

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 95-086-2]

#### Citrus Canker; Addition to Quarantined Areas

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

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

**SUMMARY:** We are amending the citrus canker regulations by adding portions of Broward, Collier, and Manatee Counties, FL, to the list of quarantined areas and by expanding the boundaries of the quarantined area in Dade County, FL, due to the recent detections of citrus canker in those areas. This action is necessary on an emergency basis to prevent the spread of citrus canker into noninfested areas of the United States. This action imposes certain restrictions on the interstate movement of regulated articles from and through the quarantined areas.

**DATES:** Interim rule effective January 26, 1999. Consideration will be given only to comments received on or before April 2, 1999.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 95-086-2, 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. 95-086-2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call

ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**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; or e-mail: Stephen.R.Poe@usda.gov.

#### 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 for the designation of survey areas around quarantined areas. Survey areas undergo close monitoring by Animal and Plant Health Inspection Service (APHIS) and State inspectors for citrus canker and serve as buffer zones against the disease.

Under § 301.75-4(c) of the regulations, any State or portion of a State where an infestation is detected will be designated as a quarantined area and will retain that designation until the area has been free from citrus canker for 2 years.

Section 301.75-4(d) of the regulations provides that less than an entire State will be designated as the quarantined area only if certain conditions are met. The State must, with certain specified exceptions, enforce restrictions on the intrastate movement of regulated articles from the quarantined area that are at least as stringent as those being enforced on the interstate movement of regulated articles from the quarantined area. The State must also undertake the destruction of all infected plants and

trees. Under the regulations in § 301.75-6(c), within 7 days after confirmation that a plant or tree is infected, the State must provide written notice to the owner that the plant or tree must be destroyed. The owner then has 45 days in which to destroy the infected plant or tree. These State-conducted eradication activities within quarantined areas are an integral element of a cooperative State/Federal citrus canker program that, when successfully completed, will result in the eradication of citrus canker and the removal of an area's designation as a quarantined area.

In an interim rule effective on January 16, 1996, and published in the **Federal Register** on January 22, 1996 (61 FR 1519-1521, Docket No. 95-086-1), we quarantined an area of approximately 140 square miles within Dade County, FL, based on the detection of the Asiatic strain of citrus canker within a 24-square-mile residential area of the county. In that document we stated that the highly populated, residential character of the area in which citrus canker was detected led us to expect the disease might be found on additional properties in the vicinity of the original detection. Given that expectation, we opted to establish an expanded quarantined area containing what we believe to be an adequate buffer zone around the affected properties, rather than establish a quarantined area surrounded by a separate, less-restrictive survey area.

We solicited comments concerning the January 1996 interim rule for 60 days ending March 22, 1996. We received two comments by that date. They were from a State agricultural agency and an association representing citrus growers. Both of the commenters fully supported the interim rule as written.

New infestations of citrus canker have recently been detected on properties in Dade County, FL, that lie outside the previously quarantined area, and in areas of Broward, Collier, and Manatee Counties, FL, which were not previously designated as quarantined areas. The State of Florida has placed these new areas under State quarantine and is enforcing restrictions on the intrastate movement of regulated articles from these quarantined areas. We have determined that Florida's restrictions on the intrastate movement of regulated articles from the

quarantined areas are at least as stringent as those on the interstate movement of regulated articles from the quarantined areas. Therefore, as provided by § 301.75-4(d), we are designating an area less than the entire State as a quarantined area.

Specifically, we are amending the regulations by adding a 30-square-mile portion of Collier County, FL, and a 68-square-mile portion of Manatee County, FL, to the list of quarantined areas. We are also adding a combined entry for Dade and Broward Counties, FL, to the list of quarantined areas. The combined entry encompasses a 507-square-mile area of those two counties and includes that portion of Dade County that was designated as a quarantined area in our January 1996 interim rule. An exact description of the quarantined areas can be found in the rule portion of this document.

These new or revised quarantined areas include what we believe to be an adequate buffer zone around the infected properties, so no areas in any of the counties have been designated as survey areas. As we explained in the January 1996 interim rule, we believe that expanding the quarantined area to include a buffer zone, rather than establishing a separate, less-restrictive survey area, will enhance our ability to detect and control further occurrences of citrus canker in and around the infested area. Because some of the new findings of citrus canker were in highly populated residential areas, we expect there may be additional detections of citrus canker on other properties in the general vicinity of the original findings. Having an extended quarantined area will allow us to more effectively contain the spread of citrus canker and reduce the need for frequent changes to the regulations to reflect new findings of citrus canker.

#### Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent citrus canker from spreading into noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective upon signature. 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. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

For our January 1996 interim rule, we performed an Initial Regulatory Flexibility Analysis, in accordance with 5 U.S.C. 603, regarding the impact of that interim rule on small entities. In that Initial Regulatory Flexibility Analysis, we stated that we did not have all of the data necessary for a comprehensive analysis of the effects of the interim rule on small entities. Therefore, we invited comments on potential effects of the interim rule and specifically requested information regarding the number and kinds of small entities that may incur benefits or costs from the implementation of that interim rule. Neither of the two comments we received in response to the interim rule contained any information pertaining to potential economic effects.

For this interim rule, we have performed a second Initial Regulatory Flexibility Analysis, in accordance with 5 U.S.C. 603, regarding the impact of this interim rule on small entities. That analysis is set out below. Because we do not currently have all of the data necessary for a comprehensive analysis of the effects of this interim rule on small entities, we are again inviting comments on its potential effects. In particular, we are interested in determining the number and kinds of small entities that may incur benefits or costs from the implementation of this interim rule.

The Plant Quarantine Act, contained in 7 U.S.C. 151-165 and 167, authorizes the Secretary of Agriculture to quarantine States or portions of States and to promulgate regulations to prevent the spread of dangerous plant diseases new to or not widely prevalent in the United States.

We are amending the citrus canker regulations by adding portions of Broward, Collier, and Manatee Counties, FL, to the list of quarantined areas and by expanding the quarantined area within Dade County, FL. This action imposes certain restrictions on the interstate movement of regulated articles from and through the quarantined area.

#### Entities Potentially Affected

*Broward and Dade Counties.* We have identified approximately 3,528 entities within Broward and Dade Counties, FL, that could be affected by this interim rule. These entities consist of 78 nurseries, 6 nursery stock dealers, 200 fresh fruit retail stores, 1 fruit packer, 1 gift fruit shipper, 6 commercial groves, 3 grove maintenance services, 3 fruit harvesting contractors, and 3,230 lawn maintenance businesses.

*Collier County.* We have identified approximately 85 entities within Collier County, FL, that could be affected by this interim rule. These entities consist of 10 commercial groves, 10 fruit packers, 10 gift fruit shippers, 10 fruit transporters, 20 fruit harvesting contractors, and 25 grove maintenance services. The numbers provided for all entities except commercial groves include entities that are located within the quarantined area as well as entities located outside the quarantined area that could be affected.

*Manatee County.* We have identified approximately 443 entities within Manatee County, FL, that could be affected by this interim rule. These entities consist of 3 nurseries, 24 fresh fruit retail stores, 57 commercial groves, 2 fruit processors, 2 fruit packers, 2 gift fruit shippers, 3 fruit transporters, 20 fruit harvesting contractors, 5 grove maintenance services, 319 lawn maintenance businesses, and 6 flea markets. The numbers provided for fruit harvesting contractors and flea markets include entities that are located within the quarantined area as well as entities located outside the quarantined area that could be affected.

#### Number of Small Entities

The number of these entities that meet the Small Business Administration (SBA) definition of a small entity is unknown, since the information needed to make that determination (i.e., each entity's annual sales) is not currently available. However, it is reasonable to assume that most of these entities are small in size because the majority of the same or similar businesses in southern Florida, as well as in the rest of the United States, are small entities by SBA standards. In 1992, for example, the average sales per establishment for all metropolitan Miami area establishments primarily engaged in selling trees, shrubs, and seed to the general public (SIC 526, which includes retail nurseries) was \$340,340, which is well below the SBA's current small entity size standard for such businesses of \$5 million in sales. In 1992, the average sales per establishment for all

metropolitan Miami area establishments primarily engaged in selling general food items for home consumption (SIC 541, which includes grocery stores) was \$2.6 million, which is also well below the SBA's current small entity size standard for such businesses of \$20 million in sales. Similarly, in 1992 the average sales per establishment for all metropolitan Miami area establishments primarily engaged in selling certain other food items for home consumption (SIC 543, 544, 545, and 549, which include fruit and vegetable markets) was \$453,138, which is well below the SBA's current small entity size standard for such businesses of \$5 million in sales. Finally, in 1993, the average sales per firm for all 33,301 U.S. firms primarily engaged in providing lawn and garden services (SIC 0782, which includes lawn maintenance businesses) was \$222,571, which is well below the SBA's current small entity size standard for such businesses of \$5 million in sales.

