

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS-2005-0116]

#### Mediterranean Fruit Fly; Remove Portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, From the List 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 portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, from the list of quarantined areas and by removing restrictions on the interstate movement of regulated articles from those areas. This action is necessary to relieve restrictions that are no longer needed to prevent the spread of Mediterranean fruit fly into noninfested areas of the United States. We have determined that the Mediterranean fruit fly has been eradicated from these portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, and that the quarantine and restrictions are no longer necessary. These portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, were the last remaining areas in California quarantined for Mediterranean fruit fly. Therefore, as a result of this action, there are no longer any areas in the continental United States quarantined for the Mediterranean fruit fly.

**DATES:** This interim rule was effective September 7, 2006. We will consider all comments that we receive on or before November 13, 2006.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click "Submit." In the Docket ID column, select APHIS-2005-0116 to submit or view public comments and to view supporting and related materials available electronically. Information on using [Regulations.gov](http://www.regulations.gov), including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS-2005-0116, 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-2005-0116.

*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, National Fruit Fly Program Manager, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-4387.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Mediterranean fruit fly (Medfly, *Ceratitis capitata* [Wiedemann]) is one of the world's most destructive pests of numerous fruits and vegetables. The 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 Mediterranean fruit fly regulations, contained 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. The regulations also designate soil and a large number of fruits, nuts, vegetables, and berries as regulated articles.

In an interim rule effective on February 7, 2006, and published in the **Federal Register** on February 13, 2006 (71 FR 7393-7395, Docket No. APHIS-2005-0116), we quarantined portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, and restricted the interstate movement of regulated articles from the quarantined areas.

Based on trapping surveys conducted by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that Medfly has been eradicated from the quarantined portions of these counties. The last finding of Medfly in the Los Angeles and San Bernardino Counties, CA, quarantined areas was December 13, 2005, and the last finding of Medfly in the Santa Clara County, CA, quarantined area was October 9, 2005.

Since then, no evidence of Medfly infestation has been found in these areas. Based on our experience, we have determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that Medfly no longer exists in Los Angeles, San Bernardino, and Santa Clara Counties, CA. Therefore, we are removing the counties from the list of quarantined areas in § 301.78-3(c). With the removal of Los Angeles, San Bernardino, and Santa Clara Counties, CA, from that list, there are no longer any areas in the continental United States quarantined for Medfly.

##### Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary. Portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, were quarantined due to the possibility that the Medfly could be spread from those areas to noninfested areas of the United States. Since we have concluded that Medfly no longer exists in those areas, immediate action is warranted to remove the quarantine on Los Angeles, San Bernardino, and

Santa Clara Counties, CA, and to relieve the restrictions on the interstate movement of regulated articles from those areas. 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 action 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 action amends the Medfly regulations by removing Los Angeles, San Bernardino, and Santa Clara Counties, CA, from the list of quarantined areas.

County records indicated there are approximately 297 small entities that may be affected by the lifting of the quarantine in this interim rule. These include 127 yard maintenance firms, 110 fruit sellers, 22 nurseries, 15 growers, 4 distributors, 4 haulers, 3 certified farmers' market, 3 processors, 2 harvesters, 2 packers, 2 recyclers, 1 food bank, 1 producer, and 1 swapmeet. These 297 entities comprise less than 1 percent of the total number of similar entities operating in the State of California.

We expect that the effect of this interim rule on the small entities referred to above will be minimal. Small entities located within the quarantined area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears likely to be minimal. In addition, the effect on any small entities that may move regulated articles interstate has been minimized during the quarantine period by the availability of various treatments that allow these small entities, in most cases, to move regulated articles interstate with very little additional cost. Thus, just as the previous interim rule establishing the quarantined area in portions of Los Angeles, San Bernardino, and Santa Clara Counties, CA, had little effect on the small entities in the area, the lifting

of the quarantine in the current interim rule will also have little effect.

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.

#### **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. 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).

■ 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: There are no areas in the continental United States quarantined for the Mediterranean fruit fly.

Done in Washington, DC, this 7th day of September 2006.

**Kevin Shea,**

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

[FR Doc. E6–15213 Filed 9–12–06; 8:45 am]

**BILLING CODE 3410–34–P**

## **DEPARTMENT OF COMMERCE**

### **Bureau of Industry and Security**

#### **15 CFR Part 736**

[Docket No. 060818222–6222–01]

RIN 0694–AD83

#### **Amendment to General Order No. 3: Addition of Certain Entities; Correction**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Correcting amendment.

**SUMMARY:** The Bureau of Industry and Security (BIS) published a final rule in the **Federal Register** on Wednesday, September 6, 2006 (71 FR 52426) that amended a general order published on June 5, 2006 in the **Federal Register** to add nine additional entities related to Mayrow General Trading. The September 6, 2006, final rule contained an error in the amendatory language for paragraph (a)(1). This document corrects that error by revising that paragraph of the general order.

**DATES:** *Effective Date:* This rule is effective September 6, 2006.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Turner, Director, Office of Export Enforcement, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044; Phone: (202) 482–1208, x3; E-mail: [rpd2@bis.doc.gov](mailto:rpd2@bis.doc.gov); Fax: (202) 482–0964.

#### **SUPPLEMENTARY INFORMATION:**

#### **Background**

This document corrects an inadvertent error in the final rule that was published by the Bureau of Industry and Security (BIS) on September 6, 2006 (71 FR 52426). In the September 6, 2006, final rule, the amendatory instruction for General Order No. 3 to Supplement No. 1 to part 736, paragraph (a)(1) did not specify that the entire paragraph (a)(1) was being revised. This document corrects General Order No. 3 to Supplement No. 1 to part 736, by revising paragraph (a)(1).

Consistent with section 6 of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420) (2000) (the “Act”), a foreign policy report was submitted to Congress on August 29, 2006, notifying Congress of