

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2007–0022]

RIN 0579–AC34

Citrus Canker; Movement of Fruit From Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the citrus canker regulations to modify the conditions under which fruit may be moved interstate from a quarantined area. Under this proposed rule, we would eliminate the requirement that the groves in which the fruit is produced be inspected and found free of citrus canker, and instead require that fruit produced in the quarantined area be treated with a surface disinfectant treatment in a packinghouse operating under a compliance agreement and that each lot of finished fruit be inspected at the packinghouse and found free of visible symptoms of citrus canker. We would, however, retain the current prohibition on the movement of fruit from a quarantined area into commercial citrus-producing States. These proposed changes would relieve some restrictions on the interstate movement of fresh citrus fruit from Florida while maintaining conditions that would help prevent the artificial spread of citrus canker.

DATES: We will consider all comments regarding this proposed rule that we receive on or before July 23, 2007 and all comments regarding the information collection requirements associated with this proposed rule that we receive on or before August 20, 2007.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select “Animal and Plant Health Inspection

Service” from the agency drop-down menu, then click “Submit.” In the Docket ID column, select APHIS–2007–0022 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link.

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0022, 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–2007–0022.

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 Operations Officer, Emergency Domestic Programs, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1231; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease caused by the bacterium *Xanthomonas axonopodis* pv. *citri* (referred to below as *Xac*) 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 “Subpart—Citrus Canker” (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, 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.*).

The regulations governing the movement of regulated articles were first promulgated in 1984, at a time when citrus canker had very limited distribution within Florida. Although the regulations have been amended several times since then, the approach of the regulations had remained the same until recently, i.e., to quarantine those areas where the disease was found and promote eradication efforts while allowing the normal movement of regulated fruit and seed from those areas where the disease was not present.

The exceptionally active hurricane seasons in 2004 and 2005 were devastating to the citrus canker eradication program. Surveys showed that citrus canker had become so widespread within Florida that approximately 75 percent of commercial groves in the State were located within 5 miles of a location where the disease had been detected, which is well within the range that the disease could be spread by future hurricanes or other tropical storms. With a significant portion of the commercial citrus acreage in the State either infected with citrus canker or at high risk of becoming infected, it became apparent that it would no longer be possible to identify and quarantine infected citrus acreage quickly enough to prevent further spread of the disease in Florida. Because of that situation, on January 10, 2006, the U.S. Department of Agriculture (USDA) announced that it had determined that the established eradication program was no longer a

scientifically feasible option to address citrus canker in Florida.

In response to the widespread establishment of citrus canker in Florida, we published an interim rule in the **Federal Register** on August 1, 2006 (71 FR 43345–43352, Docket No. APHIS–2006–0114) in which we amended the regulations to list the entire State of Florida as a quarantined area for citrus canker and amended the requirements for the movement of regulated articles from Florida. We also amended the regulations to allow regulated articles that would not otherwise be eligible for interstate movement to be moved to a port for immediate export.

More recently, we published an interim rule in the **Federal Register** on March 22, 2007 (72 FR 13423–13428, Docket No. APHIS–2007–0032) that clarified and amended the citrus canker quarantine regulations to explicitly prohibit, with limited exceptions, the interstate movement of regulated nursery stock from a quarantined area. We included two exceptions to the prohibition. The first exception allowed calamondin and kumquat plants, two types of citrus plants that are highly resistant to citrus canker, to be moved interstate from a quarantined area under a protocol designed to ensure their freedom from citrus canker. We also continued to allow the interstate movement of regulated nursery stock for immediate export, under certain conditions.

Citrus Health Response Program

In January 2006, in response to the widespread establishment of citrus canker in Florida, as well as other challenges to the citrus industry, the Animal and Plant Health Inspection Service (APHIS) convened key stakeholders in citrus protection and production and led a discussion on various options from which came the concept of a Citrus Health Response Program (CHRP). The CHRP is intended to improve the ability of the commercial citrus industry to produce, harvest, process, and ship healthy fruit in the presence of citrus canker. This program provides general guidance to all sectors of the citrus industry on ways to safeguard their products against citrus canker and other citrus pests of concern. While the CHRP is not mandatory for fruit production, the guidance is consistent with good production practices. Together with the State of Florida and other citrus producing States, their industries, and independent researchers, we prepared the CHRP plan, which is available on the Internet at <http://>

www.aphis.usda.gov/plant_health/index.shtml.

Pest Risk Analysis

As we worked with States and industry to develop the CHRP, it became clear that the widespread presence of citrus canker in Florida posed a serious threat to the viability of the Florida fresh fruit industry. APHIS saw a need to reevaluate the regulations for the movement of citrus fruit to determine whether the long-standing grove certification and packinghouse requirements for the movement of citrus fruit remained scientifically justified and necessary and to determine whether, in light of widespread citrus canker, a program could be devised that would continue to allow the interstate movement of fresh citrus fruit from Florida and that would maintain adequate safeguards against the spread of citrus canker to other commercial citrus-producing States. As part of APHIS's reevaluation, we conducted a pest risk assessment (PRA) titled, "Evaluation of asymptomatic citrus fruit (*Citrus* spp.) as a pathway for the introduction of citrus canker disease (*Xanthomonas axonopodis* pv. *citri*)."¹ The PRA considered all available evidence associated with asymptomatic citrus fruit as a pathway for the introduction of citrus canker. The PRA concluded that asymptomatic, commercially produced citrus fruit, treated with a disinfectant, and subject to other mitigations, is not epidemiologically significant as a pathway for the introduction and spread of citrus canker.

