

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

## Section IV Emergency Rules

**DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES****Division of Plant Industry**

RULE NO.:                   RULE TITLE:  
5BER11-1                   Fruit Fly Eradication

**SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE:** The Mediterranean fruit fly, commonly referred to as Medfly, is one of the most destructive pests of citrus and other known fruits and is the most important and widespread pest in the fruit fly group. Medfly attacks more than 260 different fruits and vegetables. In Florida, the pest has been eradicated twelve times, including five major outbreaks. A total of two Medflies have been identified from one Jackson trap removed from a trap location in Pompano Beach, Broward County, on January 31, 2011. If immediate action is not taken to eradicate Medflies from the Pompano Beach area, they will continue to spread and affect agriculture production areas resulting in millions of dollars in production losses and control costs, and impacting consumers through increased prices in the market place. In view of these specific facts and reasons, and in accordance with the constitutional authority conferred upon the Commissioner of Agriculture by the Florida Constitution, Article IV, Section 4, and authorized by Florida Statutes, Sections 570.07(21) (to declare an emergency), and 581.031(7), the Commissioner of Agriculture does hereby find that an immediate danger to the public health, safety and welfare exists and declares a quarantine in Florida host plants and regulated articles as set forth in the emergency rule hereby promulgated.

**REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES:** This action is necessary and fair under this emergency because immediate action must be taken to eradicate the Mediterranean fruit fly before the infestation spreads. If immediate action is not taken, eradication costs will rise dramatically due to the increased area which then will need treatment. If the Mediterranean fruit fly continues to spread unchecked, it will caused substantial damage to fruit-bearing plants in home gardens and ultimately spread into agricultural production areas where it would cost millions of dollars in control costs, lost production and increased consumer prices in the marketplace.

**SUMMARY:** This emergency rule provides definitions; the criteria for establishing a quarantine area, the certification requirements for hosts or regulated articles, the criteria for establishing treatment areas, treatment procedures, mitigative measures and the criteria for declaring a fruit fly emergency.

**THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS:** Dr. Wayne N. Dixon, Acting Director, Division of Plant Industry, Department of Agriculture and Consumer Services, P. O. Box 147100, Gainesville, Florida 32614-7100, phone: (352)372-3505

**THE FULL TEXT OF THE EMERGENCY RULE IS:**

5BER11-1 Fruit Fly Eradication.

(1) Definitions. For the purpose of this rule the definitions in Section 581.011, Florida Statutes, and the following definitions shall apply:

(a) Department. The Florida Department of Agriculture and Consumer Services.

(b) EPA. The United States Environmental Protection Agency.

(c) Fruit Fly. Any life stage of any species of tephritid fruit fly in the genera Anastrepha (except A. suspensa), Bactrocera, Ceratitis, Dacus and Tetradacus or synonyms thereof.

(d) Host. All fruit (including nuts, dates and berries), vegetables and the fruiting bodies of many wild and cultivated plants which are capable of infestation by any life stage of any species of fruit fly defined in paragraph (1)(b).

(e) Infested. Actually harboring a fruit fly in any of its life stages.

(f) Regulated articles. Any article, including soil, capable of transporting or harboring a fruit fly.

(g) USDA. United States Department of Agriculture, Animal and Plant Health Inspection Service.

(2) Purpose. The purpose of this rule is to establish procedures for conducting a program to eradicate fruit flies defined in paragraph (1)(c) upon their detection in the State of Florida. This rule designates the size of quarantine areas, as provided for in Section 581.031(7), Florida Statutes, and the requirements for the movement and certification of hosts and regulated articles. It designates the size of treatment areas and the procedures for conducting treatments, outlines program mitigative measures and sets forth the requirements for declaring eradication.

(3) Declaration. Pursuant to Section 581.031(6), Florida Statutes, fruit flies as defined in paragraph (1)(b) are declared to be a plant pest and a public and agricultural nuisance. Their detection in the state endangers or threatens the horticultural, agricultural, environmental and public interests of the state and constitutes an emergency in accordance with Section 581.111, Florida Statutes.