Fresh fruit retail stores, nurseries, and lawn maintenance companies comprise, on a combined basis, 3,860 (approximately 95 percent) of the total 4,056 entities potentially affected by this interim rule. The operations of those entities are, for the most part, local in nature; they do not typically move regulated articles outside of the State of Florida during the normal course of their business, and consumers do not generally move products purchased from those entities out of the State. The fruit sold by grocery stores and other retail food outlets is generally sold for local consumption. Retail nurseries also market their products for local consumption. Lawn maintenance businesses collect yard debris, but they do not normally transport that debris outside the State for disposal.

The fresh fruit retailers affected by this interim rule will be required to abide by restrictions on the interstate movement of regulated articles. They may be affected by this interim rule because fruit sold within the quarantined areas in retail stores cannot be moved outside of the quarantined areas. However, we expect any direct costs of compliance for fresh fruit retailers to be minimal.

The lawn maintenance companies affected by this interim rule will be required to perform additional sanitation measures when maintaining an area inside the quarantined areas. Lawn maintenance companies will have to clean and disinfect their equipment after grooming an area within the quarantined areas, and they must properly dispose of any clippings from plants or trees within the quarantined

areas. These requirements will slightly increase costs for lawn maintenance companies affected by this interim rule.

Commercial citrus growers, processors, packers, and shippers within the quarantined areas will still be able to move their fruit interstate, provided the fruit is treated and not shipped to another citrus-producing State. Growers will have to bear the cost of treatment, but that cost is expected to be minimal. The prohibition on moving the fruit to other citrus-producing States is not expected to negatively affect entities within the quarantined areas because most States do not produce citrus and growers are expected to be able to find a ready market in non-citrus-producing States.

The nurseries and commercial groves affected by this interim rule will be required to undergo periodic inspections. These inspections may be inconvenient, but the inspections will not result in any additional costs for the nurseries or growers because APHIS or the State of Florida will provide the services of the inspector without cost to the nursery or grower.

#### **Consideration of Alternatives**

The alternative to this interim rule was to make no changes in the citrus canker regulations. We rejected this alternative because failure to quarantine portions of Broward, Collier, and Manatee Counties, FL, and an additional portion of Dade County, FL, could result in great economic losses for domestic citrus producers.

#### **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.

#### **National Environmental Policy Act**

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment considers three alternatives for citrus canker control: No action, regulatory quarantine only, and cooperation in a State/Federal program

to contain and eradicate citrus canker. Under the "no action" alternative, APHIS would take no action to control and eradicate citrus canker, or to otherwise restrict the movement of articles that might spread citrus canker. This option would result in State agriculture departments, grower groups, and growers bearing the entire burden in dealing with the infestation. Under the "regulatory quarantine only" alternative, APHIS would take regulatory actions (e.g., the quarantine of a whole State, restricting the interstate movement of articles which might spread citrus canker) designed to prevent the spread of citrus canker. This option would still leave State agriculture departments, grower groups, and growers to bear the entire burden of intrastate control and eradication of the infestation. Finally, under the "cooperative agreement" alternative, which is the recommended alternative, APHIS' regulatory quarantines would be used in combination with State regulatory quarantines and control methods in a cooperative State/Federal program to contain and eradicate citrus canker.

The environmental assessment provides a basis for our conclusion that the selected citrus canker eradication program will not have a significant impact on the quality of the human environment. Based on the findings of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690-2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under  
**FOR FURTHER INFORMATION CONTACT.**

**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 in 7 CFR Part 301**

Agricultural commodities, Incorporation by reference, 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. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.75–4, paragraph (a) is revised to read as follows:

**§ 301.75–4 Quarantined areas.**

(a) The following States or portions of States are designated as quarantined areas:

**FLORIDA**

*Collier County.* Beginning at the intersection of SR 29 and SR 858; then north along SR 29 approximately 3.5 miles to the north section line of sec. 32, T. 47, R. 30; then east along the north section lines of secs. 32, 33, 34, 35, and 36, T. 47, R. 30, to the northeast corner of sec. 36, T. 47, R. 30; then south along the east section line of sec. 36, T. 47, R. 30, and secs. 1, 12, 13, 24, and 25, T. 48, R. 30, approximately 6 miles to the southeast corner of sec. 25, T. 48, R. 30; then west along the south section line of secs. 25, 26, 27, 28, and 29, T. 48, R. 30, approximately 4.5 miles to SR 29; then north along SR 29 approximately 2.5 miles to the point of beginning.

