

companies as the small entities most likely to be affected by this action and considers the costs associated with complying with the inspection and other requirements imposed by the regulations on the interstate movement of regulated articles from quarantined areas. Based on the information presented in the analysis, we expect that affected entities would not experience any additional compliance costs as a result of this rule because a State-imposed quarantine is already in place that applies the same movement restrictions and inspection requirements. We invite comment on our economic analysis, which is posted with this interim rule on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov) and may be obtained from the person listed under FOR FURTHER INFORMATION CONTACT.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects 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 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75-15 issued under Sec. 204, Title II, Public Law 106-113, 113 Stat. 1501A-293; sections 301.75-15 and 301.75-16 issued

under Sec. 203, Title II, Public Law 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.51-2, paragraph (a) is revised to read as follows:

#### § 301.51-2 Regulated articles.

(a) Firewood (all hardwood species), and green lumber and other material living, dead, cut, or fallen, inclusive of nursery stock, logs, stumps, roots, branches, and debris of half an inch or more in diameter of the following genera: Acer (maple), Aesculus (horse chestnut), Albizia (mimosa), Betula (birch), Celtis (hackberry), Cercidiphyllum (katsura), Fraxinus (ash), Platanus (sycamore), Populus (poplar), Salix (willow), Sorbus (mountain ash), and Ulmus (elm).

\* \* \* \* \*

■ 3. In § 301.51-3, paragraph (c), under the heading "Massachusetts," the entry for *Worcester County* is revised to read as follows:

#### § 301.51-3 Quarantined areas.

\* \* \* \* \*

(c) \* \* \*

Massachusetts

*Worcester County.* The portion of Worcester County, including the municipalities of Worcester, Holden, West Boylston, Boylston, and Shrewsbury, that is bounded by a line starting at the intersection of Route 140 (Grafton Circle) and Route 9 (Belmont Street) in Shrewsbury; then north and northwest on Route 140 through Boylston into West Boylston until it intersects Muddy Brook (body of water); then east along Muddy Brook to the Wachusett Reservoir; then along the shoreline of the Wachusett Reservoir in an easterly, northerly, and then westerly direction until it intersects the West Boylston Town boundary; then along the West Boylston Town boundary until it intersects Interstate 190 at River Road; then south along Interstate 190 to Malden Street; then west on Malden Street to Bullard Street in Holden; then west on Bullard Street to Wachusett Street; then northwest on Wachusett Street to Union Street; then southwest on Union Street until it becomes Highland Street; then southwest on Highland Street to Main Street; then southeast on Main Street to Bailey Road; then south on Bailey Road to Chapin Road; then south on Chapin Road to its end; then continuing in a southeasterly direction to Fisher Road; then southwest on Fisher Road to Stonehouse Hill Road; then south on Stonehouse Hill Road to Reservoir Street; then southeast on Reservoir Street until it intersects the Worcester City boundary; then along the

Worcester City boundary until it intersects Route 20 (Hartford Turnpike); then east on Route 20 to Lake Street, then north and northeast on Lake Street to Route 9 (Belmont Street), then east on Route 9 to the point of beginning.

\* \* \* \* \*

Done in Washington, DC, this 14<sup>th</sup> day of June 2010.

**Kevin Shea,**

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

[FR Doc. 2010-14658 Filed 6-16-10; 2:08 pm]

BILLING CODE 3410-34-S

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Parts 301 and 305

[Docket No. APHIS-2008-0015]

RIN 0579-AC85

#### Citrus Greening and Asian Citrus Psyllid; Quarantine and Interstate Movement Regulations

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

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

**SUMMARY:** We are quarantining the States of Florida and Georgia, Puerto Rico, the U.S. Virgin Islands, two parishes in Louisiana, and two counties in South Carolina due to the presence of citrus greening and quarantining Alabama, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, Puerto Rico, Texas, the U.S. Virgin Islands, three counties in South Carolina, portions of one county in Arizona, and all of three and portions of an additional three counties in California due to the presence of Asian citrus psyllid, a vector of the bacterial pathogen that causes citrus greening. This action follows the discovery of these pests in the respective quarantined areas. We are also establishing restrictions on the interstate movement of regulated articles from the quarantined areas. This action is necessary on an emergency basis in order to prevent the spread of the disease and its vector to noninfested areas of the United States.

**DATES:** This interim rule is effective June 17, 2010, except for § 301.76-4 which is effective September 15, 2010. We will consider all comments that we receive on or before August 16, 2010.

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

● Federal eRulemaking Portal: Go to (<http://www.regulations.gov/>)

[fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0015](http://fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0015)) to submit or view comments and to view supporting and related materials available electronically.

• **Postal Mail/Commercial Delivery:** Please send one copy of your comment to Docket No. APHIS-2008-0015, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2008-0015.

**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. Patrick Gomes, PPQ, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606-5213; (919) 855-7313.

#### **SUPPLEMENTARY INFORMATION:**

#### **Background**

Under section 412(a) of the Plant Protection Act (7 U.S.C. 7701 *et seq.*, referred to below as the PPA), 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 disease within the United States. Under the Act, the Secretary may also issue regulations requiring plants and plant products moved in interstate commerce to be subject to remedial measures determined necessary to prevent the spread of the disease, or requiring the objects to be accompanied by a permit issued by the Secretary prior to movement.

In accordance with the PPA, we are amending “Domestic Quarantine Notices” at 7 CFR part 301 by adding a new subpart, “Citrus Greening and Asian Citrus Psyllid” (§§ 301.76 through 301.76-11, referred to below as the regulations). The regulations quarantine the States of Florida and Georgia, Puerto Rico, the U.S. Virgin Islands, two parishes in Louisiana, and two counties in South Carolina due to the presence of citrus greening and quarantine Alabama,

Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, Puerto Rico, Texas, the U.S. Virgin Islands, three counties in South Carolina, portions of one county in Arizona, and all of three and portions of an additional three counties in California due to the presence of Asian citrus psyllid, a vector of the bacterial pathogen that causes citrus greening.

Citrus greening, also known as Huanglongbing disease of citrus, is considered to be one of the most serious citrus diseases in the world. Citrus greening is a bacterial disease, caused by strains of the bacterial pathogen “*Candidatus Liberibacter asiaticus*”, that attacks the vascular system of host plants. The pathogen is phloem-limited, inhabiting the food-conducting tissue of the host plant, and causes yellow shoots, blotchy mottling and chlorosis, reduced foliage, and tip dieback of citrus plants. Citrus greening greatly reduces production, destroys the economic value of the fruit, and can kill trees. Once infected, there is no cure for a tree with citrus greening disease. In areas of the world where the disease is endemic, citrus trees decline and die within a few years and may never produce usable fruit. Citrus greening was first detected in the United States in Miami-Dade County, FL, in 2005, and is only known to be present in the United States in the States of Florida and Georgia, Puerto Rico, the U.S. Virgin Islands, two parishes in Louisiana, and two counties in South Carolina.

The bacterial pathogen causing citrus greening can be transmitted by grafting, and under laboratory conditions, by dodder. There also is some evidence, discussed later in this document, that seed transmission may occur. The pathogen can also be transmitted by two insect vectors in the family *Psyllidae*: *Diaphorina citri* Kuwayama, the Asian citrus psyllid (ACP), and *Trioza erytreae* (del Guercio), the African citrus psyllid. ACP can also cause economic damage to citrus in groves and nurseries by direct feeding. Both adults and nymphs feed on young foliage, depleting the sap and causing galling or curling of leaves. High populations feeding on a citrus shoot can kill the growing tip. ACP is currently present in the States of Alabama, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, Puerto Rico, Texas, the U.S. Virgin Islands, and portions of Arizona, California, and South Carolina. Based on regular surveys of domestic commercial citrus-producing areas, the African citrus psyllid is not present in the United States.

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) has undertaken measures to control the artificial spread of citrus greening and its vectors to noninfested areas of the United States since the introduction of the disease in 2005. On September 16, 2005, APHIS issued a Federal Order designating one affected county in Florida as a quarantined area, and imposing restrictions on the interstate movement all citrus greening and ACP host material from this area.<sup>1</sup>

In January 2006, we issued an environmental assessment, titled “Citrus Greening Control Program in Florida Nurseries” (January 2006).<sup>2</sup> This document assessed the environmental impacts associated with the use of the pesticide treatments acetamiprid, chlorpyrifos, fenprothrin, imidacloprid, kaolin, and a cyfluthrin/imidacloprid mixture as part of a disease control program for citrus greening and ACP.

On May 3, 2006, we revised the September 2005 Federal Order to designate 9 additional counties in Florida as quarantined areas.

On November 2, 2007, we issued a revised order that designated 18 additional counties in Florida as areas quarantined for citrus greening and quarantined 32 counties in Texas, the entire States of Florida and Hawaii, the entire Territory of Guam, and the entire Commonwealth of Puerto Rico for ACP. This order also contained treatments that could be performed on ACP regulated articles to allow their movement from a quarantined area to areas of the United States other than commercial citrus-producing States. The order stated that, prior to movement, regulated articles (other than *Berbera* (= *Murraya koenigii*, or curryleaf) had to be treated using an Environmental Protection Agency (EPA)-approved product labeled for use in nurseries. The articles had to subsequently be treated with a drench containing imidacloprid as the active ingredient within 30 days prior to movement and with a foliar spray with a product containing acetamiprid,<sup>3</sup> chlorpyrifos, or fenprothrin as the active ingredient within 10 days prior to movement.

<sup>1</sup> To view the September 2005 Federal Order, or any other Federal Order referenced in this interim rule, go to ([http://www.aphis.usda.gov/plant\\_health/plant\\_pest\\_info/citrus\\_greening/regs.shtml](http://www.aphis.usda.gov/plant_health/plant_pest_info/citrus_greening/regs.shtml)).

