

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS-2008-0080]

RIN 0579-AC81

#### Citrus Canker; Movement of Fruit From a Quarantined Area; Bag Markings

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

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

**SUMMARY:** We are amending the regulations governing the interstate movement of fruit from an area quarantined for citrus canker to extend the temporary exception that allows fruit to be packed for interstate movement in bags that are clearly marked with only a limited distribution statement, if those bags are then packed in a box that is marked with both the limited distribution statement and the statement "Limited Permit: USDA-APHIS-PPQ." We are extending the ending date for this temporary exemption from August 1, 2008, to August 1, 2010. This action provides for the continued use of existing inventories of bags in which regulated fruit are packed while maintaining safeguards against the movement of regulated fruit to commercial citrus-producing States.

**DATES:** This interim rule is effective July 31, 2008. We will consider all comments that we receive on or before September 29, 2008.

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0080> to submit or view comments

and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS-2008-0080, 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-2008-0080.

**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. Stephen Poe, Senior Staff Officer, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road, Unit 137, Riverdale, MD 20737-1231; 301-734-8899.

#### SUPPLEMENTARY INFORMATION:

##### Background

Citrus canker is a plant disease caused by the bacterium *Xanthomonas citri* subsp. *citri* 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 render 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. Citrus canker is only known to be present in the United States in the State of Florida.

The regulations to prevent the interstate spread of citrus canker are contained in §§ 301.75-1 through 301.75-14 of "Subpart—Citrus Canker" (7 CFR 301.75-1 through 301.75-17, 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, among other things, conditions under which regulated fruit may be moved into, through, and from quarantined areas for packing. These regulations are promulgated pursuant to the Plant Protection Act (7 U.S.C. 7701 *et seq.*).

On June 21, 2007, we published in the **Federal Register** (72 FR 34180-34191, Docket No. APHIS-2007-0022) a proposal to amend the citrus canker regulations by modifying the conditions under which fruit may be moved interstate from quarantined areas. Among other things, we proposed to require that boxes in which fruit are packed be marked with the statement "Limited Permit: USDA-APHIS-PPQ" in addition to the limited distribution statement, "Not for distribution in AZ, CA, HI, LA, TX, and American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands of the United States," that the regulations already required. We also proposed that only fruit that has been treated, inspected, and found free of visible symptoms of citrus canker would be allowed to leave packinghouses in boxes marked with the limited permit statement.

We proposed adding the limited permit statement in order to help ensure that only fruit that was handled in accordance with all of the requirements in § 301.75-7 would be moved interstate. In addition, the limited permit statement indicates under whose authority the distribution of the fruit to commercial citrus-producing States is prohibited, thus further assuring that packers and handlers comply with the limited distribution requirement. It was also our understanding that boxes and other containers in which fruit would be moving interstate would be large enough to bear the proposed limited permit statement, by adding either a sticker or stamp to the existing inventory of boxes or containers.

We received comments on the proposed rule stating that bags of fruit, which are typically packed in boxes, also bore the limited distribution statement but that it was not practical to add the limited permit statement using a sticker or stamp, as the surface area of the label on bags was not large enough to accommodate the additional limited permit statement. Existing inventories of

bags would have to be destroyed, and new bags would have to be printed.

On November 19, 2007, we published in the **Federal Register** (72 FR 65171–65204, Docket No. APHIS–2007–0022) a final rule that required the limited permit and limited distribution statements on all boxes and containers in which regulated fruit is packaged for interstate movement, but provided a temporary exception for the use of bags that are marked only with the limited distribution statement. This exception was intended to allow industry to exhaust its existing inventory of bags pre-marked with the limited distribution statement.

The regulations in paragraph (a)(5)(ii) of § 301.75–7 have provided that, until August 1, 2008, fruit that meets all the requirements of § 301.75–7 may be packed in bags that are clearly marked with the statement “Not for distribution in AZ, CA, HI, LA, TX, and American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands of the United States,” as long as the bags of fruit are packed in boxes that are marked with both the limited permit and limited distribution statements. Fruit that does not meet all the requirements of § 301.75–7 may not be packed in either bags or boxes that are marked with the limited distribution statement.

We determined that this requirement would ensure that fruit moved interstate meets the requirements of § 301.75–7 and would provide protection against the distribution of fruit to commercial citrus-producing States because the bags must be packed in boxes that are marked with both the limited permit statement and the limited distribution statement, and because bagged fruit is not unloaded from the boxes in which it is shipped until it reaches the point of sale. Since the final rule became effective on November 19, 2007, there have been no instances where bags of fruit have been unloaded from the boxes in which they were shipped and distributed prior to the final point of sale. This requirement has provided an effective means of ensuring that the information regarding the permitted distribution of the fruit is apparent to enforcement personnel, distributors, and consumers.