On April 6, 2006, we published a notice in the **Federal Register** (71 FR 17434–17435, Docket No. APHIS–2006–0045), announcing the availability of the PRA. We made the PRA available for comment for 90 days, and submitted it for peer review in accordance with USDA's guidelines for peer review developed in response to the Office of Management and Budget's peer review bulletin. We received 19 comments by the end of the comment period, which we also submitted to the peer review panel members for their consideration. We carefully considered the comments of the public and peer reviewers, and made revisions to the analysis based on concerns they raised.¹ Even with those revisions, the key conclusion of the analysis remains unchanged: Asymptomatic, commercially produced citrus fruit, treated with a disinfectant,

¹ The revised PRA is available on the Regulations.gov Web site and in our reading room (see ADDRESSES above) and may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

and subject to other mitigations, is not epidemiologically significant as a pathway for the introduction and spread of citrus canker.

However, in light of the comments by the public and peer reviewers, it became clear that additional analysis was necessary to apply the conclusions of the PRA to the situation in Florida. In order to do this, we needed to extend the application of the PRA to evaluate methods by which fruit² could be produced, processed, treated, inspected, packaged, and shipped without resulting in the spread of citrus canker to commercial citrus-producing areas. (Commercial citrus-producing areas are listed in § 301.75–5 of the regulations and are referred to in this document as commercial citrus-producing States. Those States, listed in § 301.75–5(a), are: American Samoa, Arizona, California, Florida, Guam, Hawaii, Louisiana, Northern Mariana Islands, Puerto Rico, Texas, and the U.S. Virgin Islands.)

Risk Management Analysis

To address the considerations described above, APHIS has prepared a risk management analysis (RMA) titled, "Movement of commercially packed fresh citrus fruit (*Citrus* spp.) from citrus canker (*Xanthomonas axonopodis* pv. *citri*) disease quarantine areas, March 2007," that we are making available for comment along with this proposed rule.³ The RMA will also be submitted for peer review, which will occur concurrently with the public comment period for this proposed rule. The RMA analyzes the potential of fresh commercially packed citrus fruit and associated packing material to serve as a pathway for the introduction and spread of citrus canker into new areas. It also identifies and evaluates options for regulating interstate movement with the goal of reducing the potential for citrus canker introduction and spread. The RMA extends the application of the PRA mentioned earlier to the citrus canker situation in Florida.

To develop the RMA, we reviewed available evidence regarding the biology and epidemiology of *Xac* and the management of citrus canker disease. The RMA concludes that the introduction and spread of *Xac* into other commercial citrus producing States through the movement of

² Given the practical difficulties in ensuring that only asymptomatic fruit enters interstate commerce under any regulatory strategy—the strategy proposed in this document or the strategy currently in place—we refer here to host fruit in general.

³ The RMA is available on the Regulations.gov Web site and in our reading room (see ADDRESSES above) and may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

commercially packed fresh citrus fruit is unlikely because:

- Fresh citrus fruit is produced and harvested using techniques that reduce the prevalence of *Xac*-infected fruit;
- Citrus fruit is commercially packed using techniques that reduce the prevalence of infected or contaminated fruit, including disinfectant treatment that devitalizes epiphytic contamination;
- For a successful *Xac* infection that results in disease outbreaks to occur an unlikely sequence of epidemiological events would have to occur;
- Reports of citrus canker disease outbreaks linked to fresh fruit are absent; and
- Large quantities of fresh citrus fruit shipped from regions with *Xac* have not resulted in any known outbreaks of citrus canker disease.

Nevertheless, the evidence is not currently sufficient to conclude that fresh citrus fruit produced in a *Xac*-infested grove absolutely cannot serve as a pathway for the introduction of *Xac* into new areas. Furthermore, it is not possible to design an operationally feasible system that ensures only uninfected fruit moves from quarantined areas. Resource constraints and other practical considerations make it difficult to implement a grove-centered regulatory systems-approach in Florida that ensures full compliance with the conclusions of the evaluation described above. Therefore, the RMA evaluates several packinghouse-centered risk management options for the interstate movement of fresh commercially-packed citrus fruit from regions infested with citrus canker to regions without the disease:

- *Option 1*: Allow unrestricted distribution of all types and varieties of commercially packed citrus fruit to all U.S. States.
- *Option 2*: Allow distribution of all types and varieties of commercially packed citrus fruit to all U.S. States, subject to packinghouse treatment with APHIS-approved disinfectant and APHIS inspection of finished fruit that has completed the packinghouse washing, disinfection, grading, and inspection processes.
- *Option 3*: Allow distribution of all types and varieties of commercially packed citrus fruit (except tangerines) in U.S. States except commercial citrus-producing States. Allow distribution of commercially packed tangerines to all U.S. States, including commercial citrus-producing States. Require packinghouse treatment of all such citrus fruit with APHIS-approved disinfectant and APHIS inspection of

finished fruit (all types and varieties) for citrus canker disease symptoms.

