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Operational Support, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; or

(3) May be viewed on the APHIS Web site at *http://www.aphis.usda.gov/ppq/pim/accreditation*.

§ 300.5 International Standards for Phytosanitary Measures.

(a) The International Standards for Phytosanitary Measures Publication No. 4, "Requirements for the Establishment of Pest Free Areas," which was published February 1996 by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(b) *Availability*. Copies of International Standards for Phytosanitary Measures Publication No. 4:

(1) Are available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*; or

(2) May be obtained by writing to Phytosanitary Issues Management, Operational Support, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; or

(3) May be viewed on the APHIS Web site at *http://www.aphis.usda.gov/ppq/pim/standards/*.

[68 FR 37915, June 25, 2003]

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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).

Subpart—Preemption and Special Need Requests

SOURCE: 73 FR 63064, Oct. 23, 2008, unless otherwise noted.

§ 301.1 Purpose and scope.

(a) Under section 436 of the Plant Protection Act (7 U.S.C. 7756), a State or political subdivision of a State may not impose prohibitions or restrictions upon the movement in interstate commerce of articles, means of conveyance, plants, plant products, biological control organisms, plant pests, or noxious weeds if the Secretary has issued a regulation or order to prevent the dissemination of the biological control organism, plant pest, or noxious weed within the United States. The only exceptions to this are:

(1) If the prohibitions or restrictions issued by the State or political subdivision of a State are consistent with and do not exceed the regulations or orders issued by the Secretary, or

(2) If the State or political subdivision of a State demonstrates to the Secretary and the Secretary finds that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment.

(b) The regulations in this subpart provide for the submission and consideration of special need requests when a State or a political subdivision of a State seeks to impose prohibitions or restrictions on the movement in interstate commerce of articles, means of conveyance, plants, plant products, biological control organisms, plant pests, or noxious weeds that are in addition to the prohibitions or restrictions imposed by this part or by a Federal Order.

§ 301.1–1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service (APHIS), or any person 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.

Biological control organism. Any enemy, antagonist, or competitor used to control a plant pest or noxious weed.

Interstate commerce. Trade, traffic, or other commerce

(1) From one State into or through any other State or

(2) Within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Move (moved, movement). Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved or allowed to be moved.

Noxious weed. Any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health or the environment.

Plant pest. Any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any

infectious substances which can directly or indirectly injure or cause disease or damage in any plants or parts thereof or any processed, manufactured, or other products of plants.

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

§ 301.1–2 Criteria for special need requests.

(a) A special need request, as described in § 301.1, may be generated by a State or a political subdivision of a State. If the request is generated by a political subdivision of a State, the request must be submitted to APHIS through the State. States may also collaborate with other States to submit multi-State special need requests. However, if submitted, the multi-State special need request must include information in sufficient detail to allow APHIS to analyze the impacts on each State on an individual basis. All special need requests must be signed by the executive official or officials or by a plant protection official or officials of the State(s) making the request and must contain the following:

(1) Data drawn from a scientifically sound detection survey, showing that the biological control organism, noxious weed, or plant pest of concern does not exist in the State or political subdivision or, if already present in the State or political subdivision, the distribution of the biological control organism, noxious weed, or plant pest of concern;

(2) If the biological control organism, noxious weed, or plant pest is not present in the State or political subdivision, a risk analysis or other scientific data showing that the biological control organism, noxious weed, or plant pest could enter the State or political subdivision and become established;

(3) Specific information showing that, if introduced into or allowed to spread within the State or political subdivision, the biological control organism, noxious weed, or plant pest would harm or injure the environment or agricultural resources in the State or political subdivision. The request should contain detailed information, including quantitative estimates, if available, about what harm or injury would result from the introduction or dissemination of the biological control organism, noxious weed, or plant pest in the State or political subdivision;

(4) Specific information showing that the State or political subdivision has characteristics that make it particularly vulnerable to the biological control organism, noxious weed, or plant pest, such as unique plants, diversity of flora, historical concerns, or any other special basis for the request for additional restrictions or prohibitions; and

(5) Information detailing the proposed additional prohibitions or restrictions and scientific data demonstrating that the proposed additional prohibitions or restrictions are necessary and adequate, and that there is no less drastic action that is feasible and that would be adequate, to prevent the introduction or spread of the biological control organism, noxious weed, or plant pest in the State or political subdivision.

(b) All special need requests must be submitted to the Deputy Administrator for Plant Protection and Quarantine, APHIS, USDA, Jamie L. Whitten Federal Building, 14th Street and Independence Avenue, SW., Room 301–E, Washington, DC 20250.

§ 301.1–3 Action on special need requests.

(a) Upon receipt of a complete special need request submitted in accordance with § 301.1–2, APHIS will publish a notice in the FEDERAL REGISTER to inform the public of the special need request and to make the request and its supporting information available for review and comment for at least 60 days.

(b) Following the close of the comment period, APHIS will publish another notice announcing the Administrator's decision to either grant or deny the special need request. The Administrator's determination will be based upon the evaluation of the information submitted by the State or political subdivision of a State in support of its request and would take into account any comments received.

(1) If the Administrator grants the special need request, the State or political subdivision of a State will be authorized to impose only the specific prohibitions or restrictions identified in the request and approved by APHIS. APHIS will coordinate with the State, or with the State on behalf of the political subdivision of the State, to ensure that the additional prohibitions or restrictions are in accord with the special need exception granted by the Administrator.

(2) If the Administrator denies the special need request, the State or political subdivision of a State will be notified in writing of the reason for the denial and may submit any additional information the State or political subdivision of a State may have in order to request a reconsideration.

(c) If granted, a special need exception will be applicable for 2 years, at the end of which the State or political subdivision of a State must submit a request for renewal of the exception. A special need renewal request must address the same criteria as the initial request submitted under §301.1–2 and must show that a special need still exists that warrants the continuation of the special need exception. The renewal must be submitted no sooner than 6 months and no later than 3 months prior to the end of the 2-year applicability period for the initial exception. Once a special need renewal request has been received, APHIS will follow the same notice and comment process outlined in paragraphs (a) and (b) of this section. If, by the end of the 2-year applicability period, the State or political subdivision of a State does not submit a special need renewal request, the State's or political subdivision's special need exception will lapse and the State or political subdivision of a State will have to reapply for the special need exception.

(d) If the Administrator determines that there is a need for the withdrawal of a special need exception before the renewal date of the special need exception, the reasons for the withdrawal would be communicated to the State or to the political subdivision of the State and APHIS will publish a notice in the FEDERAL REGISTER to inform the public of the withdrawal of the special need exception and to make the information supporting the withdrawal available for review and comment for at least 60 days. Reasons for withdrawal of approval of a special need exception may include, but are not limited to, the availability of new scientific data or changes in APHIS regulations. Following the close of the comment period, APHIS will publish another notice announcing the Administrator's decision to either withdraw or uphold the special need exception. The Administrator's determination will be based upon the evaluation of the information submitted in support of the withdrawal and would take into account any comments received.

(Approved by the Office of Management and Budget under control number 0579–0291)

Subpart—Imported Plants and Plant Parts

SOURCE: 62 FR 61212, Nov. 17, 1997, unless otherwise noted.

§ 301.10 Definitions.

Move (moved, movement). Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved.

State. Any State, territory, district, or possession of the United States.

§ 301.11 Notice of quarantine; prohibition on the interstate movement of certain imported plants and plant parts.

(a) In accordance with part 319 of this chapter, some plants and plant parts may only be imported into the United States subject to certain destination restrictions. That is, under part 319, some plants and plant parts may be imported into some States or areas of the United States but are prohibited from being imported into, entered into, or distributed within other States or areas, as an additional safeguard against the introduction and establishment of foreign plant pests and diseases.

(b) Under this quarantine notice, whenever any imported plant or plant part is subject to destination restrictions under part 319:

(1) The State(s) or area(s) into which the plant or plant part is allowed to be imported is quarantined with respect to that plant or plant part; and

(2) No person shall move any plant or plant part from any such quarantined State or area into or through any State or area not quarantined with respect to that plant or plant part.

Subpart—Fruit Flies

SOURCE: 73 FR 32432, June 9, 2008, unless otherwise noted.

§ 301.32 Restrictions on interstate movement of regulated articles.

(a) No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.[1]

(b) Section 414 of the Plant Protection Act (7 U.S.C. 7714) provides that the Secretary of Agriculture may, under certain conditions, hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of any plant, plant pest, plant product, article, or means of conveyance that is moving, or has moved into or through the United States or interstate if the Secretary has reason to believe the article is a plant pest or is infested with a plant pest at the time of movement.

§ 301.32–1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

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

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of fruit flies and may be moved interstate to any destination.

Commercially produced. Fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Such identification will be based on a variety of indicators, including, but not limited to: Quantity of produce, monocultural practices, pest management programs, good sanitation practices including destruction of culls, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the shipment to a wholesaler or retailer.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with this subpart.

Core area. The area within a circle surrounding each site where fruit flies have been detected using a ½-mile radius with the detection site as a center point.

Day degrees. A unit of measurement used to measure the amount of heat required to further the development of fruit flies through their life cycle. Day-degree life cycle requirements are calculated through a modeling process specific for each species of fruit fly.

Departmental permit. A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.32–4(c).

Dripline. The line around the canopy of a plant.

Fruit fly (fruit flies). The melon fruit fly, Mexican fruit fly, Mediterranean fruit fly, Oriental fruit fly, peach fruit fly, sapote fruit fly, or West Indian fruit fly, or other species of insects found in the family Tephritidae, collectively.

Infestation. The presence of fruit flies or the existence of circumstances that makes it reasonable to believe that fruit flies are present.

Inspector. Any employee of APHIS or other person authorized by the Administrator to enforce this subpart.

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

Limited permit. A document in which an inspector or person operating under

[1] Permit and other requirements for the interstate movement of any of the fruit flies regulated under this subpart are contained in part 330 of this chapter.

a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.32–5(b) only to a specified destination and only in accordance with specified conditions.

Mediterranean fruit fly. The insect known as Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), in any stage of development.

Melon fruit fly. The insect known as the melon fruit fly, *Bactrocera cucurbitae* (Coquillett), in any stage of development.

Mexican fruit fly. The insect known as Mexican fruit fly, *Anastrepha ludens* (Loew), in any stage of development.

Move (moved, movement). Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved.

Oriental fruit fly. The insect known as Oriental fruit fly, *Bactrocera dorsalis* (Hendel), in any stage of development.

Peach fruit fly. The insect known as peach fruit fly, *Anastrepha zonata* (Saunders), in any stage of development.

Person. Any individual, partnership, corporation, association, joint venture, or other legal entity.

Plant Protection and Quarantine. The organizational unit within the Animal and Plant Health Inspection Service that has been delegated responsibility for enforcing provisions of the Plant Protection Act and related legislation, quarantines, and regulations.

Quarantined area. Any State, or any portion of a State, designated as a quarantined area in accordance with § 301.32–3.

Regulated article. Any article listed in § 301.32–2 or otherwise designated as a regulated article in accordance with § 301.32–2(d).

Sapote fruit fly. The insect known as the sapote fruit fly, *Anastrepha serpentina*, in any stage of development.

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

West Indian fruit fly. The insect known as the West Indian fruit fly, *Anastrepha obliqua* (Macquart), in any stage of development.

§ 301.32–2 Regulated articles.

(a) In the following table, the berry, fruit, nut, or vegetable listed in each row in the left column is a regulated article for each of the fruit fly species listed in that row in the right column, unless the article is canned, dried, or frozen below −17.8 °C (0 °F):

Botanical name	Common name(s)	Fruit fly
Abelmoschus esculentus = *Hibiscus esculentus*.	Okra	Melon, Peach.
Acca sellowiana = *Feijoa sellowiana*	Pineapple guava	Mediterranean, Oriental, Peach.
Actinidia chinensis	Kiwi	Mediterranean.
Aegle marmelos	Indian bael	Peach.
Anacardium occidentale	Cashew	Oriental.
Annona cherimola	Cherimoya	Mexican, Oriental, Peach.
Annona glabra	Pond-apple	Sapote.
Annona muricata	Soursop	Melon, Oriental, Peach.
Annona reticulata	Custard apple, Annona	Melon, Mexican, Oriental, Peach.
Annona squamosa	Custard apple	Peach.
Artocarpus altilis	Breadfruit	Oriental.
Artocarpus heterophyllus	Jackfruit	Oriental.
Averrhoa carambola	Carambola, Country gooseberry	Oriental, West Indian.
Benincasa hispida	Melon, Chinese	Melon.
Brassica juncea	Mustard, leaf	Melon.
Brassica oleracea var. *botrytis*	Cauliflower	Melon.
Brosimum alicastrum	Ramón	West Indian.
Byrsonima crassifolia	Nance	Sapote.
Calophyllum inophyllum	Alexandrian-laurel, Laurel	Oriental.
Cananga odorata	Ylang-Ylang	Oriental.
Capsicum annum	Pepper, chili	Mediterranean, Melon, Oriental.
Capsicum frutescens	Pepper, tabasco	Mediterranean, Melon.
Capsicum frutescens abbreviatum	Oriental bush red pepper	Oriental.
Capsicum frutescens var. *grossum*	Pepper, sweet	Oriental.

Botanical name	Common name(s)	Fruit fly
Carica papaya	Papaya	Mediterranean, Melon, Oriental, Peach.
Carissa grandiflora	Natal plum	Oriental.
Carissa macrocarpa	Natal plum	Mediterranean.
Casimiroa edulis	Sapote, white	Mediterranean.
Casimiroa greggii = *Sargentia greggii*	Sargentia, yellow chapote	Mexican.
Casimiroa spp	Sapote	Mexican.
Cereus coerulescens	Cactus	Oriental.
Chrysophyllum cainito	Star apple	Oriental, Sapote.
Chrysophyllum oliviforme	Caimitillo	Oriental.
Citrofortunella japonica	Orange, calamondin	Peach.
Citrullus colocynthis	Colocynth	Melon.
Citrullus lanatus = *Citrullus vulgaris*	Watermelon	Melon, Peach.
Citrullus spp	Melon	Melon.
Citrus aurantiifolia	Lime	Mediterranean, Mexican,[1] Oriental, Peach.
Citrus aurantium	Orange, sour	Mediterranean, Mexican, Oriental, Peach.
Citrus jambhiri	Lemon, Rough	Mediterranean.
Citrus latifolia	Lime, Persian	Oriental.
Citrus limon	Lemon	Mediterranean,[2] Mexican,[3] Oriental, Peach.
Citrus limon x *reticulata*	Lemon, Meyer	Mediterranean.
Citrus madurensis = x*Citrofortunella mitis*	Orange, Panama	Sapote.
Citrus maxima = *Citrus grandis*	Pummelo or Shaddock	Mediterranean, Mexican, Oriental, Peach.
Citrus medica	Citrus citron	Mediterranean, Mexican, Peach.
Citrus paradisi	Grapefruit	Mediterranean, Melon, Mexican, Oriental, Peach.
Citrus reticulata	Mandarin orange, tangerine	Mediterranean, Mexican, Oriental, Peach.
Citrus reticulata var. *Unshu*	Orange, Unshu	Mediterranean, Oriental.
Citrus reticulata x *C. sinensis* = *Citrus nobilis*.	Orange, king	Mediterranean, Melon, Oriental, Peach.
Citrus reticulata x *Fortunella*	Orange, calamondin	Mediterranean, Mexican, Oriental.
Citrus sinensis	Orange, sweet	Mediterranean, Melon, Mexican, Oriental, Peach.
Citrus spp	Citrus	Sapote.
Clausena lansium	Wampi	Oriental.
Coccinia spp	Gourds	Melon, Peach.
Coccoloba uvifera	Seagrape	Oriental.
Coffea arabica	Coffee, Arabian	Oriental.
Cresentia spp	Gourds	Melon, Peach.
Cucumis melo and *Cucumis melo* var. *Cantalupensis*.	Cantaloupe	Melon, Peach.
Cucumis melo var. *conomon*	Melon, oriental pickling	Melon.
Cucumis pubescens and *Cucumis trigonus*.	Cucurbit	Melon.
Cucumis sativus	Cucumber	Melon, Oriental, Peach.
Cucumis utilissimus	Melon, long	Peach.
Cucurbita maxima	Squash	Melon.
Cucurbita moschata	Pumpkin, Canada	Melon.
Cucurbita pepo	Pumpkin	Melon.
Cydonia oblonga	Quince	Mexican, Mediterranean, Oriental, Peach, Sapote.
Cyphomandra betaceae	Tomato, tree	Melon.
Diospyros digyna	Black sapote	Sapote.
Diospyros discolor	Velvet apple	Oriental.
Diospyros khaki	Japanese persimmon	Mediterranean, Oriental.
Diospyros spp	Sapote	Sapote, West Indian.
Dovyalis hebecarpa	Kitembilla	Oriental, Sapote, West Indian.
Dracena draco	Dragon tree	Oriental.
Elaeocarpus angustifolius	Blue marbletree; New Guinea quandong	Peach.
Elaeocarpus grandiflorus	Lily of the valley tree	Peach.
Elaeocarpus madopetalus	Ma-kok-nam	Peach.
Eriobotrya japonica	Loquat	Mediterranean, Oriental, Peach, West Indian.
Eugenia brasiliensis = *E. dombeyi*	Brazil-cherry, grumichama	Mediterranean, Oriental, Peach.
Eugenia malaccensis	Malay apple	Oriental.
Eugenia uniflora	Surinam cherry	Mediterranean, Oriental, Peach.
Euphoria longan	Longan	Oriental.
Ficus benghalensis	Fig, Banyan	Peach.
Ficus carica	Fig	Mediterranean, Melon, Oriental, Peach.
Ficus macrophylla	Fig, Moreton Bay	Peach.
Ficus retusa	Fig, glossy leaf	Peach.

Botanical name	Common name(s)	Fruit fly
Ficus rubiginosa	Fig, Port Jackson	Peach.
Ficus spp	Fig	Peach.
Fortunella japonica	Chinese Orange, Kumquat	Mediterranean, Oriental, Peach.
Garcinia celebica	Gourka	Oriental.
Garcinia mangostana	Mangosteen	Oriental.
Grewia asiatica	Phalsa	Peach.
Jubaea chilensis = Jubaea spectabilis	Syrup palm	Oriental.
Juglans hindsii	Walnut	Oriental.
Juglans regia	Walnut, English	Oriental.
Juglans spp	Walnut with husk	Mediterranean.
Lablab purpureus subsp. *purpureus = Dolichos lablab.*	Bean, hyacinth	Melon.
Lagenaria spp	Gourds	Melon, Peach.
Luffa acutangula	Gourd, ribbed or ridged, luffa	Peach.
Luffa aegyptiaca	Gourd, smooth luffa, sponge	Peach.
Luffa spp	Gourds	Melon, Peach.
Luffa vulgaris	Gourd	Peach.
Lychee chinensis	Lychee nut	Oriental.
Lycopersicon esculentum	Tomato	Mediterranean,[4] Melon, Oriental, Peach.
Madhuca indica = Bassia latifolia	Mahua, mowra-buttertree	Peach.
Malpighia glabra	Cherry, Barbados	Oriental, West Indian.
Malpighia punicifolia	West Indian cherry	Oriental.
Malus sylvestris	Apple	Mediterranean, Melon, Mexican, Oriental, Sapote, Peach.
Mammea americana	Mammy apple	Mexican, Oriental, Peach, Sapote.
Mangifera foetida	Mango, Bachang	Peach.
Mangifera indica	Mango	All.
Mangifera odorata	Kuine	Peach.
Manilkara hexandra	Sapodilla, balata	Peach.
Manilkara jaimiqui subsp. *emarginata*	Sapodilla, wild	Peach.
Manilkara zapota	Sapodilla, chiku	Oriental, Peach, Sapote, West Indian.
Mimusops elengi	Spanish cherry	Mediterranean, Oriental.
Momordica balsamina	Balsam apple, hawthorn	Peach.
Momordica charantia	Balsam pear, bitter melon	Peach.
Momordica cochinchinensis	Balsam apple, gac	Peach.
Momordica spp	Gourds	Melon, Peach.
Morus nigra	Mulberry	Oriental.
Murraya exotica	Mock orange	Mediterranean, Oriental.
Musa x *paradisiaca = Musa paradisiaca* subsp. *sapientum.*	Banana	Oriental.
Musa acuminata = Musa nana	Banana, dwarf	Oriental.
Ochrosia elliptica	Orange, bourbon	Peach.
Olea europea	Olive	Mediterranean.
Opuntia ficus-indica = Opuntia megacantha.	Prickly pear	Oriental.
Opuntia spp	Opuntia cactus	Mediterranean.
Passiflora edulis	Passionflower, passionfruit, yellow lilikoi	Melon, Oriental, West Indian.
Passiflora laurifolia	Lemon, water	Melon.
Passiflora ligularis	Granadilla, sweet	Oriental.
Passiflora quadrangularis	Granadilla, giant	West Indian.
Passiflora tripartita var. *mollissima*	Passionflower, softleaf	Oriental.
Persea americana	Avocado	Mediterranean, Melon, Mexican, Oriental, Peach, Sapote.
Phaseolus lunatus = Phaseolus limensis	Bean, lima	Melon.
Phaseolus vulgaris	Bean, mung	Melon.
Phoenix dactylifera	Date palm	Mediterranean, Melon, Oriental, Peach.
Planchonia careya = Careya arborea	Patana oak, kumbhi	Peach.
Pouteria caimito	Abiu	Sapote.
Pouteria campechiana	Eggfruit tree	Oriental, Sapote.
Pouteria obovata	Lucmo	Sapote.
Pouteria viridis	Sapote, green	Sapote.
Prunus americana	Plum, American	Mediterranean, Mexican, Oriental, Peach.
Prunus armeniaca	Apricot	Mediterranean, Mexican, Oriental, Peach.
Prunus avium	Sweet cherry	Mediterranean, Peach.
Prunus cerasus	Sour cherry	Mediterranean, Peach.
Prunus domestica	Plum, European	Mediterranean, Mexican, Oriental, Peach.
Prunus dulcis = P. amygdalus	Almond with husk	Mediterranean, Peach[5].
Prunus ilicifolia	Cherry, Catalina	Oriental, Peach.
Prunus lusitanica	Cherry, Portuguese	Oriental, Peach.
Prunus persica	Peach	All.
Prunus persica var. *nectarine*	Nectarine	Mediterranean, Mexican, Oriental, Peach.

