

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 305

[Docket No. APHIS–2009–0002]

Regulation of the Interstate Movement of Lemons From an Area Quarantined for Mediterranean Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the list of regulated articles in our domestic fruit fly quarantine regulations. The regulations currently indicate that smooth-skinned lemons (all varieties of *Citrus limon*) harvested for packing by commercial packinghouses are not regulated articles for Mediterranean fruit fly. We are proposing to amend the regulations to designate all yellow lemons as regulated articles. This proposed change is based on research indicating that, under certain conditions, yellow lemons are a host for Mediterranean fruit fly. As a result of this proposed action, yellow lemons produced in an area quarantined for Mediterranean fruit fly would be subject to certain interstate movement restrictions in order to prevent the spread of that pest into uninfested areas of the United States.

DATES: We will consider all comments that we receive on or before November 20, 2009.

ADDRESSES: You may submit comments by either of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0002> to submit or view comments and to view supporting and related materials available electronically.

- **Postal Mail/Commercial Delivery:** Please send two copies of your comment to Docket No. APHIS–2009–0002, Regulatory Analysis and Development,

PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0002.

Reading Room: 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.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, APHIS Exotic Fruit Fly Director, Fruit Fly Exclusion and Detection Programs, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly (Medfly, *Ceratitidis capitata* [Wiedemann]) is one of the world's most destructive pests of fruits and vegetables. The short life cycle of the Medfly allows rapid development of serious outbreaks, which can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Animal and Plant Health Inspection Service (APHIS) enforces regulations in 7 CFR part 301, "Domestic Quarantine Notices," that are designed to prevent the interstate spread of pests that are new to or not widely distributed within the United States. The regulations in "Subpart—Fruit Flies," contained in §§ 301.32 through 301.32–10 (referred to below as the regulations), are intended to prevent the spread of fruit flies designated as plant pests to noninfested areas of the United States. To this end, the regulations impose restrictions on the interstate movement of articles that are hosts of fruit flies or whose movement could otherwise spread fruit flies from areas quarantined because of fruit flies. We refer to these articles as "regulated articles." The table in § 301.32–2(a), "Regulated Articles," lists articles subject to domestic quarantine

regulations for several species of fruit fly, including Medfly. While lemons (*Citrus limon*) are included in the table as a regulated article for several types of fruit flies, a footnote to the table indicates that smooth-skinned lemons harvested for packing by commercial packinghouses are not regulated articles for Medfly.

The decision to exempt smooth-skinned lemons harvested for packing by commercial packinghouses was originally based on research published by scientists from the U.S. Department of Agriculture's Agricultural Research Service (ARS).¹ Citing their own research and other studies that examined lemons as a potential Medfly host, ARS scientists noted that rind toughness and thickness generally impede Medflies from infesting lemons. Moreover, chemicals within the lemon rind are toxic to Medfly eggs and any larvae that manage to hatch there. They also determined that lemons grown and packed commercially are less likely to be infested with plant pests, including Medfly, than noncommercial consignments.

However, in 2006 live Medfly larvae were intercepted in commercial shipments of lemons from Spain, leading us to re-examine whether lemons should be designated as regulated articles in areas quarantined for Medfly. We reviewed over 90 scientific publications, including the above-referenced 1984 study. We also examined findings from two site visits to Medfly-infested lemon-producing areas in Spain and Argentina, as well as details of the Medfly infestation in Spanish commercial lemons. Our conclusions appear in a report titled "Lemon (*Citrus limon*) as a host for Mediterranean fruit fly (Medfly; *Ceratitidis capitata*): A scientific review and status report" (January 2008). Copies of the report may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**, viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov), or retrieved online at http://www.aphis.usda.gov/plant_health/plant_pest_info/fruit_flies/index.shtml.

¹ Spitler, G.H., J.W. Armstrong, and H.M. Couey. 1984. Mediterranean fruit fly (Diptera: Tephritidae) host status of commercial lemon. Journal of Economic Entomology 77: 1441–1444.

Based on our review, we have determined that lemons are a conditional non-host for Medfly, meaning that while Medfly generally does not infest lemons, it will do so under certain conditions. For example, green lemons are not hosts of Medfly, but as they mature they become more susceptible to infestation. It is likely that light yellow lemons are not at a maturity stage where they would be susceptible to Medfly; only damaged or dark yellow, overly mature fruit are considered suitable hosts.

Resistance of lemons to Medfly infestation is causally linked to the thickness, toughness, and chemical toxicity of the lemon rind. The female Medfly ovipositor normally cannot pierce through the lemon rind to lay eggs in the toxin-free pulp, and if it does, the eggs laid within the rind are killed by the toxic compounds. However, if the rind is thin or damaged, or existing oviposition puncture holes are present, females can exploit these vulnerable points by ovipositing into the pulp, where Medfly eggs and larvae are more likely to survive and develop. A high Medfly population also increases the likelihood of lemon infestation due to repeated ovipositing by females into existing oviposition holes in the rind. These findings indicate the need to designate all varieties of yellow lemons as regulated articles for Medfly in our domestic fruit fly quarantine regulations in order to prevent the spread of Medfly to uninfested areas of the United States.

We are therefore proposing to amend the entry for lemons in the table of regulated articles in § 301.32–2(a) by removing the exemption for smooth-skinned lemons harvested for packing by commercial packinghouses, and instead indicating that all varieties of yellow lemons are regulated articles for Medfly.

We are also proposing to amend the phytosanitary treatments regulations in 7 CFR part 305 by updating the table in § 305.2(h)(2)(ii), which includes approved treatments for regulated articles moved interstate from areas quarantined for fruit flies, to correct two outdated references to the former locations of specific provisions of the fruit fly regulations.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We have prepared an economic analysis for this proposed rule. As described in the economic analysis, the

majority of producers, importers, and merchants that may be affected by the proposed rule are small entities. No commercial lemon producers are located in the area currently quarantined for Medfly. The number of producers that may be affected in the future is not known, since we do not have data on production of smooth-skinned lemons harvested for packing by commercial packinghouses. Nonetheless, the costs of pre-harvest or post-harvest treatments of smooth-skinned lemons that would be required by this rule are negligible. 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.

The full economic analysis may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed 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

7 CFR Part 301

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

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 7 CFR parts 301 and 305 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

§ 301.32–2 [Amended]

2. In § 301.32–2, paragraph (a), footnote 2 to the table is amended by removing the words “Smooth-skinned lemons harvested for packing by commercial packinghouses are not” and adding the words “Only yellow lemons are” in their place.

PART 305—PHYTOSANITARY TREATMENTS

3. The authority citation for part 305 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 305.2 [Amended]

4. In § 305.2, the table in paragraph (h)(2)(ii) is amended by removing, from the column titled “Commodity”, the citations “§ 301.78–2(a)” and “§ 301.99–2(b)” and adding the citation “§ 301.32–2(a)” in their place.

Done in Washington, DC, this 15th day of September 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–22631 Filed 9–18–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1493

Solicitation of Input from Stakeholders on Revised Fees for the Export Credit Guarantee (GSM–102) Program

AGENCY: Foreign Agricultural Service and Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.