- *Option 4*: Allow distribution of all types and varieties of commercially packed citrus fruit in U.S. States except commercial citrus producing States and require packinghouse treatment of citrus fruit with APHIS-approved disinfectant and APHIS inspection of finished fruit (all types and varieties) for citrus canker disease symptoms.
- *Option 5*: Leave the current regulations for the interstate movement of citrus fruit from citrus canker quarantined areas in place and unchanged.

Each option was considered within the context of available scientific evidence. Option 1 would allow unrestricted distribution of all types and varieties of commercially packed citrus fruit to all U.S. States. Although the available evidence suggests fresh citrus fruit is an unlikely pathway, that evidence is not currently sufficient to unequivocally conclude that fresh citrus fruit cannot serve as a pathway for the introduction of *Xac* into new areas. Therefore, unrestricted movement of citrus fruit from quarantine areas was determined not to be scientifically justified. Consequently, the more restrictive Options 2, 3, 4 and 5 were evaluated and Option 1 was no longer considered.

The objective in designing the proposed risk management options was to ultimately ensure that visibly infected fruit is not shipped and does not reach citrus producing States. To that end, we set out to design an inspection protocol that would achieve the maximum level of sensitivity (the protocol that would allow the fewest fruit with visible symptoms to escape detection by the APHIS packinghouse phytosanitary inspection) given the constraints of operational feasibility.

To assist in evaluating Options 2, 3, and 4, we prepared a quantitative model (Appendix 1 to the RMA) based on Florida production and shipping data to evaluate the efficacy of three levels of phytosanitary inspection in ensuring that symptomatic fruit does not enter commercial citrus-producing States. The three inspection levels were determined by preliminary estimates of PPQ's Citrus Health Response Program staff of inspection levels that might be operationally feasible. The three inspection levels evaluated were 500 fruit per lot, 1,000 fruit per lot, and 2,000 fruit per lot. Statistically, inspection of 500, 1,000 fruit, or 2,000 fruit per lot will ensure, with 95 percent confidence, that the proportion of undetected symptomatic fruit in a

cleared lot is no more than 0.75, 0.38, and 0.19 percent, respectively.

The outputs of the quantitative model were probability distributions. The model determined, with 95 percent confidence, that the total number of citrus fruit shipped from Florida to five citrus-producing States (Arizona, California, Hawaii, Louisiana and Texas) over a single shipping season would be 181,283,744 or less if unlimited distribution is permitted. The model determined, with 95 percent confidence, that the number of *Xac*-symptomatic fruit reaching those five States in a single shipping season would be 633,152 or less at the 1,000 fruit inspection levels. We anticipate that about double that number (approximately 1,266,304 or less) of *Xac*-symptomatic fruit would reach those States at the 500 fruit inspection level. About half that number (approximately 316,576 or less) would reach those States at the 2,000 fruit inspection level. The model further determined with 95 percent confidence that the number of symptomatic fruit reaching citrus-producing areas within those States in a single shipping season would be 2,135 or less at the 1,000 fruit inspection level, about double that number (approximately 4270 or less) at the 500 fruit inspection level and about half that number (approximately 1067 or less) at the 2,000 fruit inspection level. The base level inspection of 1,000 fruit per lot, was adopted because it is operationally feasible with small adjustments to the current phytosanitary inspection process in Florida.

PPQ Staff from the Melbourne, Florida office of the Citrus Health Response program conducted a small test of the 2,000 fruit sampling protocol to evaluate its operational feasibility. The study found that the normal complement of two inspectors at the packinghouse chosen for the evaluation were physically unable to achieve the 2,000 fruit per lot inspection level. It was estimated that the number of inspectors would have to have been doubled to four in order to inspect 2,000 fruit per lot, but the packinghouse physically had room for only two inspectors. Based on this test and additional input from PPQ operational staff, it was determined that the higher inspection level that achieves 95 percent confidence of detecting at least 0.19 percent rate of symptomatic fruit (about 2,000 fruit per lot), is only feasible with increased inspectional resources and/or more substantial modifications to the packing/phytosanitary inspection processes, and could be justifiable only if the risk

reduction benefits outweighed the cost. An inspection level of 1,000 fruit per lot that achieves a detection rate of 0.38 percent with 95 percent confidence was adopted because it provides the maximum level of detection that is operationally feasible with the phytosanitary inspection resources in Florida. Inspection of 500 fruit per lot was rejected because it did not meet the criteria of achieving the maximum level of detection that was operationally feasible.

The potential for symptomatic fruit to reach citrus producing States, coupled with the aforementioned uncertainty regarding fruit as a pathway, led to the determination that additional mitigations were required.

As mentioned above, Option 2 would allow distribution of all types and varieties of commercially packed citrus fruit to all U.S. States, subject to packinghouse treatment with APHIS-approved disinfectant and APHIS inspection of finished fruit that has completed the packinghouse washing, disinfection, grading, and inspection processes. Despite the determination that commercially packed fresh citrus fruit is an unlikely pathway for the introduction and spread of *Xac*, and a phytosanitary inspection that ensures, with high confidence, that a low level of shipped fruit has symptoms of citrus canker disease, the model indicates the potential for some symptomatic fruit to be shipped to citrus producing States. That potential for symptomatic fruit to reach citrus producing States coupled with the aforementioned uncertainty regarding fruit as a pathway led to the determination that the additional mitigation of limited distribution to non citrus-producing States only was required. Accordingly, Option 2 was no longer considered.