<sup>2</sup> To view the 2006 environmental assessment, go to ([http://www.aphis.usda.gov/plant\\_health/ea/downloads/citrusgreening1-06ea.pdf](http://www.aphis.usda.gov/plant_health/ea/downloads/citrusgreening1-06ea.pdf)).

<sup>3</sup> We have since obtained data suggesting that acetamiprid is not efficacious in neutralizing ACP. Accordingly, we are not designating it an APHIS-approved treatment within this interim rule.

Provided that it did not originate from an area quarantined for citrus greening, currryleaf could be moved interstate to any State following treatment with methyl bromide according to the APHIS-approved treatment schedule MB T101-n-2, found in 7 CFR part 305.

We accompanied this revised order with a notice<sup>4</sup> published on the same day in the **Federal Register** (72 FR 62204-62205, Docket No. APHIS-2007-0135) in which we announced to the public the availability of an environmental assessment, titled "Movement of Regulated Articles from Citrus Greening and Asian Citrus Psyllid Quarantine Zones" (October 2007). The assessment evaluated the possible environmental impacts associated with implementation of the revised Federal Order and, in particular, the treatment schedules specified within it.

The November 2007 order also provided Florida and Texas with a deadline of December 1, 2007, to adopt and enforce regulations restricting the intrastate movement of regulated articles that were equivalent to those imposed by the Federal Order on the interstate movement of regulated articles from areas within the State quarantined for citrus greening, in the case of Florida, and ACP, in the case of Texas. If such regulations were not established by December 1, 2007, we stated that we would designate the entire States as quarantined areas.

Texas established such regulations prior to December 1, 2007, while Florida did not. Accordingly, on January 11, 2008, we amended the Federal Order to designate the State of Florida as an area quarantined for citrus greening. In that Federal Order, we also allowed for the use of irradiation, in addition to the option of using methyl bromide, as a possible treatment for currryleaf and other articles intended for consumption or decorative use and moved from the ACP quarantined area.

On June 24, 2008, we amended the Federal Order to add one parish in Louisiana to the list of areas quarantined for citrus greening, and four parishes in Louisiana to the list of areas quarantined for ACP, following the detection of the disease and ACP within the State. On July 11, 2008, we amended the Federal Order to designate an additional parish in Louisiana as a quarantined area for ACP. On July 22, 2008, we amended the Federal Order to designate two additional parishes in

Louisiana as quarantined areas for ACP. On August 5, 2008, we updated the order to add an additional parish in Louisiana to the list of ACP quarantined areas. Louisiana established equivalent intrastate regulations to prevent the spread of citrus greening and ACP from the quarantined areas.

On September 12, 2008, we amended the Federal Order to add the entire State of Georgia, as well as one county in Alabama, one county in Mississippi, three counties in South Carolina, and three additional counties in Texas to the list of ACP quarantined areas. Alabama, Mississippi, and South Carolina established equivalent intrastate regulations to prevent the spread of ACP; Georgia elected to forgo establishment of such regulations in favor of a Statewide quarantine.

On October 1, 2008, we updated the Federal Order to designate another parish in Louisiana as a quarantined area for citrus greening, and portions of one county in California as a quarantined area for ACP. Upon detection of ACP, California immediately implemented equivalent restrictions on intrastate movement of regulated articles. Therefore, only portions of one county were designated as a quarantined area.

In January 2009, Alabama, Louisiana, Mississippi, and Texas requested to have their entire States designated as quarantined areas for ACP. Accordingly, on January 28, 2009, we amended the Federal Order to designate the entire States of Alabama, Louisiana, Mississippi, and Texas as quarantined areas for ACP. In that Federal Order, we also expanded the quarantined area in California by adding portions of an adjacent county.

On July 29, 2009, we updated the Federal Order to add the State of Georgia and two counties in South Carolina to the list of areas quarantined for citrus greening, and to add portions of a third county in California to the list of areas quarantined for ACP.

On September 21, 2009, we updated the Order to add Los Angeles and Orange Counties to the area in California that is quarantined for ACP.

On November 20, 2009, we updated the Order to designate all of Puerto Rico as a quarantined area for citrus greening.

On December 15, 2009, we updated the Order to designate portions of one county in Arizona as a quarantined area for ACP, and to modify the area quarantined for ACP in California.

This rule replaces the December 15, 2009, Federal Order. It codifies some of the provisions of the order, clarifies others, and adds provisions that we have determined since the issuance of

the order to be necessary in order to prevent the spread of citrus greening and ACP to noninfested areas of the United States.

#### *Restrictions on the interstate movement of regulated articles (§ 301.76)*

Section 301.76 prohibits the interstate movement of articles regulated for citrus greening and ACP from an area quarantined for citrus greening or ACP, except in accordance with the regulations.

#### *Definitions (§ 301.76-1)*

Section 301.76-1 contains definitions of the following terms: *Administrator, Animal and Plant Health Inspection Service (APHIS), Asian citrus psyllid, certificate, citrus greening, commercial citrus grove, compliance agreement, EPA, established population, inspector, interstate, limited permit, moved (move, movement), nursery, nursery stock, person, port, quarantined area, regulated article, and State.*

We recognize that the definitions of two of these terms differ from existing definitions in our domestic quarantine regulations for citrus canker, another disease of citrus plants (see 7 CFR 301.75-1). First, in the citrus canker regulations, we define a *commercial citrus grove* as "an establishment maintained for the primary purpose of producing citrus fruit for commercial sale." We are defining this term in this rule as "a solid-set planting of trees maintained for the primary purpose of producing citrus fruit for commercial sale." This new definition clarifies that groves differ from other establishments that produce citrus fruit for commercial sale, such as nurseries and packinghouses. Such a clarification is necessary because movement of regulated nursery stock to a commercial citrus grove, in certain instances, exempts the articles from having to be labeled in accordance with § 301.76-4(a). We discuss this labeling requirement in greater depth later in this document.

Second, in the citrus canker regulations, we define a nursery as "any premises, including greenhouses but excluding groves, at which nursery stock is grown or maintained." Here, we are defining a *nursery* as "any commercial location where nursery stock is grown, propagated, stored, maintained, or sold, or any location from which nursery stock is distributed." This definition clarifies that any establishment that contains nursery stock, including retailers and distributors, must comply with the relevant regulations established by this interim rule.

<sup>4</sup> To view the notice or the environmental assessment, go to (<http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0135>).

We intend to amend these two definitions in the citrus canker regulations in a forthcoming rulemaking to make them identical to the definitions in the citrus greening regulations.

*Regulated articles for ACP and citrus greening (§ 301.76-2)*

Articles of several species of plants are host material for ACP, and thus present a risk of spreading ACP if they are moved from quarantined areas without restrictions. Most, although not all, of these species are also already confirmed to be hosts of “*Candidatus Liberibacter asiaticus*”, the bacterial pathogen that causes citrus greening. That said, both ACP and citrus greening are known to attack hosts within the plant family Rutaceae. Moreover, scientists have not yet discovered any members of the Rutaceae family that are resistant or immune to citrus greening. Indeed, studies to date suggest that grafting plant parts infected with citrus greening, as well as probing and feeding by ACP carrying the citrus greening pathogen, can transmit citrus greening to ACP host articles previously considered immune to the disease.<sup>5</sup> Finally, there is emerging evidence that plant species that are only known to be hosts of ACP may also be infected by citrus greening without showing symptoms of the disease.<sup>6</sup> Based on the apparent lack of immunity to citrus greening among the Rutaceae family, the possibility that ACP hosts may be infected but asymptomatic hosts for citrus greening, and the severity of citrus greening, we have determined it necessary to consider all ACP host species to be potential host species of citrus greening.

Therefore, paragraph (a) of § 301.76-2 states that all plants and plant parts (including leaves), except fruit, of the following species are regulated articles for ACP and citrus greening: *Aegle marmelos*, *Aeglopsis chevalieri*, *Afraegle gabonensis*, *A. paniculata*, *Amyris madrensis*, *Atalantia* spp. (including *Atalantia monophylla*), *Balsamocitrus dawei*, *Berbera* (= *Murraya*) *koenigii*, *Calodendrum capense*, *Choisya ternate*, *C. arizonica*, *X Citroncirus webberi*, *Citropsis articulata*, *Citropsis gillettiana*, *Citrus madurensis* (= *X Citrofortunella microcarpa*), *Citrus* spp., *Clausena anisum-olens*, *C. excavata*, *C. indica*, *C. lansium*, *Eremocitrus glauca*,

*Eremocitrus* hybrid, *Esenbeckia berlandieri*, *Fortunella* spp., *Limonia acidissima*, *Merrillia caloxylon*, *Microcitrus australasica*, *M. australis*, *M. papuana*, *XMicrocitronella* spp., *Murraya* spp., *Naringi crenulata*, *Pamburus missionis*, *Poncirus trifoliata*, *Severinia buxifolia*, *Swinglea glutinosa*, *Tetradium rutilcarpum*, *Toddalia asiatica*, *Triphasia trifolia*, *Vepris* (= *Toddalia*) *lanceolata*, and *Zanthoxylum fagara*.

In a November 19, 2007, final rule (72 FR 65172-65204, Docket No. APHIS-2007-0022) governing the interstate movement of citrus fruit from an area quarantined for citrus canker, we stated that we were evaluating whether seed contained in fruit serves as a pathway for the transmission of citrus greening.<sup>7</sup> Our evaluation determined that it does not. Moreover, fruit is not known to be a host article of ACP. Accordingly, we are not designating fruit as a regulated article for either citrus greening or ACP.

