Rules and Regulations

Federal Register
Vol. 76, No. 81
Wednesday, April 27, 2011

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2010–0048]

RIN 0579–AD29

Citrus Canker, Citrus Greening, and Asian Citrus Psyllid; Interstate Movement of Regulated Nursery Stock

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations governing the interstate movement of regulated articles from areas quarantined for citrus canker, citrus greening, and/or Asian citrus psyllid (ACP) to allow the movement of regulated nursery stock under a certificate to any area within the United States. In order to be eligible to move regulated nursery stock, a nursery must enter into a compliance agreement with APHIS that specifies the conditions under which the nursery stock must be grown, maintained, and shipped. We are also amending the regulations that allow the movement of regulated nursery stock from an area quarantined for ACP, but not for citrus greening, to amend the existing regulatory requirements for the issuance of limited permits for the interstate movement of the nursery stock. We are making these changes on an immediate basis in order to provide nursery stock producers in areas quarantined for citrus canker, citrus greening, or ACP with the ability to ship regulated nursery stock to markets within the United States that would otherwise be unavailable to them due to the prohibitions and restrictions contained in the regulations while continuing to provide adequate safeguards to prevent the spread of the three pests into currently unaffected areas of the United States.

DATES: This interim rule is effective April 27, 2011. We will consider all comments that receive on or before June 27, 2011.

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-2010-0048* 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–2010–0048, 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–2010–0048.

Reading Room: You may read any comments that we receive on this docket on the Regulations.gov Web site (see link above) or 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. Osama El-Lissy, Director, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 160, Riverdale, MD 20737–1238; (301) 734–5459; or Ms. Deborah L. McPartlan, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 160, Riverdale, MD 20737–1238; (301) 734–5356.

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 pest within the United States. Under the PPA, 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 pest, or requiring the plants or plant products to be accompanied by a permit issued by the Secretary prior to movement.

Citrus canker is a plant disease that is caused by the bacterium *Xanthomonas citri* subsp. *citri* that affects plants and plant parts of citrus and citrus relatives (Family Rutaceae). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants, which render the fruit unmarketable, and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas. Citrus canker is known to be present in the United States in the State of Florida.

The regulations to prevent the interstate spread of citrus canker are contained in "Subpart—Citrus Canker" (7 CFR 301.75–1 through 301.75–14, referred to below as the citrus canker regulations). The citrus canker regulations designate the State of Florida as a quarantined area, and restrict the interstate movement of regulated articles from and through this area. Regulated articles are plants and plant parts of all species, clones, cultivars, strains, varieties, or hybrids of the genera *Citrus* and *Fortunella,* and all clones, cultivars, strains, varieties and hybrids of the species *Clausena lansium* and *Poncirus trifoliata.* Plants and plant parts include, among other articles, fruit, seed, and nursery stock. The provisions of the citrus canker regulations that pertain to the interstate movement of regulated nursery stock from areas quarantined for citrus canker are found in § 301.75–6.

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. 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 known to be present in the United States in 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 parasitic plants. There also is some evidence 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 Alabama, American Samoa,[1] Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, Puerto Rico, Texas, the U.S. Virgin Islands, and portions of Arizona, California, and South Carolina. Regular surveys of domestic commercial citrus-producing areas indicate that the African citrus psyllid is not present in the United States.

The regulations to prevent the interstate spread of citrus greening and ACP are contained in "Subpart-Citrus Greening and Asian Citrus Psyllid" (7 CFR 301.76 through 301.76–11, referred to below as the citrus greening and ACP regulations). The citrus greening and ACP 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, and portions of Arizona, California, and South Carolina due to the presence of ACP. The regulations also place restrictions on the interstate movement of regulated articles from quarantined areas. Regulated articles include all plants and plant parts, except fruit, of host species within the Family Rutaceae.

The provisions of the citrus greening and ACP regulations that pertain to the interstate movement of regulated nursery stock from areas quarantined for citrus greening and/or ACP are found in §§ 301.76–6 and 301.76–7. Section 301.76–6 contains specific conditions for the issuance of certificates and limited permits for regulated articles moved interstate from an area quarantined for ACP, but not for citrus greening. Section 301.76–7 contains specific conditions for the issuance of certificates and limited permits for regulated articles moved interstate from an area quarantined for citrus greening.

Current Restrictions and Prohibitions on the Interstate Movement of Regulated Nursery Stock From Areas Quarantined for Citrus Canker, Citrus Greening, and/or ACP

As we mentioned earlier in this document, the provisions of the citrus canker regulations that pertain to the interstate movement of regulated nursery stock from areas quarantined for citrus canker are found in § 301.75–6. This section prohibits the interstate movement of regulated nursery stock from a quarantined area, and prior to the publication of this interim rule, provided for only two exceptions to this general prohibition. The first exception allowed the interstate movement of kumquat plants, which have a natural resistance to citrus canker, in accordance with a protocol designed to ensure their freedom from citrus canker prior to movement. The other exception allowed regulated nursery stock to be moved interstate for immediate export.

Similarly, § 301.76–7 contains specific conditions for the issuance of certificates and limited permits for regulated articles moved interstate from areas quarantined for citrus greening, and prohibits the interstate movement of regulated nursery stock from such areas. Prior to issuance of this interim rule, there was only one exception in § 301.76–7 to this general prohibition on interstate movement: Nursery stock destined for immediate export and shipped under a protocol designed to ensure that it does not spread citrus greening into currently unaffected areas of the United States.

In contrast, our approach towards the movement of regulated nursery stock from areas quarantined for ACP, but not for citrus greening, has differed. This is because, while ACP can damage citrus nursery stock, its primary risk to nursery stock is as a vector of the bacterial pathogen that causes citrus greening. The risk that the artificial spread of ACP poses to currently unaffected areas of the United States, then, lies in its potential to introduce citrus greening to those areas.

Therefore, the citrus greening and ACP regulations currently allow the interstate movement of regulated nursery stock from areas quarantined for ACP, but not for citrus greening, provided that the nursery stock has been subject to remedial measures to prevent ACP from moving with the nursery stock. Specifically, § 301.76–6 allows for the movement of any regulated article from an area quarantined for ACP to any State, provided that, among other conditions, the articles are treated with methyl bromide and shipped in a container that has been sealed with an agricultural seal placed by an inspector after treatment.

