

FOR INFORMATION AND ACTION

DA-2022-17

April 29, 2022

Subject: APHIS Modifies Conditions for the Movement of Certain Regulated Articles in Quarantined Areas for European Cherry Fruit Fly (*Rhagoletis cerasi*)

To: State and Territory Agricultural Regulatory Officials

Effective immediately, the Animal and Plant Health Inspection Service (APHIS) is modifying conditions for the movement of regulated articles from areas quarantined for European cherry fruit fly (ECFF) as described in Federal Order DA-2020-10. The conditions include a new systems approach to allow the movement of commercially produced cherry fruit outside of the quarantined area without methyl bromide fumigation. The new systems approach focuses on the extensive use of float tests of cherries as a more direct method to assess the risk of human-assisted movement of ECFF to locations outside of the quarantine area. The new systems approach also provides clearer protocols for the application of approved disposal/destruction methods for culled fruit and fruit waste outside of quarantine areas. The host list remains unchanged.

APHIS will regulate the movement of ECFF host articles from all ECFF quarantined areas in the United States in accordance with the regulations in 7 C.F.R. § 301.32 and any applicable provisions of this Federal Order. APHIS has posted the current ECFF quarantine areas, the ECFF host list, and this Federal Order on the following site:

<https://www.aphis.usda.gov/plant-health/ff>

For additional information about the ECFF program, you may contact the Fruit Fly National Policy Manager, Richard Johnson, at (301) 851-2109 or richard.n.johnson@usda.gov.



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Attachment: Federal Order

**United States Department of Agriculture
Animal and Plant Health Inspection Service
Plant Protection and Quarantine**

Federal Order

**Conditions for the Movement of Certain Regulated Articles from European Cherry
Fruit Fly (*Rhagoletis cerasi*) Quarantined Areas**

**DA-2022-17
April 29, 2022**

Effectively immediately, the Animal and Plant Health Inspection Service (APHIS) is modifying the conditions governing the movement of certain regulated articles from the European cherry fruit fly (ECFF) quarantined areas as described in Federal Order DA-2020-10. The conditions include a new systems approach that allows the movement of commercially produced cherry fruit outside of the quarantined area without methyl bromide fumigation. The new systems approach focuses on the extensive use of float tests of cherries as a more direct method to assess the risk of human-assisted movement of ECFF to locations outside of the quarantine area. The new systems approach also provides clearer protocols for the application of approved disposal/destruction methods for culled fruit and fruit waste outside of quarantine areas. The systems approach applies to commercially produced cherry fruit only.

This Federal Order is issued pursuant to the regulatory authority provided by the Plant Protection Act (PPA) of June 20, 2000, as amended, Section 412(a), 7 U.S.C. 7712(a). The Act authorizes the Secretary of Agriculture to prohibit or restrict the movement in commerce of any plant, plant part, or article if the Secretary determines the prohibition or restriction is necessary to prevent the dissemination of a plant pest within the United States. This Federal Order is also issued pursuant to the domestic fruit fly regulations promulgated under the PPA and found in the Code of Federal Regulations (C.F.R.) at 7 C.F.R. § 301.32 *et seq.* (referred to below as “the regulations”). While this Federal Order modifies previous Federal Orders for ECFF, it does not modify the ECFF host list provided in the previous Federal Orders.

If not managed, ECFF can be a major pest of cherry crops. It is native to Europe, and its presence is confirmed in Canada (in 2016), and the United States (in 2017). Important U.S. crops at risk include sweet cherries and sour/tart cherries. Damage occurs when the female deposits eggs in unripe fruit. The eggs hatch into larvae, which tunnel through the flesh of the fruit making it unfit for consumption.

On June 7, 2018, in accordance with the process described in 7 C.F.R. § 301.32, APHIS and the New York State Department of Agriculture and Markets (NYS AGM) established an initial ECFF quarantine in New York. APHIS and NYS AGM have repeatedly expanded the ECFF

quarantine in response to the eastern movement of ECFF detections. The APHIS website below describes the current ECFF quarantine areas in the United States:

<http://www.aphis.usda.gov/plant-health/ff-quarantine>

Effective immediately, all movement of host articles of ECFF must be in accordance with this Federal Order and applicable conditions of 7 C.F.R. § 301.32.

Rationale for the Systems Approach

The extent of the ECFF quarantine area is primarily determined through an area-wide trapping program following international standards. To safely move cherries to locations outside of the quarantine area, the program employs the following principal safeguards:

1. A pesticide-based management program;
2. The application of a float test to check against pest management failure;
3. Application of approved disposal/destruction methods for culled fruit and fruit waste outside of quarantine areas, when necessary; and
4. Restrictions against the shipment of fruit from the quarantine area to areas outside of the quarantine where ECFF establishment would have major impacts.