That said, while propagative seed (i.e., seed not contained in fruit and intended for planting) is not a host of ACP, we do consider it a potential host of citrus greening. This determination is based on emerging scientific evidence, from studies conducted by USDA’s Agricultural Research Service and the Center for Plant Health Science and Technology (CPHST) of APHIS’ Plant Protection and Quarantine (PPQ) program, that a small percentage of seedlings generated from seed taken from plants infected with citrus greening have tested positive for the disease. While evidence is not yet conclusive regarding the ability of propagative seed to transmit the disease, the severity of citrus greening has led us to determine that, in the absence of scientific evidence demonstrating that propagative seed is not a host of citrus greening, it should be considered a host.

Therefore, paragraph (b) of § 301.76-2 states that propagative seed of the species listed in § 301.76-2(a) is considered a host of citrus greening but not a host of ACP. Accordingly, notwithstanding the other provisions of this rule, the movement of propagative seed of these species from an area quarantined for citrus greening is prohibited, while the movement of such seed from an area quarantined only for ACP, but not for citrus greening, is allowed without restriction.

Paragraph (c) states that any other product, article, or means of conveyance may be designated as a regulated article

for ACP or citrus greening, if an inspector determines that it presents a risk of spreading these pests, and after the inspector provides written notification to the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of the regulations. This is intended to address, for example, a truck carrying refuse from a quarantined area, if an inspector considers it reasonable to believe that this refuse may contain leaves, branches, or other plant parts of regulated articles.

Finally, as we discuss in greater detail later in this document, certain plant parts of species that are hosts of citrus greening and ACP are used for consumption, as apparel or as a similar personal accessory, or for other decorative use. In order to render these parts suitable for their intended use, as a standard industry practice, the parts often are subject to extensive processing. For example, *Berbera* (= *Murraya*) *koenigii* (curryleaf) leaves that are intended for culinary use are usually both dried and shredded prior to shipment.

After reviewing these industry practices, APHIS has determined that, if they are uniformly applied, they often make the plant parts incapable of hosting live ACP or disseminating viable or potentially viable “*Candidatus Liberibacter asiaticus*”. Accordingly, paragraph (d) of § 301.76-2 states that plant parts of the species listed in paragraph (a) of the section may be exempted from the regulations in the subpart, provided that the parts have been processed such that an inspector determines they no longer present a risk of spreading ACP or citrus greening. Examples of such processing include, but are not limited to, heating, freezing, drying, pickling, and shredding.

(Please note that the final determination regarding whether to exempt such parts lies with the inspector. If an inspector has reason to believe that the articles may still host viable ACP or citrus greening, he or she may require that a certificate or limited permit be issued before the parts may be moved in interstate commerce or subject the articles to remedial measures pursuant to APHIS’ authority under the PPA.)

*Quarantined areas; citrus greening and ACP (§ 301.76-3)*

Paragraph (a) of § 301.76-3 describes the process by which a quarantined area for citrus greening or ACP is designated. Under this process, the Administrator will designate an area as a quarantined area for citrus greening or as a quarantined area for ACP in accordance

<sup>5</sup> See, e.g., Hung, T.H. M. L. Wu, H. J. Su. Identification of Alternative Hosts of the Fastidious Bacterium Causing Citrus Greening Disease. *Journal of Phytopathology* (June 2000), 321-326.

<sup>6</sup> Source: Dr. Andrew Beattie, University of West Sydney. Correspondence with APHIS, March 2008.

<sup>7</sup> To view the November 2007 final rule, go to (<http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0022>).

with the criteria listed in paragraph (c) of § 301.76-3.

We will publish the description of all areas quarantined for citrus greening or ACP on the PPQ Web site at ([http://www.aphis.usda.gov/plant\\_health/plant\\_pest\\_info/citrus\\_greening/index.shtml](http://www.aphis.usda.gov/plant_health/plant_pest_info/citrus_greening/index.shtml)). The description of each quarantined area will include the date the description was last updated and a description of the changes that have been made to the quarantined area. Lists of all quarantined areas may also be obtained by request from any local office of PPQ; local offices are listed in telephone directories and on the Internet at ([http://www.aphis.usda.gov/services/report\\_pest\\_disease/report\\_pest\\_disease.shtml](http://www.aphis.usda.gov/services/report_pest_disease/report_pest_disease.shtml)). After a change is made to the list of quarantined areas, we will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the quarantined area.

Paragraph (b) describes the conditions for the designation of less than an entire State as a quarantined area. Less than an entire State will be designated as a quarantined area for citrus greening or ACP only if the Administrator determines that:

- The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles; and
- The designation of less than the entire State as a quarantined area will prevent the interstate spread of citrus greening or ACP.

Based upon the criteria of this paragraph, we are quarantining the entire States of Florida and Georgia, as well as Puerto Rico and the U.S. Virgin Islands for citrus greening, and Alabama, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, Puerto Rico, Texas, and the U.S. Virgin Islands for ACP. We do not, however, consider it necessary to quarantine the entire State of Louisiana or South Carolina for citrus greening or to quarantine the entire States of Arizona, South Carolina, or California for ACP. This is because these States have adopted and are enforcing equivalent restrictions on the intrastate movement of regulated articles from all areas within the State that are quarantined for citrus greening or ACP, and because citrus greening or ACP have not been found in any areas within those States other than the following parishes and counties, or portions thereof:

- In Arizona, portions of Yuma County, as follows, which are quarantined for ACP: Sections 19, and

28 through 35 of Township 5 South and Range 20 West; Sections 15 through 36 of Township 5 South and Range 21 West; Sections 13 and 85 of Township 5 South and Range 22 West; Sections 7, 17 through 21, and Sections 27 through 34 of Township 6 South and Range 19 West; all Sections of Township 6 South and Range 20 West through 22 West; Section 31 of Township 7 South and Range 18 West; All Sections of Township 7 South and Range 19 West through 22 West; Sections 6, 7, 18, 19, 30, and 31 of Township 8 South Range 18 West; All Sections of Township 8 South and Range 19 West through 24 West; Sections 6, 7, 18 and 19 of Township 9 South and Range 18 West; All Sections of Townships 9 South and Range 19 West through 25 West; Sections 1 through 23, 27 through 33 of Township 10 South and Range 19 West; All Sections of Townships 10 South and Range 20 West through 25 West; Sections 5, 6, and 7 of Township 11 South and Range 19 West; All Sections of Townships 11 South and Range 20 West through 25 West; All Sections of Townships 12 South and Range 21 West through 23 West; All Sections of Townships 16 South and Range 21 East and 22 East;

- In Louisiana, Orleans and Washington Parishes, which are quarantined for citrus greening;
- In South Carolina, Beaufort and Charleston Counties, which are quarantined for both ACP and citrus greening, and Colleton County, which is quarantined for ACP; and
- In California, Imperial, Los Angeles, and Orange Counties, in their entirety; an area consisting of portions of Riverside and San Diego Counties; an area consisting of portions of Riverside County and San Diego County; and an area consisting of other portions of Riverside County and San Bernadino County, which are quarantined for ACP.

As we mentioned earlier in this document, paragraph (c) of § 301.76-3 sets forth the criteria for designating a State or a portion of a State as a quarantined area for citrus greening or ACP. Under the provisions of this paragraph, we will designate a State or portion of a State as a quarantined area for citrus greening when the presence of citrus greening is confirmed within the area by an APHIS-administered test, and we will designate a State or portion of a State as a quarantined area for ACP in which an established population of ACPs has been detected. "Established population" is defined in § 301.76-1 as the presence of ACP within an area that the Administrator determines is likely to persist for the foreseeable future.

A State, or portion of a State, will also be designated as a quarantined area for either citrus greening or ACP if the Administrator considers it necessary to quarantine the area because of its inseparability for quarantine enforcement purposes from localities in which citrus greening or an established population of ACP has been found.

In other regulations governing plant pests, we tend to designate an area as a quarantined area if the pest is determined to be present in the area. We have not used this criterion for designating an area as quarantined for ACP because certain ACP hosts that are intended for consumption, as apparel or as a similar personal accessory, or for other decorative use may be treated with irradiation at a dosage that neutralizes ACP, but does not kill it. Therefore, sterile ACP could be present on an article that will be shipped to retailers well outside of the natural range of ACP, e.g., on curryleaf shipped to a State in the Northeast corridor. We believe that, by qualifying that an established population of ACP must be detected within the area, we will have sufficient latitude to deal with any such incidents on a case-by-case basis, without necessarily imposing restrictions on the interstate movement of regulated articles from a State in which ACP is detected on such an article. In short, there are occasions when live ACP may be detected in an area and we will not quarantine the area for ACP.

If we detect an established population of ACP within an area, we will, on every occasion, quarantine that area for ACP. This is because ACP is the primary vector for citrus greening within the United States. Its presence in an area facilitates the introduction and spread of citrus greening.

*Labeling requirements for regulated nursery stock produced within an area quarantined for citrus greening (§ 301.76-4)*

We have determined that the inadvertent but illicit interstate movement of regulated nursery stock from an area quarantined for citrus greening is a high-risk pathway for the spread of the disease. For example, a tourist visiting a quarantined area could purchase ornamental nursery stock at a retail store, roadside stand, or airport kiosk, be unaware of the restrictions regarding its interstate movement, and transport the article to another State via luggage or some other means of conveyance. We are aware of at least 11 instances in FY 2008 when hosts of citrus greening were intercepted in passenger luggage in transit from Florida to another commercial citrus-

producing State. We are also aware of instances when producers have attempted to sell regulated nursery stock propagated in an area quarantined for citrus greening illicitly through Internet commerce. Because citrus greening is a high-risk disease, and because the introduction of citrus greening into a previously unaffected commercial citrus-producing area within the United States could result in substantial economic losses within that area, it is vitally important to establish a mechanism to alert the general public to these movement restrictions with the goal of preventing inadvertent movement.