In addition, prior to publication of this interim rule, § 301.76–6 allowed for the movement of regulated nursery stock to areas other than commercial citrus-producing areas[2] under a limited permit from an area quarantined for ACP, but not for citrus greening, provided that, among other conditions, the articles were treated before shipment with certain approved soil drenches and foliar sprays, inspected, and shipped in sealed containers. The citrus greening and ACP regulations have otherwise prohibited all other interstate movement of regulated nursery stock.

Requests for a Systems Approach Under Which Citrus Nursery Stock May Be Moved Interstate

The congressional findings set out in section 402 of the PPA describe USDA's responsibility to facilitate interstate commerce in agricultural products and other commodities that pose a risk of harboring plant pest in ways that will reduce, to the extent practicable, the risk of dissemination of plant pests. It is APHIS' policy to impose restrictions on the interstate movement of host articles that are the least restrictive measures necessary to prevent the dissemination of plant pests within the United States.

For several years, various individuals and entities have requested that APHIS implement a systems approach that

[1] An established population of ACP was discovered in American Samoa in October 2010, and the entire island has been designated a quarantined area for ACP through administrative action.

[2] Commercial citrus-producing areas are American Samoa, Arizona, California, Florida, Guam, Hawaii, Louisiana, Northern Mariana Islands, Puerto Rico, Texas, and U.S. Virgin Islands.

could serve as the basis for allowing the interstate movement of citrus nursery stock to any area of the United States from areas quarantined for citrus canker, citrus greening, and ACP.

This request was first made by commenters during the comment period for an interim rule that was published in the **Federal Register** on March 22, 2007 and effective on March 16, 2007 (72 FR 13423–13428, Docket No. APHIS–2007–0032) that explicitly prohibited the interstate movement of citrus nursery stock, with the two limited exceptions mentioned earlier in this document, from the State of Florida. The commenters stated that, in lieu of such a general prohibition, APHIS should recognize the Citrus Nursery Stock Certification Program, established by the State of Florida in December 2006 to prevent the spread of citrus canker and citrus greening within and from that State, as sufficient to allow the interstate movement of nursery stock produced in that program.

In response to those comments, we examined the program thoroughly and determined that certain of its provisions did not adequately address the risk of the spread of citrus canker or citrus greening from Florida. We subsequently communicated this determination to the Florida Department of Agriculture and Consumer Services (FDACS), highlighting those aspects of the approach that we considered inadequate.

In response, FDACS requested APHIS' assistance in crafting a systems approach that would provide adequate phytosanitary measures to allow the interstate movement of citrus nursery stock from areas quarantined for citrus canker, citrus greening, and ACP. To this end, APHIS convened a technical working group, which recommended sourcing from a pest-exclusionary production facility and testing for all germplasm and budwood destined for propagation in nurseries within the State, construction and maintenance of pest-exclusionary production facilities and buffer zones, safeguarding, routine inspections, cleaning and disinfection protocols, and other measures that would be sufficient to address the concerns raised in our earlier evaluation. As a result of this collaboration with APHIS, FDACS presented a draft systems approach to us for evaluation in December 2008. The mitigation measures proposed in that systems approach appeared consistent with the recommendations of the technical working group.

However, because the movement of citrus nursery stock is considered to be a high-risk pathway for citrus canker and citrus greening, and because the introduction of citrus canker or citrus greening into currently unaffected commercial citrus-producing areas could have a lasting and deleterious effect on the U.S. industry as a whole, we did not initiate rulemaking at that time to establish such a systems approach. Rather, we decided to prepare an analysis of the risks associated with the interstate movement of citrus nursery stock from areas quarantined for citrus canker, citrus greening, and ACP.

Risk Management Analysis

APHIS has prepared a risk management analysis (RMA). The document, titled "Interstate Movement of Citrus and Other Rutaceous Plants for Planting to Non-Quarantine Areas in Any State," analyzes the movement of citrus nursery stock from areas quarantined for citrus canker, citrus greening, or ACP as a pathway for the introduction of citrus canker, citrus greening, and ACP into other areas of the United States. Consistent with the findings of the technical working group, the analysis also finds that a systems approach is necessary in order to mitigate the risk associated with such movement.

Because the nature of the three pests and the manner in which they are introduced into nursery stock vary, the exact nature of the necessary mitigation measures in the systems approach will correspondingly vary based on whether the nursery stock is produced in an area quarantined for citrus canker, citrus greening, or ACP, or a combination of these three pests. However, the analysis finds that each such systems approach must be predicated upon two critical elements: Pest exclusion and system monitoring.

The analysis describes pest exclusion as consisting of the following core components: Testing the citrus nursery stock that will be moved interstate for citrus greening, certifying the nursery stock as free of citrus greening, growing the nursery stock in approved structures that are constructed to exclude introduction of the relevant pests, maintaining a controlled space around the structure that is free of citrus, and safeguarding the nursery stock within the structure to prevent pest introduction.

The analysis describes system monitoring as consisting of the following core components: Inspecting the nursery stock within the structure on a routine basis, conducting an unannounced inspection at least once yearly, testing a statistically valid sample of the plants within the nursery for citrus greening on a recurring schedule, surveying the nursery regularly for quarantine pests, responding to breaches of the facility with appropriate remediation, and maintaining quality assurance, including but not limited to accurate recordkeeping and labeling, as well as standard operating procedures for cleaning and disinfection.

The RMA may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** at the beginning of this document.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**. We request comment on the analysis, especially any scientific studies that may be pertinent.

Protocol Document

Based on the determination of the RMA that a systems approach is necessary to mitigate the risk associated with the interstate movement of citrus nursery stock from areas quarantined for citrus canker, citrus greening, and/or ACP, APHIS prepared a draft protocol document that used core components suggested in the RMA as the basis for standards and requirements that a nursery would have to meet in order to move citrus nursery stock interstate from such areas. APHIS then shared the draft protocol with nursery stock producers and State agricultural officials. In response to the input we received, we revised some of the conditions in the protocol document to provide alternative standards or requirements that were equivalent to the core components identified in the RMA. By meeting the standards and requirements, a nursery would be able to obtain a certificate or limited permit [3] for the interstate movement of citrus nursery stock from areas quarantined for citrus canker, citrus greening, or ACP.