Federal regulations specify that fruit fly host articles must be treated prior to shipment from a quarantined area, with limited exceptions. For fresh cherries originating from within the quarantine zone, post-harvest fumigation treatment is the only way the regulated articles may be moved outside of the quarantine.

Producers in the quarantined area of New York require a means for shipping cherry fruit from ECFF-quarantined areas that do not require post-harvest treatment, which often reduces the shelf life and commercial viability of the fruit. APHIS has determined that fresh cherry fruit may be safely moved from an area quarantined for ECFF, without methyl bromide fumigation, under certain conditions. This Federal Order provides a systems approach under which articles originating from a quarantined area may enter commerce outside of the quarantine without post-harvest treatment.

I. Quarantined Area for *Rhagoletis cerasi* (European Cherry Fruit Fly, ECFF); Designation and Removal of Quarantined Areas

- A.** APHIS lists areas of the United States quarantined for ECFF on the following website:

<http://www.aphis.usda.gov/plant-health/ff-quarantine>

- B.** APHIS will designate and remove areas from quarantine in accordance with 7 C.F.R. § 301.32-3. APHIS will communicate changes to the quarantined area to the

public through State and Territory Agricultural Regulatory Official (SPRO) letters and the Stakeholder Registry.

II. Host List

The berries and fruit of the plant species listed on the following website are considered host articles for ECFF. Unless proven otherwise, all cultivars, varieties, and hybrids of the plant species listed are considered suitable hosts of ECFF. APHIS will communicate changes to this host list by SPRO letter and the Stakeholder Registry.

<https://www.aphis.usda.gov/planthealth/ff-host-lists>

III. Conditions for the Movement of Host Articles Outside of the Quarantined Area

- A.** Except as provided in paragraph B of this section, the conditions for the movement of host articles for ECFF are those found in 7 C.F.R. § 301.32 *et seq.*, and certificates, limited permits, and compliance agreements will be issued and revoked in accordance with the provisions of that subpart.

- B.** The movement of fresh cherry fruit is prohibited from areas within the quarantine to areas outside the quarantine, unless moved in accordance with (1) the regulations contained in 7 C.F.R. § 301.32 (2) all applicable state laws, and (3) the systems approach requirements in Section IV below.

IV. Systems Approach for the Distribution and Sale of Cherries Produced in the ECFF Quarantine to Areas of the United States Outside of the Quarantine

A. General Requirements:

1. Orchards engaged in growing cherry fruit in an area quarantined for ECFF and intending to move fruit outside of the quarantine for the fresh market must meet the conditions specified in paragraph B of this section to ship under the conditions of the systems approach.

2. Growers, packers, brokers, and others engaged in growing and shipping fresh cherry fruit in an ECFF quarantine area must enter into a compliance agreement with their state department of agriculture before shipping fruit outside of the quarantine under the systems approach option. This compliance agreement will specify the terms of the systems approach as well as any other orchard-specific requirements determined to be necessary to prevent the spread of ECFF. The state department of agriculture evaluates the location of the orchard in relation to the quarantine boundary prior to the initiation of the compliance agreement.

3. An APHIS limited permit verifying that all conditions of the systems approach protocol, and any additional requirements listed in the compliance agreement have been met, must accompany fresh cherry fruit found eligible for movement

outside of the quarantined area, under the systems approach. A copy of the limited permit must be attached to the consignee's copy of the accompanying waybill.

4. Cherry fruit must be properly labeled. Boxes or other containers of regulated cherry fruit, and shipping documents accompanying the boxes must be clearly marked with the statement “**Limited Permit: USDA-APHIS-PPQ, Not for distribution in California, Idaho, Montana, Oregon, Utah, and Washington.**” The limited permit will also state the orchard of origin.
5. The adoption and use of this protocol are subject to monitoring by a regulatory program official.

B. Orchard Requirements:

1. Specific Requirements for Systems Approach:

- Producers within quarantine areas must conduct a spray program to control potential fruit fly populations within the orchard. Applications of program-approved pesticides (**Systems Approach: Protocol for Distribution and Sale of Cherries Produced in the ECFE Quarantine, Appendix 1**) labeled for the control of fruit flies on stone fruits should be made at 7-to-10-day intervals beginning at least 30 days prior to harvest, in accordance with the label. Detailed spray records must be maintained as a requirement of the ECFE compliance agreement and shall be made available upon request by a regulatory program official.
- The new **Systems Approach** is located on the APHIS Fruit Fly Exclusion and Detection (FFED) Program website:

<https://www.aphis.usda.gov/plant-health/ff>

2. Other Requirements:

- If a portion of an orchard block in the quarantine falls within an area not eligible for the systems approach, the entire contiguous cherry orchard is ineligible.
- Cherry shipments follow restrictions for certain specified states, as specified by the Limited Permit.

