

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 97-056-14]

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

**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 Highlands County, FL, to the list of quarantined areas and restricting the intrastate and 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 August 7, 1998. Consideration will be given only to comments received on or before October 13, 1998.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 97-056-14, 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. 97-056-14. 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:

michael.b.stefan@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 part 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 the Medfly to noninfested areas of the United States.

On September 30, 1997, we published a declaration of extraordinary emergency (62 FR 51079, Docket No. 97-056-6) because a serious outbreak of the Medfly was occurring in Florida, and the State of Florida was unable to continue to take action necessary to control and eradicate the Medfly in the State. Because of the declaration of extraordinary emergency, the Animal and Plant Health Inspection Service (APHIS) has the authority to enforce restrictions on the intrastate and interstate movement of regulated articles from the areas in Florida quarantined because of the Medfly.

In an interim rule effective on April 17, 1998, and published in the **Federal Register** on April 23, 1998 (63 FR 20053-20054, Docket No. 98-046-1), we added a portion of Dade County, FL, to the list of quarantined areas and restricted the intrastate and interstate movement of regulated articles from the quarantined area. In a second interim rule effective on May 5, 1998, and published in the **Federal Register** on May 11, 1998 (63 FR 25748-25750, Docket No. 97-056-11), we expanded the quarantined area in Dade County, FL. In a third interim rule effective on May 13, 1998, and published in the **Federal Register** on May 19, 1998 (63 FR 27439-27440, Docket No. 97-056-12), we added a portion of Lake and Marion Counties, FL, to the list of quarantined areas and restricted the

intrastate and interstate movement of regulated articles from the quarantined area. In a fourth interim rule effective on June 5, 1998, and published in the **Federal Register** on June 11, 1998 (63 FR 31887-31888, Docket No. 97-056-13), we added a portion of Manatee County, FL, to the list of quarantined areas and restricted the intrastate and interstate movement of regulated articles from the quarantined area.

Recent trapping surveys by inspectors of Florida State and by inspectors of APHIS have revealed that an infestation of Medfly has occurred in a portion of Highlands County, 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.

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 Highlands County, 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 Highlands County, 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 intrastate and interstate movement of regulated articles from the quarantined area in Highlands County, FL. We estimate that there are 426 entities in the quarantined area of Highlands County, FL, that sell, process, handle, or move regulated articles; this estimate includes 263 commercial growers, 2 transportation terminals, 20 fruit stands, 3 flea markets, 4 citrus packinghouses, 5 mobile vendors, 20 food stores, 4 common carriers, 25 nurseries, and 80 lawn maintenance companies. 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 426 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.

The effect on the small entities that move regulated articles intrastate or 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 intrastate and interstate with very little additional costs. Also, many of these types of small entities sell other items in addition to the 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 Highlands County, FL, in alphabetical order, to read as follows:

**§ 301.78-3 Quarantined areas.**

\* \* \* \* \*

(c) \* \* \*

Florida

\* \* \* \* \*

*Highlands County.* That portion of Highlands County beginning at the northeast corner of Sec. 15, T. 33, R. 29; then south along the eastern section line of Sec. 15, T. 33, R. 29, to the southwest corner of Sec. 14, T. 33, R. 29; then east along the southern section line of Sec. 14, T. 33, R. 29, to the northeast corner of Sec. 23, T. 33, R. 29; then south along the eastern section line of Secs. 23 and 26, T. 33, R. 29, to the southwest corner of Sec. 25, T. 33, R. 29; then east along the southern section line of Sec. 25, T. 33, R. 29, to the northeast corner of Sec. 36, T. 33, R. 29; then south along the eastern section line of Sec. 36, T. 33, R. 29, to the northwest corner of Sec. 6, T. 34, R. 30; then east along the northern section line of Sec. 6, T. 34, R. 30, to Arbuckle Creek; then south along the western bank of Arbuckle Creek to Carter Creek; then west along the northern bank of Carter Creek to the eastern section line of Sec. 13, T. 34, R. 29; then south along the eastern section line of Secs. 24 and 25, T. 34, R. 29, to the CSX Railroad; then west along the CSX Railroad to the extension of Snyder Road; then south along the extension of Snyder Road and Snyder Road to the southwest corner of Sec. 36, T. 34, R. 29 (Moon Ranch Road); then east along the southern section line of Sec. 36, T. 34, R. 29, to the southern section line of

