

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 91-155-19]

#### Mediterranean Fruit Fly; Removal of 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 removing the quarantined areas in Los Angeles, Orange, and San Bernardino Counties, CA, from the list of quarantined areas. We have determined that the Mediterranean fruit fly has been eradicated from these areas and that restrictions on the interstate movement of regulated articles from these areas are no longer necessary. As a result of this action, there are no longer any areas in the continental United States quarantined because of the Mediterranean fruit fly.

**DATES:** Interim rule effective June 14, 1996. Consideration will be given only to comments received on or before July 19, 1996.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 91-155-19, 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. 91-155-19. 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 Operations, 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.

In the continental United States, California is the only State where Medfly has been present in recent years. The Mediterranean fruit fly regulations (contained in 7 CFR 301.78 through 301.78-10 and 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. Since the establishment of the regulations in 1991, the quarantined areas have included certain portions of Los Angeles, Santa Clara, Orange, Riverside, San Bernardino, San Diego, and Ventura Counties, CA. Currently, the regulations designate only portions of Los Angeles, Orange, and San Bernardino Counties, CA, as quarantined for Medfly.

We have determined, based on trapping surveys conducted by the Animal and Plant Health Inspection Service (APHIS) and California State and county agency inspectors, that the Medfly has been eradicated from the quarantined areas in Los Angeles, Orange, and San Bernardino Counties, CA. The last finding of the Medfly thought to be associated with the infestation in these areas was in July 1994. Since then, no evidence of infestation has been found in these areas. We are, therefore, removing these areas from the list of areas in § 301.78-3(c) quarantined because of the Medfly. As a result of this action, there are no longer any areas in the continental

United States quarantined because of the Medfly.

#### Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. The areas in California affected by this document were quarantined to prevent the Medfly from spreading to noninfested areas of the United States. Because the Medfly has been eradicated from these areas, and because the continued quarantined status of these areas would impose unnecessary regulatory restrictions on the public, immediate action is warranted to relieve restrictions.

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 this rule effective less than 30 days after publication. 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 interim rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

This interim rule affects the interstate movement of regulated articles from portions of Los Angeles, Orange, and San Bernardino Counties, CA. There are approximately 8,016 small entities that could be affected, including 4,449 fruit sellers, 790 nurseries, 1,917 vendors, 32 markets, 29 community gardens, 153 growers, 14 air cargo warehouses, 19 caterers, 112 yard maintenance companies, 46 swap meets, 9 packers, 6 processors, 399 distributors and wholesalers, and 41 food banks.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, most of these small entities sell regulated articles primarily for local intrastate, not

interstate, movement, and the sale of these articles would not be affected by this interim regulation.

Therefore, termination of the quarantine in Los Angeles, Orange, and San Bernardino Counties should have a minimal economic effect on the small entities operating there. We anticipate that the economic impact of lifting the quarantine, though positive, will be no more significant than was the minimal impact of its imposition.

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 12778

This rule has been reviewed under Executive Order 12778, 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

This rule contains no new 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, 7 CFR part 301 is amended as follows:

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

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 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) is revised to read as follows:

##### **§ 301.78–3 Quarantined areas.**

\* \* \* \* \*

(c) The areas described below are designated as quarantined areas:

Mediterranean fruit fly is not known to exist in the continental United States.

Done in Washington, DC, this 14th day of June 1996.

Lonnie L. King,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 96–15582 Filed 6–18–96; 8:45 am]

BILLING CODE 3410–34–P

#### **Agricultural Marketing Service**

##### **7 CFR Parts 911 and 915**

[Docket No. FV96–911–4IFR]

#### **Limes and Avocados Grown in Florida; Relaxation of Container Marking Requirements**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule relaxes the container marking requirements for limes and avocados packed under the Federal marketing orders for limes and avocados grown in Florida. This relaxation reduces the number of lime and avocado containers required to be marked with the lot stamp number. This rule reduces handling costs and provides more flexibility in lime and avocado packing operations.

**DATES:** Effective June 20, 1996; comments received by July 19, 1996 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, Fax # (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Aleck Jonas, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299–4770; or Britthany Beadle, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–3923.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order Nos.

911 and 915 (7 CFR parts 911 and 915), as amended, regulating the handling of limes and avocados grown in Florida, hereinafter referred to as the “orders.” These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 10 handlers of limes and 65 handlers of avocados who are subject to regulation under the respective marketing order and approximately 40 lime and 100 avocado producers in the regulated areas. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual