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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 04-093-1]

#### Golden Nematode; Regulated Areas

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

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

**SUMMARY:** We are amending the golden nematode regulations by adding a field in Cayuga County, NY, to the list of generally infested regulated areas. This action is necessary to prevent the artificial spread of golden nematode to noninfested areas of the United States.

**DATES:** This interim rule is effective November 8, 2004. We will consider all comments that we receive on or before January 7, 2005.

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

- **EDOCKET:** Go to <http://www.epa.gov/feddoCKET> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 04-093-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 04-093-1.

- **E-mail:** Address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached

files. Please include your name and address in your message and "Docket No. 04-093-1" on the subject line.

- **Agency Web site:** Go to <http://www.aphis.usda.gov/ppd/rad/cominst.html> for a form you can use to submit an e-mail comment through the APHIS Web site.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

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

**FOR FURTHER INFORMATION CONTACT:** Dr. Vedpal Malik, Agriculturalist, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-6774.

#### SUPPLEMENTARY INFORMATION:

##### Background

The golden nematode (*Globodera rostochiensis*) is a destructive pest of potatoes and other solanaceous plants. Potatoes cannot be economically grown on land which contains large numbers of the nematode. The golden nematode has been determined to occur in the United States only in parts of New York.

The golden nematode regulations (contained in 7 CFR 301.85 through 301.85-10 and referred to below as the regulations) list two entire counties and portions of seven other counties in the State of New York as regulated areas and restrict the interstate movement of regulated articles from those areas. Such restrictions are necessary to prevent the artificial spread of the golden nematode to noninfested areas of the United States.

Regulated areas are those areas in which the golden nematode has been found or in which there is reason to believe that the golden nematode is present, or those areas which it is deemed necessary to regulate because of their proximity to infestation or their inseparability for quarantine enforcement purposes from infested localities. The regulations provide that less than an entire State may be designated as a regulated area only if the Deputy Administrator determines that the State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of the regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of the articles and the designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the golden nematode.

Regulated areas are divided into suppressive areas and generally infested areas. Suppressive areas are regulated areas where eradication of the golden nematode is undertaken as an objective. Generally infested areas are regulated areas not designated as suppressive areas. Restrictions are imposed on the interstate movement of regulated articles from generally infested areas and suppressive areas in order to prevent the infestation of areas where the golden nematode does not occur.

Recent surveys conducted by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that an infestation of golden nematode has occurred in one field outside the regulated area in Cayuga County, NY. New York has quarantined the infested area and is restricting the intrastate movement of regulated articles from that area to prevent the further spread of golden nematode. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the regulated areas to prevent the spread of golden nematode to other States and other countries.

In accordance with the criteria for listing regulated areas, we are amending the list of regulated areas in § 301.85-2a to include an additional part of Cayuga County, NY, in response to the recent golden nematode findings described above. The regulated area is described

in the rule portion of this document. Maps of the regulated area are available by writing to the person listed under **FOR FURTHER INFORMATION CONTACT** or from local offices of Plant Protection and Quarantine.

**Emergency Action**

This rulemaking is necessary on an emergency basis to prevent the artificial spread of golden nematode to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments 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 rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the golden nematode regulations by adding a field in Cayuga County, NY, to the list of generally infested regulated areas. This action is necessary to prevent the artificial spread of golden nematode to noninfested areas of the United States.

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small entities and to use flexibility to provide regulatory relief when regulations create economic disparities between different sized entities. According to the Small Business Administration's (SBA's) Office of Advocacy, regulations create economic disparities based on size when they have significant economic impact on a substantial number of small entities.

Potato farms are classified as small businesses if they receive less than \$750,000 in annual sales receipts. The U.S. Department of Agriculture's National Agricultural Statistics Service does not publish data on farm size for New York potato farms. However, it is likely that the regulated farm in Cayuga County qualifies as a small business as defined by the SBA.

In the United States, the potato is the leading vegetable in terms of acreage

and farm value. About 1.3 million acres are grown for a total production yield of 31.4 billion pounds, worth \$2.5 billion in farm receipts. Over 60 percent of U.S. potato production is processed. Growth in the chip market alone has averaged about 11 percent per year over the past 8 years, resulting in a \$4 billion industry. The market for exported, processed potatoes is a rapidly growing one.

Golden nematode infestation of potatoes and other solanaceous plants (e.g., tomatoes, eggplants) poses a threat to New York's agricultural economy. New York State is the twelfth largest potato producer nationwide. According to the New York Agricultural Statistics Service, in 2002 New York State had approximately 22,200 planted acres of potatoes with a production value totaling \$65 million. About 55 percent of New York State's potato production is destined for the fresh market, 40 percent for processing (i.e., potato chips), and 5 percent for seed and livestock feed. New York State potatoes and potato products are primarily consumed locally and within the northeastern portion of the United States. In 2001, the production value of major solanaceous plants in New York was \$92.4 million.