Botanical name	Common name(s)	Fruit fly
Prunus salicina	Japanese plum	Mediterranean, Mexican, Peach, West Indian.
Prunus salicina x *Prunus cerasifera*	Methley plum	Peach.
Psidium cattleianum	Strawberry guava, Cattley guava	Mediterranean, Melon, Oriental.
Psidium cattleianum var. *cattleianum f. lucidum.*	Yellow strawberry guava	Peach.
Psidium cattleianum var. *littorale*	Red strawberry guava	Oriental, West Indian, Peach.
Psidium guajava	Guava	All.
Punica granatum	Pomegranate	Mediterranean, Mexican, Oriental, Peach.
Pyrus communis	Pear	All.
Pyrus pashia	Kaeuth	Peach.
Pyrus pyrifolia	Pear, sand	Peach.
Rhodomyrtus tomentosa	Myrtle, downy rose	Oriental.
Sandoricum koetjape	Santol	Oriental.
Santalum album	Sandalwood, white	Oriental.
Santalum paniculatum	Sandalwood	Oriental.
Sapotaceae	Sapota, Sapodilla	Mexican.
Sechium edule	Chayote	Melon.
Sesbania grandiflora	Scarlet wisteria tree	Melon.
Sicyes sp	Cucumber, bur	Melon.
Solanum aculeatissimum	Nightshade	Peach.
Solanum mauritianum = S. auriculatum	Tobacco, wild	Peach.
Solanum melongena	Eggplant	Mediterranean,[6] Melon, Peach.
Solanum muricatum	Pepino	Oriental, Peach.
Solanum pseudocapsicum	Jerusalem cherry	Oriental, Peach.
Solanum seaforthianum	Nightshade, Brazilian	Peach.
Solanum verbascifolium	Nightshade, Mullein	Peach.
Spondias dulcis = Spondias cytherea	Otaheite apple, Jew plum	Oriental, West Indian.
Spondias mombin	Hog-plum	Sapote, West Indian.
Spondias purpurea	Red mombin	Sapote, West Indian.
Spondias spp	Spanish plum, purple mombin or Ciruela	Mexican.
Spondias tuberose	Imbu	Oriental.
Syzygium aquem	Water apple, watery roseapple	Peach.
Syzygium cumini	Java plum, jambolana	Peach.
Syzygium jambos = Eugenia jambos	Rose apple	Mediterranean, Mexican, Oriental, Peach, West Indian.
Syzygium malaccense = Eugenia malaccensis.	Mountain apple, Malay apple	Mediterranean, Peach, West Indian.
Syzygium samarangense	Java apple	Peach.
Terminalia bellirica	Myrobalan, belleric	Peach.
Terminalia catappa	Tropical almond	Oriental, Peach.
Terminalia chebula	Myrobalan, black or chebulic	Mediterranean, Oriental, Peach.
Thevetia peruviana	Yellow oleander	Mediterranean, Oriental.
Trichosanthis spp	Gourds	Melon, Peach.
Vaccinium spp	Blueberry	Mediterranean.
Vigna unguiculata	Cowpea	Melon.
Vitis spp	Grapes	Mediterranean, Oriental.
Vitis trifolia	Grape	Melon.
Wikstroemia phillyreifolia	Akia	Oriental.
Ziziphus mauritiana	Chinese date, jujube	Peach.

[1] Sour limes are not regulated articles for Mexican fruit fly.
[2] Only yellow lemons are regulated articles for Mediterranean fruit fly.
[3] Eureka, Lisbon, and Villa Franca cultivars (smooth-skinned sour lemon) are not regulated articles for Mexican fruit fly.
[4] Only pink and red ripe tomatoes are regulated articles for Mediterranean fruit fly.
[5] Harvested almonds with dried husks are not regulated articles for peach fruit fly.
[6] Commercially produced eggplants are not regulated articles for Mediterranean fruit fly.

(b) Plants of the following species in the family Curcurbitaceae are regulated articles for the melon fruit fly only:

Cantaloupe (*Cucumis melo*)
Chayote (*Sechium edule*)
Colocynth (*Citrullus colocynthis*)
Cucumber (*Cucumis sativus*)
Cucumber, bur (*Sicyes* spp.)
Cucurbit (*Cucumis pubescens* and *C. trigonus*)
Cucurbit, wild (*Cucumis trigonus*)
Gherkin, West India (*Cucumis angaria*)
Gourds (*Coccinia*, *Cresentia*, *Lagenaria*, *Luffa*, *Momordica*, and *Trichosanthis* spp.)
Gourd, angled luffa (*Luffa acutangula*)
Gourd, balsam apple (*Momordica balsaminia*)
Gourd, ivy (*Coccinia grandis*)
Gourd, kakari (*Momordica dioica*)
Gourd, serpent cucumber (*Trichosanthis anguina*)
Gourd, snake (*Trichosanthis cucumeroides*)
Gourd, sponge (*Luffa aegyptiaca*)
Gourd, white flowered (*Lagenaria siceraria*)

Melon, Chinese (*Benincasa hispida*)
Melon, long (*Cucumis utilissimus*)
Pumpkin (*Cucurbita pepo*)
Pumpkin, Canada (*Cucurbita moschata*)
Squash (*Cucurbita maxima*)
Watermelon (*Citrullus lanatus* = *Citrullus vulgaris*)

(c) Soil within the dripline of the plants listed in paragraph (b) of this section or plants that are producing or have produced any article listed in paragraph (a) of this section.

(d) Any other product, article, or means of conveyance not listed in paragraphs (a), (b), or (c) of this section that an inspector determines presents a risk of spreading fruit flies, when the inspector notifies the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

[73 FR 32432, June 9, 2008, as amended at 75 FR 12962, Mar. 18, 2010]

§ 301.32–3 Quarantined areas.

(a) *Designation of quarantined areas.* In accordance with the criteria listed in paragraph (c) of this section, the Administrator will designate as a quarantined area each State, or each portion of a State, in which a fruit fly population subject to the regulations in this subpart has been found by an inspector, or in which the Administrator has reason to believe that a fruit fly population is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which a fruit fly population has been found. The Administrator will publish the description of the quarantined area on the Plant Protection and Quarantine Web site, *http://www.aphis.usda.gov/plant_health/plant_pest_info/fruit_flies/index.shtml.* The description of the 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. The description of the quarantined area may also be obtained by request from any local office of PPQ; local offices are listed in telephone directories. After a change is made to the quarantined area, 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.

(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 only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the 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 the fruit fly.

(c) *Criteria for designation of a State, or a portion of a State, as a quarantined area.* A State, or a portion of a State, will be designated as a quarantined area when a fruit fly population has been found in that area by an inspector, when the Administrator has reason to believe that the fruit fly is present in that area, or when the Administrator considers it necessary to quarantine that area because of its inseparability for quarantine enforcement purposes from localities in which the fruit fly has been found.

(d) *Removal of a State, or a portion of a State, from quarantine.* A State, or a portion of a State, will be removed from quarantine when the Administrator determines that sufficient time has passed without finding additional flies or other evidence of infestation in the area to conclude that the fruit fly no longer exists in that area.

§ 301.32–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area[2] only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.32–5 and 301.32–8;

(b) Without a certificate or limited permit if:

(1) The regulated article originated outside the quarantined area and is either moved in an enclosed vehicle or is

[2] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

completely enclosed by a covering adequate to prevent access by fruit flies (such as canvas, plastic, or other closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is indicated on the waybill, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area; and

(3) The regulated article is moved through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs.

(c) Without a certificate or limited permit if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the permit and found by the Administrator to be adequate to prevent the spread of fruit flies; and

(4) With a tag or label bearing the number of the permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container.

(d) Hass avocados that are grown or packed in an area quarantined for Mexican or sapote fruit fly and that are moving interstate from such an area are subject to the following additional requirements:

(1) *Orchard sanitation and safeguarding requirements.* (i) Hass avocado fruit that has fallen from the trees may not be included in field boxes of fruit to be packed for shipping.

(ii) Harvested Hass avocados must be placed in field boxes or containers of field boxes that are marked to show the location of the orchard. The avocados must be moved from the orchard to the packinghouse within 3 hours of harvest or they must be protected from fruit fly infestation until moved.

(iii) Hass avocados must be protected from fruit fly infestations during their movement from the orchard to the packinghouse and must be accompanied by a field record indicating the location of the orchard where the avocados originated.

(2) *Packinghouse requirements for Hass avocados packed within a quarantined area.* (i) All openings to the outside of the packinghouse must be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents insects from entering the packinghouse.

(ii) The packinghouse must have double doors at the entrance to the facility and at the interior entrance to the area where the avocados are packed.

(iii) If the Hass avocados were grown in an orchard within the quarantined area, the identity of the avocados must be maintained from field boxes or containers to the shipping boxes in the packinghouse so that the avocados can be traced back to the orchard in which they were grown. The avocados must be packed in boxes or crates that are clearly marked with the identity of the grower and the packinghouse.

(iv) Any boxes of Hass avocados packed in the quarantined area must be placed in a refrigerated truck or refrigerated container and remain in that truck or container while in transit through the quarantined area. Prior to leaving the packinghouse, the truck or container must be secured with a seal that will be broken when the truck or container is opened. Once sealed, the refrigerated truck or refrigerated container must remain unopened until it is outside the quarantined area.

(v) Any avocados that have not been packed or loaded into a refrigerated truck or refrigerated container by the end of the workday must be kept inside the screened packinghouse.

(3) *Packinghouse requirements for Hass avocados packed outside a quarantined area but grown within a quarantined area.* Hass avocados grown in an orchard within a quarantined area but packed in a packinghouse outside the quarantined area must meet the requirements of paragraph (d)(2)(iii) of this section.

(Approved by the Office of Management and Budget under control numbers 0579–0088 and 0579–0336)

[73 FR 32432, June 9, 2008, as amended at 74 FR 31159, June 30, 2009; 75 FR 12962, Mar. 18, 2010]

§ 301.32–5 Issuance and cancellation of certificates and limited permits.

(a) A certificate may be issued by an inspector[3] for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with § 301.32–10; or

(ii) Based on inspection of the premises of origin, the premises are free from fruit flies; or

(iii) Based on inspection of the regulated article, the regulated article is free of fruit flies; or

(iv) The regulated articles are Hass variety avocados that have been harvested, safeguarded, and packed in accordance with the conditions in § 301.32–4(d); and

(2) The regulated article will be moved through the quarantined area in an enclosed vehicle or will be completely enclosed by a covering adequate to prevent access by fruit flies; and

(3) The regulated article 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 fruit flies; and

(4) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) An inspector[4] will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) 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 this interstate movement will not result in the spread of fruit flies because life stages of the fruit flies will be destroyed by the specified handling, processing, or utilization;

(2) The regulated article 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 fruit flies; and

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

(c) Certificates and limited permits for the interstate movement of regulated articles 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 if an inspector has determined that the regulated article is eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(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 conditions in this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly 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.

[3] Services of an inspector may be requested by contacting local PPQ offices, which are listed in telephone directories.

[4] See footnote 3.

Rules of practice concerning a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control numbers 0579–0088 and 0579–0336)

[73 FR 32432, June 9, 2008, as amended at 74 FR 31160, June 30, 2009]

§ 301.32–6 Compliance agreements and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person is aware of this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.[5]

(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 any of the conditions of this subpart or with any of the provisions of the compliance agreement. 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 wrongfully 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 hearing will be adopted by the Administrator.

[5] Compliance agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Emergency and Domestic Programs, 4700 River Road Unit 134, Riverdale, MD 20737–1236, and from local PPQ offices, which are listed in telephone directories.

§ 301.32–7 Assembly and inspection of regulated articles.

(a) Any person, other than a person authorized to issue certificates or limited permits under § 301.32–5(c), who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector[6] as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

§ 301.32–8 Attachment and disposition of certificates and limited permits.

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

(1) Attached to the outside of the container containing the regulated article; or

(2) Attached to the regulated article itself if not in a container; or

(3) Attached to the consignee's copy of the accompanying waybill: Provided, however, that if the certificate or limited permit is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

(Approved by the Office of Management and Budget under control number 0579–0088)

§ 301.32–9 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. The user will be responsible for all costs and charges arising from inspection and other services provided outside normal business hours.

[6] See footnote 3 to § 301.32–5(a).

§ 301.32–10 Treatments.

Regulated articles may be treated in accordance with part 305 of this chapter to neutralize fruit flies. The following treatments also may be used for the regulated articles indicated:

(a) *Soil within the dripline of plants that are producing or have produced regulated articles listed § 301.32(a) or (b).* The following soil treatments may be used: Apply diazinon at the rate of 5 pounds active ingredient per acre to the soil within the dripline with sufficient water to wet the soil to at least a depth of 0.5 inch. Both immersion and pour-on treatment procedures are also acceptable.

(b) *Premises.* Fields, groves, or areas that are located within a quarantined area but outside the infested core area and that produce regulated articles may receive regular treatments with either malathion or spinosad bait spray as an alternative to treating fruits and vegetables as provided in part 305 of this chapter. These treatments must take place at 6- to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for development of fruit fly egg and larvae. Determination of the time period must be based on the day degrees model for the specific fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 oz of technical grade malathion and 9.6 oz of protein hydrolysate per acre. The spinosad bait spray treatment must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications, the mixture may be diluted with water to improve coverage.

[73 FR 32432, June 9, 2008, as amended at 75 FR 4240, Jan. 26, 2010]

Subpart—Black Stem Rust

SOURCE: 54 FR 32791, Aug. 10, 1989, unless otherwise noted.

§ 301.38 Notice of quarantine; restrictions on interstate movement of regulated articles.

The conterminous 48 States and the District of Columbia are quarantined in order to prevent the spread of black stem rust. No person shall move interstate any regulated article except in accordance with this subpart. [1]

[54 FR 32791, Aug. 10, 1989, as amended at 66 FR 21050, Apr. 27, 2001]

§ 301.38–1 Definitions.

In this subpart the following definitions apply:

Administrator. The Administrator, Animal and Plant Health Inspection Service (APHIS), or any person 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.

Black stem rust. The disease commonly known as the black stem rust of grains (*Puccinia graminis*).

Certificate. A document in which an inspector, or a person operating under a compliance agreement, affirms that a specified regulated article has met the criteria in § 301.38–5(b) of this subpart and may be moved interstate to any destination.

Clonally propagated. Reproduced asexually through cuttings, tissue culture, suckers, or crown division. For the purposes of this subpart, a *Berberis* plant will be considered clonally propagated only if its parent stock is, or was derived from, a seed-propagated black stem rust-resistant plant of more than 2 years' growth.

Compliance agreement. A written agreement between a State that is a protected area or that encompasses a protected area and a person who moves regulated articles interstate, or in a non-protected area between APHIS and

[1] Any properly identified employee of the Animal and Plant Health Inspection Service 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 regulated articles as provided in sections 414 and 421 of the Plant Protection Act (7 U.S.C. 7714 and 7731).

such person, in which that person agrees to comply with this subpart.

Departmental permit. A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes, and that the regulated article is eligible for interstate movement under the conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the introduction of rust-susceptible varieties of the genera *Berberis*, *Mahoberberis*, and *Mahonia* into protected areas.

Inspector. Any APHIS employee or other person authorized by the Administrator in accordance with law to enforce this subpart.

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

Limited permit. A document issued by an inspector to allow the interstate movement into or through a protected area of regulated articles not eligible for certification under this subpart to a specified destination outside the protected area.

Moved (movement, move). Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved. "Movement" and "move" shall be construed in accordance with this definition.

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

Protected area. Those States or counties designated in § 301.38–3(d) of this subpart.

Rust-resistant plants. All plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, and their progeny, that have proven resistant to black stem rust during testing by the United States Department of Agriculture,[2] and that are listed as rust-resistant under § 301.38–2 (a)(1) and (a)(2).

Rust-susceptible plants. All plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* not listed as rust-resistant under § 301.38–2 (a)(1) and (a)(2).

Regulated article. Any article listed in § 301.38–2 (a)(1) through (a)(3) of this subpart or otherwise designated as a regulated article in accordance with § 301.38–2(a)(4) of this subpart.

Seedling. Any plant of the genera *Berberis*, *Mahoberberis*, and *Mahonia* grown from seed and having less than 2 years' growth.

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

Two years' growth. The growth of a plant during all growing seasons of 2 successive calendar years.

[54 FR 32791, Aug. 10, 1989; 54 FR 38494, Sept. 18, 1989; 67 FR 8178, Feb. 22, 2002; 71 FR 5778, Feb. 3, 2006]

§ 301.38–2 Regulated articles.

(a) The following are regulated articles:[3]

(1) All plants, seeds, fruits, and other plant parts capable of propagation from the following rust-resistant *Berberis* species and varieties.

B. aggregata×*B. wilsoniae* 'Pirate King'
B. 'Amstelveen'
B. aridocalida
B. beaniana
B. buxifolia
B. buxifolia nana
B. calliantha
B. candidula
B. candidula 'Amstelveen'
B. candidula×*B. verruculosa* 'Amstelveen'

[2] Testing is performed by the Agricultural Research Service of USDA as follows: In a greenhouse, the suspect plant, or test subject, is placed under a screen with a control plant, *i.e.*, a known rust-susceptible variety of *Berberis*, *Mahoberberis*, or *Mahonia*. Infected wheat stems, a primary host of black stem rust, are placed on top of the screen. The plants are moistened and maintained in 100% humidity, causing the spores to swell and fall on the plants lying under the screen. The plants are then observed for 7 days at 20–80% relative humidity. This test procedure is repeated 12 times. If in all 12 tests, the rust-susceptible plant shows signs of infection after 7 days and the test plants do not, USDA will declare the test plant variety rust-resistant. The tests must be performed on new growth, just as the leaves are unfolding.

[3] Permit and other requirements for the insterstate movement of black stem rust organisms are contained in part 330 of this chapter.