Therefore, paragraph (a) of § 301.76-4 states that, effective September 15, 2010, except as provided in paragraphs (b) and (c) of § 301.76-4, all regulated nursery stock offered for commercial sale within an area quarantined for citrus greening must have an APHIS-approved plastic or metal tag on which a statement alerting consumers to Federal prohibitions regarding the interstate movement of the article is prominently and legibly displayed. Alternatively, if the article is destined for commercial sale in a box or container, the statement may be printed on the box or container, or printed on a label permanently affixed to the box or container, provided that, in either case, the statement is prominently and legibly displayed.

The operator of the site of propagation of the nursery stock and the person offering the plants for commercial sale are jointly responsible for all such labeling. Either party may actually do the labeling, as long as the plant is labeled in accordance with this section by the time it is offered for commercial sale. In accordance with our authority under the PPA, APHIS inspectors may take remedial measures to prevent the commercial sale of any products that lack such labeling; this may include confiscation or destruction of unlabeled articles.

We recognize that some regulated nursery stock produced within a quarantined area is destined for planting in a commercial citrus grove within that same area and moved directly to that grove, without movement outside of the quarantined area. This nursery stock, often known as "source stock," is used by the grove in order to ensure that there are enough fruit-bearing plants on site for the grove to be economically viable. Accordingly, this stock is not moved from the grove or commercially distributed. Since this nursery stock is not sold to the general public, and is moved solely within an area that is already affected with citrus greening,

paragraph (b) of § 301.76-4 states that such nursery stock may be moved without being labeled in accordance with paragraph (a).

Similarly, paragraph (c) states that nursery stock that will be moved interstate for immediate export under a limited permit in accordance with § 301.76-7(c) may be moved without being labeled in such a manner. Such nursery stock is not sold to the general public within the United States, and is moved interstate in a sealed container that must remain sealed as long as the articles are within the United States.

Finally, we are making this section effective on September 15, 2010, rather than upon publication of this rule in the **Federal Register**, in order to provide APHIS with sufficient time to engage in discussions with Federal and State plant health personnel, as well as regulated parties, regarding what statements and design should be approved for such labels. APHIS will provide producers and commercial retailers with a list of approved statements and tags as expeditiously as possible in order to provide these regulated parties with sufficient time to produce or purchase and affix labels in order to comply with this section.

*General conditions governing the issuance of any certificate or limited permit; provisions for cancellation of a certificate or limited permit (§ 301.76-5)*

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued when an inspector or person operating under a compliance agreement finds that, because of certain conditions, a regulated article can be moved safely from a quarantined area without spreading the disease or pest. For example, the article may have been grown under certain conditions that prohibit the introduction of the disease or pest, or may have been subject to remedial measures that eradicate the disease or destroy all life stages of the pest. Regulated articles accompanied by a certificate may be moved interstate without further movement restrictions. Limited permits are issued for regulated articles when an inspector finds that, because of a possible pest risk, the articles may safely be moved interstate only subject to further restrictions, such as prohibitions on movement to certain locations or movement for limited purposes. This interim rule establishes conditions for the issuance both of certificates and of limited permits. Section 301.76-5 contains the general

conditions for issuing a certificate or limited permit.

Paragraphs (a)(1) and (a)(2) of § 301.76-5 set out the general conditions under which an inspector or person operating under a compliance agreement will issue a certificate for the interstate movement of a regulated article. In addition to all other relevant conditions within the regulations, a certificate may only be issued if a regulated article:

- Will be moved in compliance with any additional emergency conditions that the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of ACP; and
- Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the article.

In paragraph (a)(1), we have included a footnote (number 2) to explain that, in accordance with sections 414, 421, and 423 of the PPA (7 U.S.C. 7714, 7731, and 7754), an inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles.

Paragraph (b) of § 301.76-5 sets out general conditions for the issuance of a limited permit. In addition to all other relevant conditions of the regulations, an inspector or person operating under a compliance agreement may issue a limited permit for the interstate movement of a regulated article only if he or she determines that the regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit) and that this movement of the regulated article will not result in the spread of citrus greening or ACP. Furthermore, a limited permit will only be issued if the regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the PPA to prevent the spread of citrus greening and ACP, and if the regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the article.

Paragraph (c) allows any person who has entered into and is operating under a compliance agreement to issue a certificate or limited permit for the interstate movement of a regulated article after he or she has determined that the article is eligible for a certificate or limited permit under the regulations.

Paragraph (d) contains provisions for the withdrawal of a certificate or limited

permit if the inspector determines that the holder of the certificate or limited permit has not complied with all of the provisions for the use of the document or with all of the conditions contained in the document. This paragraph also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact in the event that the person wishes to appeal the cancellation.

Finally, paragraph (e) states that, unless specific provisions exist in § 301.76-6 or § 301.76-7 of this subpart to allow the interstate movement of a certain regulated article, the interstate movement of that article is prohibited. This paragraph is necessary to clarify that the general provisions § 301.76-5 do not, in themselves, provide sufficient conditions for the movement of regulated articles, but serve, instead, as indispensable preconditions for the movement of regulated articles.

*Additional conditions for the issuance of certificates and limited permits for regulated articles moved interstate from areas quarantined only for ACP, but not for citrus greening (§ 301.76-6)*

Section 301.76-6 establishes additional conditions for the issuance of certificates and limited permits for regulated articles moved interstate from an area that is quarantined only for ACP, and not quarantined for citrus greening. Paragraph (a) establishes additional conditions under which an inspector or person operating under a compliance agreement may issue a certificate for the interstate movement of any regulated article to any State. In addition to the general conditions for issuance of a certificate contained in § 301.76-5(a), a certificate may be issued if:

- The article is treated with methyl bromide in accordance with 7 CFR part 305.
- The article is shipped in a container that has been sealed with an agricultural seal placed by an inspector.
- The container that will be moved interstate is clearly labeled with the certificate.
- A copy of the certificate will be attached to the consignee's copy of the accompanying waybill.

Methyl bromide treatment in accordance with treatment schedule MB T101-n-2 has been demonstrated to kill all life stages of ACP. Moreover, by requiring that such articles must be sealed with an agricultural seal placed by an inspector after treatment, we are mitigating the risk that the articles will become reinfested with ACP during movement. Accordingly, these

conditions collectively are sufficient for the issuance of a certificate.

However, it should be noted that methyl bromide can be phytotoxic, that is, damaging or lethal to living plant tissue. Accordingly, we recommend that persons contemplating whether to apply methyl bromide to regulated nursery stock take this potential phytotoxicity into consideration prior to application of the treatment.

Moreover, it should also be noted that EPA or State or local environmental authorities may not authorize the use of methyl bromide on certain regulated articles.

Paragraph (b) establishes additional conditions for the issuance of a limited permit for the interstate movement of regulated nursery stock from an area quarantined only for ACP, but not for citrus greening. Specifically, in addition to the general conditions for issuance of a limited permit in § 301.76-5(b), an inspector or person operating under a compliance agreement may issue a limited permit for the interstate movement of regulated nursery stock if:

- The nursery stock is treated for ACP with an APHIS-approved soil drench or in-ground granular application no more than 30 days and no fewer than 20 days before shipment, followed by an APHIS-approved foliar spray no more than 10 days before shipment. All treatments must be applied according to their EPA label, including directions on application, restrictions on place of application and other restrictions, and precautions, and including statements pertaining to Worker Protection Standards.

- The nursery stock is inspected by an inspector in accordance with § 301.76-9 and found free of ACP.

- The nursery stock is affixed prior to movement with a plastic or metal tag on which the statement "Limited permit: USDA-APHIS-PPQ. Not for distribution in American Samoa, Northern Mariana Islands, or those portions of AZ, CA, and SC not quarantined due to the presence of Asian citrus psyllid or citrus greening" is prominently and legibly displayed. If the nursery stock is destined for movement or sale in boxes or containers, the statement may be printed on the box or container, or printed on a label permanently affixed to the box or container, provided that, in either case, the statement is prominently and legibly displayed.

- The nursery stock is moved in a container sealed with an agricultural seal placed by an inspector.

- This container also prominently and legibly displays the statement of the limited permit.

- A copy of the limited permit is attached to the consignee's copy of the accompanying waybill.

- The nursery stock is moved in accordance with the conditions specified on the limited permit to the location specified on the permit.

We have previously evaluated both the efficacy of and potential environmental impacts associated with the use of several pesticide treatments as part of a control program for ACP. Based on efficacy studies reviewed by CPHST and the evaluations documented in our 2006 and 2007 environmental assessments, we have determined that soil drenches containing imidacloprid and foliar sprays containing chlorpyrifos or fenpropathrin are effective and environmentally sound means of controlling ACP for all regulated nursery stock.

At the request of the citrus industry and State plant health officials in several States with commercial citrus production, CPHST recently examined the efficacy of in-ground granular applications containing dinotefuran and foliar sprays containing bifenthrin, deltamethrin, or a mixture of imidacloprid and cyfluthrin as pesticide treatments for ACP, and found them to be effective in treating regulated nursery stock for ACP. Moreover, the EA that accompanies this rule documents that the use of bifenthrin, deltamethrin, dinotefuran, or a mixture of imidacloprid and cyfluthrin as a treatment for ACP is not likely to have a significant impact on the human environment. Accordingly, APHIS is approving the use of each of these pesticides as treatments for ACP.