The protocol document is divided into five sections. Section I provides general requirements. Under this section, each nursery that wishes to obtain a certificate to move regulated nursery stock interstate must enter into a compliance agreement with APHIS in which it agrees to observe the protocol's minimum construction standards for a pest-exclusionary production facility; sourcing and certification requirements for all propagative material grown in the facility; cleaning, disinfecting, and safeguarding requirements for the

[3] APHIS authorizes certificates to be issued when an article can safely be moved interstate from a quarantine area without any risk of spreading a quarantine pest, and limited permits when, in order to address a risk of plant pest dissemination, limits must be placed on the distribution or utilization of the article.

facility; labeling requirements for the nursery stock maintained in the facility; and recordkeeping and inspection requirements.

The protocol also contains additional conditions for interstate movement of regulated nursery stock that the nursery would have to agree to observe; each set of additional conditions addresses disease risks associated with the area in which the nursery is located: Section II of the protocol document sets forth additional requirements for interstate movement of regulated nursery stock from areas quarantined for citrus canker; section III, for areas quarantined for ACP; and section IV, for areas quarantined for citrus greening.

Section V of the protocol provides conditions for the issuance of limited permits for the interstate movement of regulated nursery stock from areas that are quarantined for ACP, but not citrus greening. These conditions match the requirements of § 301.76–6 in this interim rule. Our changes to § 301.76–6 are discussed later in this rule.

The protocol document may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** at the beginning of this document). In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**. It is also available on the Plant Protection and Quarantine (PPQ) Web site at *http://www.aphis.usda.gov/plant_health/plant_pest_info/citrus/index.shtml.*

We believe that the procedures set forth in the protocol document will provide the necessary safeguards to allow the interstate movement of citrus nursery stock from areas quarantined for citrus canker, citrus greening, or ACP to any area of the United States. It may, however, be necessary for us to propose to update the protocol document as circumstances warrant. We envision that these proposed updates will usually be nonsubstantive, and will be intended to further delineate the protocol's provisions or provide additional options to the mitigation strategies currently contained in the document. APHIS believes that the ability to revise the protocol document is necessary because new scientific information on the risks associated with ACP, citrus greening, and citrus canker continues to be published at a rapid pace. As new information comes to light, APHIS must be able to adjust its quarantine protocols in a flexible manner. If we are proposing substantive modifications, however, we will publish a notice in the **Federal Register** containing the nature of and rationale for these proposed revisions, and requesting public comment. In such instances, if, after the close of the comment period, we continue to consider it necessary to update the protocol document, we will do so accordingly. We request comment on this approach and whether it provides sufficient avenue for input from the public.

Whenever we update the protocol document, we will notify each State agricultural official and holder of a compliance agreement of the changes, and compliance agreements will be updated to reflect the updated protocol. It will be necessary for those operating under a compliance agreement to sign the updated agreement in order to continue to be eligible to continue shipping citrus nursery stock interstate. Other interested parties can receive notification of these updates by subscribing to the PPQ stakeholder registry at *https://web01.aphis.usda.gov/PPQStakeWeb2.nsf.*

Regulatory Changes

We are amending the citrus canker and citrus greening and ACP regulations to reflect the findings of the RMA and the provisions of the protocol document and allow the interstate movement of regulated nursery stock to any area of the United States, under certain conditions. To accommodate these amendments, we are also amending several other provisions of the citrus canker and citrus greening and ACP regulations that would otherwise have been in conflict with the amendments.

Citrus Canker Regulations

As we mentioned earlier in this document, the provisions of the citrus canker regulations that pertain to the interstate movement of regulated nursery stock from areas quarantined for citrus canker are found in § 301.75–6. Prior to the publication of this interim rule, paragraph (a) of § 301.75–6 explicitly prohibited the interstate movement of regulated nursery stock from a quarantined area, unless the nursery stock was moved in accordance with paragraph (b) or (c) of the section. Paragraph (b) allowed the interstate movement of kumquats in accordance with a protocol designed to ensure their freedom from citrus canker prior to movement. Paragraph (c) stated that nursery stock produced in a nursery located in a quarantined area that is not eligible for movement under paragraph (b) of could be moved interstate only for immediate export.

We are redesignating paragraph (c) as paragraph (d), and adding a new paragraph (c) in its place. This new paragraph (c) of § 301.75–6 provides that regulated nursery stock produced in a nursery within a quarantined area may be moved interstate to any area within the United States, if all of the following conditions are met:

- The nursery in which the nursery stock is produced has entered into a compliance agreement with APHIS in which it agrees to meet the relevant construction standards, sourcing and certification requirements, cleaning, disinfecting, and safeguarding requirements, labeling requirements, and recordkeeping and inspection requirements specified in the protocol document described above. In addition to being available on the APHIS Web site, the protocol document will be provided to the person at the time he or she enters into the compliance agreement. The compliance agreement may also specify additional conditions determined by APHIS to be necessary to prevent the dissemination of citrus canker under which the nursery stock must be grown, maintained, and shipped in order to obtain a certificate for its movement. The compliance agreement will specify that APHIS may amend the agreement.
- An inspector has determined that the nursery has adhered to all terms and conditions of the compliance agreement.
- The nursery stock is accompanied by a certificate issued in accordance with § 301.75–12.
- The nursery stock is completely enclosed in a sealed container that is clearly labeled with the certificate and is moved interstate in that container. We are requiring such containers in order to safeguard the nursery stock against wind and rain events that may lead to the introduction of citrus canker.
- A copy of the certificate is attached to the consignee's copy of the accompanying waybill.

Because of this new paragraph (c), there are now two paragraphs in § 301.75–6 which allow nursery stock to be moved interstate for purposes other than immediate export. As a result, we are amending newly designated paragraph (d) to provide that nursery stock that is not eligible for movement under either of the paragraphs may be moved interstate only for immediate export. For a similar reason, we are also amending paragraph (a) of § 301.75–6 to authorize interstate movement of nursery stock under the conditions in any of the subsequent paragraphs in the section.

The certificate accompanying the container and accompanying waybill of the nursery stock being moved must be attached in a manner that varies from the general requirements for attachment and disposition of certificates contained

in the citrus canker regulations. Accordingly, we are amending paragraph (b) of § 301.75–12, which contains general requirements for attachment and disposition of certificates, to exempt nursery stock moved under the conditions of paragraph (c) of § 301.75–6 from those general requirements.