APHIS was asked by representatives of the Florida citrus industry to consider regulating tangerines, which are thought to be more resistant to *Xac* infection than other citrus varieties, differently than other citrus fruit. Option 3 would allow for the movement of tangerines from Florida into all States, including commercial citrus producing States. In order to determine the viability of this option, we needed to determine whether adequate evidence was available to conclude that tangerines warrant different regulatory status than other fruit, so we reviewed published literature on tangerine varieties as well as grove surveys.

Tangerines are generally grouped in the species *Citrus reticulata* and are widely regarded as less susceptible to citrus canker disease than other commercially grown *Citrus* species. But

many of the “tangerine” varieties grown in Florida are hybrids of *C. reticulata* with other more susceptible *Citrus* species. Clearly, tangerines in Florida are not immune to citrus canker, as APHIS records indicate that, during the 2005–2006 growing season grove surveys, *Xac* was detected on 274 samples from tangerine, tangor, and tangelo groves. APHIS pest interception data indicate that between 1985 and 2006, *Xac* was intercepted 632 times on *C. reticulata* fruit.

The level of susceptibility was expressed as a continuum across “tangerine” varieties rather than as a discrete immunity for all varieties. This creates a regulatory problem when an overlap occurs in the level of susceptibility expressed by, for example, a more susceptible tangerine variety and a more resistant non-tangerine citrus variety. Sufficient evidence does not exist to exclude tangerines from regulations applicable to other Florida citrus varieties and as such, Option 3 was rejected.

Option 4 prohibits distribution of all types and varieties of citrus fruit, including tangerines, to citrus-producing States. Option 4 includes all the requirements of Option 3 and further mitigates the risk of *Xac* introduction by prohibiting the distribution of all types and varieties of citrus fruit, including tangerines, from areas with citrus canker disease to U.S. commercial citrus producing States. Option 4 would amend the regulations by substituting a packinghouse inspection for the preharvest grove inspections currently required by the regulations.

Option 4 takes into account the possibility that fruit may be transported into commercial citrus-producing States, despite the prohibition, and compensates for uncertainty generated by that movement by requiring a disinfectant treatment and phytosanitary inspection in addition to the distribution restriction. These measures ensure that even if a given shipment were illegally moved to a commercial citrus-producing State, that shipment would have a low likelihood of containing symptomatic fruit.

A packinghouse-based inspection that could ensure the same level of phytosanitary security as the preharvest grove survey required under the current regulations would be easier and potentially less costly to implement and enforce, and would be more reliable and less easily circumvented. In addition, a phytosanitary packinghouse inspection creates a performance standard for packed fruit that allows citrus producers greater flexibility to determine the most

efficient and effective means of producing a product that will be eligible for interstate movement.

Option 5 is the most restrictive option that we considered. It would leave the current regulations in place and unchanged, including the requirement for preharvest grove surveys. APHIS has concluded that a mandatory packinghouse treatment of citrus fruit with APHIS approved disinfectant and phytosanitary inspection, by APHIS, of finished fruit provides an effective safeguard to prevent the spread of *Xac* via the movement of commercially-packed citrus fruit, especially when combined with a limited distribution requirement that excludes shipment to U.S. citrus-producing States.

Of the five options, we determined that Options 1, 2, and 3 are not viable at the present time. Those options would each allow for the movement of at least some types and varieties of fresh citrus fruit from Florida into commercial citrus-producing States. While the conclusions of both our PRA and RMA indicate that fresh citrus fruit is an unlikely pathway for citrus canker infection, we cannot conclusively rule out any type or variety of citrus fruit as a potential source of citrus canker infection at this time. In addition, the probabilistic model presented in our RMA document finds that if such distribution were to take place, fruit with symptoms of citrus canker disease could end up in citrus-producing States. We also determined that Options 4 and 5 offered similar levels of phytosanitary protection, but that Option 4 offered some relief of restrictions for growers of citrus fruit in Florida while maintaining conditions that would help prevent the artificial spread of *Xac*.

We are proposing to implement Option 4 in this document. This option would pair limited distribution of all types and varieties of citrus fruit to non-citrus-producing States with mitigations conducted at packinghouses operating under compliance agreements. Those mitigations would be the use of an approved disinfectant for all fruit and phytosanitary inspection.

The approved disinfectants listed in the regulations in § 301.75–11(a) have been shown to reduce or nearly eliminate any *Xac* bacterium that may exist as a surface contaminant on citrus fruit moving interstate from citrus canker quarantined areas. The RMA discusses the efficacy of currently approved disinfectant treatments in the context of the scientific evidence in greater detail. Decontaminant treatments for fruit are required under the current regulations and would continue to be required under our proposal.

Based on our evaluation of production and processing procedures and their impact on removal of citrus canker from the fresh-fruit pathway, along with our review of the operational feasibility of enforcing various mitigation measures, APHIS has concluded that the mandatory packinghouse inspection of processed fruit provides an effective safeguard against the spread of citrus canker via the movement of commercial citrus fruit. After consultation with operational staff, APHIS determined that—given the resources currently available—the inspection of 1,000 fruit per lot is possible without significant additional resources or disruptions to citrus packing operations. This rate of inspection is sufficient to detect, with a 95 percent level of confidence, lots of fruit containing 0.38 percent or more fruit with visible canker lesions. This determination takes into account operational constraints in packinghouses as well as the availability of APHIS inspectors. The inspection would require visual examination of approximately 1,000 randomly selected fruit per lot, depending on the size of the lot and other factors.