Additionally, we are currently evaluating the efficacy of several other pesticides as treatments for ACP, and we welcome public comment regarding the efficacy of any pesticides not currently approved by APHIS as treatments for ACP. If, after publication of this rule, we determine that a pesticide is efficacious, we will evaluate its impact on the human environment. As necessary, we will prepare an environmental assessment documenting this evaluation, and will publish a notice in the **Federal Register** to inform the public of the availability of this assessment. If an environmental assessment is not necessary, or if an assessment and notice of availability are necessary but we receive no comments on our notice suggesting that the pesticide has a significant impact on the human environment, we will consider treatments containing the pesticide to be APHIS-approved treatments for ACP. We will maintain a continually updated list of all approved pesticides on the

PPQ Web site ([http://www.aphis.usda.gov/plant\\_health/plant\\_pest\\_info/citrus\\_greening/index.shtml](http://www.aphis.usda.gov/plant_health/plant_pest_info/citrus_greening/index.shtml)).

While these soil drenches, granular applications, and foliar sprays have been proven to be efficacious in neutralizing ACP, because we are not establishing regulations governing the locations in which such treatments may be applied, it is possible, although unlikely, that the nursery stock could be reinfested with ACP before it is sealed in a container.

Because of this risk, we are prohibiting the movement of nursery stock treated in such a manner to American Samoa, the Northern Mariana Islands, and those portions of Arizona and California that are not quarantined due to the presence of ACP because those areas contain commercial citrus production and an established population of ACP has not yet been detected in the areas. The introduction of ACP to these areas, and the possible subsequent introduction of citrus greening, could result in substantive economic losses for the areas.

Although it is not listed as a commercial citrus-producing State, we are also prohibiting the movement of nursery stock treated in such a manner to the areas in South Carolina that are not quarantined for ACP or citrus greening because both ACP and citrus greening exist in South Carolina, because surveys have determined that host articles exist both in residential areas and in the wild in portions of the State that are currently not under quarantine for ACP or citrus greening, and because the further dissemination of ACP or citrus greening throughout the State could serve as a pathway for the natural or artificial spread of ACP and citrus greening throughout the South or to other uninfested areas of the United States.

Soil drenches and in-ground granular applications must be applied no fewer than 20 days before shipment because we have determined that application of a soil drench fewer than 20 days before shipment often results in suboptimal absorption of the drench and, in certain instances, may impede the treatment from being effective in neutralizing ACP. Conversely, if a foliar spray is applied more than 10 days before shipment, this increases the possibility of reintroduction of the psyllid prior to shipment.

Regarding the approved soil drenches and granular applications, we note that dinotefuran is currently not approved by EPA for use on fruit-bearing nursery stock. Similarly, we note that Worker Protection Standards, which are

statements on the label of certain pesticides regarding the prerequisites that an individual must fulfill in order to be qualified to apply those pesticides, may also restrict a producer's ability to apply certain of these treatments. Finally, we encourage all persons who intend to apply soil drenches, granular applications, and foliar sprays in accordance with the provisions of this section to consult with the environmental authorities in their State, since State regulations may restrict the sale or use of certain Federally approved treatments.

Shortly before issuance of our January 11, 2008, Federal Order, we received a request from parties who desired to move regulated articles intended for consumption (e.g., *Berbera* (= *Murraya*) *koenigii*, or curryleaf), as apparel or as a similar personal accessory, or for other decorative use (e.g., *Murraya* *paniculata*, or mock orange flowers or foliage, which are often incorporated into leis and into interior floral arrangements) from an area quarantined only for ACP, but not for citrus greening, following irradiation treatment.

Based on our evaluation of the risk associated with such movement, we established conditions to allow such movement in that Federal Order.

In paragraph (c) of § 301.76-6, we codify the movement conditions of the January 2008 Federal Order. The paragraph states that, in addition to the general conditions for issuance of a limited permit within the regulations, an inspector or person operating under a compliance agreement may issue a limited permit for the interstate movement of regulated articles intended for consumption, as apparel or as a similar personal accessory, or for other decorative use if:

- The articles are treated with irradiation in accordance with 7 CFR part 305 at an irradiation facility that is not located in an area quarantined for citrus greening.

- The container that will be used to move the articles interstate is clearly labeled with the limited permit, which contains the name of the State or portion of a State where the regulated article was produced and a statement that the article was treated in accordance with 7 CFR part 305.

- A copy of the limited permit is attached to the consignee's copy of the accompanying waybill.

Irradiation treatment at a dose of at least 400 gray has been demonstrated to neutralize, that is, to kill or render sterile, all plant pests that are members of the class Insecta, and do not belong to the order Lepidoptera; this includes

ACP. This treatment schedule, along with all other authorized treatment schedules, is found in the PPQ Treatment Manual, found on the Internet at ([http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/treatment.shtml](http://www.aphis.usda.gov/import_export/plants/manuals/ports/treatment.shtml)).

The phytosanitary treatment regulations contained in 7 CFR part 305 set out standards for treatments required in 7 CFR parts 301, 318 and 319. Section 305.9 of those regulations contains general requirements for irradiation treatment and includes several specific provisions that pertain to the irradiation treatment of certain articles that are regulated as hosts of fruit flies and that are moved interstate from an area quarantined for fruit flies. After reviewing these provisions, we have determined that, with several non-substantive changes, they can also be applied to the irradiation treatment of articles that are regulated as hosts of ACP and that are moved interstate from an area quarantined for ACP. We are amending § 305.9 accordingly.

By amending § 305.9, we are not only providing for irradiation treatment at a dose of at least 400 gray as an approved treatment for host articles of ACP, but also providing that certain risk mitigation measures within that section be applied to regulated articles to preclude the introduction of ACP to the articles. First, § 305.9 requires inspectors to be present at the facility and monitor treatments and authorizes these individuals to conduct unannounced inspections of the facility. Second, the section requires that all regulated articles be packed in insect-proof cartons prior to irradiation, and that safeguarding be applied to all pallets on which the articles are transported. These measures collectively obviate the need for requiring that irradiated articles be moved interstate in a container sealed with an agricultural seal.

Irradiation at the generic dose of 400 gray may not necessarily kill ACP; however, as noted above, it does neutralize it, that is, render it sterile. Some ACP may therefore survive treatment at the facility and interstate movement from the facility to the location provided on the limited permit. This is our rationale for requiring that the facility not be located in an area quarantined for citrus greening. Moreover, we are requiring that limited permits issued in accordance with paragraph (c) of § 301.76-6 contain the State or portion of a State where the regulated article was produced, in order to alleviate concerns that the consignee listed on the limited permit may have that such an article, if found to be



infested with irradiated ACP, originates from an area quarantined for both ACP and citrus greening, and thus is potentially infested with ACP carrying the bacterial pathogen that causes citrus greening. In a similar manner, we are requiring that the limited permit contain a statement that the article was treated in accordance with 7 CFR part 305, in order to provide assurances to the consignee that any ACP found on the article have been neutralized with irradiation. In the absence of such a statement, we consider it reasonable for the consignee to assume either that the article has not been treated for ACP, or that ACP have been introduced to the article during transit.

Finally, we note that we have, to date, only received requests to allow the interstate movement of articles intended for consumption, as apparel or as a similar personal accessory, or for other decorative use following irradiation treatment for ACP. However, we will entertain any requests that we receive requesting that we authorize the use of such treatment for other regulated articles.

*Additional conditions for issuance of certificates and limited permits for regulated articles moved interstate from areas quarantined for citrus greening (§ 301.76-7)*

The interstate movement of regulated nursery stock from an area quarantined for citrus greening presents a substantial risk of introducing citrus greening to a currently unaffected area of the United States. Accordingly, we are only authorizing the issuance of limited permits for nursery stock that is grown, produced, or maintained at a nursery or other facility located in an area quarantined for citrus greening if the nursery stock is moved interstate for immediate export under a protocol designed to ensure that it does not present a pathway for the artificial spread of citrus greening or ACP to these unaffected areas. Paragraph (a) of § 301.76-7 provides the conditions of the protocol.

Under the protocol, in addition to all other general conditions for issuance of a limited permit, the nursery stock must be treated for ACP with an APHIS-approved soil drench or in-ground granular application, followed by an APHIS-approved foliar spray, in accordance with § 301.76-6(b)(1), or with methyl bromide or irradiation, in accordance with 7 CFR part 305; must be inspected by an inspector prior to movement in accordance with § 301.76-9 and found free of ACP, if treated in accordance with § 301.76-6(b)(1); and must be affixed prior to movement with

a plastic or metal tag on which the statement "Limited permit: USDA-APHIS-PPQ. For immediate export only" is prominently and legibly displayed. If the nursery stock is destined for movement or sale in a box or container, the statement may be printed on the box or container, or printed on a label permanently affixed to the box or container, provided that, in either case, the statement is prominently and legibly displayed. The nursery stock must be accompanied by a copy of this limited permit attached to the consignee's copy of the waybill, and must be moved in accordance with the conditions of the limited permit directly to the port of export, in a container sealed with an agricultural seal placed by an inspector. A copy of the limited permit must also be attached to or legibly printed on this sealed container. The nursery stock must remain in this container, and the container must remain sealed, as long as the plants are within the United States.

Apart from treatment and inspection for ACP, the provisions of this protocol constitute the safeguards necessary to mitigate the risk associated with the interstate movement of potential host material for citrus greening. Treatment and inspection for ACP are necessary because, as we mentioned earlier in this document, ACP is the primary vector of citrus greening in the United States, and ACP in a citrus greening quarantined area must be presumed to be a carrier of the disease. We can foresee no instances when an area would be quarantined for citrus greening without also being quarantined for ACP either prior to or after the detection of citrus greening.