Prior to the publication of this interim rule, the citrus canker regulations stated that we would cancel a compliance agreement if an inspector found that the person who entered into the compliance agreement had failed to comply with the regulations. However, under paragraph (c) of § 301.75–6, the conditions under which a nursery must grow, maintain, and ship nursery stock in order to obtain a certificate for its movement to any area of the United States are found not in the citrus canker regulations themselves, but in the compliance agreement that the nursery has entered into with APHIS. Accordingly, failure by the nursery to comply with any term or condition of the compliance agreement could present a risk that regulated nursery stock at the facility becomes infected with citrus canker and that the movement of the regulated nursery stock presents a pathway for the artificial spread of the disease to unaffected areas of the United States. Therefore, we are amending paragraph (b) of § 301.75–13, which contains our provisions for cancellation of a compliance agreement, to state that failure to comply with any term or condition of the compliance agreement itself will also result in cancellation of the compliance agreement.

Finally, in § 301.75–1, the definition of *compliance agreement* has described them as being between APHIS and persons engaged in the business of growing or handling regulated articles. However, because of the manner in which compliance agreements are used within paragraph (c) of § 301.75–6, we consider it necessary to expand the scope of the definition so that it also refers to persons engaged in maintaining, processing, packing, and moving regulated articles. We are amending the definition of *compliance agreement* accordingly.

Citrus Greening Regulations

As we mentioned earlier in this document, § 301.76–7 contains specific conditions for the issuance of certificates and limited permits for regulated articles moved interstate from an area quarantined for citrus greening.

Prior to the publication of this interim rule, the only conditions for the movement of regulated articles from an area quarantined for citrus greening were found in paragraph (a) of § 301.76–7. This paragraph allowed for the issuance of limited permits to move regulated nursery stock interstate, if the nursery stock was destined for immediate export and shipped under a protocol designed to ensure that it did not present a pathway for the introduction of citrus greening to currently unaffected areas of the United States. To clarify that this was the only condition under which regulated articles could be moved interstate from an area quarantined for citrus greening, paragraph (b) of § 301.76–7 stated that, except for nursery stock for which a limited permit has been issued in accordance with § 301.76–7(a), no other regulated article may be moved interstate from an area quarantined for citrus greening.

We are adding a new paragraph (a) to § 301.76–7 and redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively. The new paragraph (a) provides that, in addition to the general conditions for issuance of a certificate, an inspector or person operating under a compliance agreement may issue a certificate for interstate movement of regulated nursery stock to any State if all of the following conditions are met:

- The nursery in which the nursery stock is produced has entered into a compliance agreement with APHIS in which it agrees to meet the relevant construction standards, sourcing and certification requirements, cleaning, disinfecting, and safeguarding requirements, labeling requirements, and recordkeeping and inspection requirements specified in the PPQ protocol document. In addition to being available on the APHIS Web site, the protocol document will be provided to the person at the time he or she enters into the compliance agreement. The compliance agreement may also specify additional conditions determined by APHIS to be necessary in order to prevent the dissemination of citrus greening under which the nursery stock must be grown, maintained, and shipped in order to obtain a certificate for its movement. The compliance agreement will also specify that APHIS may amend the agreement.
- An inspector has determined that the nursery has adhered to all terms and conditions of the compliance agreement.
- The nursery stock is completely enclosed in a sealed container that is clearly labeled with the certificate and is moved interstate in that container.
- A copy of the certificate is attached to the consignee's copy of the accompanying waybill.

Because both paragraphs (a) and (b) of § 301.76–7 now contain conditions for the interstate movement of regulated nursery stock from an area quarantined for citrus greening, we are amending newly redesignated paragraph (c) of § 301.76–7 to specify that apart from nursery stock moved in accordance with either of those paragraphs, no other regulated article may be moved interstate from an area quarantined for citrus greening.

These revisions to § 301.76–7 also require us to make certain nonsubstantive changes to other sections of the citrus greening regulations.

We currently require all regulated nursery stock offered for commercial sale within an area quarantined for citrus greening to have an APHIS-approved label on which a statement alerting consumers to Federal prohibitions regarding the interstate movement of the article is prominently and legibly displayed, unless the regulations grant an exemption from the requirement. We are amending § 301.76–4, which contains the labeling requirement and the exemptions from it, to grant such an exemption to plants moved under paragraph (a) of § 301.76–7, since the interstate movement of such plants is not prohibited.

We are also amending the conditions in the citrus greening regulations that will lead us to cancel a compliance agreement. We modeled these conditions on those in the citrus canker regulations, and are amending them for the same reason we are amending those in the citrus canker regulations.

ACP Regulations

As we mentioned earlier in this document, § 301.76–6 of the ACP and citrus greening regulations contains specific conditions for the interstate movement of regulated articles from areas quarantined for ACP, but not for citrus greening. Prior to the publication of this interim rule, the only conditions under which a certificate would be issued for the interstate movement of regulated nursery stock were found in paragraph (a) of § 301.76–6. The paragraph allows a certificate to be issued for the interstate movement of any regulated article, including citrus nursery stock, provided that:

- The article is treated with methyl bromide in accordance with 7 CFR part 305. That part contains our phytosanitary treatment regulations, and sets out standards for treatments required in 7 CFR part 301.
- 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.

Because methyl bromide is phytotoxic, that is, deadly or damaging to propagative plants and plant parts, producers have informed us that few plants have been moved under these conditions.

In addition to the conditions in paragraph (a), prior to the issuance of this interim rule, the only other conditions for interstate movement of regulated nursery stock from an area quarantined for ACP were found in paragraph (b) of § 301.76–6; this paragraph provided conditions for the issuance of limited permits for such movement to areas other than commercial citrus-producing areas.

We are redesignating this paragraph as paragraph (c). We are also substantively revising the conditions for issuance of such a limited permit. We discuss the revised conditions, and the considerations that led us to revise them, at length below.

To accommodate this redesignation, we are also redesignating the previous paragraph (c), which contains conditions for the issuance of limited permits for regulated articles intended for consumption, for use as apparel or as a similar personal accessory, or for decorative use, as new paragraph (d).