B. cavallieri
B. chenaulti
B. chanaulti 'Apricot Queen'
B. circumserrata
B. concinna
B. coxii
B. darwini
B. dasystachya
B. dubia
B. feddeana
B. formosana
B. franchetiana
B. gagnepainii
B. gagnepaini 'Chenault'
B. gilgiana
B. gladwynensis
B. gladwynensis 'William Penn'
B. gyalaica
B. heterophylla
B. horvathi
B. hybrido-gagnepaini
B. insignis
B. integerrima 'Wallichs Purple'
B. julianae
B. julianae 'Nana'
B. julianae 'Spring Glory'
B. koreana
B. koreana×*B. thunbergii* hybrid *Bailsel*
B. koreana×*B. thunbergii* hybrid *Tara*
B. lempergiana
B. lepidifolia
B. linearifolia
B. linearifolia var. 'Orange King'
B. lologensis
B. lologensis 'Mystery Fire'
B. manipurana
B. media'Dual Jewel'
B. media 'Park Jewel'
B. media 'Red Jewel'
B. mentorensis
B. pallens
B. poirettii 'BJG 073', 'MTA'
B. potanini
B. Renton
B. replicata
B. sanguinea
B. sargentiana
B. sikkimensis
B. soulieana 'Claret Cascade'
B. stenophylla
B. stenophylla diversifolia
B. stenophylla gracilis
B. stenophylla irwini
B. stenophylla nana compacta
B. taliensis
B. telomaica artisepala
B. thunbergii
B. thunbergii'Ada'
B. thunbergii 'Admiration'
B. thunbergii 'Amera'
B. thunbergii 'Antares'
B. thunbergii argenteo marginata
B. thunbergii 'Arlene'
B. thunbergii atropurpurea
B. thunbergii atropurpurea erecta
B. thunbergii atropurpurea erecta Marshalli
B. thunbergii atropurpurea 'Golden Ring'
B. thunbergii atropurpurea 'Intermedia'
B. thunbergii atropurpurea 'Knight Burgundy'
B. thunbergii atropurpurea 'Moretti Select'
B. thunbergii atropurpurea nana
B. thunbergii atropurpurea 'Redbird'
B. thunbergii atropurpurea 'Rose Glow'
B. thunbergii aurea
B. thunbergii 'Aurea Nana'
B. thunbergii 'Bagatelle'
B. thunbergii 'Bailgreen' (Jade Carousel™)
B. thunbergii 'Bailone'
B. thunbergii 'Bailone' (Ruby Carousel®)
B. thunbergii 'Bailtwo'
B. thunbergii 'Bailtwo' (Burgundy Carousel®)
B. thunbergii 'Benita'
B. thunbergii 'Bonanza Gold'
B. thunbergii 'Breval 8'
B. thunbergii 'Celeste'
B. thunbergii 'Chloe'
B. thunbergii 'Concorde'
B. thunbergii 'Crimson Ruby'
B. thunbergii 'Crimson Pygmy'
B. thunbergii 'Criruzam' Crimson Ruby™
B. thunbergii 'Dwarf Jewell'
B. thunbergii 'Edda'
B. thunbergii erecta
B. thunbergii 'Fay'
B. thunbergii 'Fireball'
B. thunbergii 'Gail'
B. thunbergii 'globe'
B. thunbergii 'golden'
B. thunbergii 'Golden Carpet'
B. thunbergii 'Golden Devine'
B. thunbergii 'Golden Pygmy'
B. thunbergii 'Golden Rocket'
B. thunbergii 'Golden Ruby'
B. thunbergii 'Golden Torch'
B. thunbergii 'Green Carpet'
B. thunbergii 'Grhozam' (Green Hornet™)

B. thunbergii 'Harlequin'
B. thunbergii 'Helen'
B. thunbergii 'Helmond Pillar'
B. thunbergii 'Joyce'
B. thunbergii 'Kasia'
B. thunbergii 'Kobold'
B. thunbergii 'Koren'
B. thunbergii 'Lime Glow'
B. thunbergii 'Lotty'
B. thunbergii 'Lustre Green'
B. thunbergii 'Maria'
B. thunbergii 'Martha'
B. thunbergii maximowiczi
B. thunbergii 'Midruzam' Midnight Ruby™
B. thunbergii 'Mimi'
B. thunbergii minor
B. thunbergii 'Monlers'
B. thunbergii 'Monomb'
B. thunbergii 'Monry'
B. thunbergii 'Orange Rocket'
B. thunbergii 'Painter's Palette'
B. thunbergii 'Phoebe'
B. thunbergii 'Pink Queen'
B. thunbergii pluriflora
B. thunbergii 'Pow Wow'
B. thunbergii 'Pyruzam' (Pygmy Ruby™)
B. thunbergii 'Red Carpet'
B. thunbergii 'Red Rocket'
B. thunbergii 'Rosy Rocket'
B. thunbergii 'Royal Burgundy'
B. thunbergii 'Royal Cloak'
B. thunbergii 'Ruth'
B. thunbergii 'Sparkle'
B. thunbergii 'Sparkler'
B. thunbergii 'Talago'
B. thunbergii 'Thornless'
B. thunbergii 'Tiny Gold'
B. thunbergii '24kagozam' (24 Karat Gold™)
B. thunbergii 'Upright Jewell'
B. thunbergii 'Velglozam' (Velvet Glow™)
B. thunbergii variegata
B. thunbergii xanthocarpa
B. thunbergii×'Bailsel' (Golden Carousel®)
B. thunbergii×'Tara' (Emerald Carousel®)
B. triacanthophora
B. triculosa
B. verruculosa
B. virgatorum
B. workingensis
B. xanthoxylon
B.×*carminea* 'Pirate King'
B.×*frikartii* 'Amstelveen'

(2) All plants, seedlings, seeds, fruits, and other plant parts capable of propagation from the following rust-resistant *Mahoberberis* and *Mahonia* species and varieties, except *Mahonia* cuttings for decorative purposes:

(i) Genus *Mahoberberis:*
M. aqui-candidula
M. aquifolium 'Smaragd'
M. aqui-sargentiae
M. miethkeana
M.×'Magic'

(ii) Genus *Mahonia:*
M. amplectens
M. aquifolium
M. aquifolium atropurpurea
M. aquifolium compacta
M. aquifolium compacta 'John Muir'
M. aquifolium 'Donewell'
M. aquifolium 'Kings Ransom'
M. aquifolium 'Orangee Flame'
M. aquifolium 'Undulata'
M. aquifolium 'Winter Sun'
M. 'Arthur Menzies'
M. bealei
M. 'Bokasio' Sioux
M. 'Bokrafoot' Blackfoot
M. dictyota
M. fortunei
M. 'Golden Abundance'
M. japonica
M. japonica×*M. lomariifolia* 'Charity'
M. lomarifolia
M. nervosa
M. pinnata
M. pinnata 'Ken Hartman'
M. piperiana
M. pumila
M. repens
M.×*media* 'Charity'
M.×*media* 'Winter Sun'

(3) All plants, seeds, fruits, and other plant parts capable of propagation from rust-susceptible species and varieties of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, except *Mahonia* cuttings for decorative purposes.

(4) Any other product or article not listed in paragraphs (a)(1) through (a)(3) of this section that an inspector determines presents a risk of spread of black stem rust. The inspector must notify the person in possession of the product or article that it is subject to the provisions of this subpart.

(b) A person may request that an additional rust-resistant variety be added to paragraph (a)(1) or (a)(2) of this section. The person requesting that a rust-resistant variety be added to paragraph (a)(1) or (a)(2) of this section

must provide APHIS with a description of the variety, including a written description and color pictures that can be used by an inspector to clearly identify the variety and distinguish it from other varities.

(Approved by the Office of Management and Budget under control number 0579–0186)

[67 FR 8179, Feb. 22, 2002, as amended at 71 FR 5778, Feb. 3, 2006; 72 FR 32167, June 12, 2007; 72 FR 72233, Dec. 20, 2007;75 FR 29193, May 25, 2010; 75 FR 54462, Sept. 8, 2010]

§ 301.38–3 Protected areas.

(a) The Administrator may designate as a protected area in paragraph (d) of this section any State that has eradicated rust-susceptible plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* under the cooperative Federal-State eradication program. In addition, the State must employ personnel with responsibility for the issuance and withdrawal of certificates in accordance with § 301.38–5, and maintain and enforce an inspection program under which every plant nursery within the State is inspected at least once each year to ensure that they are free of rust-susceptible plants. During the requisite nursery inspections, all nursery stock shall be examined to determine that it consists only of rust-resistant varieties of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, and that the plants are true to type. Plants that do not meet this criteria must be destroyed.

(b) The Administrator may designate as a protected area any county within a State, rather than the entire State, if areas within the State have eradicated rust-susceptible plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* under the cooperative Federal-State program, and;

(1) The State employs personnel with responsibility for the issuance and withdrawal of certificates in accordance with § 301.38–5;

(2) The State is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles, as determined by the Administrator; and

(3) The State maintains and enforces an inspection program under which every plant nursery within the county is inspected at least once each year to ensure that plant nurseries within that area are free of rust-susceptible plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia*. During the requisite nursery inspections, all nursery stock shall be examined to determine that it consists only of rust-resistant varieties of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, and that the plants are true to type. Plants that do not meet this criteria must be destroyed.

(c) All seed used to propagate plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* in protected areas, and all seed used to propagate plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* that are certified as rust-resistant for interstate movement into protected areas, must be produced at properties where a State inspector has verified that no wild or domesticated rust-susceptible plants are growing at or within one-half mile of the property.[4]

(d) The following are designated as protected areas:

(1) The States of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Pennsylvania, South Dakota, West Virginia, Wisconsin, and Wyoming.

[4] Persons performing the inspections must be able to recognize rust-susceptible varieties of *Berberis*, *Mahoberberis*, and *Mahonia*. Inspectors must work side by side, 10 to 20 feet apart, and walk outward away from the property a distance of one-half mile measured from the edge of the property, and observe all plants growing in the half-mile band. The distance between the inspectors may vary within this range, depending upon the visibility of the plant growth. In areas with low brush and flat terrain, the inspectors may be the maximum distance of 20 feet apart if they can observe all plants growing within 10 feet of them. In areas of high plant growth or hilly terrain, the inspectors must be closer together due to limited or obstructed visibility. Inspectors must observe all plants growing between themselves and the mid-point of the distance between themselves and the next inspector. This process must be repeated so that the entire band, measured from the border of the property to the circumference of an imaginary circle having the property as its mid-point, is visually inspected in this manner.

(2) The following counties in the State of Washington: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, Yakima.

(e) Each State that is a protected area or that encompasses a protected area must submit annually to the Administrator a written statement, signed by an inspector, assuring APHIS that all nursery inspections have been performed in accordance with this section. The statement must be submitted by January 1st of each year, and must include a list of the nurseries inspected and found free of rust-susceptible plants.

(f) The Administrator may remove a protected area from the list of designated protected areas in paragraph (d) of this section if he or she determines that it no longer meets the criteria of paragraph (a) or (b)(1) through (3) of this section. A hearing will be held to resolve any conflict as to any material fact. Rules of practice for the hearing shall be adopted by the Administrator.

[54 FR 32791, Aug. 10, 1989, as amended at 55 FR 29558, July 20, 1990; 57 FR 3118, Jan. 28, 1992; 71 FR 5778, Feb. 3, 2006]

§ 301.38–4 Interstate movement of regulated articles.

(a) *Non-protected areas.* Interstate movement of regulated articles into or through any State or area that is not designated as a protected area under § 301.38–3(d) is allowed without restriction under this subpart.

(b) *Protected areas.* (1) *Prohibited movement.* The following regulated articles are prohibited from moving interstate into or through any protected area:

(i) All rust-susceptible *Berberis*, *Mahoberberis*, and *Mahonia* plants, seeds, fruits, and other plant parts capable of propagation, except Mahonia cuttings for decorative purposes.

(ii) All seed-propagated plants of the *Berberis* species and varieties designated as rust-resistant in § 301.38–2(a)(1) of this subpart that are of less than 2 years' growth, and any seeds, fruits, and other plant parts capable of propagation from such plants.

(2) *Restricted movement.* The following regulated articles may be moved interstate into or through a protected area with a certificate issued and attached in accordance with §§ 301.38–5 and 301.38–7 of this subpart:

(i) Seed-propagated plants of at least 2 years' growth, clonally propagated plants of any age, seeds, fruits, and other plant parts capable of propagation of the *Berberis* species and varieties designated as rust-resistant in § 301.38–2(a)(1) of this subpart;

(ii) Plants, seeds, fruits, and other plant parts capable of propagation of the *Mahoberberis* and *Mahonia* species and varieties designated as rust-resistant in § 301.38–2(a)(2) of this subpart.

(c) An inspector may issue a limited permit to allow a regulated article not eligible for certification under § 301.38–4(b)(2) to move interstate into or through a protected area to a specified destination that is stated in the permit and is outside the protected area, if the requirements of all other applicable Federal domestic plant quarantines are met. A regulated article moved interstate under a limited permit must be placed in a closed sealed container that prevents unauthorized removal of the regulated article, and that remains sealed until the regulated article reaches the final destination stated in the permit. At the final destination, the sealed container must be opened only in the presence of an inspector or with the authorization of an inspector obtained expressly for that shipment.

(d) The United States Department of Agriculture may move any regulated article interstate into or through a protected area in accordance with the conditions determined necessary to prevent the introduction or spread of black stem rust in protected areas, as specified in a Departmental permit issued for this purpose.

[54 FR 32791, Aug. 10, 1989, as amended at 67 FR 8180, Feb. 22, 2002; 71 FR 5778, Feb. 3, 2006]

§ 301.38–5 Assembly and inspection of regulated articles: issuance and cancellation of certificates.

(a) Any person, other than a person authorized to issue certificates under paragraph (c) of this section, who desires to move interstate a regulated article that must be accompanied by a

certificate under § 301.38–4(b), shall, as far in advance of the desired interstate movement as possible (and no less than 48 hours before the desired interstate movement), request an inspector[5] to issue a certificate. To expedite the issuance of a certificate, an inspector may direct that the regulated articles be assembled in a manner that facilitates inspection.

(b) An inspector may issue a certificate for the interstate movement of a regulated article if he or she:

(1) Determines, upon examination, that the regulated article may be moved interstate in accordance with this subpart; and

(2) Determines that the regulated article may be moved interstate in accordance with all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates for interstate movement of regulated articles may be issued by an inspector to a person operating under a compliance agreement for use with subsequent shipments of regulated articles to facilitate their movement. A person operating under a compliance agreement must make the determinations set forth in paragraph (b) of this section before shipping any regulated articles.

(d) Any certificate that has been issued may be withdrawn by an inspector, orally or in writing, if he or she determines that the holder of the certificate has not complied with the conditions of this subpart for the use of the certificate. If the withdrawal is oral, the inspector will confirm the withdrawal and the reasons for the withdrawal, in writing, within 20 days of oral notification of the withdrawal. Any person whose certificate has been withdrawn may appeal the decision, in writing within 10 days after receiving 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 was wrongfully withdrawn. A hearing will be held to resolve any conflict as to any material fact. An appeal shall be granted or denied, in writing, as promptly as circumstances allow, and the reasons for the decision shall be stated. In a non-protected area, appeal shall be made to the Administrator. The Administrator shall adopt rules of practice for the hearing. The certificate will remain withdrawn pending decision of the appeal.

[54 FR 32791, Aug. 10, 1989, as amended at 59 FR 67608, Dec. 30, 1994; 67 FR 8180, Feb. 22, 2002]

§ 301.38–6 Compliance agreements and cancellation.

(a) Any State may enter into a written compliance agreement with any person who grows or handles regulated articles in a protected area, or moves interstate regulated articles from a protected area, under which that person agrees to comply with this subpart, to provide inspectors with information concerning the source of any regulated articles acquired each year, and to prevent the unauthorized use of certificates issued for future use under the compliance agreement.[6]

(b) A compliance agreement may be cancelled by an inspector, orally or in writing, whenever he or she determines that the person who has entered into the compliance agreement has failed to comply with the agreement or this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed, in writing, within 20 days of oral notification of the cancellation. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts

[5] Services of an inspector may be requested by contacting a local APHIS office (listed in telephone directories under Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine). The addresses and telephone numbers of local offices may also be obtained by writing to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737–1236.

[6] In non-protected areas, compliance agreements may be arranged by contacting a local office of the Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine, or by writing to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737–1236.

and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. A hearing will be held to resolve any conflict as to any material fact. An appeal shall be granted or denied, in writing, as promptly as circumstances allow, and the reasons for the decision shall be stated. In a non-protected area, appeal shall be made to the Administrator. The Administrator shall adopt rules of practice for the hearing. The compliance agreement will remain cancelled pending decision of the appeal.

[54 FR 32791, Aug. 10, 1989; 54 FR 38494, Sept. 18, 1989, as amended at 57 FR 3118, Jan. 28, 1992; 59 FR 67608, Dec. 30, 1994]

§ 301.38–7 Attachment and disposition of certificates.

(a) The certificate required for the interstate movement of a regulated article must, at all times during the interstate movement, be attached to the outside of the container containing the regulated article except as follows:

(1) The certificate may be attached to the regulated article itself if it is not in container; or

(2) The certificate may be attached to the accompanying waybill or other shipping document if the regulated article is identified and described on the certificate or waybill.

(b) The carrier must furnish the certificate to the consignee at the destination of the regulated article.

§ 301.38–8 Costs and charges.

The services of an inspector[4] during normal business hours, Monday through Friday, 8 a.m. to 4:30 p.m., will be furnished without cost to persons requiring the services. The United States Department of Agriculture will not be responsible for any other costs or charges.

[54 FR 32791, Aug. 10, 1989; 54 FR 38494, Sept. 18, 1989]

Subpart—Gypsy Moth

SOURCE: 58 FR 39423, July 23, 1993, unless otherwise noted.

§ 301.45 Notice of quarantine; restriction on interstate movement of specified regulated articles.

(a) *Notice of quarantine.* Pursuant to the provisions of , sections 411, 412, 414, 431, and 434 of the Plant Protection Act (7 U.S.C. 7711, 7712, 7714, 7751, and 7754), the Secretary of Agriculture hereby quarantines the States of Connecticut, Delaware, District of Columbia, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin in order to prevent the spread of the gypsy moth, *Lymantria dispar* (Linnaeus), a dangerous insect injurious to forests and shade trees and not theretofore widely prevalent or distributed within or throughout the United States; and establishes regulations governing the interstate movement from generally infested areas of the quarantined States of regulated articles and outdoor household articles defined in § 301.45–1.

(b) *Restrictions on the interstate movement of regulated articles and outdoor household articles.* No common carrier or other person may move interstate from any generally infested area any regulated article or outdoor household article except in accordance with the conditions prescribed in this subpart.

[58 FR 39423, July 23, 1993, as amended at 62 FR 29287, May 30, 1997; 63 FR 38280, July 16, 1998; 66 FR 21050, Apr. 27, 2001; 66 FR 37114, July 17, 2001]

§ 301.45–1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural, and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture (APHIS).

Associated equipment. Articles associated and moved with mobile homes and recreational vehicles, such as, but not

limited to, awnings, tents, outdoor furniture, trailer blocks, and trailer skirts.

Bark. The tough outer covering of the woody stems of trees, shrubs, and other woody plants as distinguished from the cambium and inner wood.

Bark products. Products containing pieces of bark including bark chips, bark nuggets, bark mulch, and bark compost.

Certificate. A Plant Protection and Quarantine-approved form, stamp, or document issued and signed by an inspector, or by a qualified certified applicator or by any other person operating in accordance with a compliance agreement, affirming that a specified regulated article is eligible for interstate movement in accordance with this subpart.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, in which the person agrees to comply with the provisions of this subpart.

Effectively diminishing. An eradication program is considered to be effectively diminishing the gypsy moth population of an area if the results of two successive annual Federal or State delimiting trapping surveys of the area conducted in accordance with Section II, "Survey Procedures—Gypsy Moth," of the Gypsy Moth Treatment Manual show that the average number of gypsy moths caught per trap in the second delimiting survey (when comparable geographical areas and trapping densities are used) is: (1) Less than 10, and (2) less than the average number of gypsy moths caught per trap in the first survey.

Eradication program. A program that uses pesticide application, biological controls, or other methods with the goal of eliminating gypsy moth from a particular area.

General infestation. (1) The detection of gypsy moth egg masses through visual inspection by an inspector during a 10-minute walk through the area; however, it does not include the presence of gypsy moth egg masses which are found as a result of hitchhiking on transitory means of conveyance; or

(2) The detection of gypsy moth through multiple catches of adult gypsy moths at multiple trapping locations in the area over a period of 2 or more consecutive years, if the Administrator determines, after consulting with the State plant regulatory official, that gypsy moth is established in the area.

Generally infested area. Any State, or portion thereof, listed as a generally infested area in §301.45–3 or temporarily designated as a generally infested area in accordance with §301.45–2(c).

Gypsy moth. The live insect known as the gypsy moth, *Lymantria dispar* (Linnaeus), in any life stage (egg, larva, pupa, adult).

Inspector. Any employee of APHIS, a State government, or any other person, authorized by the Administrator in accordance with law to enforce the provisions of the quarantine and regulations in this subpart. A person operating under a compliance agreement is not an inspector.

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

Limited permit. A document in which an inspector or a person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with §301.45–5 only to the specified destination and only in accordance with the specified conditions.

Mobile home. Any vehicle, other than a recreational vehicle, designed to serve, when parked, as a dwelling or place of business.

Move (movement, moved). Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means. "Movement" and "moved" shall be construed in accordance with this definition.

OHA document. The self-inspection checklist portion of USDA–APHIS Program Aid Number 1329, "Don't Move Gypsy Moth," completed and signed by the owner of an outdoor household article (OHA) affirming that the owner has inspected the OHA for life stages of gypsy moth in accordance with the procedures in the program aid.

Outdoor household articles. Articles associated with a household that have

been kept outside the home such as awnings, barbecue grills, bicycles, boats, dog houses, firewood, garden tools, hauling trailers, outdoor furniture and toys, recreational vehicles and associated equipment, and tents.

Person. Any individual, partnership, corporation, company, society, association, or other organized group.

Qualified certified applicator. Any individual (1) certified pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136i) as a certified commercial applicator in a category allowing use of the restricted use pesticides Spray N Kill (EPA Registration No. 8730–30), Ficam W (EPA Registration No. 45639–1), and acephate (Orthene®); (2) who has attended and completed a workshop approved by the Administrator on the identification and treatment of gypsy moth life stages on outdoor household articles and mobile homes; and (3) who has entered into a compliance agreement in accordance with § 301.45–6 of this part for the purpose of inspecting, treating, and issuing certificates for the movement of outdoor household articles and mobile homes.[1]

Recreational vehicles. Highway vehicles, including pickup truck campers, one-piece motor homes, and travel trailers, designed to serve as temporary places of dwelling.

Regulated articles. (1) Trees without roots (e.g., Christmas trees), trees with roots, and shrubs with roots and persistent woody stems, unless they are greenhouse grown throughout the year.

(2) Logs, pulpwood, and bark and bark products.

(3) Mobile homes and associated equipment.

(4) Any other products, articles, or means of conveyance, of any character whatsoever, when it is determined by an inspector that any life stage of gypsy moth is in proximity to such articles and the articles present a high risk of artificial spread of gypsy moth infestation and the person in possession thereof has been so notified.

State. Any State, Territory, or District of the United States including Puerto Rico.

Treatment manual. The provisions currently contained in the Gypsy Moth Program Manual.[2]

Under the direction of. Monitoring treatments to assure compliance with the requirements in this subpart.

Under the direct supervision of a qualified certified applicator. An inspection or treatment is considered to be applied under the direct supervision of a qualified certified applicator if the inspection or treatment is performed by a person acting under the instructions of a qualified certified applicator who is available if and when needed, even though such qualified certified applicator is not physically present at the time and place the inspection or treatment occurred.

[58 FR 39423, July 23, 1993, as amended at 59 FR 67608, Dec. 30, 1994; 67 FR 8464, Feb. 25, 2002; 70 FR 33268, June 7, 2005; 71 FR 40878, July 19, 2006; 72 FR 70764, Dec. 13, 2007]

§ 301.45–2 Authorization to designate and terminate designation of generally infested areas.