Paragraph (b) states that, except for nursery stock for which a limited permit has been issued in accordance with the conditions of paragraph (a) of this section, no other regulated article may be moved interstate from an area quarantined for citrus greening. This paragraph is necessary to clarify that the provisions of paragraph (a) are currently the only conditions under which we will allow the interstate movement of regulated articles from such an area.

That said, while there are presently no other conditions under which we will allow the interstate movement of nursery stock or any other regulated article from an area quarantined for citrus greening, we are evaluating the risk associated with the interstate movement of nursery stock produced from propagative material that is free of ACP and citrus greening and grown, packed, and moved under pest-exclusionary conditions. If we determine that there are conditions that are sufficient to allow nursery stock to

move safely from such a quarantined area, we will initiate rulemaking to add provisions to § 301.76-6 to provide for the movement of such nursery stock.

*Compliance agreements and cancellation (§ 301.76-8)*

Section 301.76-8 provides for the use of and cancellation of compliance agreements. Compliance agreements are provided for the convenience of persons who are involved in the growing, maintaining, processing, handling, packing, treating, or moving of regulated articles from quarantined areas. A person may enter into a compliance agreement when an inspector has determined that the person requesting the compliance agreement has been made aware of the requirements of the regulations and the person has agreed to comply with the requirements of the regulations and all the provisions of the compliance agreement. The person must also agree to maintain and offer for inspection such records as are necessary to demonstrate continual adherence to the requirements of the regulations and the provisions of the compliance agreement. This section contains a footnote (number 4) that explains where compliance agreement forms may be obtained.

Section 301.76-8 also provides that an inspector may cancel the compliance agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations or the agreement. The inspector will notify the holder of the compliance agreement of the reasons for the cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact in the event that the person wishes to appeal the cancellation.

*Inspection of regulated nursery stock (§ 301.76-9)*

As we mentioned in our discussion of § 301.76-7, all regulated nursery stock treated with soil drenches or in-ground granular applications and foliar sprays prior to interstate movement from an area quarantined only for ACP but not for citrus greening, as well as all nursery stock intended for interstate movement for immediate export from an area quarantined for citrus greening, must be inspected by an inspector. Section 301.76-9 contains the requirements for such an inspection. The inspection must occur no more than 72 hours prior to movement. The person who desires to move the articles interstate must notify the inspector as far in advance of the desired interstate movement as possible. The articles must be inspected at the place and in the manner the inspector

designates as necessary to comply with this rule. If the inspector has reason to believe that the interstate movement of the articles may lead to the artificial spread of citrus greening or ACP, he or she may deny issuance of a limited permit for interstate movement of the article or take other remedial measures to prohibit such spread.

We are including a footnote (number 5) in this section to provide further information regarding how to contact an inspector. The footnote states that inspectors are assigned to local offices of APHIS, which are listed in local telephone directories. It further states that information concerning local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, MD 20737-1236.

#### *Attachment and disposition of certificates and limited permits (§ 301.76-10)*

Section 301.76-10 requires the certificate or limited permit, or a copy thereof, to be attached to or legibly printed on the outside of the container containing the regulated article or the regulated article itself, if the article is not packed in a container, to be attached to or legibly printed on the sealed container in which the article is shipped and to be attached to the consignee's copy of the accompanying waybill. Further, the section requires that the carrier or the carrier's representative must furnish the certificate or limited permit to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

#### *Costs and charges (§ 301.76-11)*

Section 301.76-11 explains the APHIS policy that the services of an inspector that are needed to comply with the regulations are provided between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, to persons requiring those services. No services are provided outside of these hours, and all services provided are without cost. Finally, APHIS will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than the services of the inspector.

#### *Treatments in 7 CFR part 305 and the PPQ Treatment Manual*

As we mentioned earlier in this document, the phytosanitary treatments regulations contained in 7 CFR part 305 set out standards and schedules for

treatments required in 7 CFR parts 301, 318, and 319.

Within part 305, § 305.2 states that approved treatment schedules are set out in the PPQ Treatment Manual, and § 305.3 contains our processes for adding, revising, or removing treatment schedules. Paragraph (b)(1)(iii) of § 305.3 states that new treatment schedules may immediately be added to the manual, if PPQ has determined that the schedules are effective, based on efficacy data, and that ongoing trade in an article may be adversely impacted unless the new treatment schedules are approved for use.

Prior to this rule, methyl bromide was not listed in the manual as an approved treatment for ACP. However, as we mentioned above, we have determined, based on multiple efficacy studies, that the methyl bromide treatment schedule MB T101-n-2 will kill ACP in all life stages of the pest, and therefore can be used to treat all articles regulated for ACP. Moreover, we have determined that failing to add this treatment schedule to the manual could adversely impact interstate commerce in regulated articles from an area quarantined for ACP by removing a treatment option that was available to producers under our Federal Orders. Therefore, in accordance with §§ 305.2 and 305.3, we are immediately amending the treatment manual to list MB T101-n-2 as an approved treatment schedule for such articles.

#### **Emergency Action**

This rulemaking is necessary on an emergency basis to prevent the artificial spread of citrus greening and ACP, a vector of citrus greening. 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 the Regulatory Flexibility Act**

This interim 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 quarantining the States of Florida and Georgia, Puerto Rico, the U.S. Virgin Islands, two parishes in Louisiana, and two counties in South Carolina due to the presence of citrus greening and quarantining Alabama, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, Puerto Rico, Texas, the U.S. Virgin Islands, three counties in South Carolina, portions of one county in Arizona, and all of three and portions of an additional three counties in California due to the presence of Asian citrus psyllid, a vector of the bacterial pathogen that causes citrus greening. This action follows the discovery of these pests in the respective quarantined areas. We are also establishing restrictions on the interstate movement of regulated articles from the quarantined areas.

We have prepared an economic analysis for this interim rule. The analysis, which includes a cost-benefit analysis, identifies nursery operations and other production sites in Alabama, Arizona, California, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, Puerto Rico, South Carolina, Texas, and the U.S. Virgin Islands that produce citrus trees, orange jasmine, curryleaf, and other articles regulated by the interim rule as the entities that are likely to be affected by this action and examines the potential economic effects on those entities. The economic analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov). Copies of the economic analysis are also available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### **Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### **Paperwork Reduction Act**

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection and recordkeeping

requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579-0363 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. APHIS-2008-0015, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. APHIS-2008-0015 and send your comments within 60 days of publication of this rule.

This interim rule will require persons to complete various forms and documents. These include: Compliance agreements, certificates, limited permits, and labels.

We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.0002644 hours per response.

*Respondents:* Nurseries, commercial retailers.

*Estimated annual number of respondents:* 116.

*Estimated annual number of responses per respondent:* 16,399.62.

*Estimated annual number of responses:* 1,902,356.

*Estimated total annual burden on respondents:* 503 hours. (Due to averaging, the total annual burden hours

may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

### List of Subjects

#### 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

#### 7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 7 CFR parts 301 and 305 as follows:

### PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

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

■ 2. Part 301 is amended by adding a new "Subpart—Citrus Greening and Asian Citrus Psyllid," §§ 301.76 through 301.76-11, to read as follows:

#### Subpart—Citrus Greening and Asian Citrus Psyllid

Sec.

301.76 Restrictions on the interstate movement of regulated articles.

301.76-1 Definitions.

301.76-2 Regulated articles for Asian citrus psyllid and citrus greening.

301.76-3 Quarantined areas; citrus greening and Asian citrus psyllid.

301.76-4 Labeling requirements for regulated nursery stock produced within an area quarantined for citrus greening.

301.76-5 General conditions governing the issuance of any certificate or limited permit; provisions for cancellation of a certificate or limited permit.

301.76-6 Additional conditions for issuance of certificates and limited permits for regulated articles moved interstate from areas quarantined only for Asian citrus psyllid, but not for citrus greening.

301.76-7 Additional conditions for issuance of certificates and limited permits for regulated articles moved interstate from areas quarantined for citrus greening.

301.76-8 Compliance agreements and cancellation.

301.76-9 Inspection of regulated nursery stock.

301.76-10 Attachment and disposition of certificates and limited permits.

301.76-11 Costs and charges.

### Subpart—Citrus Greening and Asian Citrus Psyllid

#### § 301.76 Restrictions on the interstate movement of regulated articles.

No person may move interstate from any quarantined area any articles regulated for citrus greening and Asian citrus psyllid, except in accordance with this subpart.<sup>1</sup>

#### § 301.76-1 Definitions.

*Administrator.* The Administrator of the Animal and Plant Health Inspection Service or any individual authorized to act for the Administrator.

*Animal and Plant Health Inspection Service (APHIS).* The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

*Asian citrus psyllid.* The insect known as Asian citrus psyllid (*Diaphorina citri* Kuwayama) in any stage of development.

*Certificate.* A document, stamp, or other means of identification approved by APHIS and issued by an inspector or person operating under a compliance agreement when he or she finds that, because of certain conditions, a regulated article can be moved safely from an area quarantined for Asian citrus psyllid and/or citrus greening without spreading the psyllid or the disease.

*Citrus greening.* A plant disease caused by several strains of the uncultured, phloem-limited bacterial pathogen "*Candidatus Liberibacter asiaticus*".

*Commercial citrus grove.* A solid-set planting of trees maintained for the

<sup>1</sup> In order to enforce this section, any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of host articles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

primary purpose of producing citrus fruit for commercial sale.

**Compliance agreement.** A written agreement between APHIS and a person engaged in the business of growing, maintaining, processing, handling, packing, or moving regulated articles for interstate movement, in which the person agrees to comply with this subpart. For the purposes of this subpart, a memorandum of understanding is considered a compliance agreement.

**EPA.** The U.S. Environmental Protection Agency.

**Established population.** Presence of Asian citrus psyllid within an area that the Administrator determines is likely to persist for the foreseeable future.