We are adding a new paragraph (b) to § 301.76–6. This is because, based on the findings of the RMA, we have determined that we can provide another set of conditions for issuance of a certificate for the interstate movement of regulated nursery stock from areas quarantined only for ACP. These conditions are:

• The nursery in which the nursery stock is produced has entered into a compliance agreement with APHIS in which it agrees to meet the relevant construction standards, sourcing and certification requirements, cleaning, disinfecting, and safeguarding requirements, labeling requirements, and recordkeeping and inspection requirements specified in the PPQ protocol document. In addition to being available on the APHIS Web site, the protocol document will be provided to the person at the time he or she enters into the compliance agreement. The compliance agreement may also specify additional conditions determined by APHIS to be necessary in order to prevent the spread of ACP under which the nursery stock must be grown, maintained, and shipped in order to obtain a certificate for its movement. For example, we may require additional safeguarding measures beyond those specified in the protocol document for facilities located in areas with high population densities of ACP. The compliance agreement will also specify that APHIS may amend the agreement.

• An inspector determines that the nursery has adhered to all terms and conditions of the compliance agreement.

• The nursery stock is completely enclosed in a sealed container that is clearly labeled with the certificate, and is moved interstate in that container. We are requiring a sealed container in order to safeguard the nursery stock against possible reintroduction of ACP.

• A copy of the certificate is attached to the consignee's copy of the accompanying waybill.

As we mentioned above, newly redesignated paragraph (c) of § 301.76–6 contains conditions for issuance of a limited permit for interstate movement of regulated nursery stock.

Prior to the publication of this interim rule, this paragraph provided for the issuance of limited permits 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 ACP or citrus greening, 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 Environmental Protection Agency 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.

The conditions in the regulations before this interim rule were established in a prior interim rule published in the **Federal Register** and effective on June 17, 2010 (75 FR 34322–34336, Docket No. APHIS–2008–0015).[4] Several commenters on the June 2010 rule stated that certain of the conditions unnecessarily hindered interstate commerce. Two commenters stated that the 10-day timeframe for the application of soil drenches or granular applications was impracticable for smaller producers, who often did not know the expected date of interstate movement of an article that far in advance. While recognizing the need for optimal absorption of the soil drench, the commenters requested a longer window of time for the application of that treatment.

Similarly, two commenters stated that, by requiring the articles to be sealed in a shipping container and inspectors to seal each container with an agricultural seal prior to movement, we were, in effect, limiting shipment of the articles to normal business hours (8 a.m. to 4:30 p.m., Monday through Friday). The commenters stated that their shipments traditionally have tended to occur overnight or in the early morning. Because of these economic considerations, the commenters questioned whether the conditions were strictly necessary, especially for nursery stock that is not destined for an area in which ACP could become established.

In addition, around the same time that these comments were received, State agricultural officials from several commercial citrus-producing States contacted APHIS on behalf of their producers to suggest a different scope and timing for inspections. The officials stated that inspections of the whole nursery at set intervals would prove more practicable than inspections of plants in the days preceding shipment.

In order to respond to these comments and requests, we first reviewed the

[4] Section 301.76–4 of that rule was effective on September 15, 2010, rather than June 17, 2010.

relevant scientific literature. In particular, we evaluated a 2008 presentation at the International Research Conference on Huanglongbing by P.T. Yamamoto et al., which examined the efficacy of various insecticides to control ACP.[5] Yamamoto and his colleagues found that the residual effect of imidacloprid and other soil drenches on nursery stock is considerably longer than previously thought—in certain instances, as long as 105 days. Yamamoto's research suggests that soil drenches can be applied up to 90 days and no less than 30 days prior to shipment, provided that they are coupled with subsequent foliar sprays no more than 10 days before shipment.

Based on Yamamoto's findings, we evaluated the risk of dissemination of ACP that would be associated with a regulatory scheme for the movement of citrus nursery stock from ACP quarantined areas to areas other than commercial citrus-producing areas under which inspections of the entire nursery for ACP occurred at set intervals, soil drenches could be applied up to 90 days before shipment, and plants were not required to be shipped in sealed containers.

We determined that, under the provisions of this regulatory scheme, the risk that ACP would be introduced to the plants prior to shipment would be commensurately greater. Such introduction, however, would not necessarily lead to further dissemination of ACP within the United States. Rather, the risk of such dissemination would be directly correlated to whether the nursery stock transited through commercial citrus-producing areas, that is, areas where host articles are prevalent, and climatic conditions are conducive to ACP becoming established in significant population densities. If the nursery stock were to transit such areas, as additional mitigation measures, it would need to be inspected and found free of ACP no more than 72 hours before shipment and would need to be shipped in a container sealed with an agricultural seal affixed by an inspector; moreover, the seal would have to remain affixed throughout transit and be removed by an inspector at its destination.

Accordingly, paragraph (c) of § 301.76–6 establishes two separate sets of conditions for issuance of a limited permit for interstate movement of regulated nursery stock from areas quarantined for ACP, but not for citrus greening.

In addition to all general conditions for issuance of a limited permit, paragraphs (c)(1) through (c)(1)(vi) provide that, if the nursery stock will not be moved through a commercial citrus-producing area (American Samoa, Arizona, California, Florida, Guam, Hawaii, the Northern Mariana Islands, Puerto Rico, Texas, or the U.S. Virgin Islands), an inspector or person operating under a compliance agreement may issue a permit for the interstate movement of regulated nursery stock to areas of the United States other than Northern Mariana Islands or those portions of Arizona and California that are not quarantined due to the presence of ACP or citrus greening, if:

- The nursery in which the nursery stock is produced has entered into a compliance agreement with APHIS in accordance with § 301.76–8.
- All citrus nursery stock at the nursery has been inspected by an inspector every 30 days, and any findings of ACP during an inspection have been reported to APHIS immediately.
- The nursery stock is treated for ACP with an APHIS-approved soil drench or in-ground granular application no more than 90 days and no fewer than 30 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 affixed prior to movement with a plastic or metal tag on which the statement "Limited permit: USDA–APHIS–PPQ. Not for distribution in Northern Mariana Islands or those portions of AZ and CA not quarantined due to the presence of Asian citrus psyllid or citrus greening" is prominently and legibly displayed on the obverse, and adequate information as determined by APHIS regarding the identity of the nursery stock and its source of production to conduct traceback to the nursery in which the nursery stock was produced is prominently and legibly printed on the reverse. If the nursery stock is destined for movement or sale in boxes or containers, the statement and the identifying information 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 and the identifying information are prominently and legibly displayed.
- A copy of the limited permit will be attached to the consignee's copy of the accompanying waybill.
- The nursery stock is shipped in accordance with the conditions specified on the limited permit to the destination specified on the permit.