(a) Generally infested areas. The Administrator shall list as generally infested areas in § 301.45–3 each State or each portion thereof in which a gypsy moth general infestation has been found by an inspector, or each portion of a State which the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities; Except that, an area shall not be listed as a generally infested area if the Administrator has determined that:

(1) The area is subject to a gypsy moth eradication program conducted by the Federal government or a State government in accordance with the Eradication, Suppression, and Slow the Spread alternative of the Final Environmental Impact Statement (FEIS) on Gypsy Moth Suppression and Eradication Projects that was filed with the

[1] Names of qualified certified applicators may be obtained from State departments of agriculture.

[2] The Gypsy Moth Program Manual may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/manuals/online_manuals.html.*

United States Environmental Protection Agency on January 16, 1996; and,

(2) State or Federal delimiting trapping surveys conducted in accordance with Section II, "Survey Procedures—Gypsy Moth" of the Gypsy Moth Treatment Manual show that the average number of gypsy moths caught per trap is less than 10 and that the trapping surveys show that the eradication program is effectively diminishing the gypsy moth population of the area.

(b) Less than an entire State will be designated as a generally infested area only if the Administrator has determined that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and,

(2) The designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth.

(c) Temporary designation of areas as generally infested areas. The Administrator or an inspector may temporarily designate any area in any State as a generally infested area in accordance with the criteria specified in paragraph (a) of this section. An inspector will give written notice of the designation to the owner or person in possession of the area and thereafter, the interstate movement of any regulated article from such areas is subject to the applicable provisions of this subpart. As soon as practicable, each generally infested area will be added to the list in § 301.45–3 or the designation will be terminated by the Administrator or an authorized inspector, and notice thereof shall be given to the owner or person in possession of the areas.

(d) Termination of designation as a generally infested area. The Administrator shall terminate the designation of any area as a generally infested area whenever the Administrator determines that the area no longer requires designation under the criteria specified in paragraph (a) of this section.

[58 FR 39423, July 23, 1993, as amended at 72 FR 70764, Dec. 13, 2007]

§ 301.45–3 Generally infested areas.

(a) The areas described below are designated as generally infested areas:

CONNECTICUT

The entire State.

DELAWARE

The entire State.

DISTRICT OF COLUMBIA

The entire district.

ILLINOIS

Cook County. The entire county.
Du Page County. The entire county.
Lake County. The entire county.
McHenry County. The entire county.

INDIANA

Allen County. The entire county.
De Kalb County. The entire county.
Elkhart County. The entire county.
LaGrange County. The entire county.
Noble County. The entire county.
Porter County. The entire county.
St. Joseph County. The entire county.
Steuben County. The entire county.

MAINE

Androscoggin County. The entire county.
Aroostook County. The townships of Amity, Bancroft, Benedicta, Cary Plantation, Crystal, Dyer Brook, Forkstown, Glenwood Plantation, Haynesville, Hodgdon, Houlton, Island Falls, Linneus, Macwahoc Plantation, Molunkus, New Limerick, North Yarmouth Academy Grant, Oakfield, Orient, Reed Plantation, Sherman, Silver Ridge, Upper Molunkus, Weston, T1 R5 WELS, T2 R4 WELS, T3 R3 WELS, T4 R3 WELS, and TA R2 WELS.
Cumberland County. The entire county.
Franklin County. The townships of Avon, Carthage, Chesterville, Coplin Plantation, Crockertown, Dallas Plantation, Davis, Farmington, Freeman, Industry, Jay, Jerusalem, Kingfield, Lang, Madrid, Mount Abraham, New Sharon, New Vineyard, Perkins, Phillips, Rangeley, Rangeley Plantation, Redington, Salem, Sandy River Plantation, Strong, Temple, Washington, Weld,

Wilton, Wyman, Township 6 north of Weld, Township D and Township E; and the Eustis area.

Hancock County. The entire county.

Kennebec County. The entire county.

Knox County. The entire county.

Lincoln County. The entire county.

Oxford County. The townships of Adamstown, Albany, Andover, Andover North, Andover West, Batchelders Grant, Bethel, Brownfield, Buckfield, Byron, Canton, Denmark, Dixfield, Fryeburg, Gilead, Grafton, Greenwood, Hanover, Hartford, Hebron, Hiram, Lincoln Plantation, Lovell, Lower Cupsuptic, Magalloway Plantation, Mason Plantation, Mexico, Milton Plantation, Newry, Norway, Oxford, Paris, Parkerstown, Peru, Porter, Richardsontown, Riley, Roxbury, Rumford, Stoneham, Stow, Sumner, Sweden, Upton, Waterford, Woodstock, C, and C Surplus.

Penobscot County. The townships of Alton, Argyle, Bangor City, Bradford, Bradley, Brewer City, Burlington, Carmel, Carroll Plantation, Charleston, Chester, Clifton, Corinna, Corinth, Dexter, Dixmont, Drew Plantation, E. Millinocket, Eddington, Edinburg, Enfield, Etna, Exeter, Garland, Glenburn, Grand Falls Plantation, Greenbush, Greenfield, Grindstone, Hampden, Hermon, Hersey Town, Holden, Hopkins Academy Grant, Howland, Hudson, Indian Purchase, Kenduskeag, Kingman, Lagrange, Lakeville, Lee, Levant, Lincoln, Long A, Lowell, Mattamiscontis, Mattawamkeag, Maxfield, Medway, Milford, Millinocket, Newburgh, Newport, Old Town City, Orono, Orrington, Passadumkeag, Plymouth, Prentiss Plantation, Seboesis Plantation, Soldiertown, Springfield, Stacyville, Stetson, Summit, Veazie, Webster Plantation, Winn, Woodville, T1 ND, T1 R6 WELS, T1 R8 WELS, T2 R8 NWP, T2 R8 WELS, T2 R9 NWP, T3 R1 NBPP, T3 R9 NWP, T5 R1 NBPP, TA R7, TA R8, and TA R9; and the Patten area.

Piscataquis County. The townships of Abbot, Atkinson, Barnard, Blanchard Plantation, Bowerbank, Brownville, Dover-Foxcroft, Elliotsville, Greenville, Guilford, Katahdin Iron Works, Kingsbury Plantation, Lakeview Plantation, Medford, Milo, Monson, Orneville, Parkman, Sangerville, Sebec, Shirley, Veazie Gore, Williamsburg, Willimantic, Willington, T1 R9 WELS, T2 R9 WELS, T4 R9 NWP, T5 R9 NWP, T1 R10 WELS, T1 R11 WELS, T7 R9 NWP, TA R10 WELS, TA R11 WELS, TB R10 WELS, TB R11 WELS, and T2 R10 WELS.

Sagadahoc County. The entire county.

Somerset County. The townships of Anson, Athens, Bald Mountain, Bingham, Bowtown, Brighton Plantation, Cambridge, Canaan, Caratunk, Carrying Place, Carrying Place Town, Concord Plantation, Cornville, Dead River, Detroit, East Moxie, Embden, Fairfield, Harmony, Hartland, Highland Plantation, Lexington Plantation, Madison, Mayfield, Mercer, Moscow, Moxie Gore, New Portland, Norridgewock, Palmyra, Pittsfield, Pleasant Ridge Plantation, Ripley, Skowhegan, Smithfield, Solon, St. Albans, Starks, The Forks Plantation, and West Forks Plantation.

Waldo County. The entire county.

Washington County. The entire county.

York County. The entire county.

MARYLAND

The entire State.

MASSACHUSETTS

The entire State.

MICHIGAN

The entire State.

NEW HAMPSHIRE

The entire State.

NEW JERSEY

The entire State.

NEW YORK

The entire State.

NORTH CAROLINA

Currituck County. The entire county.

Dare County. The area bounded by a line beginning at the intersection of State Road 1208 and Roanoke Sound; then easterly along this road to its junction with State Road 1206; then southerly along this road to its intersection with U.S. Highway Business

158; then easterly along an imaginary line to its intersection with the Atlantic Ocean; then northwesterly along the coastline to its intersection with the Dare-Currituck County line; then westerly along this county line to its intersection with the Currituck Sound; then southeasterly along this sound to the point of beginning.

OHIO

Ashland County. The entire county.
Ashtabula County. The entire county.
Belmont County. The entire county.
Carroll County. The entire county.
Columbiana County. The entire county.
Coshocton County. The entire county.
Cuyahoga County. The entire county.
Defiance County. The entire county.
Delaware County. The entire county.
Erie County. The entire county.
Fairfield County. The entire county.
Franklin County. The entire county.
Fulton County. The entire county.
Geauga County. The entire county.
Guernsey County. The entire county.
Harrison County. The entire county.
Henry County. The entire county.
Hocking County. The entire county.
Holmes County. The entire county.
Huron County. The entire county.
Jefferson County. The entire county.
Knox County. The entire county.
Lake County. The entire county.
Licking County. The entire county.
Lorain County. The entire county.
Lucas County. The entire county.
Mahoning County. The entire county.
Medina County. The entire county.
Monroe County. The entire county.
Morgan County. The entire county.
Morrow County. The entire county.
Muskingum County. The entire county.
Noble County. The entire county.
Ottawa County. The entire county.
Perry County. The entire county.
Portage County. The entire county.
Richland County. The entire county.
Sandusky County. The entire county.
Seneca County. The entire county.
Stark County. The entire county.
Summit County. The entire county.
Trumbull County. The entire county.
Tuscarawas County. The entire county.
Washington County. The entire county.
Wayne County. The entire county.
Williams County. The entire county.
Wood County. The entire county.

PENNSYLVANIA

The entire State.

RHODE ISLAND

The entire State.

VERMONT

The entire State.

VIRGINIA

City of Alexandria. The entire city.
City of Bedford. The entire city.
City of Buena Vista. The entire city.
City of Charlottesville. The entire city.
City of Chesapeake. The entire city.
City of Colonial Heights. The entire city.
City of Danville. The entire city.
City of Emporia. The entire city.
City of Fairfax. The entire city.
City of Falls Church. The entire city.
City of Franklin. The entire city.
City of Fredericksburg. The entire city.
City of Hampton. The entire city.
City of Harrisonburg. The entire city.
City of Hopewell. The entire city.
City of Lexington. The entire city.
City of Lynchburg. The entire city.
City of Manassas. The entire city.
City of Manassas Park. The entire city.
City of Newport News. The entire city.
City of Norfolk. The entire city.
City of Petersburg. The entire city.
City of Poquoson. The entire city.
City of Portsmouth. The entire city.
City of Richmond. The entire city.
City of Roanoke. The entire city.
City of Salem. The entire city.
City of South Boston. The entire city.
City of Staunton. The entire city.
City of Suffolk. The entire city.
City of Virginia Beach. The entire city.
City of Waynesboro. The entire city.
City of Williamsburg. The entire city.
City of Winchester. The entire city.
Accomack County. The entire county.
Albemarle County. The entire county.
Alleghany County. The entire county.
Amelia County. The entire county.
Amherst County. The entire county.
Appomattox County. The entire county.
Arlington County. The entire county.
Augusta County. The entire county.
Bath County. The entire county.
Bedford County. The entire county.
Botetourt County. The entire county.
Brunswick County. The entire county.
Buckingham County. The entire county.
Campbell County. The entire county.

Caroline County. The entire county.
Charles City County. The entire county.
Charlotte County. The entire county.
Chesterfield County. The entire county.
Clarke County. The entire county.
Craig County. The entire county.
Culpeper County. The entire county.
Cumberland County. The entire county.
Dinwiddie County. The entire county.
Essex County. The entire county.
Fairfax County. The entire county.
Fauquier County. The entire county.
Fluvanna County. The entire county.
Frederick County. The entire county.
Giles County. The entire county.
Gloucester County. The entire county.
Goochland County. The entire county.
Greene County. The entire county.
Greensville County. The entire county.
Halifax County The entire county.
Hanover County. The entire county.
Henrico County. The entire county.
Highland County. The entire county.
Isle of Wight County. The entire county.
James City County. The entire county.
King and Queen County. The entire county.
King George County. The entire county.
King William County. The entire county.
Lancaster County. The entire county.
Loudoun County. The entire county.
Louisa County. The entire county.
Lunenburg County. The entire county.
Madison County. The entire county.
Mathews County. The entire county.
Mecklenburg County The entire county.
Middlesex County. The entire county.
Montgomery County. The entire county.
Nelson County. The entire county.
New Kent County. The entire county.
Northampton County. The entire county.
Northumberland County. The entire county.
Nottoway County. The entire county.
Orange County. The entire county.
Page County. The entire county.
Pittsylvania County. The entire county.
Powhatan County. The entire county.
Prince Edward County. The entire county.
Prince George County. The entire county.
Prince William County. The entire county.
Rappahannock County. The entire county.
Richmond County. The entire county.
Roanoke County. The entire county.
Rockbridge County. The entire county.
Rockingham County. The entire county.
Shenandoah County. The entire county.
Southampton County. The entire county.
Spotsylvania County. The entire county.
Stafford County. The entire county.
Surry County. The entire county.
Sussex County. The entire county.
Warren County. The entire county.
Westmoreland County. The entire county.
York County. The entire county.

WEST VIRGINIA

Barbour County. The entire county.
Berkeley County. The entire county.
Braxton County. The entire county.
Brooke County. The entire county.
Calhoun County. The entire county.
Doddridge County. The entire county.
Gilmer County. The entire county.
Grant County. The entire county.
Greenbrier County. The entire county.
Hampshire County. The entire county.
Harrison County. The entire county.
Hancock County. The entire county.
Hardy County. The entire county.
Jackson County. The entire county.
Jefferson County. The entire county.
Lewis County. The entire county.
Marion County. The entire county.
Marshall County. The entire county.
Mineral County. The entire county.
Monongalia County. The entire county.
Monroe County. The entire county.
Morgan County. The entire county.
Nicholas County. The entire county.
Ohio County. The entire county.
Pendleton County. The entire county.
Pleasants County. The entire county.
Pocahontas County. The entire county.
Preston County. The entire county.
Randolph County. The entire county.
Ritchie County. The entire county.
Taylor County. The entire county.
Tucker County. The entire county.
Tyler County. The entire county.
Upshur County. The entire county.
Webster County. The entire county.
Wetzel County. The entire county.
Wirt County. The entire county.
Wood County. The entire county.

WISCONSIN

Adams County. The entire county.
Brown County. The entire county.
Calumet County. The entire county.

Columbia County. The entire county.
Dane County. The entire county.
Dodge County. The entire county.
Door County. The entire county.
Florence County. The entire county.
Fond du Lac County. The entire county.
Forest County. The entire county.
Green Lake County. The entire county.
Jefferson County. The entire county.
Juneau County. The entire county.
Kenosha County. The entire county.
Kewaunee County. The entire county.
Langlade County. The entire county.
Lincoln County. The entire county.
Manitowoc County. The entire county.
Marathon County. The entire county.
Marinette County. The entire county.
Marquette County. The entire county.
Menominee County. The entire county.
Milwaukee County. The entire county.
Oconto County. The entire county.
Oneida County. The entire county.
Outagamie County. The entire county.
Ozaukee County. The entire county.
Portage County. The entire county.
Racine County. The entire county.
Rock County. The entire county.
Sauk County. The entire county.
Shawano County. The entire county.
Sheboygan County. The entire county.
Vilas County. The entire county.
Walworth County. The entire county.
Washington County. The entire county.
Waukesha County. The entire county.
Waupaca County. The entire county.
Waushara County. The entire county.
Winnebago County. The entire county.
Wood County. The entire county.

[58 FR 39423, July 23, 1993, as amended at 59 FR 46902, Sept. 13, 1994; 62 FR 29287, May 30, 1997; 62 FR 36646, July 9, 1997; 63 FR 25748, May 11, 1998; 63 FR 38280, July 16, 1998; 64 FR 40510, July 27, 1999; 66 FR 37114, July 17, 2001; 67 FR 41810, June 20, 2002; 69 FR 31723, June 7, 2004; 71 FR 25064, Apr. 28, 2006; 71 FR 53547, Sept. 12, 2006; 71 FR 66830, Nov. 17, 2006; 74 FR 48002, Sept. 21, 2009; 75 FR 78588, Dec. 16, 2010]

§ 301.45–4 Conditions governing the interstate movement of regulated articles and outdoor household articles from generally infested areas.

(a) Regulated articles and outdoor household articles from generally infested areas. (1) A regulated article, except for an article moved in accordance with paragraph (c) of this section, shall not be moved interstate from any generally infested area into or through any area that is not generally infested unless a certificate or permit has been issued and attached to such regulated article in accordance with §§ 301.45–5 and 301.45–8.[3]

(2) An outdoor household article shall not be moved interstate from any generally infested area into or through any area that is not generally infested unless a certificate or OHA document has been issued and attached to such outdoor household article in accordance with §§ 301.45–5 and 301.45–8.

(b) A regulated article originating outside of any generally infested area may be moved interstate directly through any generally infested area without a certificate or permit if the point of origin of the article is clearly indicated by shipping documents, its identity has been maintained, and it has been safeguarded against infestation while in any generally infested area during the months of April through August. The articles must be safeguarded by a covering adequate to prevent access by any gypsy moth life stages.

(c) A regulated article originating in a generally infested area may be moved interstate from a generally infested area without a certificate if it complies with (1) or (2) of this paragraph:

(1) The article is moved by the U.S. Department of Agriculture for experimental or scientific purposes, and:

(i) Is moved pursuant to a permit issued for each article by the Administrator;

(ii) Is moved in accordance with conditions specified on the permit and found by the Administrator to be adequate to prevent the dissemination of the gypsy moth, i.e., conditions of treatment, processing, shipment, and disposal; and

(iii) Is moved with a tag or label securely attached to the outside of the container containing the article or securely attached to the article itself if not in a container, and with such tag or label bearing a permit number corresponding to the number of the permit issued for such article.

(2) The article is logs, pulpwood, or bark and bark products, and the person

[3] Requirements under all other applicable Federal domestic plant quarantines must also be met.

moving the article has attached a signed accurate statement to the waybill or other shipping documents accompanying the article stating that he or she has inspected the article in accordance with the Gypsy Moth Program Manual no more than 5 days prior to the date of movement and has found no life stages of gypsy moth on the article.

[58 FR 39423, July 23, 1993, as amended at 70 FR 33268, June 7, 2005; 71 FR 40878, July 19, 2006; 72 FR 70764, Dec. 13, 2007]

§ 301.45–5 Issuance and cancellation of certificates, limited permits, and outdoor household article documents.

(a) A certificate may be issued by an inspector for the movement of a regulated article or an outdoor household article (OHA) if the inspector determines that it is eligible for certification for movement to any destination under all Federal domestic plant quarantines applicable to such article and:

(1) It has originated in noninfested premises in a generally infested area and has not been exposed to the gypsy moth while within the generally infested area; or

(2) The inspector inspects the article no more than 5 days prior to the date of movement during the months of April through August (14 days prior to the date of movement from September through March) and finds it to be free of the gypsy moth; or

(3) It has been treated under the direction of an inspector to destroy the gypsy moth in accordance with the treatment manual and part 305 of this chapter; or

(4) It has been grown, produced, manufactured, stored, or handled in such a manner that no infestation would be transmitted thereby as determined by an inspector.

(b) Limited permits may be issued by an inspector to allow interstate movement of any regulated article under this subpart to specified destinations for specified handling, utilization, processing, or treatment in accordance with the treatment manual, when, upon evaluation of all of the circumstances involved in each case, the Administrator determines that such movement will not result in the spread of the gypsy moth because life stages of the moths will be destroyed by such specified handling, utilization, processing or treatment, or the pest will not survive in areas to which shipped, and the requirements of all other applicable Federal domestic plant quarantines have been met.

(c) Certificate and limited permit forms may be issued by an inspector to any person for use for subsequent shipments of regulated articles provided the person is operating under a compliance agreement. Any person operating under a compliance agreement may reproduce the forms as needed to attach them to regulated articles moved under a compliance agreement. Any person operating under a compliance agreement may execute and issue the certificate forms or reproduction of such forms, for the interstate movement of regulated articles from the premises of such person identified in the compliance agreement, if the person has treated such regulated articles as specified in the compliance agreement, and if the regulated articles are eligible for certification for movement to any destination under all applicable Federal domestic plant quarantines. Any person operating under a compliance agreement may execute and issue the limited permit forms, or reproductions of such forms, for the interstate movement of regulated articles to specified destinations when an inspector has made the determinations specified in paragraph (b) of this section.

(d) A certificate may be issued by a qualified certified applicator for the interstate movement of any outdoor household article or mobile home if such qualified certified applicator determines the following:

(1) That the article has been inspected by the qualified certified applicator and found to be free of any life stage of the gypsy moth; or

(2) That the article has been treated by, or treated under the direct supervision of, the qualified certified applicator to destroy any life stage of the gypsy moth in accordance with methods and procedures prescribed in section III of the Gypsy Moth Program Manual.

(e) An OHA document may be issued by the owner of an outdoor household article for the interstate movement of the article if such person has inspected the outdoor household article and has found it to be free of any life stage of gypsy moth.

(f) Any certificate or permit which has been issued or authorized may be withdrawn by an inspector if he determines that the holder thereof has not complied with any condition for the use of such document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances permit. Any person whose certificate or permit has been withdrawn may appeal the decision in writing to the Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate or permit was wrongfully withdrawn. The Administrator shall grant or deny the appeal, in writing, stating the reasons for his decision as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0088)

[58 FR 39423, July 23, 1993, as amended at 59 FR 46902, Sept. 13, 1994; 70 FR 33268, June 7, 2005]

§ 301.45–6 Compliance agreement and cancellation thereof.

