

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 00-037-1]

RIN 0579-AB15

#### Citrus Canker; Payments for Commercial Citrus Tree Replacement

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending our citrus canker regulations to establish provisions under which eligible owners of commercial citrus groves may receive payments to replace commercial citrus trees removed because of citrus canker. The payment of these funds is necessary in order to reduce the economic effect of the citrus canker quarantine on affected commercial citrus growers.

**DATES:** This interim rule is effective October 16, 2000. We invite you to comment on this docket. We will consider all comments that we receive by December 15, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 00-037-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 00-037-1.

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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Poe, Operations Officer, Program Support Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-8247.

#### SUPPLEMENTARY INFORMATION:

##### Background

Citrus canker is a plant disease that affects plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family Rutaceae). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants, which renders the fruit unmarketable, and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

The regulations to prevent the interstate spread of citrus canker are contained in 7 CFR 301.75-1 through 301.75-14 (referred to below as the regulations). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide conditions under which regulated fruit may be moved into, through, and from quarantined areas for packing. The regulations currently list parts of Broward, Collier, Dade, Hendry, Hillsborough, and Manatee Counties, FL, as quarantined areas for citrus canker.

In this document, we are amending the regulations to provide for the payment of tree replacement funds to eligible owners of commercial citrus groves who have had citrus trees destroyed because of citrus canker. The provisions for the commercial citrus tree replacement program are contained in a new section, § 301.75-15, which is explained in detail below.

#### Definitions (§ 301.75-1)

We are amending § 301.75-1, which provides definitions for the terms used in Subpart—Citrus Canker, by adding definitions for *commercial citrus grove* and *public order*, two terms that are used in new § 301.75-15.

We have defined *commercial citrus grove* as “An establishment maintained for the primary purpose of producing citrus fruit for commercial sale.” This definition is intended to distinguish commercial citrus groves from “dooryard” or residential citrus trees. This distinction between commercial and dooryard citrus is necessitated by the language contained in the two acts cited above that provide the funding for the tree replacement payments provided for by this rule. Specifically, the Consolidated Appropriations Act for FY 2000 provides for the use of funds “to replace commercial citrus trees” and the Agricultural Risk Protection Act directs the use of funds to compensate “commercial producers.” Although the Florida Department of Food and Consumer Services’ Division of Plant Industry (DPI) defines a commercial citrus grove as “a solid set planting of 40 or more citrus trees,” our definition of the term in this interim rule omits the 40-tree threshold in recognition of the possibility that there may be some small groves of fewer than 40 trees that were, prior to being destroyed because of citrus canker, maintained by their owners for the purpose of producing citrus fruit for commercial sale. If, during the processing of an application for tree replacement funds, a question arises as to whether or not a small grove was maintained for commercial purposes, we will ask the grove owner to produce documentation to support his or her claim that the grove was maintained for commercial purposes. The supporting documents that we expect a person engaged in the commercial production of citrus could provide are records of production expenses incurred, records of income derived from direct sales to consumers or from the consignment of harvested fruit to a packer or juicing operation, and tax records showing losses or gains in income resulting from the production and sale of the fruit.

We have defined *public order* as “either an ‘Agreement to Destroy and Covenant Not to Sue’ signed by the grove owner and the Florida Department

of Food and Consumer Services' Division of Plant Industry (DPI) or an 'Immediate Final Order' issued by DPI, both of which identify citrus trees infected with or exposed to citrus canker and order their destruction." This State-issued order serves as the official means by which the owner of a commercial citrus grove is notified of the need to destroy citrus trees because of citrus canker.

#### *Funds for the Replacement of Commercial Citrus Trees*

The introductory text of § 301.75–15 provides that the payment of tree replacement funds is contingent upon the availability of funds appropriated for that purpose. The funding for the tree replacement payments provided for by this rule currently comes from two sources. The Consolidated Appropriations Act for FY 2000 (Pub. L. 106–113) directs the Secretary of Agriculture to use not more than \$9 million of Commodity Credit Corporation funds for a cooperative program with the State of Florida to replace commercial citrus trees removed to control citrus canker until the earlier of December 31, 1999, or the date crop insurance coverage is made available with respect to citrus canker. We will draw from that \$9 million to pay claims for the majority of the trees destroyed before December 31, 1999. Claims resulting from the destruction of any trees for which crop insurance was available, as well as for any trees destroyed after December 31, 1999, will be paid with a portion of the funds made available by the Agricultural Risk Protection Act of 2000 (Pub. L. 106–224), which provides that \$25 million shall be used by the Secretary to compensate commercial growers for losses due to plum pox, Pierce's disease, and citrus canker.

#### *Eligibility*

Under paragraph (a) of new § 301.75–15, the owner of a commercial citrus grove may be eligible to receive funds to replace commercial citrus trees removed to control citrus canker if the trees were removed pursuant to a public order after September 28, 1995, which is the date that the current citrus canker infestation was detected in Florida. This interim rule also provides for the payment of tree replacement funds for trees destroyed between 1986 and 1990 because the State of Florida has identified five commercial citrus groves in Manatee and Highlands Counties that were destroyed to control citrus canker during a limited outbreak of the disease during that period. Prior to the effective date of this interim rule, no provision

had been made for the payment of tree replacement funds or other compensation to the owners of those five groves.

#### *Tree Replacement Payments*

We consider that trees infected with or exposed to citrus canker, because of the destructive nature of the disease, have no value. Thus, the tree replacement payments provided for by this interim rule are intended to provide eligible growers with the funds necessary to establish new plantings, rather than to pay for the trees destroyed because of citrus canker. In calculating the replacement costs for commercial citrus trees, we considered the costs of land preparation, the replacement tree, labor for planting, and maintenance until the tree becomes productive. In developing the Florida Fruit Tree Pilot Crop Insurance Program, which includes coverage for the loss of commercial citrus trees due to citrus canker, the U.S. Department of Agriculture's (USDA's) Risk Management Agency (RMA) calculated the cost of replacing commercial citrus trees to be \$26 per tree. This amount is applicable for all varieties of citrus trees for which coverage is offered, i.e., grapefruit, lemon, lime, orange, and "all other citrus" (tangerine, tangelo, temple orange, and murcott), and considers the costs of land preparation, tree planting, and grove care expenses. Information gathered from industry sources confirms the cost of replanting commercial citrus trees. The cost of tree replacement as calculated by RMA is consistent with APHIS' estimate of costs for the first 6 years of production, or until trees become productive and earn an income. For all categories of citrus, these costs are estimated to be \$25.51 per tree. Therefore, § 301.75–15(b) provides that the owner of a commercial citrus grove who is eligible to receive funds to replace commercial citrus trees will, upon approval of his or her application, receive a payment of \$26 per tree up to a maximum of between \$2,704 and \$4,004 per acre, depending on the variety of the trees removed. Specifically, the per-acre caps, which were calculated by multiplying \$26 by the varietal average number of trees per acre reported by the Florida citrus industry to the USDA's National Agricultural Statistics Service through the Florida Agriculture Statistics Service, are as follows:

Variety	Average number of trees per acre	Maximum payment per acre
Grapefruit, red seedless ...	104	\$2,704
Orange, Valencia .....	123	3,198
Orange, early/midseason/ navel .....	118	3,068
Tangelo .....	114	2,964
Lime .....	154	4,004
Other or mixed citrus <sup>1</sup> .....	104	2,704

<sup>1</sup> Approximately 32 acres of "other, unidentified" citrus trees are reported as having been destroyed in the information furnished by the State of Florida. Since that initial information was provided by Florida, we have been able to determine that the "other, unidentified" category of citrus groves is a mix of trees not conveniently categorized. The mix of trees may include grapefruit, oranges, and specialty crops. Based on the fact that 82 percent of the destroyed acres were red seedless grapefruit, APHIS used the average per-acre tree density for red seedless grapefruit to set the per-acre cap for those "other, unidentified" groves.

We anticipate that additional funds will be made available for USDA to provide payments to the owners of commercial citrus groves for losses in production income resulting from the destruction of trees due to citrus canker. Because output per acre is approximately the same, regardless of the number of trees per acre, capping the tree replacement payments provided for by this rule based on the average number of trees per acre for each variety will ensure that no grower receives combined payments (i.e., tree replacement and lost production) that exceed the total estimated per-acre loss.