Recently, regulated entities have informed us that the existing inventory of bags marked only with the limited distribution statement has not yet been depleted. They have requested an additional 2 years to use their remaining inventory. Given that the provisions allowing the use of the existing bags have been working successfully, this interim rule extends the temporary

exception until August 1, 2010, to allow for the depletion of the existing inventory of such bags. This action maintains the current safeguards against the movement of regulated fruit to commercial citrus-producing States. Because this exception will eventually expire, when regulated entities deplete their existing inventory of bags marked only with the limited distribution statement, they will replenish their inventory with bags marked with both the limited permit statement and the limited distribution statement, thus making clear under whose authority the distribution of the fruit to commercial citrus-producing States is prohibited.

#### **Immediate Action**

This rule extends until August 1, 2010, a temporary exception that is scheduled to end on August 1, 2008. That exception allows fruit to be packed for interstate movement in bags if those bags are clearly marked with the limited distribution statement and if those bags are then packed in a container that is marked with both the limited permit statement and the limited distribution statement. Immediate action is warranted to alleviate what would otherwise be the negative economic effects on citrus packers who would have no practical option to comply with the regulations other than destroying their current inventory of bags pre-marked with the limited distribution statement and having replacement bags printed with both the limited permit and limited distribution statements. 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 interim rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the

potential economic effects of this action on small entities.

We are amending the regulations to extend the temporary exception that allows fruit to be packed for interstate movement in bags that are clearly marked with only a limited distribution statement, if those bags are then packed in a box that is marked with both the limited distribution statement and the statement “Limited Permit: USDA–APHIS–PPQ.” We are extending the ending date for this temporary exemption from August 1, 2008, to August 1, 2010. This action provides for the continued use of existing inventories of bags in which regulated fruit are packed while maintaining safeguards against the movement of regulated fruit to commercial citrus-producing States.

APHIS has determined that displaying the limited permit language on boxes or other containers containing fruit for interstate movement is a sufficient mitigation for controlling the distribution of this fruit for the interstate market. Since the final rule became effective on November 19, 2007, there have been no instances where bags of fruit have been unloaded from the boxes in which they were shipped and distributed prior to the final point of sale.

Additionally, the inventory of bags that had been printed prior to the November 19, 2007, final rule continues to be significant. The value of the current inventory of bags, in combination with the projected costs of printing new bags with the limited permit statement, has been estimated by industry to be up to \$6 million. APHIS has determined that the adverse economic impact associated with having packers print new bags in order to comply with the regulations is not warranted.

The current inventory of bags printed with the limited distribution statement, but not the limited permit statement, is expected to be depleted by August 1, 2010.

APHIS does not believe small entities will be subject to significant economic impacts as a result of this interim rule, as its effect is to allow regulated entities to continue their current packing process. However, if the ending date of the exception was not extended, entities affected by the interim rule would not be able to deplete any current inventory of bags they may possess.

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 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***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).

**§ 301.75–7 [Amended]**

■ 2. In § 301.75–7, paragraph (a)(5)(ii) is amended by removing the word “2008” and adding the word “2010” in its place.

Done in Washington, DC, this 28th day of July 2008.

**Cindy J. Smith,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E8–17592 Filed 7–30–08; 8:45 am]

**BILLING CODE 3410–34–P**

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 1000**

[Docket No. AMS–DA–07–0026; AO–14–A77, et al.; DA–07–02–A]

**Milk in the Northeast and Other Marketing Areas; Interim Order Amending the Orders**

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

**ACTION:** Interim final rule.

**SUMMARY:** This order amends the manufacturing cost allowances and the butterfat yield factor used in the Class III and Class IV product-price formulas applicable to all Federal milk marketing orders. More than the required producers approved the issuance of the interim order as amended.

**DATES:** *Effective Date:* September 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Jack Rower, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branches, STOP 0231–Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–2357, e-mail address: [jack.rower@usda.gov](mailto:jack.rower@usda.gov).

**SUPPLEMENTARY INFORMATION:** This decision adopts provisions to amend the manufacturing (make) allowances for cheese, butter, nonfat dry milk (NFDM) and dry whey powder contained in the Class III and Class IV product-price formulas. Specifically, this decision adopts the following make allowances: cheese—\$0.2003 per pound; butter—\$0.1715 per pound; NFDM—\$0.1678 per pound; and dry whey—\$0.1991 per pound. This decision also increases the butterfat yield factor in the butterfat price formula from 1.20 to 1.211.

This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a 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 Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (AMAA), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the

AMAA, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (USDA) 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 the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The AMAA provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

**Regulatory Flexibility Act and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a small business if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a small business if it has fewer than 500 employees.

For the purposes of determining which dairy farms are small businesses, the \$750,000 per year criterion was used to establish a marketing guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most “small” dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During February 2007, the month the initial public hearing was held, the milk of 49,712 dairy farmers was pooled on the Federal order system. Of the total, 46,729 dairy farmers, or 94 percent, were considered small businesses. During the same month, 352 plants were regulated by or reported their milk receipts to be pooled and priced on a Federal order. Of the total, 186 plants, or 53 percent, were considered small businesses.

This interim final rule amends all orders by changing the make allowances