*Dade and Broward Counties.* Beginning at the mouth of the Miami River in Biscayne Bay; then north along Biscayne Bay to Bal Harbor; then east along the inlet at Bal Harbor to the Atlantic Ocean; then north along the shoreline of the Atlantic Ocean to the Port Everglades Channel in Broward County; then west and south through the Port Everglades Channel to where it meets Eller Drive; then west on Eller Drive to I–595; then west on I–595 to I–75; then south on I–75 to the Florida Turnpike Homestead Extension; then south on the Florida Turnpike Homestead Extension to NW 58th Street; then west along NW 58th Street to Krome Avenue (NW 177th Avenue); then south along Krome Avenue (NW and SW 177th Avenue) to Coral Reef

Drive (SW 152nd Street); then east along Coral Reef Drive to Biscayne Bay; then north along the shoreline of Biscayne Bay to the point of beginning.

*Manatee County.* Beginning at the intersection of the Manatee River and I–75; then west along the shoreline of the Manatee River to Terra Ceia Bay; then northeast along the shoreline of Terra Ceia Bay to the Terra Ceia River; then north along the Terra Ceia River to I–275; then east on I–275 to Bishop Harbor Road; then north and east on Bishop Harbor Road to U.S. 41; then north on U.S. 41 to Buckeye Road; then east on Buckeye Road to the eastern boundary of sec. 10, T. 33 S, R. 18 E; then south along the eastern boundary of sec. 10, T. 33 S, R. 18 E to Carter Road; then south on Carter Road to the eastern boundary of sec. 22, T. 33 S, R. 18 E; then south along the eastern boundary of sec. 22, T. 33 S, R. 18 E to Erie Road; then east and south along Erie Road to U.S. Highway 301; then southwest along U.S. Highway 301 to I–75; then south along I–75 to the point of beginning.

\* \* \* \* \*

Done in Washington, DC, this 26th day of January 1999.

**Joan M. Arnoldi,**

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

[FR Doc. 99–2324 Filed 1–29–99; 8:45 am]

BILLING CODE 3410–34–P

**DEPARTMENT OF JUSTICE****Immigration and Naturalization Service****8 CFR Part 244**

[INS No. 1972–99]

RIN 1115–AF37

**Temporary Protected Status: Amendments to the Requirements for Employment Authorization Fee, and Other Technical Amendments**

**AGENCY:** Immigration and Naturalization Service, Justice.

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

**SUMMARY:** This interim rule amends the Immigration and Naturalization Service (Service) regulations by removing outdated language requiring that only certain EL Salvadorans must pay a fee for Temporary Protected Status (TPS)-related applications for employment authorization documents (EADs). Removing this language will make Service regulations conform to current Service policy as provided in the instructions to the Form I–765. The instructions on the Form I–765 instruct

all applicants for TPS who desire employment authorization to pay the fee.

**DATES:** *Effective date:* This interim rule is effective February 1, 1999.

*Comment date:* Comments must be submitted on or before April 2, 1999.

**ADDRESSES:** Please submit written documents, original and two copies, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1972–99 on your correspondence. Comments are available for public inspections at the above address by calling (202) 514–3291 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Michael Valverde, Residence and Status Branch, Office of Adjudications, Immigration and Naturalization Service, 425 I Street, NW, Room 3040, Washington, DC 20536, telephone (202) 514–3228.

**SUPPLEMENTARY INFORMATION:****What is Temporary Protected Status?**

Under section 244 of the Immigration and Nationality Act (Act), TPS is a temporary immigration status granted by the Attorney General to eligible nationals of a designated country or part of a country. Beneficiaries of TPS are granted a stay of removal and employment authorization for the designated TPS period and for any extensions of the designations. TPS does not lead to permanent resident status.

**What Language is Being Removed Regarding Application Fees for Employment Authorization Documents?**

The Service is amending section 244.6 to remove outdated language requiring that only certain El Salvadorans must pay a fee for TPS-related applications for EADs. Section 244.6 currently states that “\* \* \* the filing fee for the Form I–765 will be charged only for those aliens who are nationals of El Salvador, and are between the ages of 14 and 65 (inclusive), and are requesting work authorization.” This language pertains to the statutory designations of EL Salvador for TPS (under section 303 of the Immigration Act of 1990) that expired June 30, 1992.

The El Salvador specific fee language has been superseded by the fee requirements contained on the instructions to the Form I–765 (last revised on April 25, 1995). The Form I–765 instructs applicants filing for initial TPS to pay the fee if they wish to receive employment authorization. The Service generally charges fees for