#### *How To Apply*

Paragraph (c) of § 301.75–15 provides information on how to apply for commercial citrus tree replacement funds. This paragraph states that the form necessary to apply for tree replacement funds may be obtained from any local citrus canker program office or from the USDA Citrus Canker Eradication Project office in Miami, FL. Completed claim forms must be sent to the USDA Citrus Canker Eradication Project office in Winter Haven, FL, which is where the DPI records necessary to validate claims are located. When the completed application is submitted, it should be accompanied by a copy of the public order that directed the destruction of the trees, the order's accompanying inventory that describes the number and variety of trees removed, and documentation verifying that the destruction of trees has been completed and the date of that destruction. Claims for trees destroyed on or before the effective date of this rule must be received within 60 days

after the effective date of this rule, and claims for trees destroyed after the effective date of this rule must be received within 60 days after the destruction of the trees.

#### **Immediate Action**

Immediate action is necessary to reduce the economic effect of the citrus canker eradication program on affected commercial citrus growers, thus ensuring the continued cooperation of commercial growers with the survey and eradication activities being conducted by the State of Florida and APHIS. 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 rule effective less than 30 days after publication in the **Federal Register**.

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**. The document 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 rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

The following economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act.

This rule amends the citrus canker regulations to establish provisions under which eligible owners of commercial citrus groves may receive payments to replace commercial citrus trees removed because of citrus canker. The payment of these tree replacement funds is necessary as a first step toward reducing the economic effect of the citrus canker quarantine on affected commercial citrus growers. As for the second step, we anticipate that additional funds will be made available for USDA to provide payments to growers for losses in production income resulting from the destruction of trees due to citrus canker. In order to make those funds available, we expect to publish a proposed rule that details our estimates of per-acre losses and discusses the information and

methodology upon which those estimates are based.

The value of citrus produced in the United States in 1998 was \$2.6 billion, and Florida produced a substantial share of the total. In 1997–1998, Florida accounted for 43.67 percent of U.S. orange production, 76.2 percent of grapefruit production, 72.72 percent of lime production, 63.41 percent of tangerine production, and 100 percent of both temple and K-Early citrus production (USDA, National Agricultural Statistics Service, *Agricultural Statistics*, 1999). Removing the infected and exposed trees protects a substantial investment in other citrus groves. While the entire value of citrus produced is not at risk immediately from citrus canker, the disease would, if left unchecked, continue to spread. In time, the entire industry would be at risk.

According to the data provided to APHIS by the State of Florida, during the current citrus canker outbreak, approximately 484,900 commercial citrus trees were removed to control citrus canker by July 19, 2000, and another 238,900 commercial citrus trees are expected to be destroyed by September 30, 2000. Paid at the rate of \$26 per tree, the costs of replacing those 723,800 trees would be approximately \$18.8 million. However, we expect that the actual amount paid out will be lower due to the per-acre cap on tree replacement payments provided for by this interim rule; as noted previously, we have placed this cap on tree replacement payments in order to ensure that no grower receives combined tree replacement and lost production payments that exceed the total estimated per-acre loss. The State of Florida has also identified another 87,731 trees from 5 groves in Manatee and Highlands Counties that were destroyed because of citrus canker between 1986 and 1990 (i.e., before the start of the current outbreak); the costs of replacing those trees at \$26 per tree would be approximately \$2.28 million. Again, we expect that the per-acre cap on tree replacement payments provided for by this interim rule will result in the actual amount paid out being lower.

#### *Effects on Small Entities*

This rule establishes provisions under which eligible owners of commercial citrus groves could, subject to the availability of appropriated funds, receive payments to replace commercial citrus trees removed because of citrus canker. Therefore, the entities who will be affected by this rule are commercial citrus growers. The Regulatory Flexibility Act requires that the Agency

specifically consider the economic effects of its rules on small entities. The Small Business Administration (SBA) defines a firm engaged in agriculture as “small” if it has less than \$500,000 in annual receipts. While the majority of citrus growers in Florida would be considered small entities under those SBA guidelines, those growers who would not be classified as small entities account for the majority of the citrus-growing acreage in the State. Based on available information, it appears that most of the citrus-canker-related losses in Florida have been incurred by those larger citrus producers. Regardless of the size of the entities affected, we expect that this rule will benefit those commercial citrus growers who are eligible for tree replacement payments by helping to defray some of the losses and expenses that they have incurred as a result of the ongoing State and Federal efforts to eradicate citrus canker in Florida.