We are requiring that the nursery enter into a compliance agreement with APHIS in order to ensure, among other things, that the nursery maintains records of inspections and treatments for APHIS review.

We are requiring the tag on which the limited permit statement is printed to have adequate information as determined by APHIS regarding the identity of the nursery stock and its source of production to conduct traceback to the nursery in which the nursery stock was produced because, as we noted above, there is some risk under these regulatory provisions that ACP will be introduced to the nursery stock at the nursery. In the event that the soil drenches and foliar sprays do not achieve 100 percent mortality of this ACP prior to movement, there is a corresponding degree of risk that live ACP may be on the plants when they reach their point of destination. In such instances, APHIS will use the information on the tags in order to review the recordkeeping of the nursery in which the nursery stock was produced. While this review is ongoing, we will also prohibit the nursery from shipping articles interstate.

Finally, we are removing the requirement that the nursery stock be shipped in a sealed container because this regulatory scheme focuses not on the possibility that a few ACP may be reintroduced into the nursery stock prior to interstate movement of the plants, but rather on the likelihood that such reintroduction will result in the artificial spread of ACP.

Paragraphs (c)(2) through (c)(2)(vi) establish conditions for the issuance of limited permits for regulated nursery stock that will be moved through a commercial citrus-producing area to another area. In addition to the general conditions for issuance of a limited permit, an inspector or person operating under a compliance agreement may issue a limited permit for such movement, if:

- All conditions for movement of regulated nursery stock in paragraphs (c)(1)(i) through (c)(1)(vi) of § 301.76–6, that is, all conditions of the new

[5] Yamamoto, P.T., *et al.* 2008. *Efficiency of Insecticides to Control Diaphorina citri, Vector of Huanglongbing.* T. Gottwald, W. Dixon, J. Graham, P. Berger, eds. International research conference on Huanglongbing. Plant Management Network International, Orlando, Florida. Copies available from the individuals listed under **FOR FURTHER INFORMATION CONTACT.**

regulatory scheme discussed immediately above, are fulfilled.

- The nursery stock is inspected by an inspector on the date of shipment and found free of ACP.
- The nursery stock is completely enclosed in a sealed container and is moved interstate in that container.
- The container prominently and legibly displays the required limited permit statement and identifying information.
- The agricultural seal remains intact throughout movement to the destination specified on the limited permit.
- The agricultural seal is removed at the destination specified on the limited permit by an inspector.

These revisions to § 301.76–6 entail a nonsubstantive modification to § 301.76–9. Prior to the publication of this interim rule, § 301.76–9 had provided, among other things, that all regulated nursery stock intended for interstate movement for immediate export from an area quarantined for citrus greening, as well as all regulated nursery stock treated with soil drenches and foliar sprays prior to interstate movement from an area quarantined for ACP, but not for citrus greening, had to be inspected by an inspector no more than 72 hours prior to movement.

However, as we mentioned above, inspections of regulated nursery stock to be moved interstate under a limited permit must now take place at set intervals and must be coupled with an inspection on the date of shipment if the nursery stock will transit such a commercial citrus-producing area. Accordingly, we are amending § 301.76–9 so that it now refers only to citrus nursery stock that is intended for interstate movement for immediate export.

These changes to the citrus canker, citrus greening, and ACP regulations will provide nursery stock producers in areas quarantined for citrus canker, citrus greening, or ACP with the ability to ship regulated nursery stock to markets within the United States that would otherwise be unavailable to them due to the prohibitions and restrictions contained in the regulations while continuing to provide adequate safeguards to prevent the spread of the three pests into currently unaffected areas of the United States.

Immediate Action

Immediate action is warranted to provide a degree of relief to existing prohibitions and restrictions on the interstate movement of regulated nursery stock to certain nurseries who enter into compliance agreements with APHIS. Specifically, such action will provide producers with a means to ship regulated nursery stock to previously unavailable markets within the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register.**

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register** in which we will respond to the comments we receive and finalize or, as necessary, revise the provisions of this interim rule. APHIS intends to publish this follow-up document within 18 months of the publication of this interim rule.

Executive Order 12866, Executive Order 13563, 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.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis regarding the economic effects of this rule on small entities. The analysis identifies nurseries that produce and handle regulated nursery stock as entities potentially affected by this interim rule. The analysis identifies the primary costs of the rule as those a nursery would need to assume in order to meet all terms and provisions of a compliance agreement that it has entered into with APHIS and that specifies the conditions under which the regulated nursery stock at the nursery must be grown, maintained, and shipped in order for it to be moved interstate. While these costs will vary from nursery to nursery, APHIS has estimated the aggregate cost to the industry of certain provisions that will be found in every compliance agreement. We estimate that the total cost to the industry of constructing enclosed facilities that meet our minimum requirements will be between $1.3 million and $3.2 million, and that the total cost of meeting labeling requirements for each plant propagated in such facilities will be between $119,070 and $340,000. We have determined that the rule will benefit the citrus industry in the United States by providing nurseries in quarantined areas with an opportunity for access to domestic markets that would otherwise be unavailable to them and by ensuring ongoing production of disease-free plants, which is vital to the preservation of both the U.S. citrus nursery stock and U.S. citrus fruit industries.

The full analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) or 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

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 0579–0369 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–2010–0048, 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–2010–0048 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: Certificates, limited permits, compliance agreements, records of sales and shipments, 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 0.1441359 hours per response.

Respondents: Nursery owners and operators.

Estimated annual number of respondents: 621.

Estimated annual number of responses per respondent: 21.2270.

Estimated annual number of responses: 13,182.

Estimated total annual burden on respondents: 1,900 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 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).

§ 301.75–1 [Amended]

■ 2. In § 301.75–1, the definition of *compliance agreement* is amended by removing the words "growing or handling" and adding the words "growing, maintaining, processing, handling, packing, or moving" in their place.

■ 3. Section 301.75–6 is amended as follows:

■ a. By revising paragraph (a) to read as set forth below.

■ b. By redesignating paragraph (c) as paragraph (d).

■ c. By adding a new paragraph (c) and a new footnote 1 to read as set forth below.