We ruled out inspecting at a rate of 2,000 fruit per lot because of the significant disruptions to citrus packing operations in the State of Florida. The 1,000 fruit inspectional unit is further justified given the added protection provided by allowing distribution only in non-citrus-producing States. Even with the limited distribution requirement, it is necessary to require packinghouse inspection to ensure that very few, if any, symptomatic fruit can move out of the quarantined area. This added safeguard ensures that any fruit moved into citrus-producing States, either inadvertently or intentionally, is very unlikely to be symptomatic. Additionally, we ruled out inspecting at a rate of 500 fruit per lot because inspection at the 1,000 inspectional rate provided a higher level of protection.

A packinghouse phytosanitary inspection would be conducted on fruit immediately before shipping to provide a high level of assurance about the condition of the final product. Because a phytosanitary packinghouse inspection sets a performance standard for the packed fruit, it allows producers and packers greater flexibility in determining optimum methods for achieving that standard. Packinghouse phytosanitary inspections are relatively simple compared with the monitoring of field treatment and grove inspections.

It is important to note that we recognize that different packinghouses may utilize different methods for quality control inspection and employ them at

various points in the packing process. Our intention is to allow flexibility for both large and small packinghouses to have the ability to process, treat, pack, and ship fresh citrus fruit provided that all fruit, regardless of the size of the lot being packed, is subjected to inspection at a rate sufficient to detect, with a 95 percent level of confidence, lots of fruit containing 0.38 percent or more fruit with visible canker lesions. This equates to approximately 1,000 fruit per lot. We welcome comments and suggestions regarding the appropriate methodology and inspection level at packinghouses and the appropriate balance between the sensitivity of the inspection and the operational needs and constraints of the packinghouses.

Because of the shift in emphasis from grove-freedom certification to packinghouse inspection and treatments, we wish to emphasize that only fresh citrus fruit that has been treated, inspected, and found free of symptoms of citrus canker and packaged in accordance with the proposed regulations in a packinghouse that is operating under a compliance agreement with APHIS would be eligible for interstate movement. Our proposed provisions would allow any Florida citrus growers, including commercial, gift fruit, and dooryard growers, to move their fruit interstate to non-citrus-producing States provided they comply with the conditions discussed in this proposed rule.

Determination by the Secretary

Under § 412(a) of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the movement in interstate commerce of any plant or plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of a plant pest or noxious weed within the United States. Based on information provided in our risk assessment and risk management documents, we have determined that it is not necessary to prohibit the interstate movement of citrus fruit into non-citrus-producing States under the conditions described in this proposed rule. While APHIS has concluded that commercially packed citrus fruit is an unlikely pathway for the introduction and spread of citrus canker, the remaining uncertainty about the precise level of risk associated with the movement of citrus fruit from a quarantined area has led us to maintain the current prohibition on the movement of that citrus fruit into citrus-producing States.

Changes to the Regulations

This proposed rule, if adopted, would amend the citrus canker regulations to modify the conditions under which fruit may be moved interstate from a quarantined area. Under this proposed rule APHIS would:

- Eliminate the requirement that the groves in which the fruit is produced be inspected and found free of citrus canker;
- Require that fruit produced in the quarantined area be treated with a surface disinfectant treatment in a packinghouse operating under a compliance agreement;
- Require that each lot of finished fruit would be inspected in a packinghouse operating under a compliance agreement and found free of visible symptoms of citrus canker prior to interstate movement;
- Retain the current prohibition on the movement of fruit from a quarantined area into commercial citrus-producing States;
- Retain requirements that fruit to be moved interstate must be free of leaves, twigs and other plant parts, except for stems that are less than 1-inch long and attached to the fruit;
- Retain requirements pertaining to the treatment of personnel, vehicles, and equipment in groves within a quarantined area; and
- Require that boxes in which fruit are packed would be marked with a statement that fruit are being moved interstate under limited permit and may not be distributed in commercial citrus-producing States listed in § 301.75–5(a). Only fruit that has been treated, inspected, and found free of evidence of citrus canker may leave packinghouses in boxes marked with the limited permit stamp.

The regulations in § 301.75–7 pertain to the interstate movement of regulated fruit from a quarantined area. Currently, the regulations require that a grove be free of citrus canker prior to movement of any regulated fruit. To certify grove freedom, the grove producing the regulated fruit must have received regulated plants only from nurseries located outside any quarantined areas, or from nurseries where an inspector has found every regulated plant free of citrus canker on each of three successive inspections conducted at intervals of no more than 45 days, with the third inspection no more than 45 days before shipment. In addition, every tree must have been inspected by an inspector and the grove found free of citrus canker no more than 30 days before the beginning of harvest. Further, in groves producing limes, every tree must have been

inspected and the grove found free of citrus canker every 120 days or less thereafter for as long as harvest continued. Currently, if citrus canker is found in a grove when the preharvest inspection is conducted, or at any other time beginning August 1 of the year in which the fruit is to be harvested and extending through the harvest season (including into the next calendar year), fruit from that grove is not eligible for interstate movement for the remainder of the harvest season.