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**

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0163 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and

Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503, and (2) Docket No. 00-037-1, 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. 00-037-1 and send your comments within 60 days of publication of this rule.

This rule amends the citrus canker regulations to establish provisions under which eligible owners of commercial citrus groves may receive payments to replace commercial citrus trees removed because of citrus canker. Implementing this program would necessitate the use of an information collection activity in the form of an application for funds.

We are soliciting comments from the public concerning our information collection and recordkeeping requirements. These comments will help us:

- (1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;
  - (2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;
  - (3) Enhance the quality, utility, and clarity of the information to be collected; and
  - (4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).
- Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.21 hours per response.

*Respondents:* Eligible commercial citrus grove owners in Florida.

*Estimated annual number of respondents:* 65.

*Estimated annual number of responses per respondent:* 1.08.

*Estimated annual number of responses:* 70.

*Estimated total annual burden on respondents:* 15 hours.

(Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

Copies of this information collection can be obtained by calling Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

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 part 301 is revised to read as follows:

**Authority:** Title IV, Pub. L. 106-224, 114 Stat. 438, 7 U.S.C. 7701-7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75-15 also issued under Sec. 204, Title II, Pub. L. 106-113, 113 Stat. 1501A-293, and sec. 203, title II, Pub. L. 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. Section 301.75-1 is amended by adding, in alphabetical order, definitions of the terms *commercial citrus grove* and *public order* to read as follows:

§ 301.75-1 Definitions.

\* \* \* \* \*

*Commercial citrus grove.* An establishment maintained for the primary purpose of producing citrus fruit for commercial sale.

\* \* \* \* \*

*Public order.* Either an "Agreement to Destroy and Covenant Not to Sue" signed by the grove owner and the Florida Department of Food and Consumer Services, Division of Plant Industry (DPI), or an "Immediate Final Order" issued by DPI, both of which identify citrus trees infected with or exposed to citrus canker and order their destruction.

\* \* \* \* \*

3. In Subpart—Citrus Canker, a new § 301.75-15 is added to read as follows:

§ 301.75-15 Funds for the replacement of commercial citrus trees.

Subject to the availability of appropriated funds, the owner of a commercial citrus grove may be eligible to receive funds to replace commercial citrus trees in accordance with the provisions of this section.

(a) *Eligibility.* The owner of a commercial citrus grove may be eligible to receive funds to replace commercial citrus trees removed to control citrus canker if the trees were removed pursuant to a public order between 1986 and 1990 or on or after September 28, 1995.

(b) *Tree replacement payments.* The owner of a commercial citrus grove who is eligible under paragraph (a) of this section to receive funds to replace commercial citrus trees will, upon

approval of an application submitted in accordance with paragraph (c) of this section, receive a payment of \$26 per tree up to the following per-acre maximum payments:

Variety	Maximum payment per acre
Grapefruit, red seedless .....	\$2,704
Orange, Valencia .....	3,198
Orange, early/midseason/navel ..	3,068
Tangelo .....	2,964
Lime .....	4,004
Other or mixed citrus .....	2,704

(c) *How to apply for tree replacement funds.* The form necessary to apply for funds to replace commercial citrus trees may be obtained from any local citrus canker eradication program office in Florida, or from the USDA Citrus Canker Project, 10300 SW 72nd Street, Suite 150, Miami, FL 33173. The completed application should be accompanied by a copy of the public order directing the destruction of the trees and its accompanying inventory that describes the number and the variety of trees removed. Your completed application must be sent to the USDA Citrus Canker Eradication Project, Attn: Commercial Tree Replacement Program, c/o Division of Plant Industry, 3027 Lake Alfred Road, Winter Haven, FL 33881. Claims for trees destroyed on or before the effective date of this rule must be received within 60 days after the effective date of this rule. Claims for trees destroyed after the effective date of this rule must be received within 60 days after the destruction of the trees.

(Approved by the Office of Management and Budget under control number 0579-0163.)

Done in Washington, DC, this 12th day of October 2000.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00-26591 Filed 10-13-00; 8:45 am]

BILLING CODE 3410-34-U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Docket No. FV00-956-1 IFR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Revision of Administrative Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.