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of such articles under this subpart. Qualified certified applicators must enter into compliance agreements, in accordance with the definition of qualified certified applicator in § 301.45–1. A compliance agreement shall specify safeguards necessary to prevent spread of the gypsy moth, such as disinfestation practices or application of chemical materials in accordance with the treatment manual and part 305 of this chapter. Compliance agreement forms may be obtained from the Administrator or an inspector.

(b) Any compliance agreement may be canceled by the inspector who is supervising its enforcement, orally or in writing, whenever the inspector finds that such person has failed to comply with the conditions of the agreement. If the cancellation is oral, the decision and the reasons therefore shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been canceled may appeal the decision in writing to the Administrator within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. The Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0088)

[58 FR 39423, July 23, 1993, as amended at 59 FR 46902, Sept. 13, 1994; 70 FR 33268, June 7, 2005]

§ 301.45–7 Assembly and inspection of regulated articles and outdoor household articles.

Persons (other than those authorized to use certificates or limited permits, or reproductions thereof, under § 301.45–5(c)) who desire to move interstate a regulated article which must be accompanied by a certificate or permit shall, at least 7 days before the desired movement, request an inspector to examine the article prior to movement. Persons who desire to move interstate an outdoor household article accompanied by a certificate issued in accordance with § 301.45–5 shall, at least 14 days before the desired movement, request an inspector to examine the article prior to movement. Persons who desire to move interstate an outdoor household article or a mobile home accompanied by a certificate issued by a qualified certified applicator in accordance with § 301.45–5(d) shall request a qualified certified applicator to examine the article prior to movement. Such articles

shall be assembled at such point and in such manner as the inspector or qualified certified applicator designates to facilitate inspection. An owner who wants to move outdoor household articles interstate may self-inspect the articles and issue an OHA document in accordance with § 301.45–5(e).

[58 FR 39423, July 23, 1993, as amended at 72 FR 70764, Dec. 13, 2007]

§ 301.45–8 Attachment and disposition of certificates, limited permits, and outdoor household article documents.

(a) A certificate, limited permit, or OHA document required for the interstate movement of a regulated article or outdoor household article must at all times during such movement be securely attached to the outside of the container containing the regulated article or outdoor household article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the waybill or other shipping document: Provided, however, That the requirements of this section may be met by attaching the certificate, limited permit, or OHA document to the consignee's copy of the waybill or other shipping document only if the regulated article or outdoor household article is sufficiently described on the certificate, limited permit, OHA document or shipping document to identify such article.

(b) The certificate, limited permit, or OHA document for the movement of a regulated article or outdoor household article shall be furnished by the carrier to the consignee at the destination of the shipment.

(c) Any qualified certified applicator who issues a certificate or OHA document shall at the time of issuance send a copy of the certificate or OHA document to the APHIS State Plant Health Director for the State in which the document is issued.

(Approved by the Office of Management and Budget under control number 0579–0088)

[58 FR 39423, July 23, 1993, as amended at 59 FR 46902, Sept. 13, 1994; 72 FR 70764, Dec. 13, 2007]

§ 301.45–9 Inspection and disposal of regulated articles and pests.

Any properly identified inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of, or require disposal of regulated articles, outdoor household articles, and gypsy moths as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

[58 FR 39423, July 23, 1993, as amended at 66 FR 21050, Apr. 27, 2001]

§ 301.45–10 Movement of live gypsy moths.

Regulations requiring a permit for, and otherwise governing the movement of, live gypsy moths in interstate or foreign commerce are contained in the Federal Plant Pest Regulations in part 330 of this chapter.

§ 301.45–11 Costs and charges.

The services of the inspector shall be furnished without cost. The U.S. Department of Agriculture 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.

§ 301.45–12 Disqualification of qualified certified applicator to issue certificates.

(a) Any qualified certified applicator may be disqualified from issuing certificates by the Administrator if he determines that one of the following has occurred:

(1) Such person is not certified by a State and/or the Federal government as a commercial certified applicator under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136i) in a category allowing the application of restricted use pesticides.

(2) Noncompliance with any of the provisions of this subpart or with stipulations agreed on in the compliance agreement between the certified applicator and the Administrator.

(b) The disqualification is effective upon oral or written notification, whichever is earlier. The reasons for the disqualification shall be confirmed in writing as promptly as circumstances permit, unless contained in the written notification. Any qualified

certified applicator who is disqualified from issuing certificates may appeal the decision in writing to the Administrator within ten (10) days after receiving written notification of the disqualification. The appeal shall state all of the facts and reasons upon which the person relies to show that the disqualification was a wrongful action. The Administrator shall grant or deny the appeal, in writing, stating the reasons for his decision as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0088)

[58 FR 39423, July 23, 1993, as amended at 59 FR 46902, Sept. 13, 1994; 72 FR 70764, Dec. 13, 2007]

Subpart—Japanese Beetle

SOURCE: 44 FR 24035, Apr. 24, 1979, unless otherwise noted.

QUARANTINE AND REGULATIONS

§ 301.48 Notice of quarantine; quarantine restrictions on interstate movement of regulated articles.

(a) Pursuant to the provisions of sections 411, 412, 414, 431, and 434 of the Plant Protection Act (7 U.S.C. 7711, 7712, 7714, 7751, and 7754), the Secretary of Agriculture heretofore determined after public hearing to quarantine the States of Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia in order to prevent the spread of the Japanese beetle, a dangerous insect injurious to cultivated crops and not theretofore widely prevalent or distributed within or throughout the United States.

(b) No person shall move any regulated article interstate from any regulated airport destined to any of the following States except in accordance with the conditions prescribed in this subpart: Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, and Washington.

[44 FR 24035, Apr. 24, 1979, as amended at 61 FR 32640, June 25, 1996; 66 FR 21050, Apr. 27, 2001; 68 FR 43614, July 24, 2003; 69 FR 40534, July 6, 2004; 71 FR 35493, June 21, 2006]

§ 301.48–1 Definitions.

Terms used in the singular form in this subpart shall be deemed to import the plural and vice versa, as the case may demand. The following terms, when used in this subpart shall be construed, respectively, to mean:

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

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

Compliance agreement. A written agreement between the Animal and Plant Health Inspection Service and a person engaged in the business of moving regulated articles interstate, in which the person agrees to comply with the provisions of this subpart.

Inspector. Any employee of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Administrator to enforce the provisions of the quarantine and regulations in this subpart.

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

Japanese beetle. The live insect known as the Japanese beetle (*Popillia japonica* Newm.) in any stage of development (egg, larva, pupa, or adult).

Person. Any individual, corporation, company, partnership, society, or association, or other organized group of any of the foregoing.

Regulated airport. Any airport or portions of an airport in a quarantined State declared regulated in accordance with provisions in § 301.48–2 of this subpart.

Regulated articles. Aircraft at or from regulated airports.

State. Any State, territory, or district of the United States, including Puerto Rico.

State Plant Regulatory Official. The authorized official of a State who has responsibility for the operation of the State plant regulatory program.

[44 FR 24035, Apr. 24, 1979, as amended at 61 FR 32640, June 25, 1996; 70 FR 33268, June 7, 2005]

§ 301.48–2 Authorization to designate, and terminate designation of, regulated airports.

(a) An inspector may declare any airport within a quarantined State to be a regulated airport when he or she determines that adult populations of Japanese beetle exist during daylight hours at the airport to the degree that aircraft constitute a threat to spread the Japanese beetle and aircraft destined for the States listed in § 301.48(b) may be leaving the airport.

(b) An inspector shall terminate the designation provided for under paragraph (a) of this section when he or she determines that adult populations of Japanese beetle no longer exist at the airport to the degree that the aircraft pose a threat to spread the Japanese beetle.

[44 FR 24035, Apr. 24, 1979, as amended at 61 FR 32640, June 25, 1996]

§ 301.48–3 Notification of designation, and termination of designation, of regulated airports.

Upon designating, or terminating the designation of, an airport as regulated, the inspector shall give written notice to the official in charge of the airport that the airport has been designated as a regulated airport or that the designation has been terminated. The inspector shall also give the same information in writing to the official at the airport in charge of each airline or the operator of any other aircraft, which will move a regulated article to any State designated in § 301.48(b). The Administrator shall also give the same information to the State Plant Regulatory Official of each State designated in § 301.48(b) to which any regulated article will move.

[44 FR 24035, Apr. 24, 1979, as amended at 61 FR 32640, June 25, 1996]

§ 301.48–4 Conditions governing the interstate movement of regulated articles from quarantined States.

A regulated article may be moved interstate from a regulated airport to any State[1] designated in § 301.48(b) only if:

(a) An inspector, upon visual inspection of the airport and/or the aircraft, determines that the regulated article does not present a threat to spread the Japanese beetle because adult beetle populations are not present; or

(b) The aircraft is opened and loaded only while it is enclosed inside a hangar that an inspector has determined to be free of and safeguarded against Japanese beetle; or

(c) The aircraft is loaded during the hours of 8:00 p.m. to 7:00 a.m. only or lands and departs during those hours and, in either situation, is kept completely closed while on the ground during the hours of 7:00 a.m. to 8:00 p.m.; or

(d) If opened and loaded between the hours of 7:00 a.m. to 8:00 p.m., the aircraft is inspected, treated, and safeguarded. Inspection, treatment, and safeguarding must be done either under a compliance agreement in accordance with § 301.48–8 or under the direct supervision of an inspector. On a case-by-case basis, inspectors will determine which of the following conditions, and any supplemental conditions deemed necessary by the Administrator to prevent the spread of Japanese beetle, are required:

(1) All openings of the aircraft must be closed or safeguarded during the hours of 7:00 a.m. to 8:00 p.m. by exclusionary devices or by other means approved by the Administrator.

(2) All cargo containers that have not been safeguarded in a protected area must be inspected immediately prior to and during the loading process. All personnel must check their clothing immediately prior to entering the aircraft. All Japanese beetles found must be removed and destroyed.

(3) All areas around doors and hatches or other openings in the aircraft must be inspected prior to removing

[1] Requirements under all other applicable Federal domestic plant quarantines must be met.

the exclusionary devices. All Japanese beetles found must be removed and destroyed. All doors and hatches must be closed immediately after the exclusionary devices are moved away from the aircraft.

(4) Aircraft must be treated in accordance with part 305 of this chapter no more than 1 hour before loading. Particular attention should be paid to the ball mat area and the holes around the main entrance. The aircraft must then be aerated under safeguard conditions as required by part 305 of this chapter.

(5) Aircraft treatment records must be maintained by the applicator completing or supervising the treatment for a period of 2 years. These records must be provided upon request for review by an inspector. Treatment records shall include the pesticide used, the date of application, the location where the pesticide was applied (airport and aircraft), the amount of pesticide applied, and the name of the applicator.

(6) When a designated aircraft is replaced with an alternate one just prior to departure (the procedure known as "tail swapping"), the alternate aircraft must be inspected and all Japanese beetles must be removed. The aircraft must be safeguarded by closing all openings and hatches or by equipping the aircraft with exclusionary devices until the aircraft is ready for use. During loading, all treatment and safeguard requirements applicable to regularly scheduled aircraft must be implemented.

(7) Aircraft may be retreated in the noninfested State if live Japanese beetles are found.

(8) Notification of unscheduled commercial flights and of all military flights must be given at least 1 hour before departure to the appropriate person in the destination airport of any of the States listed in §301.48(b). Notification of arriving military flights should also be given to base commanders to facilitate the entrance of Federal and/or State inspectors onto the base if necessary.

[61 FR 32640, June 25, 1996, as amended at 61 FR 56404, Nov. 1, 1996; 70 FR 33268, June 7, 2005]

§ 301.48–5 Inspection and disposal of regulated articles and pests.

Any properly identified inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of or require disposal of regulated articles and Japanese beetles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754) in accordance with instructions issued by the Administrator.

[44 FR 24035, Apr. 24, 1979, as amended at 61 FR 32641, June 25, 1996; 66 FR 21051, Apr. 27, 2001]

§ 301.48–6 Movement of live Japanese beetles.

Regulations requiring a permit for and otherwise governing the movement of live Japanese beetles in interstate or foreign commerce are contained in the Federal Plant Pest Regulations in part 330 of this chapter. Applications for permits for the movement of the pest may be made to the Administrator.

[44 FR 24035, Apr. 24, 1979, as amended at 61 FR 32641, June 25, 1996]

§ 301.48–7 Nonliability of the Department.

The U.S. Department of Agriculture disclaims liability for any costs incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart other than for the services of the inspector.

§ 301.48–8 Compliance agreements and cancellation.

(a) Any person engaged in the business of moving regulated articles may enter into a compliance agreement to facilitate the movement of such articles under this subpart. Any person who enters into a compliance agreement, and employees or agents of that person, must allow an inspector access to all records regarding treatment of aircraft and to all areas where loading, unloading, and treatment of aircraft occurs.

(b) A compliance agreement may be canceled by an inspector, orally or in writing, whenever he or she determines that the person who has entered into the compliance agreement has failed to comply with the agreement or this subpart. If the cancellation is oral, the

cancellation and the reasons for the cancellation will be confirmed in writing within 20 days of oral notification. Any person whose compliance agreement has been canceled may appeal the decision, in writing, to the Administrator 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 wrongfully canceled. A hearing will be held to resolve any conflict as to any material fact. The Administrator shall adopt rules of practice for the hearing. An appeal shall be granted or denied, in writing, as promptly as circumstances allow, and the reasons for the decision shall be stated. The compliance agreement will remain canceled pending the decision on the appeal.

[61 FR 32641, June 25, 1996]

Subpart—Pine Shoot Beetle

SOURCE: 57 FR 54496, Nov. 19, 1992, unless otherwise noted.

§ 301.50 Restrictions on interstate movement of regulated articles.

Regulated articles may be moved interstate from any quarantined area only in accordance with this subpart.[1]

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 6347, Jan. 28, 1993; 66 FR 21051, Apr. 27, 2001]

§ 301.50–1 Definitions.

Administrator. The Administrator, 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.

Certificate. A document in which an inspector, or person operating under a compliance agreement, affirms that a specified regulated article is free of pine shoot beetle and may be moved interstate to any destination.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, in which the person agrees to comply with the provisions of this subpart.

Infestation. The presence of the pine shoot beetle or the existence of circumstances that make it reasonable to believe that the pine shoot beetle is present.

Inspector. Any employee of the Animal and Plant Health Inspection Service, or other individual, authorized by the Administrator to enforce this subpart.

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

Limited permit (permit). A document in which an inspector, or person operating under a compliance agreement, affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.50–5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

Moved (Move, Movement). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

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

Pine bark products. Pieces of pine bark including bark chips, bark nuggets, bark mulch and bark compost.

Pine nursery stock. All *Pinus* spp. woody plants, shrubs, and rooted trees, including dug (balled and burlaped) Christmas trees, and ornamental pine, such as bonsai.

Pine shoot beetle. The insect known as pine shoot beetle, *Tomicus piniperda* (Linnaeus), in any stage of development.

Quarantined area. Any State, or any portion of a State, listed in § 301.50–3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.50–3(b) of this subpart.

Regulated article. Any article listed in § 301.50–2 (a) or (b) of this subpart or

[1] 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 regulated articles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

otherwise designated as a regulated article in accordance with § 301.50–2(c) of this subpart.

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

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 6347, Jan. 28, 1993; 71 FR 13925, Mar. 20, 2006]

§ 301.50–2 Regulated articles.

The following are regulated articles:

(a) Pine products (*Pinus* spp.), as follows: Bark products; Christmas trees; logs with bark attached; lumber with bark attached; nursery stock; raw pine materials for pine wreaths and garlands; and stumps.

(b) Any article, product, or means of conveyance not covered by paragraph (a) of this section, that presents a risk of spread of the pine shoot beetle and that an inspector notifies the person in possession of it is subject to the restrictions of this subpart.

[57 FR 54496, Nov. 19, 1992, as amended at 60 FR 55778, Nov. 3, 1995; 65 FR 51518, Aug. 24, 2000; 71 FR 13925, Mar. 20, 2006]

§ 301.50–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area, in paragraph (c) of this section, each State, or each portion of a State, in which the pine shoot beetle has been found by an inspector, in which the Administrator has reason to believe that the pine shoot beetle is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the pine shoot beetle has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

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

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the pine shoot beetle.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice of this temporary designation to the owner or person in possession of the nonquarantined area; thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section, or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas:

CONNECTICUT

The entire State.

ILLINOIS

Boone County. The entire county.
Bureau County. The entire county.
Carroll County. The entire county.
Champaign County. The entire county.
Christian County. The entire county.
Clark County. The entire county.
Coles County. The entire county.
Cook County. The entire county.
De Kalb County. The entire county.
De Witt County. The entire county.
Douglas County. The entire county.
Du Page County. The entire county.
Edgar County. The entire county.
Ford County. The entire county.
Grundy County. The entire county.
Henry County. The entire county.
Iroquois County. The entire county.
Jo Daviess County. The entire county.
Kane County. The entire county.
Kankakee County. The entire county.
Kendall County. The entire county.
La Salle County. The entire county.
Lake County. The entire county.
Lee County. The entire county.
Livingston County. The entire county.
Macon County. The entire county.
Marshall County. The entire county.
Mason County. The entire county.
McHenry County. The entire county.
McLean County. The entire county.
Moultrie County. The entire county.

Ogle County. The entire county.
Peoria County. The entire county.
Piatt County. The entire county.
Putnam County. The entire county.
Shelby County. The entire county.
Stark County. The entire county.
Stephenson County. The entire county.
Tazewell County. The entire county.
Vermilion County. The entire county.
Whiteside County. The entire county.
Will County. The entire county.
Winnebago County. The entire county.
Woodford County. The entire county.

INDIANA

Adams County. The entire county.
Allen County. The entire county.
Bartholomew County. The entire county.
Benton County. The entire county.
Blackford County. The entire county.
Boone County. The entire county.
Brown County. The entire county.
Carroll County. The entire county.
Cass County. The entire county.
Clinton County. The entire county.
Dearborn County. The entire county.
Decatur County. The entire county.
De Kalb County. The entire county.
Delaware County. The entire county.
Elkhart County. The entire county.
Fayette County. The entire county.
Fountain County. The entire county.
Franklin County. The entire county.
Fulton County. The entire county.
Grant County. The entire county.
Greene County. The entire county.
Hamilton County. The entire county.
Hancock County. The entire county.
Hendricks County. The entire county.
Henry County. The entire county.
Howard County. The entire county.
Huntington County. The entire county.
Jasper County. The entire county.
Jay County. The entire county.
Jennings County. The entire county.
Johnson County. The entire county.
Kosciusko County. The entire county.
Lagrange County. The entire county.
Lake County. The entire county.
La Porte County. The entire county.
Madison County. The entire county.
Marion County. The entire county.
Marshall County. The entire county.
Miami County. The entire county.
Monroe County. The entire county.
Montgomery County. The entire county.
Morgan County. The entire county.
Newton County. The entire county.
Noble County. The entire county.
Owen County. The entire county.
Park County. The entire county.
Porter County. The entire county.
Pulaski County. The entire county.
Putnam County. The entire county.
Randolph County. The entire county.
Ripley County. The entire county.
Rush County. The entire county.
Shelby County. The entire county.
St. Joseph County. The entire county.
Starke County. The entire county.
Steuben County. The entire county.
Tippecanoe County. The entire county.
Tipton County. The entire county.
Union County. The entire county.
Vermillion County. The entire county.
Vigo County. The entire county.
Wabash County. The entire county.
Warren County. The entire county.
Wayne County. The entire county.
Wells County. The entire county.
White County. The entire county.
Whitley County. The entire county.

IOWA

The entire State.

MAINE

Androscoggin County. The entire county.
Cumberland County. The entire county.
Franklin County. The entire county.
Hancock County. The entire county.
Kennebec County. The entire county.
Knox County. The entire county.
Lincoln County. The entire county.
Oxford County. The entire county.
Penobscot County. The entire county.
Piscataquis County. The entire county.
Sagadahoc County. The entire county.
Somerset County. The entire county.
Waldo County. The entire county.
York County. The entire county.

MARYLAND

Allegany County. The entire county.
Frederick County. The entire county.
Garrett County. The entire county.
Montgomery County. The entire county.
Washington County. The entire county.

MASSACHUSETTS

The entire State.

MICHIGAN

The entire State.

MINNESOTA

The entire State.

NEW HAMPSHIRE

The entire State.

NEW JERSEY

Bergen County. The entire county.
Cumberland County. The entire county.
Hunterdon County. The entire county.
Morris County. The entire county.
Passaic County. The entire county.
Somerset County. The entire county.
Sussex County. The entire county.
Warren County. The entire county.

NEW YORK

Albany County. The entire county.
Allegany County. The entire county.
Broome County. The entire county.
Cattaraugus County. The entire county.
Cayuga County. The entire county.
Chautauqua County. The entire county.
Chemung County. The entire county.
Chenango County. The entire county.
Clinton County. The entire county.
Columbia County. The entire county.
Cortland County. The entire county.
Delaware County. The entire county.
Erie County. The entire county.
Essex County. The entire county.
Franklin County. The entire county.
Fulton County. The entire county.
Genesee County. The entire county.
Greene County. The entire county.
Hamilton County. The entire county.
Herkimer County. The entire county.
Jefferson County. The entire county.
Lewis County. The entire county.
Livingston County. The entire county.
Madison County. The entire county.
Monroe County. The entire county.
Montgomery County. The entire county.
Niagara County. The entire county.
Oneida County. The entire county.
Onondaga County. The entire county.
Ontario County. The entire county.
Orange County. The entire county.
Orleans County. The entire county.
Oswego County. The entire county.
Otsego County. The entire county.
Rensselaer County. The entire county.
St. Lawrence County. The entire county.
Saratoga County. The entire county.
Schenectady County. The entire county.
Schoharie County. The entire county.
Schuyler County. The entire county.
Seneca County. The entire county.
Steuben County. The entire county.
Sullivan County. The entire county.
Tioga County. The entire county.
Tompkins County. The entire county.
Ulster County. The entire county.
Warren County. The entire county.
Washington County. The entire county.
Wayne County. The entire county.
Wyoming County. The entire county.
Yates County. The entire county.