We are proposing to remove provisions relating to the certification of grove freedom from citrus canker. Instead, APHIS would focus on the inspection of individual lots of citrus fruit at packinghouses, as described earlier in this document, to ensure that regulated fruit moving interstate is free of symptoms of citrus canker. Specifically, the new provisions in § 301.75–7(a)(1) would state that every lot of regulated fruit to be moved interstate must be inspected by an APHIS employee at the packinghouse for symptoms of citrus canker. Any lot found to contain fruit with visible symptoms of citrus canker would not be eligible for a limited permit to move interstate. The proposed regulations, as presented in this document, leave open the issue of allowing lots of fruit initially found to be ineligible for a limited permit to be reconditioned and resubmitted for inspection. Because we have not thoroughly examined all operational aspects of the reconditioning of fruit, we would like to invite comments on this topic.

The number of fruit to be inspected would be the quantity that gives a statistically significant confidence, as discussed above, of detecting the disease at a level of infection to be determined by the Administrator. As stated previously, we intend to inspect fruit at a rate of inspection sufficient to detect, with a 95 percent level of confidence, lots of fruit containing 0.38 percent or more fruit with visible canker lesions. This is equivalent to 1,000 fruit per lot for most lots. If at some time in the future conditions warrant changing this rate of inspection, APHIS would provide for public participation in that process through the publication of a notice in the **Federal Register**.

Because APHIS plans to focus on the inspection of individual lots, we would add a definition for the term *lot* in § 301.75–1. The term *lot* would be defined as “The inspectional unit for fruit composed of a single variety of fruit that has passed through the entire packing process in a single continuous run not to exceed a single work day (*i.e.*,

a run started one day and completed the next is considered two lots).”

We would also require that packinghouse owners and operators involved with shipping citrus fruit must enter into a compliance agreement with APHIS in accordance with § 301.75–13, “Compliance agreements.” In the compliance agreement, the owner or operator of the packinghouse will agree to treat fruit to be moved interstate with one of the approved treatments according to the procedures specified in § 301.75–11, and to see that this fruit is packed only in boxes marked in accordance with the requirements in § 301.75–7(a)(6). The compliance agreement would also contain (but not to be limited to) specific provisions pertaining to:

- Access to the facility, and to necessary records and documents by APHIS inspectors;
- Means by which lots are designated and notice of estimated lot sizes and run times;
- Need for notice when APHIS inspectors are not present on a regular basis;
- Need for notice when there are significant changes in the amount of fruit being packed;
- Conditions (access to fruit, lighting, safety, etc.) that must be met in order for APHIS inspectors to carry out the required inspections;
- Provisions for handling and storage of fruit, including provisions not allowing the movement of any part of a lot from the packinghouse until APHIS inspection is complete;
- Hazard-free access to decontamination areas so that APHIS inspectors can monitor the concentrations of chemicals used for fruit treatment;
- Provisions for holding fruit when packing is done at a time when an APHIS inspector is not present; and
- Hours of coverage for APHIS packinghouse inspections.

The regulations already provide that any compliance agreement may be canceled orally or in writing by an inspector if the inspector finds that the person who entered into the compliance agreement has failed to comply with this subpart. This provision would remain in effect.

We would retain the provision in § 301.75–7(a)(4) that requires the fruit to be treated in accordance with § 301.75–11(a), but would add a newly approved treatment, peroxyacetic acid, for use on fruit. Treatment instructions would specify that regulated fruit must be thoroughly wetted for at least 1 minute with a solution containing 85 parts per million peroxyacetic acid. At the

request of growers in Florida, we evaluated the efficacy of this treatment and determined that the bactericide provides treatment that is at least as efficacious as the currently approved bactericides listed in the regulations.

In addition to the new inspection requirements, we would revise the box marking requirements currently in § 301.75–7(a)(5) to clarify that regulated fruit may only be moved interstate with a limited permit and that the distribution of the fruit is limited to areas that are not designated as commercial citrus-producing States. Specifically, those proposed provisions would state that the regulated fruit must be accompanied by a limited permit issued in accordance with § 301.75–12. In order to be moved interstate, the regulated fruit would have to be packaged in boxes or other containers that are approved by APHIS and that are used exclusively for regulated fruit to be moved interstate. The boxes or other containers in which the fruit is packaged would have to be clearly marked with the statement “Limited Permit: USDA–APHIS–PPQ. Not for distribution in AZ, CA, HI, LA, TX, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands of the United States.” Those proposed provisions would also state that only fruit that meets all of the requirements of the section may be packed in boxes or other containers that are marked with the above statement. These additional provisions would help ensure that only fruit that has been handled in accordance with all of the requirements described in § 301.75–7 will be packaged in boxes bearing the limited permit statement.

Miscellaneous

In addition to the changes discussed above, we would amend the definitions for *certificate* and *limited permit* in § 301.75–1. Currently, certificates and limited permits are referred to as “official documents.” We would amend those definitions to indicate that a certificate or limited permit may be a “stamp, form, or other official document.” This proposed change would provide us with a greater degree of flexibility in the issuance of those documents.

Executive Order 12866 and Regulatory Flexibility Act

This proposed 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.

We are proposing to amend the citrus canker regulations to modify the conditions under which fruit may be moved interstate from a quarantined area. Under this proposed rule, we would eliminate the requirement that the groves in which the fruit is produced be inspected and found free of citrus canker, and instead require that fruit produced in the quarantined area be treated with a surface disinfectant treatment in a packinghouse operating under a compliance agreement and that each lot of finished fruit be inspected and found free of visible symptoms of citrus canker. We would, however, retain the current prohibition on the movement of fruit from a quarantined area into commercial citrus-producing States. These proposed changes would relieve some restrictions on the interstate movement of fresh citrus fruit from Florida while maintaining conditions that would prevent the artificial spread of citrus canker.