(4) Quarantine area. A minimum 81 square mile area around a fruit fly detection point shall be quarantined upon finding two adults within one mile of each other and within a life cycle (approximately 30 days), one gravid female, a larva, or a pupa. The geographical boundaries of a quarantine area shall be published in a major newspaper of general distribution and through other appropriate media. It shall be unlawful to move a host of the fruit fly species detected or a regulated article within, through, or from a quarantine area unless in accordance with subsection (5) of this rule. A list of those hosts most likely to be present in a quarantine area shall be published in a major newspaper of general distribution and provided to affected industry groups. An area shall be released from quarantine following a declaration by the Department that the fruit fly has been eradicated in accordance with subsection (8).

(5) Movement or possession of hosts or other regulated articles; Conditions of certification. It shall be unlawful for any person to move hosts of the fruit fly species detected or other regulated articles within, through or outside the quarantine area or to move or possess them for commercial or distribution purposes within the quarantine area unless in compliance with these rules and certified by the department or the USDA.

(a) Hosts to be moved outside of a quarantine area for commercial or distribution purposes shall be certified based on negative trapping, post-harvest treatments or treatments applied to production areas which are approved by the department. A Certificate of Inspection must accompany the treated host or regulated article and must include the method of treatment, location of the treatment facility, and other pertinent data.

(b) Hosts offered for sale or distribution in the quarantined area shall be certified if an employee of the Department or the USDA has inspected them and determined that both of the following conditions have been met:

1. All hosts have been received from outside the quarantine area. Vendors must have proof of origin in the form of written receipts or other documentation;

2. All hosts are kept in fruit fly-proof screened enclosures or sealed containers, cold storage, or fly-proof vehicles or other enclosures to prevent infestation by a fruit fly.

(c) Hosts transiting the quarantine area must be covered by fly-proof screen or be in fly-proof vehicles and accompanied by proof of origin in the form of written receipt or other documentation.

(d) Soil and plants with soil attached.

1. Soil and plants with soil attached shall be certified for movement if an employee of the Department or the USDA has inspected them and found that they are not under the drip line of a host plant which is bearing hosts or was capable of bearing hosts within the previous 60 days.

2. Soil and plants with soil attached under the drip line of a plant which is bearing hosts or was capable of bearing hosts within the previous 60 days shall be certified provided:

a. All soil and plants are removed to an area clear of plants bearing or capable of bearing hosts for 30 days or until a life cycle of the fruit fly is complete; or

b. The soil is treated with an EPA-registered pesticide which is effective for fruit fly control. All treatments must be conducted under the supervision of an employee of the Department or the USDA.

3. Plants bearing hosts. In addition to the above, plants bearing hosts or which were capable of bearing hosts shall be certified for movement after all hosts have been removed in accordance with paragraph (6)(b) and soil treated with an EPA-registered pesticide which is effective for fruit fly control. All treatments must be conducted under the supervision of an employee of the Department or the USDA. The plants can also be moved after all hosts are removed without a soil treatment provided they have been held for 30 days or until a life cycle of the fruit fly is complete.

(e) Compliance agreements. The certification of hosts and regulated articles can be accomplished through the use of compliance agreements if the department does not require each treatment or movement to be witnessed by an employee of the Department or the USDA.

(6) Confiscation and disposal of hosts.

(a) All hosts within the regulated area offered for sale or distribution which are not in compliance with subsection (5) shall be considered infested and shall be confiscated and destroyed at the expense of the vendor or person having possession following the issuance of a stop-sale notice and hold order.

(b) All hosts to be disposed must be placed in a tightly sealed plastic bag, then placed in a puncture proof container for delivery to an approved landfill or incinerator.

(7) Treatment areas, treatment procedures and mitigative measures. Treatment areas and treatment procedures to eradicate a fruit fly infestation will be dependent on the species, life-stages and numbers of fruit flies detected and the geographical area affected. Treatment areas shall be treated under the direction of the USDA and the department. Treatments may include ground or aerial applications of EPA-registered pesticides, bait stations applied to host plants or plants capable of harboring adult fruit flies, the removal and destruction of all hosts known or suspected to harbor any stage of the fruit fly species detected, the removal and destruction of abandoned or unwanted plants capable of bearing hosts, the placement of traps, and the release of sterile fruit flies to achieve eradication. All pesticide applications shall be applied in accordance with all applicable federal and state regulations implementing mitigative measures to reduce environmental and public impact as described in this rule.