■ d. In newly redesignated paragraph (d), by adding the words "or paragraph (c)" after the words "paragraph (b)".

■ e. By adding the OMB citation "(Approved by the Office of Management and Budget under control number 0579–0369)" at the end of the section.

§ 301.75–6 Interstate movement of regulated nursery stock from a quarantined area.

(a) Regulated nursery stock may not be moved interstate from a quarantined area unless such movement is authorized in this section.

* * * * *

(c) Regulated nursery stock produced in a nursery within a quarantined area may be moved interstate to any area within the United States, if all of the following conditions are met:

(1) The nursery in which the nursery stock is produced has entered into a compliance agreement in which it agrees to meet the relevant construction standards, sourcing and certification requirements, cleaning, disinfecting, and safeguarding requirements, labeling requirements, and recordkeeping and inspection requirements specified in a PPQ protocol document. The protocol document will be provided to the person at the time he or she enters into the compliance agreement.[1] The compliance agreement may also specify additional conditions determined by APHIS to be necessary in order to prevent the dissemination of citrus canker under which the nursery stock must be grown, maintained, and shipped in order to obtain a certificate for its movement. The compliance agreement will also specify that APHIS may amend the agreement.

(2) An inspector has determined that the nursery has adhered to all terms and conditions of the compliance agreement.

(3) The nursery stock is accompanied by a certificate issued in accordance with § 301.75–12.

(4) The nursery stock is completely enclosed in a sealed container that is clearly labeled with the certificate and is moved interstate in that container.

(5) A copy of the certificate is attached to the consignee's copy of the accompanying waybill.

* * * * *

§ 301.75–12 [Amended]

■ 4. In § 301.75–12, paragraph (b)(1) introductory text is amended by adding the words "or in § 301.75–6(c)(4) through (c)(5) for any regulated nursery stock," after the words "for kumquat plants".

§ 301.75–13 [Amended]

■ 5. In § 301.75–13, paragraph (b) is amended by adding the words ", or any term or condition of the compliance agreement itself" after the words "with this subpart".

§ 301.76–4 [Amended]

■ 6. In § 301.76–4, paragraph (c) is amended by removing the words "for immediate export under a limited permit in accordance with § 301.76–7(c)" and adding the words "in accordance with § 301.76–7" in their place.

§§ 301.76–8 and 301.76–9 [Amended]

■ 7. Footnote 4 in § 301.76–8 and footnote 5 in § 301.76–9 are redesignated as footnotes 6 and 7, respectively.

■ 8. Section 301.76–6 is amended as follows:

■ a. By revising the section heading to read as set forth below.

■ b. By redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively.

■ c. By revising newly redesignated paragraph (c) to read as set forth below

■ d. In newly redesignated paragraph (d), by redesignating footnote 3 as footnote 4.

[1] The protocol document is also available on the Internet at *http://www.aphis.usda.gov/plant_health/plant_pest_info/citrus/index.shtml* and may be obtained from local Plant Protection and Quarantine offices, which are listed in telephone directories.

■ e. By adding a new paragraph (b) and a new footnote 3 to read as set forth below.

■ f. By adding the OMB citation "(Approved by the Office of Management and Budget under control number 0579–0369)" at the end of the section.

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

* * * * *

(b) *Additional conditions for issuance of a certificate; regulated nursery stock.* 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 interstate movement of regulated nursery stock to any State if:

(1) The nursery in which the nursery stock is produced has entered into a compliance agreement with APHIS in which it agrees to meet the relevant construction standards, sourcing and certification requirements, cleaning, disinfecting, and safeguarding requirements, labeling requirements, and recordkeeping and inspection requirements specified in a PPQ protocol document. The protocol document will be provided to the person at the time he or she enters into the compliance agreement.[3] The compliance agreement may also specify additional conditions determined by APHIS to be necessary in order to prevent the spread of Asian citrus psyllid under which the nursery stock must be grown, maintained, and shipped in order to obtain a certificate for its movement. The compliance agreement will also specify that APHIS may amend the agreement.

(2) An inspector determines that the nursery has adhered to all terms and conditions of the compliance agreement.

(3) The nursery stock is completely enclosed in a sealed container that is clearly labeled with the certificate and is moved interstate in that container.

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

(c) *Additional conditions for issuance of a limited permit; regulated nursery stock.* (1) *Nursery stock that will not be moved through American Samoa, Arizona, California, Florida, Guam, Hawaii, the Northern Mariana Islands, Puerto Rico, Texas, or the U.S. Virgin Islands.* In addition to the general conditions for the issuance of a limited permit contained in § 301.76–5(b), an inspector or person operating under a compliance agreement, other than the operator of the nursery in which the nursery stock was produced and his or her employees, may issue a limited permit for the interstate movement of regulated nursery stock through areas of the United States other than American Samoa, Arizona, California, Florida, Guam, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, or the U.S. Virgin Islands, and to areas of the United States other than Northern Mariana Islands and those portions of Arizona and California that are not quarantined due to the presence of Asian citrus psyllid or citrus greening, if:

(i) The nursery in which the nursery stock is produced has entered into a compliance agreement with APHIS in accordance with § 301.76–8;

(ii) All citrus nursery stock at the nursery has been inspected by an inspector every 30 days, and any findings of Asian citrus psyllid during an inspection have been reported to APHIS immediately;

(iii) The nursery stock is treated for Asian citrus psyllid with an APHIS-approved soil drench or in-ground granular application no more than 90 days and no fewer than 30 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;

(iv) 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 Northern Mariana Islands or those portions of AZ and CA not quarantined due to the presence of Asian citrus psyllid or citrus greening" is prominently and legibly displayed on the obverse, and adequate information as determined by APHIS regarding the identity of the nursery stock and its source of production to conduct traceback to the nursery in which the nursery stock was produced is prominently and legibly printed on the reverse. If the nursery stock is destined for movement or sale in boxes or containers, the statement and the identifying information 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 and the identifying information are prominently and legibly displayed;

(v) A copy of the limited permit will be attached to the consignee's copy of the accompanying waybill; and

(vi) The nursery stock is shipped in accordance with the conditions specified on the limited permit to the destination specified on the permit.