OHIO

The entire State.

PENNSYLVANIA

The entire State.

RHODE ISLAND

The entire State

VERMONT

The entire State.

VIRGINIA

Clarke County. The entire county.

WEST VIRGINIA

The entire state.

WISCONSIN

The entire State.

[57 FR 54496, Nov. 19, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §301.50–3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§301.50–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area[2] only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§301.50–5 and 301.50–8 of this subpart;

(b) Without a certificate or limited permit, if:

(1)(i) The regulated article originates outside any quarantined area and is moved through the quarantined area without stopping (except for dropoff loads, refueling, or traffic conditions, such as traffic lights or stop signs) during October, November, or December, or when ambient air temperature is below 10 °C (50 °F); or

(ii) The regulated article originates outside any quarantined area and, during the period of January through September, is moved through the quarantined area at a temperature higher than 10 °C (50 °F), if the article is shipped in an enclosed vehicle or completely covered (such as with plastic, canvas, or other closely woven cloth) so as to prevent access by the pine shoot beetle; and

(2) The point of origin of the regulated article is indicted on the waybill.

(c) With a limited permit issued by the Administrator if the regulated article is moved:

[2]Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Under conditions, specified on the permit, which the Administrator has found to be adequate to prevent the spread of the pine shoot beetle; and

(3) With a tag or label, bearing the number of the permit issued for the regulated article, attached to the outside of the container of the regulated article or attached to the regulated article itself, if the regulated article is not in a container.

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 28335, May 13, 1993]

§ 301.50–5 Issuance and cancellation of certificates and limited permits.

(a) A certificate will be issued by an inspector[3] for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with § 301.50–10 of this subpart, or, if pine bark products, produced according to the requirements of the management method in § 301.50–10(b) of this subpart; or

(ii) Based on inspection of the premises of origin, if the regulated article is a greenhouse-grown pine (such as bonsai), that the greenhouse is free from the pine shoot beetle and is screened to prevent entry of the pine shoot beetle; or

(iii) Based on inspection of the regulated article, if the regulated article is a pine seedling or a pine transplant and is no greater than 36 inches high with a bole diameter at soil level of 1 inch or less, that it is free from the pine shoot beetle; or

(iv) Based on inspection by an inspector (branch tip-by-branch tip) of pine nursery stock, that it is free from the pine shoot beetle; or

(v) If the regulated article is a pine log with bark attached or pine lumber with bark attached or a pine stump, that its source tree has been felled during the period of July 1 through October 31 or if the regulated article is pine bark products produced from a tree felled and debarked during the period of July 1 through October 31; and

(2)(i) The regulated article will be moved through the quarantined area during October, November, or December, or when the ambient air temperature is below 10 °C (50 °F); or

(ii) The regulated article will be moved through the quarantined area during the period of January through September, if the ambient air temperature is 10 °C (50 °F) or higher, in an enclosed vehicle or completely enclosed by a covering adequate to prevent access by the pine shoot beetle; or

(iii) The pine log with pine bark attached, pine lumber with bark attached, or pine stump from a tree felled during the period of July 1 through October 31, or the pine bark products produced from a tree felled and debarked during the period of July 1 through October 31, will be shipped interstate from the quarantined area during the period of July 1 through October 31 of the same year in which the source tree was felled; and

(3) The regulated article is to be moved in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714)[4] to prevent the spread of the pine shoot beetle; and

(4) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated articles.

(b) An inspector[5] will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article is to be moved interstate to a specified destination for specified handling, processing,

[3] Services of an inspector may be requested by contacting the local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of 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, Maryland 20737–1236.

[4] An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

[5] See footnote 3 to § 301.50–5(a).

or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the pine shoot beetle. If the regulated article is part of a shipment of pine Christmas trees, the inspector will make a pest-risk determination on the basis of an inspection conducted in accordance with § 301.50–5(c) of this paragraph; or

(ii) The regulated article is to be moved interstate from a quarantined area to a quarantined area and will transit any non-quarantined area in an enclosed vehicle or completely enclosed by a covering adequate to prevent access by the pine shoot beetle; and

(2) The regulated article is to be moved in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the pine shoot beetle; and

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

(c) The number of pine Christmas trees randomly selected for inspection is determined by the size and type of shipment, in accordance with the following tables. If a shipment mixes painted and natural trees, the inspection procedure for painted trees will apply.

TABLE 1—PAINTED (COLOR-ENHANCED) PINE CHRISTMAS TREES [1]

No. of trees in shipment	No. of trees to sample	No. of trees in shipment	No. of trees to sample
1–72	All	701–800	120
73–100	73	801–900	121
101–200	96	901–1,000	122
201–300	106	1,001–2,000	126
301–400	111	2,001–3,000	127
401–500	115	3,001–5,000	128
501–600	117	5,001–10,000	129
601–700	119	10,001 or more	130

[1] If a pine shoot beetle is detected in any one of the trees being sampled, the entire shipment must be rejected. If no pine shoot beetle is detected in any of the trees sampled, the shipment will be allowed to move with a limited permit. The limited permit must state, "All trees that remain unsold as of December 25 must be destroyed by burning or chipping, or must be fumigated, prior to January 1."

TABLE 2—NATURAL (UNPAINTED) CHRISTMAS TREES [1]

No. of trees in shipment	No. of trees to sample	No. of trees in shipment	No. of trees to sample
1–57	All	501–600	80
58–100	58	601–700	81
101–200	69	701–1,000	82
201–300	75	1,001–3,000	84
301–400	77	3,001–10,000	85
401–500	79	10,001 or more	86

[1] If a pine shoot beetle is detected in any one of the trees being sampled, the entire shipment must be rejected. If no pine shoot beetle is detected in any of the trees sampled, the shipment will be allowed to move with a limited permit. The limited permit must state, "All trees that remain unsold as of December 25 must be destroyed by burning or chipping, or must be fumigated, prior to January 1."

(d) Certificates and limited permits for use for interstate movement of regulated articles 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 if an inspector has determined that the regulated article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(e) Any certificate or limited permit that has been issued may be withdrawn by an inspector orally, or in writing, if he or she determines that the holder of the certificate or limited permit has not complied with all conditions under this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing as promptly 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 such a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0088)

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 6348, Jan. 28, 1993; 58 FR 28335, May 13, 1993; 58 FR 34683, June 29, 1993; 59 FR 67608, Dec. 30, 1994; 66 FR 21051, Apr. 27, 2001; 71 FR 13925, Mar. 20, 2006; 75 FR 4240, Jan. 26, 2010]

§ 301.50–6 Compliance agreements and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands this subpart.[6]

(b) Any compliance agreement may be canceled 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 shall 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 wrongfully 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 such a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0088)

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 34683, June 29, 1993; 59 FR 67608, Dec. 30, 1994]

[6] 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, Maryland 20737–1236.

§ 301.50–7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.50–5(c)), who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector,[7] at least 48 hours in advance of the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

(Approved by the Office of Management and Budget under control number 0579–0088)

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 34683, June 29, 1993]

§ 301.50–8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article must be attached, at all times during the interstate movement, to the outside of the container containing the regulated article, or to the regulated article itself, if not in a container. The requirements of this section may also be met by attaching the certificate or limited permit to the consignee's copy of the waybill, provided the regulated article is sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article.

(Approved by the Office of Management and Budget under control number 0579–0088)

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 34683, June 29, 1993]

§ 301.50–9 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. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

[7] See footnote 3 to § 301.50–5(a).

§ 301.50–10 Treatments and management method.

(a) Regulated articles may be treated in accordance with part 305 of this chapter to neutralize the pine shoot beetle.

(b) *Management method for pine bark products.* The following procedures are authorized for use with pine bark products derived from white pine (*Pinus strobus*), Scotch pine (*P. sylvestris*), red pine (*P. resinosa*), and jack pine (*P. banksiana*) trees. Pine bark products will only be considered to have been produced in accordance with this management method if the following procedures are followed:

(1) For pine bark products produced from trees felled during the period November 1 through March 31:

(i) The trees must be harvested at a height of 4 inches or more above the duff line; and

(ii) The trees must have been mechanically debarked with a ring debarker or a Rosser head debarker; and

(iii) For Scotch pine, red pine, and jack pine, the bark must either be ground into pieces of 1 inch or less in diameter or composted in accordance with the procedure in paragraph (d)(3) of this section.

(2) For pine bark products produced from trees felled during the period April 1 through June 30:

(i) The trees must have been mechanically debarked with a ring debarker or a Rosser head debarker; and

(ii) The bark must either be ground into pieces of 1 inch or less in size or composted in accordance with the procedure in paragraph (d)(3) of this section.

(3) Composting for pine bark products for the management method in this paragraph (d) must be performed as follows:

(i) The pile of pine bark to be composted must be at least 200 cubic yards in size; and

(ii) The compost pile must remain undisturbed until the interior temperature of the pile reaches 120 °F (49 °C) and remains at or over that temperature for 4 consecutive days; and

(iii) After the 4-day period is completed, the outer layer of the compost pile must be removed to a depth of 3 feet; and

(iv) A second compost pile must be started using the cover material previously removed as a core. Core material must be removed from the first pile and used to cover the second compost pile to a depth of 3 feet; and

(v) The second compost pile must remain undisturbed until the interior temperature of the pile reaches 120 °F (49 °C) and remains at or over that temperature for 4 consecutive days. After this 4-day period, the composting procedure is complete.

(vi) Previously composted material generated using this procedure may be used as cover material for subsequent compost piles. A compost pile that uses previously composted material must remain undisturbed until the interior temperature of the pile reaches 120 °F (49 °C) and remains at or over that temperature for 4 consecutive days. After this 4-day period, the composting procedure is complete.

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 6348, Jan. 28, 1993; 58 FR 28335, May 13, 1993; 58 FR 63027, Nov. 30, 1993; 60 FR 55780, 55781, Nov. 3, 1995; 65 FR 51518, Aug. 24, 2000; 71 FR 13925, Mar. 20, 2006; 75 FR 4240, Jan. 26, 2010]

Subpart—Asian Longhorned Beetle

SOURCE: 62 FR 10416, Mar. 7, 1997, unless otherwise noted.

§ 301.51–1 Definitions.

Administrator. The Administrator, 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 longhorned beetle. The insect known as Asian longhorned beetle (*Anoplophora glabripennis*) in any stage of development.

Certificate. A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such article is eligible for interstate movement in accordance with § 301.51–5(a).

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles that are moved interstate, in which the person agrees to comply with the provisions of this subpart and any conditions imposed under this subpart.

Infestation. The presence of the Asian longhorned beetle in any life stage.

Inspector. Any employee of the Animal and Plant Health Inspection Service, or other individual authorized by the Administrator to enforce the provisions of this subpart.

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

Limited permit. A document in which an inspector affirms that the regulated article not eligible for a certificate is eligible for interstate movement only to a specified destination and in accordance with conditions specified on the permit.

Moved (movement, move). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

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

Quarantined area. Any State, or any portion of a State, listed in § 301.51–3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.51–3(b) of this subpart.

Regulated article. Any article listed in § 301.51–2(a) of this subpart or otherwise designated as a regulated article in accordance with § 301.51–2(b) of this subpart.

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

§ 301.51–2 Regulated articles.

The following are 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).

(b) Any other article, product, or means of conveyance not covered by paragraph (a) of this section if an inspector determines that it presents a risk of spreading Asian longhorned beetle and notifies the person in possession of the article, product, or means of conveyance that it is subject to the restrictions of this subpart.

[62 FR 10416, Mar. 7, 1997, as amended at 62 FR 60764, Nov. 13, 1997; 68 FR 26985, May 19, 2003; 75 FR 34322, June 17, 2010]

§ 301.51–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section, each State or each portion of a State in which the Asian longhorned beetle has been found by an inspector, in which the Administrator has reason to believe that the Asian longhorned beetle is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where Asian longhorned beetle has been found. Less than an entire State will be designated as a quarantined area 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 an entire State as a quarantined area will be adequate to prevent the artificial interstate spread of the Asian longhorned beetle.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area in accordance with the criteria specified in paragraph (a) of this section. The Administrator will give written notice of this designation to the owner or person in possession of the nonquarantined area, or, in the case of publicly owned land, to the person responsible for the management of the nonquarantined area. Thereafter, the

interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area either will be added to the list of designated quarantined areas in paragraph (c) of this section, or the Administrator will terminate the designation. The owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation is terminated will be given written notice of the termination as soon as practicable.

(c) The following areas are designated as quarantined areas:

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.

NEW JERSEY

Middlesex and Union Counties. That portion of the counties, including the municipalities of Roselle, Elizabeth City, Linden, Carteret, Woodbridge, Rahway, and Clark, that is bounded by a line drawn as follows: Beginning at the intersection of Locust Street (County Road 619) and West Grand Avenue (Union County 610) in Roselle, NJ; then east on West Grand Avenue to Chilton Street; then south on Chilton Street to South Street; then east on South Street to Broad Street; then south on Broad Street to Summer Street; then east on Summer Street to the Elizabeth River; then east along the Elizabeth River to the Arthur Kill; then south along the Arthur Kill (New Jersey and New York State border) to the point where Roosevelt Avenue (State Route 602) meets the Arthur Kill in Carteret, NJ; then south along Roosevelt Avenue to Port Reading Avenue (State Route 604); then west southwest along Port Reading Avenue to the Conrail railroad; then north and west along the Conrail railroad right-of-way to the NJ Transit railroad right-of-way; then north and northwest along the NJ Transit railroad right-of-way to the south branch of the Rahway River; then west along the south branch of the Rahway River to St. Georges Avenue (State Highway 27); then north along St. Georges Avenue to its intersection with the eastern border of Rahway River Park (Union County Park); then north along the eastern border of Rahway River Park to the intersection of Valley Road and Union County Parkway; then north along Union County Parkway to North Stiles Street; then northwest along North Stiles Street to Raritan Road; then northeast along Raritan Road to the perpendicular intersection of Raritan Road and the Cranford/Linden township border (144 Raritan Road); then north along the Cranford/Linden border to Myrtle Street; then east along Myrtle Street to the intersection of Amsterdam Avenue and Wood Avenue; then southeast along Wood Avenue to 5th Avenue; then northeast along 5th Avenue to Locust Street; then north along Locust Street to the point of beginning.

NEW YORK

New York City. (1) That area in the boroughs of Manhattan, Brooklyn, and Queens in the City of New York that is bounded by a line beginning at the point where the Brooklyn Battery Tunnel intersects the Manhattan shoreline of the East River; then west and north along the shoreline of the Hudson River to Martin Luther King Jr. Boulevard; then east on Martin Luther King Jr. Boulevard and across the Triborough Bridge to its intersection with the west shoreline of Randall's and Wards Island; then east and south along the shoreline of Randall's and Wards Island to its intersection with the Triborough Bridge; then east along the Triborough Bridge to its intersection with the Queens shoreline; then north and

east along the Queens shoreline to its intersection with the City of New York/Nassau County line; then southeast along the City of New York/Nassau County line to its intersection with the Grand Central Parkway; then west on the Grand Central Parkway to the Jackie Robinson Parkway; then west on the Jackie Robinson Parkway to Park Lane; then south on Park Lane to Park Lane South; then south and west on Park Lane South to 112th Street; then south on 112th Street to Atlantic Avenue; then west on Atlantic Avenue to 106th Street; then south on 106th Street to Liberty Avenue; then west on Liberty Avenue to Euclid Avenue; then south on Euclid Avenue to Linden Boulevard; then west on Linden Boulevard to Canton Avenue; then west on Canton Avenue to the Prospect Expressway; then north and west on the Prospect Expressway to the Gowanus Expressway; then north and west on the Gowanus Expressway to Hamilton Avenue and the Brooklyn Battery Tunnel; then north on Hamilton Avenue and the Brooklyn Battery Tunnel across the East River to the point of beginning.

(2) That area in the Borough of Staten Island in the City of New York bounded by a line beginning at a point along the State of New York and the State of New Jersey border due north of the intersection of Richmond Terrace and Morningstar Road; then south to the intersection of Morningstar Road and Richmond Terrace; then southwest along Morningstar Road to Forest Avenue; then east along Forest Avenue to Willow Road East; then south and then southeast along Willow Road East to Victory Boulevard; then west along Victory Boulevard to Arlene Street; then south along Arlene Street until it becomes Park Drive North; then south on Park Drive North to Rivington Avenue; then east along Rivington Avenue to Mulberry Avenue; then south on Mulberry Avenue to Travis Avenue; then northwest on Travis Avenue until it crosses Main Creek; then along the west shoreline of Main Creek to Fresh Kills Creek; then along the north shoreline of Fresh Kills Creek to Little Fresh Kills Creek; then along the north shoreline of Little Fresh Kills Creek to the Arthur Kill; then west to the border of the State of New York and the State of New Jersey in the Arthur Kill; then north along the borderline of the State of New York and the State of New Jersey; then east along the borderline of the State of New York and the State of New Jersey excluding Shooters Island to the point of beginning.

Nassau and Suffolk Counties. That area in the villages of Amityville, West Amityville, North Amityville, Babylon, West Babylon, Copiague, Lindenhurst, Massapequa, Massapequa Park, and East Massapequa; in the towns of Oyster Bay and Babylon; in the counties of Nassau and Suffolk that is bounded as follows: Beginning at a point where West Main Street intersects the west shoreline of Carlis Creek; then west along West Main Street to Route 109; then north along Route 109 to Arnold Avenue; then northwest along Arnold Avenue to Albin Avenue; then west along Albin Avenue to East John Street; then west along East John Street to Wellwood Avenue; then north along Wellwood Avenue to the Southern State Parkway; then west along the Southern State Parkway to Broadway; then south along Broadway to Hicksville Road; then south along Hicksville Road to Division Avenue; then south along Division Avenue to South Oyster Bay; then east along the shoreline of South Oyster Bay to Carlis Creek; then along the west shoreline of Carlis Creek to the point of beginning.

That area in the villages of Bayshore, East Islip, Islip, and Islip Terrace in the Town of Islip, in the County of Suffolk, that is bounded as follows: Beginning at a point where Route 27A intersects Brentwood Road; then east along Route 27A to the Southern State Parkway Heckscher Spur; then north and west along the Southern State Parkway Heckscher Spur to Carleton Avenue; then north along Carleton Avenue to the southern boundary of the New York Institute of Technology; then west along the southern boundary of the New York Institute of Technology through its intersection with Wilson Boulevard to Pear Street; then west along Pear Street through its intersection with Freeman Avenue to Riddle Street; then west along Riddle Street to Broadway; then south along Broadway to the Southern State Parkway Heckscher Spur; then west along the Southern State Parkway Heckscher Spur to Brentwood Road; then south along Brentwood Road to the point of beginning.

[62 FR 10416, Mar. 7, 1997]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 301.51–3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 301.51–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

(a) Any regulated article may be moved interstate from a quarantined area only if moved under the following conditions:

(1) With a certificate or limited permit issued and attached in accordance with §§ 301.51–5 and 301.51–8;

(2) Without a certificate or limited permit if:

(i) The regulated article is moved by the United States Department of Agriculture for experimental or scientific purposes; or

(ii) The regulated article originates outside the quarantined area and is moved interstate through the quarantined area under the following conditions:

(A) The points of origin and destination are indicated on a waybill accompanying the regulated article; and

(B) The regulated article is moved through the quarantined area without stopping, or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by Asian longhorned beetle; and

(C) The article has not been combined or commingled with other articles so as to lose its individual identity.

(b) When an inspector has probable cause to believe a person or means of conveyance is moving a regulated article interstate, the inspector is authorized to stop the person or means of conveyance to determine whether a regulated article is present and to inspect the regulated article. Articles found to be infected by an inspector, and articles not in compliance with the regulations in this subpart, may be seized, quarantined, treated, subjected to other remedial measures, destroyed, or otherwise disposed of.

§ 301.51–5 Issuance and cancellation of certificates and limited permits.

(a) An inspector[1] or person operating under a compliance agreement will issue a certificate for the interstate movement of a regulated article if he or she determines that the regulated article:

(1)(i) Is apparently free of Asian longhorned beetle in any stage of development, based on inspection of the regulated article; or

(ii) Has been grown, produced, manufactured, stored, or handled in such a manner that, in the judgment of the inspector, the regulated article does not present a risk of spreading Asian longhorned beetle; and

(2) Is to be moved in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714)[2] to prevent the artificial spread of the Asian longhorned beetle; and

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

(b) An inspector or a person operating under a compliance agreement will issue a limited permit for the interstate movement of a regulated article not eligible for a certificate if he or she determines that the regulated article:

(1) Is to be moved interstate to a specified destination for specific processing, handling, or utilization (the destination and other conditions to be listed on the limited permit), and this interstate movement will not result in the spread of Asian longhorned beetle because Asian longhorned beetle will be destroyed by the specific processing, handling, or utilization; and

(2) It is to be moved in compliance with any additional conditions that the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) in order to prevent the spread of the Asian longhorned beetle; and

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

(c) An inspector shall issue blank certificates and limited permits to a person operating under a compliance agreement in accordance with § 301.51–6 or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates and limited permits may then be completed and used, as needed, for the interstate movement of regulated articles that have met all of the requirements of paragraph (a) or (b), respectively, of this section.