(a) Treatment areas. The geographical boundaries of treatment areas shall be published in a major newspaper of general distribution and through other appropriate media. Areas shall be declared treatment areas as follows:

1. When a single male or unmated female fruit fly is detected, an intensified monitoring program will be implemented in a minimum 81 square mile area around the positive site.

2. When two adult fruit flies are detected within one mile of each other within a life cycle (approximately 30 days), or a single mated female, larva, or pupa are detected, an intensified monitoring program will be implemented in a minimum 81 square mile area around the positive site. The treatment area shall be a minimum nine square mile area around a positive site for pesticide treatments. The treatment area for sterile fly releases shall be a minimum 49 square mile area round the positive site.

3. If a larva is detected, in addition to subparagraph (7)(a)2. above, the soil under the drip line of all host plants on the property and each adjacent property shall be drenched with an EPA-registered pesticide and all hosts shall be removed within a 656 foot (200 meters) radius of the positive site by the department and the USDA.

(b) Treatment procedures. Treatments will be conducted in accordance with the following procedures upon notification of applicable federal, state, and local government agencies and officials who will be provided an opportunity for input into program procedures or mitigative measures or participation in program monitoring activities.

1. All necessary control actions will be conducted based on the species of fruit fly detected using the treatments necessary to prevent further spread and achieve eradication.

2. Hospitals and public health facilities and agencies in the treatment area will be notified of the treatment schedules and the types of pesticides used, and all accidental pesticide exposures will be reported to the appropriate local, state and federal authorities.

3. All applicable environmental laws and regulations will be followed, and an environmental monitoring program in accordance with applicable federal and state environmental laws will be implemented.

4. All pesticides will be applied under the supervision of certified applicators in accordance with label instructions, applicable quarantine or emergency exemptions, USDA Environmental Impact Statements, site specific Environmental Assessments, and state licensing requirement.

5. All program personnel will be trained on the proper use and storage of materials and instructed on emergency procedures in the event of accidental chemical exposure.

6. All necessary safety and cleaning equipment, protective clothing, and Material Safety Data Sheets will be provided to program personnel.

(c) Program Mitigative Measures. The following mitigative measures will be taken to reduce public and environmental impact:

1. Residents in treatment areas shall be contacted individually or if too numerous shall be notified by publication in a major newspaper of general distribution at least 24 hours in advance of the date and time of planned pesticide treatments. Notifications will be in English or other languages as necessary, based on the ethnic structure of the community. The notification shall include basic information about the program, the geographical boundaries of the treatment area, treatment procedures, and measures to be taken to avoid exposure and reduce damage.

2. Residents in the treatment area on the Registry of Persons Requiring Prior Notification of the Application of Pesticides shall be notified 24 hours prior to any treatment applications in accordance with Section 482.2267, Florida Statutes.

3. A telephone hot line system will be established to keep the public informed of program activities and serve as a mechanism for registering and responding to complaints.

4. Beekeepers in the treatment area will be notified 24 hours in advance of any treatment applications.

5. Sensitive areas in or near treatment areas shall be identified prior to chemical treatments and appropriate measures taken to ensure that these areas are not adversely affected.

6. All control actions will be conducted with appropriate concern for potential impact on the public, wildlife, non-target organism and sensitive areas.

7. Declaration of Eradication. Following the completion of all treatments, eradication shall be declared when no fruit flies are detected during a period of two fruit fly life cycles (approximately 60 days).

8. Program Evaluation. Following the completion of a fruit fly eradication program, program activities and monitoring results will be reviewed and evaluated and appropriate changes implemented for future programs.

Rulemaking Authority 570.07(23), 581.031(1) FS. Law Implemented 570.07(21), 570.32(5), (6), 581.031(6), (7), (9), (15), (17), (20), (26), 581.101, 581.161, 581.181, 581.201 FS. History—New 2-11-11.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: February 11, 2011