**Inspector.** An individual authorized by the Administrator to perform the duties required under this subpart.

**Interstate.** From any State into or through any other State.

**Limited permit.** A document issued by an inspector or person operating under a compliance agreement to allow the interstate movement of regulated articles to a specified destination, for specified handling, processing, or utilization.

**Moved (move, movement).** Shipped, offered for shipment, received for transportation, transported, carried (whether on one's person or by any other means of conveyance), or allowed to be moved, shipped, transported, or carried. For the purposes of this subpart, movements include any type of shipment, including mail and Internet commerce.

**Nursery.** Any commercial location where nursery stock is grown, propagated, stored, maintained, or sold, or any location from which nursery stock is distributed.

**Nursery stock.** Any plants or plant parts, excluding fruit, intended to be planted, to remain planted, or to be replanted. Nursery stock includes, but is not limited to, trees, shrubs, cuttings, grafts, scions, and buds.

**Person.** Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

**Port.** Any place designated by the President, Secretary of the Treasury, or Congress at which a Customs officer is assigned with authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the Customs and Navigation laws in force at that place.

**Quarantined area.** Any State or portion of a State designated as a quarantined area for Asian citrus psyllid or citrus greening in accordance with § 301.76-3.

**Regulated article.** Any article listed in § 301.76-2 or otherwise designated as a regulated article in accordance with § 301.76-2(c).

**State.** The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

#### **§ 301.76-2 Regulated articles for Asian citrus psyllid and citrus greening.**

The following are regulated articles for Asian citrus psyllid and citrus greening:

(a) All plants and plant parts (including leaves), except fruit, of: *Aegle marmelos*, *Aeglopsis chevalieri*, *Afraegle gabonensis*, *A. paniculata*, *Amyris madrensis*, *Atalantia* spp. (including *Atalantia monophylla*), *Balsamocitrus dawei*, *Bergera* (= *Murraya*) *koenigii*, *Calodendrum capense*, *Choisya ternate*, *C. arizonica*, *X Citroncirus webberi*, *Citropsis articulata*, *Citropsis gillettiana*, *Citrus madurensis* (= *X Citrofortunella microcarpa*), *Citrus* spp., *Clausena anisum-olens*, *C. excavata*, *C. indica*, *C. lansium*, *Eremocitrus glauca*, *Eremocitrus* hybrid, *Esenbeckia berlandieri*, *Fortunella* spp., *Limonia acidissima*, *Merrillia caloxylon*, *Microcitrus australasica*, *M. australis*, *M. papuana*, *X Microcitronella* spp., *Murraya* spp., *Naringi crenulata*, *Pamburus missionis*, *Poncirus trifoliata*, *Severinia buxifolia*, *Swinglea glutinosa*, *Tetradium ruticarpum*, *Toddalia asiatica*, *Triphasia trifolia*, *Vepris* (= *Toddalia*) *lanceolata*, and *Zanthoxylum fagara*.

(b) Propagative seed of the species listed in paragraph (a) of this section is considered a host of citrus greening but not a host of Asian citrus psyllid. Therefore, notwithstanding the other provisions of this subpart, the movement of propagative seed of these species from an area quarantined for citrus greening is prohibited, while the movement of such seed from an area quarantined only for Asian citrus psyllid, but not for citrus greening, is allowed without restriction.

(c) Any other product, article, or means of conveyance may be designated a regulated article for Asian citrus psyllid or citrus greening, if an inspector determines that it presents a risk of spreading these pests, and after the inspector provides written notification to the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

(d) Plant parts of the species listed in paragraph (a) of this section may be exempted from the regulations in this subpart, provided that the parts have

been processed such that an inspector determines they no longer present a risk of spreading Asian citrus psyllid or citrus greening.

#### **§ 301.76-3 Quarantined areas; citrus greening and Asian citrus psyllid.**

(a) The Administrator will designate an area as a quarantined area for citrus greening or as a quarantined area for Asian citrus psyllid in accordance with the criteria listed in paragraph (c) of this section. The Administrator will publish a description of all areas quarantined for citrus greening or Asian citrus psyllid on the Plant Protection and Quarantine (PPQ) Web site: ([http://www.aphis.usda.gov/plant\\_health/plant\\_pest\\_info/citrus\\_greening/index.shtml](http://www.aphis.usda.gov/plant_health/plant_pest_info/citrus_greening/index.shtml)). The description of each quarantined area will include the date the description was last updated and a description of any changes that have been made to the quarantined area. Lists of all quarantined areas may also be obtained by request from any local office of PPQ; local offices are listed in telephone directories and on the Internet at ([http://www.aphis.usda.gov/services/report\\_pest\\_disease/report\\_pest\\_disease.shtml](http://www.aphis.usda.gov/services/report_pest_disease/report_pest_disease.shtml)). After a change is made to the description of quarantined areas, we will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the quarantined areas.

(b) *Designation of an area less than an entire State as a quarantined area.* Less than an entire State will be designated as a quarantined area for citrus greening or the Asian citrus psyllid only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of citrus greening or Asian citrus psyllid.

(c) *Criteria for designation of a State, or a portion of a State, as a quarantined area for citrus greening or Asian citrus psyllid.*

(1) A State, or portion of a State, will be designated as a quarantined area for citrus greening when the presence of citrus greening is confirmed within the area by an APHIS-administered test.

(2) A State, or portion of a State, will be designated as a quarantined area for Asian citrus psyllid in which an established population of Asian citrus psyllids has been detected.

(3) A State, or portion of a State, will be designated as a quarantined area for

either citrus greening or Asian citrus psyllid if the Administrator considers it necessary to quarantine the area because of its inseparability for quarantine enforcement purposes from localities in which citrus greening or an established population of Asian citrus psyllids has been found.

**§ 301.76-4 Labeling requirements for regulated nursery stock produced within an area quarantined for citrus greening.**

(a) Effective September 15, 2010, except as provided in paragraphs (b) and (c) of this section, all regulated nursery stock offered for commercial sale within an area quarantined for citrus greening must have an APHIS-approved plastic or metal tag on which a statement alerting consumers to Federal prohibitions regarding the interstate movement of the article is prominently and legibly displayed. Alternatively, if the article is destined for commercial sale in a box or container, the statement may be printed on the box or container, or printed on a label permanently affixed to the box or container, provided that, in either case, the statement is prominently and legibly displayed. The operator of the site of propagation of the nursery stock and the person offering the plants for commercial sale are jointly responsible for all such labeling.

(b) Nursery stock produced within a quarantined area for planting in a commercial citrus grove within that same area and moved directly to that grove, without movement outside of the quarantined area, may be moved without being labeled in accordance with paragraph (a) of this section.

(c) Nursery stock that will be moved interstate for immediate export under a limited permit in accordance with § 301.76-7(c) may be moved without being labeled in accordance with paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 0579-0363)

**§ 301.76-5 General conditions governing the issuance of any certificate or limited permit; provisions for cancellation of a certificate or limited permit.**

(a) *Certificates.* In addition to all other relevant conditions within this subpart, an inspector or person operating under a compliance agreement will issue a certificate only if a regulated article:

(1) Will be moved in compliance with any additional emergency conditions that the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) <sup>2</sup> to

prevent the spread of Asian citrus psyllid; and

(2) Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the article.

(b) *Limited permits.* In addition to all other relevant conditions within this subpart, an inspector or person operating under a compliance agreement may issue a limited permit for the interstate movement of a regulated article only if the regulated article:

(1) Is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit) and this movement of the regulated article will not result in the spread of citrus greening or the Asian citrus psyllid;

(2) Is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of citrus greening and the Asian citrus psyllid; and

(3) Is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the article.

(c) Certificates and limited permits for the interstate movement of a regulated article may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article after he or she has determined that the article is eligible for a certificate in accordance with paragraph (a) of this section and all other relevant conditions of this subpart. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article after he or she has determined that the article is eligible for a limited permit in accordance with paragraph (b) of this section and all other relevant conditions of this subpart.

(d) Any certificate or limited permit that has been issued may be withdrawn, either orally or in writing, by an inspector if he or she determines that the holder of the certificate or limited permit has not complied with all of the provisions in this subpart or has not complied with all the conditions contained in the certificate or limited permit. If the withdrawal is oral, the

otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 423 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

withdrawal and the reasons for the withdrawal will be confirmed in writing as soon as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

(e) Unless specific provisions exist in § 301.76-6 or § 301.76-7 of this subpart to allow the interstate movement of a certain regulated article, the interstate movement of that article is prohibited.

(Approved by the Office of Management and Budget under control number 0579-0363)

**§ 301.76-6 Additional conditions for issuance of certificates and limited permits for regulated articles moved interstate from areas quarantined only for Asian citrus psyllid, but not for citrus greening.**

(a) *Additional conditions for issuance of a certificate; any regulated article.* In addition to the general conditions for issuance of a certificate contained in § 301.76-5(a), an inspector or person operating under a compliance agreement may issue a certificate for the interstate movement of any regulated article to any State if:

(1) The article is treated with methyl bromide in accordance with 7 CFR part 305 of this chapter.

(2) The article is shipped in a container that has been sealed with an agricultural seal placed by an inspector.

(3) The container that will be moved interstate is clearly labeled with the certificate.

(4) A copy of the certificate will be attached to the consignee's copy of the accompanying waybill.