[1] Inspectors are assigned to local offices of APHIS, which are listed in local telephone directories. Information concerning such 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, Maryland 20737–1236.

[2] An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destory, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

(d) Any certificate or limited permit may be canceled orally or in writing by an inspector whenever the inspector determines that the holder of the certificate or limited permit has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose certificate or limited permit has been cancelled may appeal the decision in writing to the Administrator within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

[62 FR 10416, Mar. 7, 1997, as amended at 66 FR 21051, Apr. 27, 2001]

§ 301.51–6 Compliance agreements and cancellation.

(a) Persons engaged in growing, handling, or moving regulated articles interstate may enter into a compliance agreement[3] if such persons review with an inspector each stipulation of the compliance agreement. Any person who enters into a compliance agreement with APHIS must agree to comply with the provisions of this subpart and any conditions imposed under this subpart.

(b) Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector determines that the person who has entered into the compliance agreement has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose compliance agreement has been cancelled may appeal the decision in writing to the Administrator within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

§ 301.51–7 Assembly and inspection of regulated articles.

(a) Persons requiring certification or other services must request the services from an inspector[4] at least 48 hours before the services are needed.

(b) The regulated articles must be assembled at the place and in the manner that the inspector designates as necessary to comply with this subpart.

§ 301.51–8 Attachment and disposition of certificates and limited permits.

(a) A regulated article must be plainly marked with the name and address of the consignor and the name and address of the consignee and must have the certificate or limited permit issued for the interstate movement of a regulated article securely attached at all times during interstate movement to:

(1) The outside of the container encasing the regulated article;

(2) The article itself, if it is not in a container; or

(3) The consignee's copy of the accompanying waybill; Provided, that the description of the regulated article on the certificate or limited permit, and on the waybill, are sufficient to identify the regulated article; and

(b) The carrier must furnish the certificate or limited permit authorizing

[3] Compliance agreements may be initiated by contacting a local office of APHIS. The addresses and telephone numbers of local offices are listed in local telephone directories and 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, Maryland 20737–1236.

[4] See footnote 1 to § 301.51–5.

interstate movement of a regulated article to the consignee at the destination of the shipment.

§ 301.51–9 Costs and charges.

The services of the inspector during normal business hours will be furnished without cost to persons requiring the services. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

Subpart—Pink Bollworm

SOURCE: 32 FR 16385, Nov. 30, 1967, unless otherwise noted.

QUARANTINE AND REGULATIONS

§ 301.52 Quarantine; restriction on interstate movement of specified regulated articles.

(a) *Notice of quarantine.* The following States are quarantined to prevent the spread of the pink bollworm (*Pectinophora gossypiella* (Saund.)): Arizona, California, New Mexico, and Texas.

(b) *Regulated articles.* No common carrier or other person shall move interstate from any quarantined State any regulated article, except in accordance with this subpart. The following are regulated articles:

(1) Cotton and wild cotton, including all parts of these plants.

(2) Seed cotton.

(3) Cottonseed.

(4) American-Egyptian (long-staple) varieties of cotton lint, linters, and lint cleaner waste; except:[1]

(i) American-Egyptian cotton lint, linters, and lint cleaner waste compressed to a density of at least 22 pounds per cubic foot.

(ii) Trade samples of American-Egyptian cotton lint and linters.

(5) Cotton waste produced at cotton gins and cottonseed oil mills.

(6) Cotton gin trash.

(7) Used bagging and other used wrappers for cotton.

(8) Used cotton harvesting equipment and used cotton ginning and used cotton oil mill equipment.

(9) Kenaf, including all parts of the plants.

(10) Okra, including all parts of these plants, except:

(i) Canned or frozen okra; or

(ii) Okra seed; and

(iii) Fresh, edible fruits of okra:

(A) During December 1 through May 15 if moved interstate, but only during January 1 through March 15 if moved to California.

(B) During May 16 through November 30, if moved interstate to any portion of Illinois, Kentucky, Missouri, or Virginia that is north of the 38th parallel; or to any destination in Colorado, Connecticut, Delaware, District of Columbia, Idaho, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, or Wyoming.

(11) Any other product, article, or means of conveyance not covered by paragraphs (b)(1) through (10) of this section, when an inspector determines that it presents a risk of spread of the pink bollworm and the person in possession of the product, article, or means of conveyance has actual notice that it is subject to the restrictions of this subpart.

[32 FR 16385, Nov. 30, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 301.52, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 301.52–1 Definitions.

Terms used in the singular form in this subpart shall be deemed to import the plural, and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively to mean:

Certificate. A document issued or authorized to be issued under this subpart by an inspector to allow the interstate movement of regulated articles to any destination.

[1] The articles hereby exempted remain subject to applicable restrictions under other quarantines and must have not been exposed to pink bollworm infestation after ginning or compression as prescribed.

Compliance agreement. A written agreement between a person engaged in growing, handling, or moving regulated articles, and the Plant Protection and Quarantine Programs, wherein the former agrees to comply with the requirements of this subpart identified in the agreement by the inspector who executes the agreement on behalf of the Plant Protection and Quarantine Programs as applicable to the operations of such person.

Deputy Administrator. The Deputy Administrator of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other officer or employee of said Service to whom authority to act in his stead has been or may hereafter be delegated.

Generally infested area. Any part of a regulated area not designated as a suppressive area in accordance with § 301.52–2.

Infestation. The presence of the pink bollworm or the existence of circumstances that make it reasonable to believe that pink bollworm is present.

Inspector. Any employee of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person authorized by the Deputy Administrator to enforce the provisions of the quarantine and regulations in this subpart.

Interstate. From any State, territory, or district of the United States into or through any other State, territory, or district of the United States (including Puerto Rico).

Limited permit. A document issued or authorized to be issued by an inspector to allow the interstate movement of noncertified regulated articles to a specified destination for limited handling, utilization, or processing or for treatment.

Moved (*movement, move*). Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means. "Movement" and "move" shall be construed accordingly.

Person. Any individual, corporation, company, society, or association, or other organized group of any of the foregoing.

Pink bollworm. The live insect known as the pink bollworm of cotton (Pectinophora gossypiella Saund.), in any stage of development.

Regulated area. Any quarantined State, territory, or district, or any portion thereof, listed as a regulated area in § 301.52–2a by the Deputy Administrator in accordance with § 301.52–2(a).

Regulated articles. Any articles described in § 301.52(b).

Restricted destination permit. A document issued or authorized to be issued by an inspector to allow the interstate movement of regulated articles not certified under all applicable Federal domestic plant quarantines to a specified destination for other than scientific purposes.

Scientific permit. A document issued by the Deputy Administrator to allow the interstate movement to a specified destination of regulated articles for scientific purposes.

Suppressive area. That part of a regulated area where eradication of infestation is undertaken as an objective, as designated by the Deputy Administrator under § 301.52–2(a).

[32 FR 16385, Nov. 30, 1967, as amended at 35 FR 2859, Feb. 12, 1970; 36 FR 24917, Dec. 24, 1971; 37 FR 10554, May 25, 1972; 52 FR 26943, July 17, 1987; 67 FR 34818, May 16, 2002; 70 FR 33268, June 7, 2005]

§ 301.52–2 Authorization for Deputy Administrator to list regulated areas and suppressive or generally infested areas.

The Deputy Administrator shall publish and amend from time to time as the facts warrant, the following lists:

(a) *List of regulated areas and suppressive or generally infested areas.* The Deputy Administrator shall list as regulated areas in a supplemental regulation designated as § 301.52–2a, the quarantined States, territories, or districts, or portions thereof, in which pink bollworm has been found or in which there is reason to believe that pink bollworm is present, or which it is deemed necessary to regulate because of their proximity to infestation or their inseparability for quarantine enforcement purposes from infested localities. The Deputy Administrator, in the

supplemental regulation, may divide any regulated area into a suppressive area and a generally infested area in accordance with the definitions thereof in § 301.52–1. Less than an entire quarantined State, territory, or district will be designated as a regulated area only if the Deputy Administrator is of the opinion that:

(1) The State, territory, or district has adopted and is enforcing a quarantine or regulations which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State, territory, or district, as a regulated area will otherwise be adequate to prevent the interstate spread of the pink bollworm.

[32 FR 16385, Nov. 30, 1967, as amended at 52 FR 26943, July 17, 1987]

§ 301.52–2a Regulated areas; suppressive and generally infested areas.

The civil divisions and part of civil divisions described below are designated as pink bollworm regulated areas within the meaning of the provisions of this subpart; and such regulated areas are hereby divided into generally infested areas or suppressive areas as indicated below.

ARIZONA

(1) *Generally infested area.* Entire State.
(2) *Suppressive area.* None.

CALIFORNIA

(1) *Generally infested area.*
Imperial County. The entire county.
Inyo County. The entire county.
Los Angeles County. The entire county.
Orange County. The entire county.
Riverside County. The entire county.
San Bernardino County. The entire county.
San Diego County. The entire county.
(2) *Suppressive area.*
Fresno County. The entire county.
Kern County. The entire county.
Kings County. The entire county.
Madera County. The entire county.
Merced County. The entire county.
San Benito County. The entire county.
Tulare County. The entire county.

NEW MEXICO

(1) *Generally infested area.* Entire State.
(2) *Suppressive area.* None.

TEXAS

(1) *Generally infested area.* Entire State.
(2) *Suppressive area.* None.

[42 FR 13533, Mar. 11, 1977]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 301.52–2a, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 301.52–3 Conditions governing the interstate movement of regulated articles from quarantined States.[2]

Any regulated articles may be moved interstate from any quarantined State under the following conditions:

(a) From any regulated area, with certificate or permit issued and attached in accordance with §§ 301.52–4 and 301.52–7 if moved:

(1) From any regulated area into or through any point outside of the regulated areas; or

(2) From any generally infested area into or through any suppressive area; or

(3) Between any noncontiguous suppressive areas; or

(4) Between contiguous suppressive areas when it is determined by the inspector that the regulated articles present a hazard of the spread of the pink bollworm and the person in possession thereof has been so notified; or

(b) From any regulated area, without certificate or permit if moved;

(1) From a generally infested area to a contiguous generally infested area; or

(2) From a suppressive area to a contiguous generally infested area; or

(3) Between contiguous suppressive areas unless the person in possession of the articles has been notified by an inspector that a hazard of spread of the pink bollworm exists; or

(4) Through or reshipped from any regulated area if the articles originated outside of any regulated area and if the point of origin of the articles is clearly indicated, their identity has been maintained and they have been safeguarded against infestation while in the regulated area in a manner satisfactory to the inspector; or

[2] Requirements under all other applicable Federal domestic plant quarantines must also be met.

(c) From any area outside the regulated areas, without a certificate or permit if the point of origin of such movement is clearly indicated on the articles or shipping document which accompanies the articles and if the movement is not made through any regulated area.

[32 FR 16385, Nov. 30, 1967, as amended at 52 FR 26943, July 17, 1987; 70 FR 33268, June 7, 2005]

§ 301.52–4 Issuance and cancellation of certificates and permits.

(a) Certificates may be issued for any regulated articles by any inspector if he determines that they are eligible for certification for movement to any destination under all Federal domestic plant quarantines applicable to such articles and:

(1) Have originated in noninfested premises in a regulated area and have not been exposed to infestation while within the regulated areas; or

(2) Upon examination, have been found to be free of infestation; or

(3) Have been treated to destroy infestation in accordance with part 305 of this chapter; or

(4) Have been grown, produced, manufactured, stored, or handled in such manner that no infestation would be transmitted thereby.

(b) Limited permits may be issued by an inspector to allow interstate movement of regulated articles, not eligible for certification under this subpart, to specified destinations for limited handling, utilization, or processing, or for treatment in accordance with part 305 of this chapter, when upon evaluation of the circumstances involved in each specific case the inspector determines that such movement will not result in the spread of the pink bollworm and requirements of other applicable Federal domestic plant quarantines have been met.

(c) Restricted destination permits may be issued by an inspector to allow the interstate movement of regulated articles to any destination permitted under all applicable Federal domestic plant quarantines (for other than scientific purposes) if such articles are not eligible for certification under all such quarantines but would otherwise qualify for certification under this subpart.

(d) Scientific permits may be issued by the Deputy Administrator to allow the interstate movement of regulated articles for scientific purposes under such conditions as may be prescribed in each specific case by the Deputy Administrator.

(e) Certificate, limited permit, and restricted destination permit forms may be issued by an inspector to any person for use by the latter for subsequent shipments provided such person is operating under a compliance agreement; and any such person may be authorized by an inspector to reproduce such forms on shipping containers or otherwise. Any such person may use the certificate forms, or reproductions of such forms, for the interstate movement of regulated articles from the premises of such person identified in the compliance agreement if such person has made one of the determination specified in paragraph (a) of this section with respect to such articles. Any such person may use the limited permit forms, or reproductions of such forms, for interstate movement of regulated articles to specific destinations authorized by the inspector in accordance with paragraph (b) of this section. Any such person may use the restricted destination permit forms, or reproductions of such forms, for the interstate movement of regulated articles not eligible for certification under all Federal domestic plant quarantines applicable to such articles, under the conditions specified in paragraph (c) of this section.

(f) Any certificate or permit which has been issued or authorized may be withdrawn by the inspector if the inspector determines that the holder thereof has not complied with any condition for the use of such document imposed by this subpart.

[32 FR 16385, Nov. 30, 1967, as amended at 70 FR 33268, June 7, 2005]

§ 301.52–5 Compliance agreements; and cancellation thereof.

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of such articles under this

subpart. Compliance agreement forms may be obtained from the Deputy Administrator or an inspector.

(b) Any compliance agreement may be cancelled by the inspector who is supervising its enforcement whenever the inspector finds, after notice and reasonable opportunity to present views has been accorded to the other party thereto, that such other party has failed to comply with the conditions of the agreement.

[32 FR 16385, Nov. 30, 1967, as amended at 70 FR 33268, June 7, 2005]

§ 301.52–6 Assembly and inspection of regulated articles.

Persons (other than those authorized to use certificates, limited permits, or restricted destination permits, or reproductions thereof, under § 301.52–4(e)) who desire to move interstate regulated articles which must be accompanied by a certificate or permit shall, as far in advance as possible, request an inspector to examine the articles prior to movement. Such articles shall be assembled at such points and in such manner as the inspector designates to facilitate inspection.

§ 301.52–7 Attachment and disposition of certificates or permits.

(a) If a certificate or permit is required for the interstate movement of regulated articles, the certificate or permit shall be securely attached to the outside of the container in which such articles are moved, except that, where the certificate or permit is attached to the waybill or other shipping document, and the regulated articles are adequately described on the certificate, permit, or shipping document, the attachment of the certificate or permit to each container of the articles is not required.

(b) In all cases, certificates or permits shall be furnished by the carrier to the consignee at the destination of the shipment.

§ 301.52–8 Inspection and disposal of regulated articles and pests.

Any properly identified inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of, or require disposal of regulated articles and pink bollworms as provided sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754), in accordance with instructions issued by the Deputy Administrator.

[32 FR 16385, Nov. 30, 1967, as amended at 66 FR 21051, Apr. 27, 2001]

§ 301.52–9 Movement of live pink bollworms.

Regulations requiring a permit for, and otherwise governing the movement of live pink bollworms in interstate or foreign commerce are contained in the Federal Plant Pest regulations in part 330 of this chapter. Applications for permits for the movement of the pest may be made to the Deputy Administrator.

§ 301.52–10 Nonliability of the Department.

The U.S. Department of Agriculture disclaims liability for any costs incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

Subpart—Emerald Ash Borer

SOURCE: 68 FR 59088, Oct. 8, 2003, unless otherwise noted.

§ 301.53–1 Definitions.

Administrator. The Administrator, 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.

Certificate. A document that is issued for a regulated article by an inspector or by a person operating under a compliance agreement and that represents that such article is eligible for interstate movement in accordance with § 301.53–5(a).

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles that are moved interstate, in which the person agrees to comply with the provisions of this subpart and any conditions imposed under this subpart.

Emerald ash borer. The insect known as emerald ash borer (Agrilus planipennis [Coleoptera: Buprestidae]) in any stage of development.

Infestation. The presence of the emerald ash borer or the existence of circumstances that make it reasonable to believe that the ash borer is present.

Inspector. Any employee of the Animal and Plant Health Inspection Service, or other individual authorized by the Administrator to enforce the provisions of this subpart.

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

Limited permit. A document in which an inspector or a person operating under a compliance agreement affirms that the regulated article not eligible for a certificate is eligible for interstate movement only to a specified destination and in accordance with conditions specified on the permit.

Moved (movement, move). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

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

Quarantined area. Any State, or any portion of a State, listed in § 301.53–3(c) or otherwise designated as a quarantined area in accordance with § 301.53–3(b).

Regulated article. Any article listed in § 301.53–2(a) or otherwise designated as a regulated article in accordance with § 301.53–2(b).

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

§ 301.53–2 Regulated articles.

The following are regulated articles:

(a) The emerald ash borer; firewood of all hardwood (non-coniferous) species; nursery stock, green lumber, and other material living, dead, cut, or fallen, including logs, stumps, roots, branches, and composted and uncomposted chips of the genus *Fraxinus*.

(b) Any other article, product, or means of conveyance not listed in paragraph (a) of this section may be designated as a regulated article if an inspector determines that it presents a risk of spreading emerald ash borer and notifies the person in possession of the article, product, or means of conveyance that it is subject to the restrictions of the regulations.

[68 FR 59088, Oct. 8, 2003, as amended at 70 FR 252, Jan. 4, 2005]

§ 301.53–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State or each portion of a State in which the emerald ash borer has been found by an inspector, in which the Administrator has reason to believe that the emerald ash borer is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where emerald ash borer has been found. Less than an entire State will be designated as a quarantined area 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 an entire State as a quarantined area will be adequate to prevent the artificial interstate spread of the emerald ash borer.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area in accordance with the criteria specified in paragraph (a) of this section. The Administrator will give written notice of this designation to the owner or person in possession of the nonquarantined area, or, in the case of publicly owned land, to the person responsible for the management of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area either will be added to the list of designated quarantined areas in paragraph (c) of this section, or the Administrator will terminate

the designation. The owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation is terminated will be given written notice of the termination as soon as practicable.

(c) The following areas are designated as quarantined areas:

Illinois

The entire State.

Indiana

The entire State.

Kentucky

Boone County. The entire county.
Bourbon County. The entire county.
Campbell County. The entire county.
Carroll County. The entire county.
Fayette County. The entire county.
Franklin County. The entire county.
Gallatin County. The entire county.
Grant County. The entire county.
Greenup County. The entire county.
Harrison County. The entire county.
Henry County. The entire county.
Jefferson County. The entire county.
Jessamine County. The entire county.
Kenton County. The entire county.
Oldham County. The entire county.
Owen County. The entire county.
Pendleton County. The entire county.
Scott County. The entire county.
Shelby County. The entire county.
Trimble County. The entire county.
Woodford County. The entire county.

Maryland

Charles County. The entire county.
Prince George's County. The entire county.

Michigan

Upper Peninsula:
Alger County. The entire county.
Chippewa County. The entire county. [Note: This quarantined area includes tribal land of the Bay Mills Indian Community. Movement of regulated articles on those lands is subject to tribal jurisdiction.]
Delta County. The entire county.
Houghton County. The entire county.
Keweenaw County. The entire county.
Luce County. The entire county.
Mackinac County. The entire county.
Schoolcraft County. The entire county.

Lower Peninsula: All counties, in their entirety (*i.e.*, Alcona, Allegan, Alpena, Antrim, Arenac, Barry, Bay, Benzie, Berrien, Branch, Calhoun, Cass, Charlevoix, Cheboygan, Clare, Clinton, Crawford, Eaton, Emmet, Genesee, Gladwin, Grand Traverse, Gratiot, Hillsdale, Huron, Ingham, Ionia, Iosco, Isabella, Jackson, Kalamazoo, Kalkaska, Kent, Lake, Lapeer, Leelanau, Lenawee, Livingston, Macomb, Manistee, Mason, Mecosta, Midland, Missaukee, Monroe, Montcalm, Montmorency, Muskegon, Newaygo, Oakland, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, Roscommon, Saginaw Sanilac, St. Clair, St. Joseph, Shiawassee, Tuscola, Van Buren, Washtenaw, Wayne, and Wexford Counties).

Minnesota

Hennepin County. The entire county.
Houston County. The entire county.
Ramsey County. The entire county.

Missouri

Wayne County. The entire county.

New York

Cattaraugus County. The entire county.
Chautauqua County. The entire county.

Ohio

The entire State.

PENNSYLVANIA

Allegheny County. The entire county.
Armstrong County. The entire county.
Beaver County. The entire county.
Butler County. The entire county.
Indiana County. The entire county.
Juniata County. The entire county.
Lawrence County. The entire county.
Mercer County. The entire county.
Mifflin County. The entire county.
Washington County. The entire county.
Westmoreland County. The entire county.

VIRGINIA

City of Alexandria. The entire city.
City of Fairfax. The entire city.
City of Falls Church. The entire city.
City of Manassas. The entire city.
City of Manassas Park. The entire city.
Arlington County. The entire county.
Fairfax County. The entire county.
Fauquier County. The entire county.
Loudon County. The entire county.
Prince William County. The entire county.