(2) *Nursery stock that will be moved through American Samoa, Arizona, California, Florida, Guam, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, or the U.S. Virgin Islands.* In addition to the general conditions for the issuance of a limited permit contained in § 301.76–5(b), an inspector or person operating under a compliance agreement may issue a permit for the interstate movement of regulated nursery stock through American Samoa, Arizona, California, Florida, Guam, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, or the U.S. Virgin Islands, and to areas of the United States other than Northern Mariana Islands or those portions of Arizona and California that are not quarantined due to the presence of Asian citrus psyllid or citrus greening, if:

(i) All conditions for movement of regulated nursery stock in paragraphs (c)(1)(i) through (c)(1)(vi) of this section are fulfilled;

(ii) The nursery stock is inspected by an inspector on the date of shipment and found free of Asian citrus psyllid;

(iii) The nursery stock is completely enclosed in a container sealed with an agricultural seal and is moved interstate in that container;

(iv) The container prominently and legibly displays the statement and identifying information specified in paragraph (c)(1)(iv) of this section;

(v) The agricultural seal remains intact throughout movement to the destination specified on the limited permit; and

(vi) The agricultural seal is removed at the destination specified on the limited permit by an inspector.

* * * * *

■ 9. Section 301.76–7 is amended as follows:

■ a. By redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively.

■ b. By adding a new paragraph (a) and a new footnote 5 to read as set forth below.

■ c. In newly redesignated paragraph (c), by adding the words "or (b)" after the words " paragraph (a)".

[3] The protocol document is also available on the Internet at *http://www.aphis.usda.gov/plant_health/plant_pest_info/citrus/index.shtml* and may be obtained from local Plant Protection and Quarantine offices, which are listed in telephone directories.

■ d. By adding the OMB citation "(Approved by the Office of Management and Budget under control number 0579–0369)" at the end of the section.

§ 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 the issuance of a certificate; regulated nursery stock produced within a nursery located in the quarantined area.* 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 interstate movement of regulated nursery stock to any State if all of the following conditions are met:

(1) The nursery in which the nursery stock is produced has entered into a compliance agreement with APHIS in which it agrees to meet the relevant construction standards, sourcing and certification requirements, cleaning, disinfecting, and safeguarding requirements, labeling requirements, and recordkeeping and inspection requirements specified in a PPQ protocol document. The protocol document will be provided to the person at the time he or she enters into the compliance agreement.[5] The compliance agreement may also specify additional conditions determined by APHIS to be necessary in order to prevent the dissemination of citrus greening under which the nursery stock must be grown, maintained, and shipped in order to obtain a certificate for its movement. The compliance agreement will also specify that APHIS may amend the agreement.

(2) An inspector has determined that the nursery has adhered to all terms and conditions of the compliance agreement.

(3) The nursery stock is completely enclosed in a sealed container that is clearly labeled with the certificate and is moved interstate in that container.

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

* * * * *

§ 301.76–8 [Amended]

■ 10. Section 301.76–8 is amended as follows:

■ a. In paragraph (b), by adding the words ", or any term or condition of the compliance agreement itself" after the words "with this subpart".

■ b. In the OMB citation at the end of the section, by removing the words "number 0579–0363" and adding the words "numbers 0579–0363 and 0579–0369" in their place.

§ 301.76–9 [Amended]

■ 11. Section 301.76–9 is amended by removing the words "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" and adding the word "All" in their place.

Done in Washington, DC, this 21st day of April 2011.

Edward M. Avalos,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2011–10092 Filed 4–26–11; 8:45 am]

BILLING CODE 3410–34–P

[5] The protocol document is also available on the Internet at *http://www.aphis.usda.gov/plant_health/plant_pest_info/citrus/index.shtml* and may be obtained from local Plant Protection and Quarantine offices, which are listed in telephone directories.

FARM CREDIT ADMINISTRATION

12 CFR Parts 651 and 652

RIN 3052–AC51

Federal Agricultural Mortgage Corporation Governance and Federal Agricultural Mortgage Corporation Funding and Fiscal Affairs; Risk-Based Capital Requirements

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, Agency, us, or we) issues this final rule amending our regulations on the Risk-Based Capital Stress Test (RBCST or model) used by the Federal Agricultural Mortgage Corporation (Farmer Mac). This rulemaking updates the model to ensure that it continues to appropriately reflect risk in a manner consistent with statutory requirements for calculating Farmer Mac's regulatory minimum capital level under a risk-based capital stress test. This rule updates the model to estimate the capital requirements associated with Farmer Mac's statutory authority to finance rural utility loans and to revise the treatment of certain secured general obligations held by Farmer Mac as program investments. This rule also revises the treatment of counterparty risk on non-program investments in the model by adjusting the haircuts applied to those investments to keep the model internally consistent with revisions made to stressed historical corporate bond default and recovery rates.

DATES: *Effective date:* This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

Compliance date: Compliance with the changes to the model must be achieved by the first day of the fiscal quarter following the effective date of the rule. All other provisions require compliance on the effective date of this rule.

FOR FURTHER INFORMATION CONTACT:

Joseph T. Connor, Associate Director for Policy and Analysis, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4280, TTY (703) 883–4434;

or

Laura McFarland, Senior Counsel, Office of the General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this final rule is to ensure that the RBCST for Farmer Mac continues to determine regulatory capital requirements in a manner consistent with statutory requirements.

II. Background

The FCA is an independent agency in the executive branch of the Federal Government that, in part, serves as the safety and soundness regulator of Farmer Mac. The FCA regulates Farmer Mac through the Office of Secondary Market Oversight (OSMO). Farmer Mac is a stockholder-owned instrumentality of the United States, chartered by Congress to establish a secondary market for agricultural real estate, rural housing mortgage loans, and rural utilities loans. Farmer Mac also facilitates the capital markets funding for USDA-guaranteed farm program and rural development loans. Section 5406 of the Food, Conservation and Energy Act of 2008 (2008 Farm Bill)[1] amended the definition of "qualified loan" in Title VIII of the Farm Credit Act of 1971, as amended, (Act)[2] to include rural utility loans. This change gave Farmer Mac the authority to purchase and guarantee securities backed by loans to rural electric and telephone utility cooperatives as program business. The

[1] Public Law 110–246, 122 Stat. 1651 (June 18, 2008) (repealing and replacing Pub. L. 110–234).

[2] Public Law 92 181, 85 Stat. 583 (December 10, 1971).