(b) *Additional conditions for issuance of a limited permit; regulated nursery stock.* In addition to the general conditions for issuance of a limited permit contained in § 301.76-5(b), an inspector or person operating under a compliance agreement may issue a limited permit for the interstate movement of regulated nursery stock to areas of the United States other than American Samoa, Northern Mariana Islands, and those portions of Arizona, California, and South Carolina not quarantined due to the presence of

<sup>2</sup> An inspector may hold seize, quarantine, treat, apply other remedial measures to, destroy, or

Asian citrus psyllid or citrus greening, if:

(1) The nursery stock is treated for ACP with an APHIS-approved soil drench or in-ground granular application no more than 30 days and no fewer than 20 days before shipment, followed by an APHIS-approved foliar spray no more than 10 days before shipment. All treatments must be applied according to their EPA label, including directions on application, restrictions on place of application and other restrictions, and precautions, and including statements pertaining to Worker Protection Standards.

(2) The nursery stock is inspected by an inspector in accordance with § 301.76-9 and found free of Asian citrus psyllid.

(3) The nursery stock is affixed prior to movement with a plastic or metal tag on which the statement "Limited permit: USDA-APHIS-PPQ. Not for distribution in American Samoa, Northern Mariana Islands, or those portions of AZ, CA and SC not quarantined due to the presence of Asian citrus psyllid or citrus greening" is prominently and legibly displayed. If the nursery stock is destined for movement or sale in boxes or containers, the statement may be printed on the box or container, or printed on a label permanently affixed to the box or container, provided that, in either case, the statement is prominently and legibly displayed.

(4) The nursery stock is moved in a container sealed with an agricultural seal placed by an inspector.

(5) This container prominently and legibly displays the statement of paragraph (b)(3) of this section.

(6) A copy of the limited permit is attached to the consignee's copy of the accompanying waybill.

(7) The nursery stock is moved in accordance with the conditions specified on the limited permit to the location specified on the permit.

(c) *Additional conditions for issuance of a limited permit; regulated articles intended for consumption, as apparel or as a similar personal accessory, or for other decorative use.*<sup>3</sup> In addition to the general conditions for issuance of a limited permit contained in § 301.76-5(b), an inspector or person operating under a compliance agreement may issue a limited permit for the interstate movement of regulated articles intended for consumption, as apparel or as a similar personal accessory, or for other decorative use if:

(1) The articles are treated with irradiation in accordance with 7 CFR

part 305 of this chapter at an irradiation facility that is not located in an area quarantined for citrus greening.

(2) The container that will be used to move the articles interstate is clearly labeled with the limited permit, which must contain the name of the State or portion of a State where the articles were produced and a statement that the articles were treated in accordance with 7 CFR part 305 of this chapter.

(3) A copy of the limited permit is attached to the consignee's copy of the accompanying waybill.

**§ 301.76-7 Additional conditions for issuance of certificates and limited permits for regulated articles moved interstate from areas quarantined for citrus greening.**

(a) *Additional conditions for issuance of a limited permit; regulated nursery stock grown, produced, or maintained at a nursery or other facility located in the quarantined area.* In addition to the general conditions for issuance of a limited permit contained in § 301.76-5(b), an inspector or person operating under a compliance agreement may issue a limited permit for the interstate movement for immediate export of regulated nursery stock grown, produced, or maintained at a nursery or other facility located in the quarantined area if:

(1) The nursery stock is treated for Asian citrus psyllid with an APHIS-approved soil drench or in-ground granular application, followed by an APHIS-approved foliar spray, in accordance with § 301.76-6(b)(1), or with methyl bromide or irradiation, in accordance with 7 CFR part 305 of this chapter.

(2) The nursery stock is inspected by an inspector in accordance with § 301.76-9 and found free of Asian citrus psyllid, if treated in accordance with § 301.76-6(b)(1).

(3) The nursery stock is affixed prior to movement with a plastic or metal tag on which the statement "Limited permit: USDA-APHIS-PPQ. For immediate export only" is prominently and legibly displayed. If the nursery stock is destined for movement or sale in a box or container, the statement may be printed on the box or container, or printed on a label permanently affixed to the box or container, provided that, in either case, the statement is prominently and legibly displayed.

(4) The nursery stock is accompanied by a copy of this limited permit attached to the consignee's copy of the waybill.

(5) The nursery stock is moved in accordance with the conditions specified on the limited permit directly to the port of export specified on the limit permit, in a container sealed with

an agricultural seal placed by an inspector.

(6) A copy of the limited permit is attached to or legibly printed on this container.

(7) The nursery stock remains in this container, and the container remains sealed, as long as the plants are within the United States.

(b) Except for nursery stock for which a limited permit has been issued in accordance with the conditions of paragraph (a) of this section, no other regulated article may be moved interstate from an area quarantined for citrus greening.

**§ 301.76-8 Compliance agreements and cancellation.**

(a) Any person involved in the growing, maintaining, processing, handling, packing, treating, or moving of regulating articles from areas quarantined for citrus greening or Asian citrus psyllid may enter into a compliance agreement when an inspector determines that the person understands this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement. The person must also agree to maintain and offer for inspection such records as are necessary to demonstrate continual adherence to the requirements of the regulations and the provisions of the compliance agreement.<sup>4</sup>

(b) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongly canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a

<sup>4</sup> Compliance agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, MD 20737-1236, and from local offices of the Plant Protection and Quarantine offices, which are listed in telephone directories.

<sup>3</sup> Examples of such articles include *Berbera* (=Murraya) *koenigii* leaves, as well as *Murraya paniculata* flowers or foliage.

hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0363)

**§ 301.76-9 Inspection of regulated nursery stock.**

All regulated nursery stock treated with soil drenches or in-ground granular applications and foliar sprays prior to interstate movement from an area quarantined only for Asian citrus psyllid, but not for citrus greening, as well as all nursery stock intended for interstate movement for immediate export from an area quarantined for citrus greening, must be inspected by an inspector<sup>5</sup> no more than 72 hours prior to movement. The person who desires to move the articles interstate must notify the inspector as far in advance of the desired interstate movement as possible. The articles must be inspected at the place and in the manner the inspector designates as necessary to comply with this subpart. If the inspector has reason to believe that the interstate movement of the articles may lead to the artificial spread of citrus greening or Asian citrus psyllid, he or she may deny issuance of a limited permit for interstate movement of the article or take other remedial measures to prohibit such spread.

(Approved by the Office of Management and Budget under control number 0579-0363)

**§ 301.76-10 Attachment and disposition of certificates and limited permits.**

(a) A certificate or limited permit required for the interstate movement of a regulated article, or a copy thereof, must, at all times during the interstate movement, be:

(1) Attached to or legibly printed on the outside of the container containing the regulated article or attached to the regulated article itself, if the article is not packed in a container; and

(2) Attached to or legibly printed on the sealed container in which the article is shipped; and

(3) Attached to the consignee's copy of the accompanying waybill. The host article must be sufficiently described on the certificate or limited permit and on the waybill to identify the article.

(b) The certificate or limited permit for the interstate movement of a host article must be furnished by the carrier or the carrier's representative to the

<sup>5</sup> Inspectors are assigned to local offices of APHIS, which are listed in local telephone directories. Information concerning local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, MD 20737-1236.

consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

**§ 301.76-11 Costs and charges.**

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. APHIS will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

**PART 305—PHYTOSANITARY TREATMENTS**

■ 3. The authority citation for part 305 continues to read as follows:

7 U.S.C. 7701-7772 and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3

■ 4. Section 305.9 is amended as follows:

■ a. By revising the introductory text of the section and adding new paragraphs (a)(3) and (c)(4) to read as set forth below.

■ b. In paragraph (f)(2) introductory text, by adding the words "or Asian citrus psyllid" after the words "fruit flies".

■ c. In paragraph (f)(3), by adding the words "or Asian citrus psyllid" after the words "fruit flies".

**§ 305.9 Irradiation treatment requirements.**

Irradiation, carried out in accordance with the provisions of this section, is approved as a treatment for any imported regulated article (i.e., fruits, vegetables, cut flowers, and foliage); for any regulated article moved interstate from Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Marianas Islands (referred to collectively, in this section, as Hawaii and U.S. territories); for any berry, fruit, nut, or vegetable listed as a regulated article in § 301.32-2(a) of this chapter; and for any regulated article listed in 301.76-2 of this chapter and intended for consumption, as apparel or as a similar personal accessory, or for decorative use.

(a) \* \* \*

(3) For articles that are moved interstate from areas quarantined only for Asian citrus psyllid, and not for citrus greening, irradiation facilities must be located within an area that is not quarantined for citrus greening.

\* \* \* \* \*

(c) \* \* \*

(4) Irradiation facilities treating articles moved interstate from areas

quarantined only for Asian citrus psyllid, and not for citrus greening, must complete a compliance agreement with APHIS as provided in § 301.76-8 of this chapter.

\* \* \* \* \*

Done in Washington, DC, this 8<sup>th</sup> day of June 2010.

**Ann Wright,**

*Acting Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 2010-14495 Filed 6-16-10; 8:45 am]

**BILLING CODE 3410-34-S**

**DEPARTMENT OF AGRICULTURE**

**Farm Service Agency**

**7 CFR Part 755**

**RIN 0560-A108**

**Reimbursement Transportation Cost Payment Program for Geographically Disadvantaged Farmers and Ranchers**

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule specifies regulations to implement the new Reimbursement Transportation Cost Payment (RTCP) Program for geographically disadvantaged farmers and ranchers authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The purpose of the RTCP Program is to assist farmers and ranchers in Hawaii, Alaska and insular areas who paid to transport either an agricultural commodity or an input used to produce an agricultural commodity. The payments provided by the RTCP Program are intended to offset a portion of the costs of transporting agricultural inputs and products over long distances. This rule specifies eligibility requirements, payment application procedures, and the method for calculating individual payments.

**DATES:** *Effective Date:* June 16, 2010.

**FOR FURTHER INFORMATION CONTACT:**

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