C. Cherries for Fresh Market:

1. The state department of agriculture will issue compliance agreements to growers to allow the movement of cherries outside of the quarantine for the fresh market contingent on the successful completion of systems approach orchard specific requirements.

2. Commercially produced cherries to be sold as fresh, unprocessed fruit (typically sweet cherries) must undergo an enhanced float test within five days of the projected first harvest date for each orchard block, with a follow-up test required 10 to 15 days after the first test date if harvest is still ongoing. The enhanced float test must follow a specific procedure detailed in the **Systems Approach, Appendix 2**. The enhanced float test must occur under the direct supervision of a regulatory program official. The orchard block passes the float test if there are no ECFF larvae detected in the sample from that block. Growers may market fresh cherries from that block outside of the quarantine area, under limited permit, to low-risk areas only, as defined in paragraph D.4., below. If there is one or more confirmed ECFF larva in the sample, the block fails the float test. Cherries from that orchard block are prohibited from being marketed outside of the quarantine area. That orchard block may be used for direct-to-consumer distribution, whereby cherries from that orchard block will not be marketed outside of the quarantine.
3. Growers with orchard blocks that are solely for direct-to-consumer distribution (e.g., u-pick, farm stand operations within the quarantine) or other retail operations solely within the quarantine do not need to conduct an enhanced float test for ECFF regulatory purposes for those particular blocks, but may be required to conduct float tests to meet other quality control conditions.
4. Large scale wholesale operations (e.g., packing houses), outside of the quarantine area, which repackage fresh cherries for retail sales, must ensure that they do not dispose of culls and other cherry debris through field spread of waste. Disposal through the use of sanitary landfill or destructive methods adequately mitigates the risk of the human-assisted spread of ECFF. Disposal at a sanitary landfill meets the requirements for the deep burial method. If the facility uses field spread of cherry culls and waste materials, the appropriate state department of agriculture will conduct random sampling using pre-disposal float tests.
5. Failure of the pre-disposal float test for fresh cherry culls/waste at the site for repackaging for retail sale will require that load be disposed of through deep burial at a sanitary landfill or an appropriate destructive disposal method.
6. Specific protocols for fruit waste handling restrictions and float tests, as well as the types of destructive disposal methods, are presented in **Systems Approach: Protocol for Distribution and Sale of Cherries Produced in the ECFF Quarantine, Appendices 4-5**, which is available on the APHIS FFED Program website:

<https://www.aphis.usda.gov/plant-health/ff>

D. Cherries for Processing:

The state department of agriculture will issue compliance agreements to growers to allow the movement of cherries outside of the quarantine for processing contingent on the successful completion of the systems approach specific requirements. In cases where the grower responsible for commercial production is not directly involved in the transportation, packing, and/or processing of fruit, the entity responsible for transportation, packing, and/or processing of fruit outside of the quarantine must also enter into a compliance agreement. Growers or other responsible entities may then market cherries for processing when the following conditions are met:

1. Cherries intended for processing must undergo a float test prior to leaving the quarantine area. Cherries from orchard blocks that pass the industry quality standard float test may be transported to processing plants outside of the quarantine. If the processor is located in a “low risk” area, then any culls or resulting residue may be disposed of through field spreading or another approved disposal method. A processor located in a “high risk” area, as defined below, must dispose of culls and residue through an approved disposal method, as described in the **Systems Approach: Protocol for Distribution and Sale of Cherries Produced in the ECFQ Quarantine, Appendices 4-5**.

<https://www.aphis.usda.gov/plant-health/ff>

Cherries from orchard blocks that fail the float test quality standard of “no white worms” will be handled appropriately within the quarantine.

2. Cherry processors located outside of the quarantine area that receives cherries from the quarantine area must be under a compliance agreement with their state department of agriculture. The compliance agreement will include the method(s) of disposal that the processor intends to use to dispose of fruit waste (culls and processing residue).
3. Specific protocols for fruit handling restrictions and float tests are presented in **Systems Approach: Protocol for Distribution and Sale of Cherries Produced in the ECFQ Quarantine, Appendices 3-5**, which is available on the APHIS Fruit Fly Program website:

<https://www.aphis.usda.gov/plant-health/ff>

4. Risk Status of Destination: APHIS categorizes processor locations outside of the

quarantine as “low risk” or “high risk”. Locations deemed as “low risk” are areas without significant commercial cherry production or without significant host material. Locations deemed “high risk” are areas outside of the quarantine with significant cherry production or with significant host material. APHIS will determine the risk level of a proposed destination as the need arises and will consider State and industry stakeholder input. Areas must be eligible to receive fresh cherries based on the limited permit for movement.

5. APHIS does not regulate the movement of cherries to processing plants within the quarantine.

For further information on the APHIS Fruit Fly Exclusion and Detection Program, please contact the Fruit Fly National Policy Manager, Richard Johnson, at (301) 851-2109 or richard.n.johnson@usda.gov.