The additional costs associated with our designation of the new regulated area in Cayuga County are very small relative to the benefits gained from agricultural sales. For example, the treatment costs for the infected fields are borne by APHIS and not the farmer. The only inconvenience to the farm operator might be that potatoes or any other solanaceous plants may be planted only every other year until the infestation is determined to be over. In the event that the farm operator needs to move farm equipment outside the farm, that equipment must first be treated, either chemically or with steam. The costs of treatment are borne by APHIS. It takes one 8-hour day for a Plant Protection and Quarantine officer and a technician to steam treat farm equipment, including the time required to set up and tear down the treatment site. Since the farm operator does not have to pay for any aspect of this treatment, this rule will not have any adverse economic impact on this farm.

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 interim 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, 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; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.85–2a, under the heading “New York”, the entry for Cayuga County is revised to read as follows:

**§ 301.85–2a Regulated areas; suppressive and generally infested areas.**

\* \* \* \* \*

New York

(1) *Generally infested area:*  
Cayuga County. (A) The Town of Montezuma;

(B) That portion of land within the Town of Mentz owned or operated by Martens Farm which lies in an area bounded as follows: Beginning at the intersection of Tow Path Road and Maiden Lane; then west along Tow Path Road to its intersection with the Town of Mentz boundary; then north along the Town of Mentz boundary to its intersection with Maiden Lane; then east along Maiden Lane to the point of beginning.

\* \* \* \* \*

Done in Washington, DC, this 2nd day of November 2004.

**Elizabeth E. Gaston,**

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

[FR Doc. 04-24827 Filed 11-5-04; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 905

[Docket No. FV04-905-2 FIR]

#### Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Exemption for Shipments of Tree Run Citrus

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture is adopting, as a final rule, without change, an interim final rule that established an exemption for shipments of small quantities of tree run citrus from the rules and regulations under the Florida citrus marketing order (order). The order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is administered locally by the Citrus Administrative Committee (Committee). Under rule, shipments of tree run citrus continue to be exempt from grade, size, and assessment requirements under the order. Producers can ship 150 1 $\frac{3}{8}$  bushel boxes, per variety, per shipment of their own citrus free from order regulations, not to exceed 3,000 boxes per variety season. The Committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns.

**EFFECTIVE DATE:** December 8, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Cathy Harding, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884-1671; telephone: (863) 324-3375. Fax: (863) 325-8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237 Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs

AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to 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 Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect an exemption for shipments of small quantities of tree run citrus from the grade, size, and assessment requirements under the order. Tree run fruit is quality citrus picked and boxed in the field and taken directly to market without being graded or sized. By providing this exemption, producers can ship 150 1 $\frac{3}{8}$  bushel boxes per variety, per shipment, of their own citrus free from order regulations. Total shipments cannot exceed 3,000 boxes per variety, per season. The Committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns. This action was

recommended unanimously by the Committee at its meeting on June 15, 2004.

Section 905.80 of the order provides authority for the Committee to exempt certain types of shipments from regulation. Exemptions can be implemented for types of shipments of any variety in such minimum quantities, or for such purposes as the Committee, with the approval of USDA, may specify. No assessment is levied on fruit so shipped. The Committee shall, with the approval of USDA, prescribe such rules, regulations, or safeguards as it deems necessary to prevent varieties handled under the provisions of this section from entering channels of trade for other than the purposes authorized by this section.

Section 905.149 of the order's rules and regulations defines grower tree run citrus and outlines the procedures to be used for growers to apply to the Committee to ship their own tree run citrus exempt from grade, size, and assessment requirements. The provisions were originally established just for the 2002-03 season, then extended for the 2003-04 season. During the 2003-04 season, growers were allowed to ship a maximum of 150 1 $\frac{3}{8}$  bushel boxes per variety, per shipment, up to a seasonal total of 3,000 boxes per variety of their tree run fruit free from order requirements.

For the past two seasons, the Committee has utilized the provisions of § 905.149 on an annual basis. Rather than making this recommendation each year, the Committee recommended that the provisions of § 905.149 be established on a continuous basis. However, growers must receive approval from the Committee before they can utilize this exemption.

According to Florida Department of Citrus (FDOC) regulation 20-35.006, "Tree run grade is that grade of naturally occurring sound and wholesome citrus fruit which has not been separated either as to grade or size after severance from the tree." Also, (FDOC) regulation 20-62.002 defines wholesomeness as fruit free from rot, decay sponginess, unsoundness, leakage, staleness, or other conditions showing physical defects of the fruit. By definition, this fruit is handled by the grower and bypasses normal handler operations. Prior to implementation of the exemption, all tree run citrus had to meet all requirements of the marketing order, as well as State of Florida Statutes and Florida Department of Citrus regulations. Even with this rule, tree run citrus must continue to meet applicable State of Florida Statutes and Florida Department of Citrus