For this proposed rule, we have prepared an economic analysis. The analysis, which is summarized below, addresses economic impacts of the proposed new protocol for treatment and inspection of citrus fruit intended for the fresh market. Expected benefits and costs are examined in accordance with Executive Order 12866. Possible impacts on small entities are considered in accordance with the Regulatory Flexibility Act. Copies of the full analysis are available at <http://www.regulations.gov>.

Section 301.75-5 of the regulations lists the designated commercial citrus-producing States as American Samoa, Arizona, California, Florida, Guam, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the U.S. Virgin Islands. Of these 11 commercial citrus-producing States, only 4 States received fresh citrus interstate shipments from Florida during the 2004-05 and 2005-06 seasons: Arizona, California, Louisiana, and Texas. As of August 1, 2006, these four States no longer receive fresh citrus shipments from Florida. In this analysis, U.S. commercial citrus-producing States other than Florida are referred to as other commercial citrus-producing States.

The overall objective of this proposed rule is to continue to prevent the spread of citrus canker to other commercial citrus-producing States, while relieving restrictions on Florida citrus producers, namely, the requirement for interstate movement of citrus fruit that every tree in the grove in which the fruit is grown be inspected, and that the grove be found to be free of citrus canker not more than 30 days before the beginning

of harvest. Under the proposed rule, the citrus fruit would be treated and inspected at the packinghouse prior to interstate movement. We expect the net economic impact of the proposed changes would be positive.

While citrus produced in Florida is primarily intended for the processed market, citrus produced in California, Texas, Arizona, and Louisiana is largely intended for the fresh market. This proposed rule would continue to prohibit the movement of fresh citrus fruit from Florida to other commercial citrus-producing States. The proposed measures are designed to ensure protection of the citrus industries in these States from the introduction of citrus canker and the increased production costs and loss of fresh fruit markets that would result if citrus canker were to be introduced in those States.

Overview of the U.S. Citrus Industry

The total value of U.S. citrus production rose by 16 percent from \$2.30 billion to \$2.68 billion, between the 2004-05 and 2005-06 seasons. These gains in value reflect increased values for processed utilization for most varieties of citrus in the United States with the exception of grapefruit, which declined in overall value by 4 percent.

Florida is the largest citrus producer in the United States, accounting for approximately 68 percent of U.S. production during the 2005-06 season. California produced approximately 28 percent of the citrus in the United States during the same period, and production in Texas and Arizona comprised the remaining 4 percent. The hurricane season of 2004, which included 4 hurricanes that crossed Florida within a 2-month period, caused significant production losses to Florida's citrus industry and was largely to blame for the 42 percent decline of total utilized production in the United States between the 2003-04 and 2004-05 seasons.

The major citrus varieties produced in Florida are early, mid-, and late-season orange varieties, red and white seedless grapefruit, navels, early tangerines, honey tangerines, temples, and tangelos. Although approximately 89 percent of all Florida citrus is intended for the processed market, the share of production that is processed is highly dependent upon the variety. Approximately 95 percent of all Florida orange production is intended for the processing sector, whereas nearly 68 percent of Florida tangerine production is utilized on the fresh market. During the 2005-06 season, nearly 36 percent of Florida grapefruit production was utilized on the fresh market. During the

previous season, the packout rate for Florida fresh grapefruit was approximately 58 percent, suggesting that the post-hurricane higher prices for fresh grapefruit led to a diversion of Florida grapefruit from the processing sector to the fresh market. The reduced packout rate for the 2005-06 season may suggest a return to a more normal fresh market share of about 40 percent.

The major citrus varieties produced in California are navel and Valencia oranges, grapefruit, tangerines, and lemons. Approximately 73 percent of California citrus was utilized on the fresh market during the 2005-06 season, including nearly 72 percent of California's oranges (making California the largest U.S. producer of fresh-market oranges), 88 percent of the State's grapefruit, 75 percent of its tangerines, and 72 percent of its lemons.

The citrus varieties produced in Texas during the 2005-06 season were grapefruit, Valencia oranges, and midseason oranges. Fresh production accounted for approximately 67 percent of total production. Valencia and midseason orange production was destined primarily for the fresh market, accounting for 79 percent of total production. Also, 62 percent of grapefruit production in that State was utilized on the fresh market.

Arizona produces Valencia and navel oranges, grapefruit, tangerines, and lemons. Approximately 58 percent of Arizona citrus was utilized on the fresh market during the 2005-06 season, including 52 percent of the State's orange production, 65 percent of its tangerine production, 55 percent of its lemon production, and all of its grapefruit production.

Total and domestic shipments of Florida fresh citrus remained virtually unchanged during the 2005-06 season over the previous season, showing few signs of recovery from the dramatic decline between the 2003-04 and 2004-05 seasons, when total and domestic shipments declined by 42 percent and 29 percent, respectively. Fresh grapefruit continued to have the largest share of total shipments of fresh Florida citrus including exports, while oranges accounted for the State's largest share of domestic shipments.