#### **BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

## Section V Petitions and Dispositions Regarding Rule Variance or Waiver

**WATER MANAGEMENT DISTRICTS**

The **South Florida Water Management District** hereby gives notice that the South Florida Water Management District (District) issued an Order Granting Variance under Sections 120.542, 373.083, and 373.62, Florida Statutes, and Chapter 40E-24, Florida Administrative Code (Order 2011-014-DAO-WU), dated February 10, 2011, to the City of Port St. Lucie, located in St. Lucie County. The Petition for Variance (Application 101006-15) was received by the District on October 6, 2010. Notice of receipt of the Petition was published in the Florida Administrative Weekly, Vol. 36, No. 42, on October 22, 2010. This Order provides a variance for the City of Port St. Lucie. Specifically, the Order grants a variance from paragraph 40E-24.201(7)(a), F.A.C., requiring landscape irrigation on specific days of the week for properties identified in Exhibits "B" and "C" of the Order. Generally, the order sets forth the basis of the Governing Board decision to grant the variance, as follows: 1) Pursuant to Section 373.62(7), Fla. Stat., the Legislature authorized the granting of a variance from day of the week irrigation restrictions to those entities utilizing smart irrigation systems that have soil moisture sensors with remote monitoring and adjustment capabilities. Port St. Lucie has demonstrated that the irrigation system it employs at the properties identified in Exhibits "B" and "C" of the Order meet the requirements of Section 373.62(7), Fla. Stat.; and 2) It would be a substantial hardship to force a sophisticated computer-controlled irrigation system with remote monitoring and soil moisture sensors such as the one employed by Port St. Lucie to conform to day-of-the-week irrigation restrictions and result in the loss of Port St. Lucie's investment in the system.

A copy of the Order or additional information may be obtained by contacting:

A copy of the Order can be obtained by contacting the Water Resource Regulation Department, during the normal business hours of 8:00 a.m. – 5:00 p.m., Monday through Friday, except legal holidays, at 3301 Gun Club Road, West Palm Beach, FL 33406; by telephone at (561)682-6911; by e-mail at

[permits@sfwmd.gov](mailto:permits@sfwmd.gov); or, by accessing the District's website ([www.sfwmd.gov](http://www.sfwmd.gov)) using the Application/Permit Search on the ePermitting page.

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

NOTICE IS HEREBY GIVEN that the Department of Business and Professional Regulation, Division of Hotels and Restaurants, Bureau of Elevator Safety hereby gives notice: On February 9, 2011 the Division issued an order. That Final Order was in response to a Petition for Variance from Bank of America Centre, filed December 21, 2010, and advertised in Vol. 37, No. 1 of the Florida Administrative Weekly. No comments were received in response to the petition. The Final Order on the Petition for Variance denies the Petitioner a variance from Rule 2.7.4 and 3.3.2, ASME A17.3, 1996 edition and from Rule 8.11.1.6, ASME A17.1, 2000 edition, as adopted by Chapter 30, Section 3001.2 Florida Building Code adopted by paragraph 61C-5.001(1)(a), Florida Administrative Code, that requires upgrading the elevators for restricted door openings, platform guards and test tags because the Petitioner has not demonstrated that Petitioner would suffer a substantial hardship if required to comply with this rule (VW 2010-735).

A copy of the Order may be obtained by contacting: Mark Boutin, Bureau of Elevator Safety, 1940 North Monroe Street, Tallahassee, Florida 32399-1013, (850)488-1133.

NOTICE IS HEREBY GIVEN that the Department of Business and Professional Regulation, Division of Hotels and Restaurants, Bureau of Elevator Safety hereby gives notice: On February 9, 2011 the Division issued an order. The Final Order was in response to a Petition for Variance from Call-Collins House at the Grove, filed December 27, 2010, and advertised in Vol 37, No 1, of the Florida Administrative Weekly. No comments were received in response to the petition. The Final Order on the Petition for Variance grants the Petitioner a variance from Rule 3.4.7 ASME A17.1a, 2005 edition, as adopted by Chapter 30, Section 3001.2 Florida Building Code adopted by paragraph 61C-5.001(1)(a), Florida Administrative Code, that would allow a reduced overhead of 31 inches because the Petitioner has demonstrated that the purpose of the statute underlying the rule will be met and that Petitioner would suffer a substantial hardship if required to comply with this rule (VW 2010-738).

A copy of the Order may be obtained by contacting: Mark Boutin, Bureau of Elevator Safety, 1940 North Monroe Street, Tallahassee, Florida 32399-1013.

NOTICE IS HEREBY GIVEN that the Department of Business and Professional Regulation, Division of Hotels and Restaurants, Bureau of Elevator Safety hereby gives notice: On February 9, 2011 the Division issued an order. The Final Order was in response to a Petition for Variance from Wachovia Bank