trapping surveys by inspectors of Florida State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that an infestation of Medfly has occurred in a portion of Lake and Marion Counties, FL.

The regulations in 301.78-3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Medfly. The boundary lines for a portion of a State being designated as quarantined are set up approximately four-and-one-half miles from the detection sites. The boundary lines may vary due to factors such as the location of Medfly host material, the location of transportation

centers such as bus stations and airports, the patterns of persons moving in that State, the number and patterns of distribution of the Medfly, and the use of clearly identifiable lines for the boundaries.

In accordance with these criteria and the recent Medfly findings described above, we are amending 301.78-3 by adding a portion of Lake and Marion Counties, FL, to the list of quarantined areas. The new quarantined area is described in the rule portion of this document.

##### Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Medfly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

##### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the Medfly regulations by adding a portion of Lake and Marion Counties, FL, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Medfly into noninfested areas of the United States.

This interim rule affects the interstate movement of regulated articles from the quarantined area of Lake and Marion Counties, FL. We estimate that there are 85 entities in the quarantined area of Lake and Marion Counties, FL, that sell, process, handle, or move regulated articles; this estimate includes 15

commercial growers, 1 transportation terminal, 8 fruit stands, 5 flea markets, 5 processing plants, 1 farmer's market, 25 nurseries, 10 apiaries, 12 mobile vendors, and 3 food stores. The number of these entities that meet the U.S. Small Business Administration's (SBA) definition of a small entity is unknown, since the information needed to make that determination (i.e., each entity's gross receipts or number of employees) is not currently available. However, it is reasonable to assume that most of the 85 entities are small in size, since the overwhelming majority of businesses in Florida, as well as the rest of the United States, are small entities by SBA standards.

We believe that few, if any, of the 85 entities will be significantly affected by the quarantine action taken in this interim rule because few of these types of entities move regulated articles outside the State of Florida during the normal course of their business. Nor do consumers of products purchased from these types of entities generally move those products interstate. The effect on the small entities that do move regulated articles interstate from the quarantined area will be minimized by the availability of various treatments that, in most cases, will allow those small entities to move regulated articles interstate with very little additional costs. Also, many of these types of small entities sell other items in addition to regulated articles, so the effect, if any, of the interim rule should be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The site specific environmental assessment and programmatic Medfly environmental impact statement provide a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would 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) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

#### Paperwork Reduction Act

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

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

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

Accordingly, 7 CFR part 301 is amended as follows:

#### PART 301—DOMESTIC QUARANTINE NOTICES

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

**Authority:** 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.78–3, paragraph (c), the entry for Florida is amended by adding an entry for Lake and Marion Counties, FL, to read as follows:

#### § 301.78–3 Quarantined areas.

\* \* \* \* \*

(c) \* \* \*

#### Florida

\* \* \* \* \*

*Lake and Marion Counties.* That portion of Lake and Marion Counties beginning at the intersection of County Road 44A and County Road 439; then west along County Road 44A to Estes Road; then south along Estes Road to Bates Avenue; then west along Bates Avenue to the extension of Bates Avenue; then west along the extension of Bates Avenue to the shoreline of Lake Eustis; then northwest along the northern shoreline of Lake Eustis to Indian Trail; then north along Indian Trail to Grand Island Shores Road; then west along Grand Island Shores Road to Apiary Road; then north along Apiary Road to the extension of Apiary Road; then north along the extension of Apiary Road to Lake Yale; then northwest and north along the shoreline of Lake Yale to the section line dividing sections 7 and 8, T. 18 S., R. 26 E.; then north along the section line dividing sections 7 and 8, and 5 and 6, T. 18 S., R. 26 E., to the Lake/Marion County line; then north along the section line dividing sections 31 and 32, and 29 and 30 to the southern section line of section 20, T. 17 S., R. 26 E.; then east along the section line dividing sections 20 and 29, and 21 and 28, T. 17 S., R. 26 E., to the section line dividing sections 21 and 22, T. 17 S., R. 26 E.; then north along the section line dividing sections 21 and 22, T. 17 S., R. 26 E., to the southern section line of section 15, T. 17 S., R. 26 E.; then east along the section line dividing sections 15 and 22, 14 and 23, and 13 and 24, T. 17 S., R. 26 E., to the Lake/Marion County line; then north along the Lake/Marion County line to the southern section line of section 7, T. 17 S., R. 27 E.; then east along the section line dividing sections 7 and 18, 8 and 17, 9 and 16, 10 and 15, and 11 and 14, T. 17 S., R. 27 E. to the western section line of section 13, T. 17 S., R. 27 E.; then south along the section line dividing sections 13 and 14, 23 and 24, 25 and 26, 35 and 36, T. 17 S., R. 26 E., and sections 1 and 2, 11 and 12, 13 and 14, and 23 and 24, T. 16 S., R. 27 E., to the southern section line of section 23, T. 16 S., R. 27 E.; then west along the section line dividing sections 23 and 26, T. 16 S., R. 27 E., to County Road 439; then south along County Road 439 the point of beginning.

Done in Washington, DC, this 13th day of May 1998.

**Charles P. Schwalbe,**  
*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 98–13289 Filed 5–18–98; 8:45 am]

BILLING CODE 3410–34–P