Sec. 31, T. 34, R. 30; the south along the southern section line of Sec. 31, T. 34, R. 30, to the northeast corner of Sec. 6, T. 35, R. 30; then south along the eastern section line of Sec. 6, T. 35, R. 30, to Webster Turn Drive; then southwest along Webster Turn Drive to Airport Road; then south along Airport Road to the southern section line of Sec. 7, T. 35, R. 30; then east along the southern section line of Sec. 7, T. 35, R. 30, to the southwest corner of Sec. 8, T. 35, R. 30; then south along the western section line of Secs. 17, 20, 29, and 32, T. 35, R. 30, to Josephine Creek; then west along the northern shoreline of Josephine Creek to the eastern section line of Sec. 4, T. 36, R. 29; then south along the eastern section line of Sec. 4, T. 36, R. 29, to the southern section line of Sec. 4, T. 36, R. 29; then west along the southern section line of Secs. 4, 5, and 6, T. 36, R. 29 to an imaginary line drawn to Northwest Josephine Road; then north along the imaginary line drawn to Northwest Josephine Road to Lake Josephine Drive; then west along Lake Josephine Drive to Orange Blossom Boulevard; then north along Orange Blossom Boulevard to the southern section line of Sec. 30, T. 35, R. 29; then west along the southern section line of Sec. 30, T. 35, R. 29, to the southern section line of Sec. 25, T. 35, R. 28; then west along the southern section line of Sec. 25, T. 35, R. 28, to the eastern section line of Sec. 26, T. 35, R. 28; then north along the eastern section line of Secs. 26, 23, 14, and 11, T. 35, R. 28, to 13th Avenue (also known as Azalea Terrace); then west along 13th Avenue (also known as Azalea Terrace) to Azalea Terrace extension; then west along the extension of Azalea Terrace until it becomes Carmel Avenue; then west along Carmel Avenue to its extension; then west along the extension of Carmel Avenue to Washington Road; then north along Washington Road to its extension; then north along the extension of Washington Road to the southeast corner of Sec. 28, T. 34, R. 28; then west along the southern section line of Secs. 28 and 29, T. 34, R. 28, to the southwest corner of Sec. 29, T. 34, R. 28; then north along the western section line of Secs. 29, 20, 17, 8, 5, and 32, T. 33, R. 28, to Zoreta Drive; then east along Zoreta Drive to Nitschke Road; then north along Nitschke Road to the southwest corner of Sec. 28, T. 33, R. 28; then east along the southern section line of Sec. 28, T. 33, R. 28, to U.S. Highways 27 and 98; then north along U.S. Highways 27 and 98 to West Main Street (State Road 17); then east along West and East Main Street (State Road 17) to County Road 17; then north

along County Road 17 to the northwest corner of Sec. 13, T. 33, R. 28; then east along the northern section line of Sec. 13, T. 33, R. 28, and Secs. 18, 17, 16, and 15, T. 33, R. 29, to the point of beginning.

\* \* \* \* \*  
 Done in Washington, DC, this 7th day of August 1998.  
**Joan M. Arnoldi,**  
*Acting Administrator, Animal and Plant Health Inspection Service.*  
 [FR Doc. 98-21761 Filed 8-12-98; 8:45 am]  
**BILLING CODE 3410-34-P**

**DEPARTMENT OF AGRICULTURE**

**Grain Inspection, Packers and Stockyards Administration**

**7 CFR Part 800**

**Fees for Official Inspection and Official Weighing Services**

*CFR Correction*

In Title 7 of the Code of Federal Regulations, parts 700 to 899, revised as of January 1, 1998, make the following correction:

On page 476, in § 800.71, in the paragraph (a) tables, following Schedule A, Table 3, Schedules B and C were inadvertently omitted. The reinstated text reads as follows:

**§ 800.71 Fees assessed by the Service.**

(a) \* \* \*

**SCHEDULE B—FEES FOR OFFICIAL INSPECTION, WEIGHING, AND APPEAL INSPECTION SERVICES PERFORMED IN CANADA<sup>1</sup>**

Inspection and weighing service (bulk or sacked grain)	Regular workday (Monday thru Saturday)	Non-regular workday (Sunday and holiday)
(1) Original inspection services and official weighing services: <sup>2,3</sup>		
(i) Contract services (per hour per service representative)	\$103.00	\$130.00
(ii) Noncontract service (per hour per service representative)	137.00	172.00

**SCHEDULE B—FEES FOR OFFICIAL INSPECTION, WEIGHING, AND APPEAL INSPECTION SERVICES PERFORMED IN CANADA<sup>1</sup>—Continued**

	Regular workday (Monday thru Saturday)	Non-regular workday (Sunday and holiday)
Inspection and weighing service (bulk or sacked grain)		
(2) Extra copies of certificates (per copy) .....	3.00	3.00

<sup>1</sup> Official inspection and weighing services include, but are not limited to grading, weighing, sampling, stowage examination, equipment testing, scale testing and certification, test weight reverification, evaluation of inspection and weighing equipment demonstrating official inspection and weighing functions, furnishing standard illustrations, and certifying inspection and weighing results.

<sup>2</sup> Fees for reinspection and appeal inspection services shall be assessed at the applicable contract or noncontract hourly rate as the original inspection. However, if additional personnel are required to perform the reinspection or appeal inspection service, the applicant will be assessed the noncontract original inspection hourly fee.

<sup>3</sup> Board appeal inspections are based on file samples. See § 800.71, Schedule A for Board Appeal fees.

**SCHEDULE C—FEES FOR FGIS SUPERVISION OF OFFICIAL INSPECTION AND WEIGHING SERVICES PERFORMED BY DELEGATED STATES AND/OR DESIGNATED AGENCIES IN THE UNITED STATES<sup>1</sup>**

TABLE 1

Inspection services (bulk or sacked grain)	Official inspection or reinspection services
(1) Official sample-lot inspection service (white certificate):	
(i) For official grade and official factor determinations:	
(A) Truck or trailer (per inspection) <sup>2</sup> .....	\$0.30
(B) Boxcar or hopper car (per inspection) <sup>2</sup> .....	0.95
(C) Barge (per inspection) <sup>2</sup> .....	6.15
(D) Ship (per ship) <sup>3</sup> .....	49.20
(E) All other lots (per inspection) <sup>2,4</sup> .....	0.30
(ii) For official factor or official criteria determinations:	
(A) Factor determination (per inspection) (maximum 2 factors) <sup>5</sup> .....	0.20
(B) Official criteria <sup>2,6</sup> .....	0.20
(2) Stowage examination services:	
(i) Ship (per stowage certificate) .....	3.00
(ii) Other carriers (per stowage certificate) .....	0.20