Expected Costs and Benefits

The proposed changes described in this document are likely to primarily affect citrus producers and packinghouses in Florida whose operations rely on the interstate shipment of fresh citrus. The proposed changes would also affect the way resources are allocated for citrus canker

mitigation activities at both Federal and State levels.

Effects on Florida Fresh Citrus Shipments

We expect the proposed rule to have little economic effect on the production of fresh citrus in Florida, but the shift from inspection for citrus canker in the citrus groves, tree by tree, to the inspection of fresh citrus fruit at the packinghouse may result in an increase in the quantity of citrus eventually approved for shipment interstate. As such, interstate shipment of fresh citrus fruit originating from groves previously prohibited from shipping outside of quarantined areas could lead to changes in market prices and increased competition. Although the changes to the supply of Florida fresh citrus in non-citrus-producing States resulting from these additional shipments are

expected to be small, we are unable to estimate the extent of any such increase due to lack of data. APHIS welcomes public input on the possibility of increased fresh citrus shipments to non-citrus producing States as a result of the proposed changes. Under the proposed protocol, Florida citrus would still be prohibited from distribution to other commercial citrus-producing States.

Effects on Florida Packinghouses and Citrus Growers

Florida packinghouses are the segment of the citrus industry likely to be the most affected by the proposed regulations, since the focus of the new protocol for treatments and inspections would be shifted away from the citrus groves to packinghouse facilities. According to the proposed regulations, citrus packinghouses would be required to operate under an APHIS compliance

agreement wherein the packinghouse operator agrees to meet all requirements of the regulations. The provisions in current § 301.75–7 pertaining to the inspection of groves for citrus canker as a prerequisite for the interstate movement of citrus fruit would be removed. While the new regulations would indirectly place a burden on the growers of fresh citrus to transport symptom-free fresh citrus to packinghouses for packing, the inspection and treatment activities that would be required would take place in the packinghouses. A packinghouse charge to the grower for citrus that does not meet the quality requirements is known as an elimination charge, and is an existing industry measure for ensuring high quality, symptom-free fruit. Table 1 outlines the average packinghouse charges for Florida fresh citrus during the 2005–06 season.

TABLE 1.—ESTIMATED AVERAGE TOTAL PACKING CHARGES PAID BY GROWERS, AND ELIMINATION CHARGES PAID BY GROWERS FOR LOTS THAT DO NOT MEET QUALITY REQUIREMENTS, 2005–06 ¹

	Domestic grapefruit	Export grapefruit	Oranges	Temples/tangelos	Tangerines
	\$/Carton ³				
Total packing charge ²	\$4.016	\$4.395	\$4.347	\$4.614	\$5.469
	\$/Box ³				
Drenching charge	\$0.181	\$0.189	\$0.181	\$0.184	\$0.188
Packinghouse elimination charges	0.545	0.553	0.548	0.548	0.552
Hauling charges for eliminations	0.505	0.534	0.515	0.531	0.534

Source: Ronald P. Muraro, University of Florida-IFAS, Citrus Research and Education Center, Lake Alfred, FL August 2006.

¹ These packing charges are based on charges at four citrus packinghouses in the Interior production region and 13 citrus packinghouses in the Indian River production region.

² Total packing charge refers to the charge to the grower for packed fruit, and is based upon packinghouse operational costs. Total packing charges are discussed in detail in the report “Average Packinghouse Charges for Florida Fresh Citrus—2005–06 Season,” (<http://edis.ifas.ufl.edu>).

³ One box is equivalent to two 4/5-bushel cartons.

Focusing regulatory enforcement in the packinghouse via required treatments and inspection of fruit intended for interstate movement is expected to be an economically efficient means of ensuring a high level of confidence that even a small percentage of infected fruit would be detected. Both packinghouses operating under compliance agreements with APHIS and growers seeking to minimize elimination charges and price discounts would have incentives to ensure that only fruit considered to be free from citrus canker would enter a packing facility. Minimizing the charges back to the grower associated the drenching, elimination, hauling of fruit unsuitable for the fresh market through the practice of grove surveys is commonly employed by growers as part of their operations. Tree inspections, which were previously conducted by APHIS and the

Florida Department of Agriculture and Consumer Services (FDACS), will, we believe, be conducted as self-surveys by the industry. Given the possibility of elimination charges, growers will apply the additional resources needed to conduct these self-surveys as long as the benefits outweigh the costs.

The inspection process would be largely dependent on the physical layout of each particular packinghouse. Conditions that must be met in order for APHIS inspectors to carry out the required inspections would translate into additional costs to the packinghouse. Inspections would either occur at the roll board prior to the fruit being physically packed or after the fruit is packed. In either case, adequate lighting would be a necessary component for the fruit inspection process. If the inspection occurs after fruit is packed, the packinghouse would

be required to provide a table and personnel to repack the boxes after inspection. Lot size would be determined by the packinghouse, and varies according to the size of the packinghouse, the number of packing lines per facility, and the varieties of fresh citrus packed. APHIS field personnel estimate that under ideal circumstances, the inspection of 1,000 pieces of fruit would take approximately 1 hour and 23 minutes (approximately 5 seconds per fruit). If the lot takes longer than that to run, the inspection is not expected to result in a delay. However, a lot that would take less than 1 hour and 23 minutes to run the line may be delayed by the inspection of 1,000 pieces of fruit.

The time it would take to run a lot of fruit varies by packinghouse, and is determined by numerous factors. It is reasonable to assume that an average