West Virginia

The entire State.

Wisconsin

Brown County. The entire county.
Crawford County. The entire county.
Fond du Lac County. The entire county.
Kenosha County. The entire county.
Milwaukee County. The entire county.
Ozaukee County. The entire county.
Racine County. The entire county.
Sheboygan County. The entire county.
Vernon County. The entire county.
Washington County. The entire county.
Waukesha County. The entire county.

[68 FR 59088, Oct. 8, 2003, as amended at 70 FR 252, Jan. 4, 2005; 70 FR 10316, Mar. 3, 2005; 70 FR 62231, Oct. 31, 2005; 71 FR 29764, May 24, 2006; 71 FR 57873, Oct. 2, 2006; 72 FR 15598, Apr. 2, 2007; 72 FR 30460, June 1, 2007; 74 FR 48000, Sept. 21, 2009; 75 FR 29190, May 25, 2010]

§ 301.53–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Regulated articles may be moved interstate from a quarantined area only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.53–5 and 301.53–8;

(b) Without a certificate or limited permit if:

(1) The regulated article is moved by the United States Department of Agriculture for experimental or scientific purposes; or

(2) The regulated article originates outside the quarantined area and is moved interstate through the quarantined area under the following conditions:

(i) The points of origin and destination are indicated on a waybill accompanying the regulated article; and

(ii) The regulated article, if moved through the quarantined area during the period of May 1 through August 31 or when the ambient air temperature is 40 °F or higher, is moved in an enclosed vehicle or is completely covered to prevent access by the EAB; and

(iii) The regulated article is moved directly through the quarantined area without stopping (except for refueling or for traffic conditions, such as traffic lights or stop signs), or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by emerald ash borer; and

(iv) The article has not been combined or commingled with other articles so as to lose its individual identity.

§ 301.53–5 Issuance and cancellation of certificates and limited permits.

(a) An inspector[1] or person operating under a compliance agreement will issue a certificate for the interstate movement of a regulated article if he or she determines that the regulated article:

(1)(i) Is apparently free of EAB, based on inspection; or the article or

(ii) Has been grown, produced, manufactured, stored, or handled in a manner that, in the judgment of the inspector, prevents the regulated article from presenting a risk of spreading EAB; and

(2) Is to 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)[2] in order to prevent the artificial spread of emerald ash borer; and

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

(b) An inspector or a person operating under a compliance agreement will issue a limited permit for the interstate movement of a regulated article not eligible for a certificate if he or she determines that the regulated article:

(1) Is to be moved interstate to a specified destination for specific processing, handling, or utilization (the destination and other conditions to be

[1] Inspectors are assigned to local offices of APHIS, which are listed in the local telephone directories. Information concerning such 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, Maryland 20737–1236.

[2] An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or 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).

listed on the limited permit), and this interstate movement will not result in the spread of emerald ash borer because emerald ash borer will be destroyed by the specific processing, handling, or utilization; and

(2) Is to 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) in order to prevent the spread of emerald ash borer; and

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

(c) An inspector shall issue blank certificates and limited permits to a person operating under a compliance agreement in accordance with § 301.53–6 or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates and limited permits may then be completed and used, as needed, for the interstate movement of regulated articles that have met all of the requirements of paragraph (a) or (b), respectively, of this section.

(d) Any certificate or limited permit may be canceled orally or in writing by an inspector whenever the inspector determines that the holder of the certificate or limited permit has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose certificate or limited permit has been canceled may appeal the decision in writing to the Administrator within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

(Approved by the Office of Management and Budget under control number 0579–0233)

§ 301.53–6 Compliance agreements and cancellation.

(a) Persons engaged in growing, handling, or moving regulated articles interstate may enter into a compliance agreement[3] if such persons review with an inspector each provision of the compliance agreement. Any person who enters into a compliance agreement with APHIS must agree to comply with the provisions of this subpart and any conditions imposed under this subpart.

(b) Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector determines that the person who has entered into the compliance agreement has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose compliance agreement has been canceled may appeal the decision in writing to the Administrator within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

(Approved by the Office of Management and Budget under control number 0579–0233)

[3] Compliance agreements may be initiated by contacting a local office of APHIS. The addresses and telephone numbers of local offices are listed in local telephone directories and 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.

§ 301.53–7 Assembly and inspection of regulated articles.

(a) Persons requiring certification or other services must request the services from an inspector[4] at least 48 hours before the services are needed.

(b) The regulated articles must be assembled at the place and in the manner that the inspector designates as necessary to comply with this subpart.

(Approved by the Office of Management and Budget under control number 0579–0233)

§ 301.53–8 Attachment and disposition of certificates and limited permits.

(a) A regulated article must be plainly marked with the name and address of the consignor and the name and address of the consignee and must have the certificate or limited permit issued for the interstate movement of a regulated article securely attached at all times during interstate movement to:

(1) The regulated article;

(2) The container carrying the regulated article; or

(3) The consignee's copy of the accompanying waybill: *Provided*, that the description of the regulated article on the certificate or limited permit, and on the waybill, are sufficient to identify the regulated article; and

(b) The carrier must furnish the certificate or limited permit authorizing interstate movement of a regulated article to the consignee at the destination of the shipment.

(Approved by the Office of Management and Budget under control number 0579–0233)

§ 301.53–9 Costs and charges.

The services of the inspector during normal business hours will be furnished without cost to persons requiring the services. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

Subpart—South American Cactus Moth

SOURCE: 74 FR 27073, June 8, 2009, unless otherwise noted.

[4] See footnote 1 to § 301.53–5.

§ 301.55 Restrictions on interstate movement of regulated articles.

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.[1]

§ 301.55–1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person 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.

Cactus plants. Any of various fleshy-stemmed plants of the botanical family Cactaceae.

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of South American cactus moth and may be moved interstate to any destination.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with this subpart.

Departmental permit. A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.55–4(c).

Infestation. The presence of the South American cactus moth or the existence of circumstances that makes it reasonable to believe that the South American cactus moth may be present.

Inspector. Any employee of APHIS or other person authorized by the Administrator to perform the duties required under this subpart.

[1] Any properly identified inspector is authorized, upon probable cause, to stop and inspect persons and means of conveyance moving in interstate commerce and to hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

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

Limited permit. A document in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.55–5(b) only to a specified destination and only in accordance with specified conditions.

Moved (move, movement). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

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

Plant Protection and Quarantine (PPQ). The Plant Protection and Quarantine program of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

Quarantined area. Any State, or any portion of a State, listed in § 301.55–3(c) or otherwise designated as a quarantined area in accordance with § 301.55–3(b).

Regulated article. Any article listed in § 301.55–2(a) or (b), or otherwise designated as a regulated article in accordance with § 301.55–2(c).

South American cactus moth. The live insect known as the South American cactus moth, *Cactoblastis cactorum,* in any life stage (egg, larva, pupa, adult).

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

§ 301.55–2 Regulated articles.

The following are regulated articles:

(a) The South American cactus moth, in any living stage of its development.[2]

(b) Cactus plants or parts thereof (excluding seeds and canned, preserved, or frozen pads or fruits) of the following genera: *Consolea, Cylindropuntia, Nopalea,* and *Opuntia.*

(c) Any other product, article, or means of conveyance not listed in paragraphs (a) or (b) of this section that an inspector determines presents a risk of spreading the South American cactus moth, 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.

§ 301.55–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State, or each portion of a State, in which the South American cactus moth has been found by an inspector, in which the Administrator has reason to believe that the South American cactus moth is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities where South American cactus moth has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the 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 be adequate to prevent the interstate spread of the South American cactus moth.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section. The Administrator will give a copy of this regulation along with written notice of the temporary designation to the owner or person in possession of the nonquarantined area, or, in the case of publicly owned land, to the person responsible for the management of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, the area

[2] Permit and other requirements for the interstate movement of South American cactus moths are contained in part 330 of this chapter.

will be added to the list in paragraph (c) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which designation is terminated will be given written notice of the termination as soon as practicable.

(c) The following areas are designated as quarantined areas: The States of Alabama, Florida, Georgia, Louisiana, Mississippi, and South Carolina.

[74 FR 27073, June 8, 2009, as amended at 75 FR 41074, July 15, 2010]

§ 301.55–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area[3] only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.555 and 301.55–8;

(b) Without a certificate or limited permit if:

(1) The regulated article originated outside the quarantined area and is either moved in an enclosed vehicle or is completely enclosed by a covering (such as canvas, plastic, or closely woven cloth) adequate to prevent access by South American cactus moths while moving through the quarantined area; and

(2) The point of origin of the regulated article is indicated on the waybill, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area; and

(3) The regulated article is moved through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs.

(c) Without a certificate or limited permit if the regulated articles are cactus pads and fruits for consumption from outside the quarantined area that are being moved in accordance with the protocols described in a compliance agreement (see § 301.55–6(a)) to a commercial food warehouse or distribution center within the quarantined area and the regulated articles remain enclosed by a covering (such as canvas, plastic, or closely woven cloth) adequate to prevent access by South American cactus moths while within the quarantined area: and

(d) Without a certificate or limited permit if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a departmental permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the departmental permit and found by the Administrator to be adequate to prevent the spread of the South American cactus moth; and

(4) With a tag or label bearing the number of the departmental permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container.

§ 301.55–5 Issuance and cancellation of certificates and limited permits.

(a) An inspector[4] may issue a certificate for the interstate movement of a regulated article if the inspector determines that:

(1) The regulated article to be moved and all other regulated articles on the premises have been grown and maintained indoors in a shadehouse or greenhouse and no other cactus moth host material exists on the premises outside of a shadehouse or greenhouse;

(2) The regulated article to be moved and all other regulated articles on the premises are maintained on benches that are kept separate from benches containing non-host material;

(3) The regulated article to be moved and all other regulated articles on the premises have been placed on a 21-day insecticide spray cycle and have been sprayed with *Bacillus thuringiensis*

[3] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

[4] Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories.

subsp. *kurstaki*, carbaryl, spinosad, or imidaploprid if maintained in the nursery for longer than 21 days;

(4) The regulated article to be moved has been sprayed with *Bacillus thuringiensis* subsp. *kurstaki*, carbaryl, spinosad, or imidaploprid 3 to 5 days prior to shipment and inspected and found free of cactus moth egg sticks and larval damage; and

(5) If the regulated article was moved into the premises from another premises in a quarantined area listed in § 301.55–3, it was immediately placed inside the shadehouse or greenhouse and sprayed with *Bacillus thuringiensis* subsp. *kurstaki*, carbaryl, spinosad, or imidaploprid within 24 hours.

(b) An inspector will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) 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 this interstate movement will not result in the spread of the South American cactus moth because life stages of the South American cactus moth will be destroyed by the specified handling, processing, or utilization;

(2) It is to be moved in compliance with any additional conditions that the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) in order to prevent the spread of the South American cactus moth; and

(3) It is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

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

(d) Any certificate or limited permit that has been issued may be canceled, either orally or in writing, by an inspector whenever the inspector determines that the holder of the limited permit has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose certificate or limited permit has been canceled may appeal the decision in writing to the Administrator within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

(Approved by the Office of Management and Budget under control number 0579–0337)

§ 301.55–6 Compliance agreements and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person is aware of this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.[5]

(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 or the terms of the compliance agreement. 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

[5] Compliance agreement forms are available without charge from local Plant Protection and Quarantine offices, which are listed in telephone directories.

agreement has been canceled may appeal the decision, in writing, to the Administrator, 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 wrongfully 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 hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0337)

§ 301.55–7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue limited permits under § 301.555(c)) who desires a certificate or limited permit to move a regulated article interstate must request an inspector[6] to examine the articles as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

§ 301.55–8 Attachment and disposition of certificates and limited permits.

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

(1) Attached to the outside of the container containing the regulated article; or

(2) Attached to the regulated article itself if not in a container; or

(3) Attached to the consignee's copy of the accompanying waybill. If the certificate or limited permit is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier or the carrier's representative to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

(Approved by the Office of Management and Budget under control number 0579–0337)

§ 301.55–9 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 all 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.

Subpart—Plum Pox

SOURCE: 65 FR 35264, June 2, 2000, unless otherwise noted.

§ 301.74 Restrictions on interstate movement of regulated articles.

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.[1]

[65 FR 35264, June 2, 2000, as amended at 66 FR 21051, Apr. 27, 2001]

§ 301.74–1 Definitions.

The following definitions apply to this subpart.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

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

Departmental permit. A document issued by the Administrator in which

[6] *See* footnote 4.

[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, qurantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles a provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.74–4 of this subpart.

Infestation (infested, infected). The presence of plum pox or circumstances or symptoms that makes it reasonable to believe that plum pox is present.

Inspector. Any employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or other person authorized by the Administrator to enforce this subpart.

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

Moved (move, movement). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

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

Plant Protection and Quarantine. Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture.

Plum pox. A plant disease caused by plum pox potyvirus that can affect many *Prunus* (stone fruit) species, including, but not limited to, almond, apricot, nectarine, peach, plum, and sweet and tart cherry. The strain of plum pox in Pennsylvania does not affect cherry trees.

Quarantined area. Any State, or any portion of a State, listed in § 301.74–3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.74–3(b) of this subpart.

Regulated article. Any article listed in § 301.74–2(a) or otherwise designated as a regulated article in accordance with § 301.74–2(b), based on its susceptibility to the form or strain of plum pox detected in the quarantined area.

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

§ 301.74–2 Regulated articles.

The following are regulated articles:

(a) All plant material and plant parts of *Prunus* (stone fruit) species other than *P. avium, P. cerasus, P. effusa, P. laurocerasus, P. mahaleb, P. padus, P. sargentii, P. serotina, P. serrula, P. serrulata, P. subhirtella, P. yedoensis,* and *P. virginiana,* except for seeds and fruit that is free of leaves and other plant parts. This includes, but is not limited to, trees, seedlings, root stock, budwood, branches, twigs, and leaves.

(b) Any other product or article that an inspector determines to present a risk of spreading plum pox when the inspector notifies the person in possession of the product or article that it is subject to the restrictions in the regulations.

§ 301.74–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State, or each portion of a State, in which plum pox has been detected through inspection and laboratory testing, or in which the Administrator has reason to believe that plum pox is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which plum pox has been detected. Less than an entire State will be designated as a quarantined area if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as 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 plum pox.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice for the temporary designation to the owner or person in possession of the nonquarantined area. Thereafter, the interstate movement of any regulated

article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which the quarantine designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas:

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Niagara County. (1) That area of Niagara County in the Towns of Burt, Newfane, and Wilson bordered on the north by Lake Ontario; bordered on the west by Maple Road; then south on Maple Road to Wilson-Burt Road; then east on Wilson-Burt Road to Beebe Road; then south on Beebe Road to Ide Road; then east on Ide Road to Route 78 (Lockport-Olcott Road); then north on Route 78 (Lockport-Olcott Road) to the Lake Ontario shoreline.

(2) That area of Niagara County in the Town of Lewiston bordered on the west by Porter Center Road starting at its intersection with Route 104 (Ridge Road); then north-northeast on Porter Center Road to Langdon Road; then east on Langdon Road to Dickersonville Road; then north on Dickersonville Road to Schoolhouse Road; then east on Schoolhouse Road to Ransomville Road; then south on Ransomville Road to Route 104 (Ridge Road); then northeast on Route 104 (Ridge Road) to Simmons Road; then south on Simmons Road to Albright Road; then east on Albright Road to Townline Road; then south on Townline Road to Lower Mountain Road; then west on Lower Mountain Road to Meyers Hill Road; then south on Meyers Hill Road to Upper Mountain Road; then west on Upper Mountain Road to Indian Hill Road; then northeast on Indian Hill Road to Route 104 (Ridge Road); then east on Route 104 (Ridge Road) to Porter Center Road.

(3) That area of Niagara County bordered on the north by Lake Ontario and on the east by Keg Creek; then south on Keg Creek to Route 18 (Lake Road); then east on Route 18 (Lake Road) to Hess Road; then south on Hess Road to Drake Settlement Road; then west on Drake Settlement Road to Transit Road; then north on Transit Road to Route 18 (Lake Road); then west on Route 18 (Lake Road) to Lockport Olcott Road; then north on Lockport Olcott Road to the Lake Ontario shoreline.

Orleans County. That area of Orleans County in the Towns of Ridgeway and Gaines bordered on the north by Route 104 (Ridge Road) at its intersection with Eagle Harbor Waterport Road; then south on Eagle Harbor Waterport Road to Eagle Habor Knowlesville Road; then west on Eagle Harbor Knowlesville Road to Presbyterian Road; then southwest on Presbyterian Road to Longbridge Road; then south on Longbridge Road to State Route 31; then west on State Route 31 to Wood Road; then south on Wood Road to West County House Road; then west on West County House Road to Maple Ridge Road; then west on Maple Ridge Road to Culvert Road; then north on Culvert Road to Telegraph Road; then west on Telegraph Road to Beales Road; then north on Beales Road to Portage Road; then east on Portage Road to Culvert Rd; then north on Culvert Road to Route 104 (Ridge Road).

Wayne County. (1) That area of Wayne County in the Town of Sodus bordered on the north by Lake Road at its intersection with Redman Road; then east on Lake Road to Maple Avenue; then south on Maple Avenue to Middle Road; then west on Middle Road to Rotterdam Road; then south on Rotterdam Road to State Route 104; then west on State Route 104 to Pratt Road; then south on Pratt Road to Ridge Road; then west on Ridge Road to Richardson Road; then south on Richardson Road to Tripp Road; then south on Tripp Road to Podger Road; then west on Podger Road to East Townline Road; then north on East Townline Road to Everdyke Road; then west on Everdyke Road to Russell Road; then south on Russell Road to Pearsall Road; then west on Pearsall Road to State Route 21; then north on State Route 21 to State Route 104; then east on State Route 104 to East Townline Road; then north on East Townline Road to Van Lare Road; then east on Van Lare Road to Redman Road; then north on Redman Road to Lake Road.

(2) That area of Wayne County in the Towns of Ontario and Williamson bordered on the north by Shepard Road at its intersection with Fisher Road; then east on Shepard Road to Salmon Creek Road; then southwest on Salmon Creek Road to Kenyon Road; then west on Kenyon Road to Furnace Road; then north on Furnace Road to Putnam Road; then east on Putnam Road to Fisher Road; then north on Fisher Road to Shepard Road.

(3) That area of Wayne County in the Town of Sodus bordered on the northeast by the Sodus Bay shoreline at Ridge Road; then west on Ridge Road to Boyd Road; then north on Boyd Road to Sergeant Road; then north on Sergeant Road to Morley Road; then east on Morley Road to State Route 14; then south on State Route 14 to Sill Road;

then northeast on Sill Road and continuing to the shoreline of Sodus Bay.

[65 FR 35264, June 2, 2000, as amended at 75 FR 81089, Dec. 27, 2010]

§ 301.74–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

The interstate movement of any regulated article from a quarantined area[2] is prohibited except when:

(a) The regulated article is moved by the United States Department of Agriculture:

(1) For an experimental or scientific purpose;

(2) Pursuant to a Departmental permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the spread of plum pox; and

(4) With a tag or label bearing the number of the Departmental permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container; or

(b) The regulated article originated outside the quarantined area and:

(1) Is moved in an enclosed vehicle or is completely enclosed by a covering (such as canvas, plastic, or other closely woven cloth) adequate to prevent access by aphids or other transmission agents of plum pox while in the quarantined area;

(2) The regulated article's point of origin is indicated on the waybill; and

(3) The regulated article must not be uncovered, unpacked, or unloaded while moving through the quarantined area.

§ 301.74–5 Compensation.

(a) *Eligibility*. The following individuals are eligible to receive compensation from the U.S. Department of Agriculture to mitigate losses or expenses incurred because of the plum pox quarantine and emergency actions:

(1) *Owners of commercial stone fruit orchards.* Owners of commercial stone fruit orchards are eligible to receive compensation for losses associated with the destruction of trees in order to control plum pox pursuant to an emergency action notification issued by the Animal and Plant Health Inspection Service (APHIS).

(i) *Direct marketers.* Orchard owners eligible for compensation under this paragraph who market all fruit they produce under the conditions described in this paragraph may receive compensation at the rates specified in paragraph (b)(1)(i) of this section. In order to be eligible to receive compensation at the rates specified in paragraph (b)(1)(i) of this section, orchard owners must have marketed fruit produced in orchards subsequently destroyed because of plum pox under the following conditions:

(A) The fruit must have been sold exclusively at farmers markets or similar outlets that require orchard owners to sell only fruit that they produce;

(B) The fruit must not have been marketed wholesale or at reduced prices in bulk to supermarkets or other retail outlets;

(C) The fruit must have been marketed directly to consumers; and

(D) Orchard owners must have records documenting that they have met the requirements of this section, and must submit those records to APHIS as part of their application submitted in accordance with paragraph (c) of this section.

(ii) *All other orchard owners.* Orchard owners eligible for compensation under this paragraph who do not meet the requirements of paragraph (a)(1)(i) of this section are eligible for compensation only in accordance with paragraph (b)(1)(ii) of this section.

(2) *Owners of fruit tree nurseries.* The owner of a fruit tree nursery will be eligible to receive compensation for net revenue losses associated with the prohibition on the movement or sale of nursery stock as a result of the issuance of an emergency action notification by APHIS with respect to regulated articles within the nursery in order to control plum pox.

(b) *Amount of payment.* Upon approval of a claim submitted in accordance with paragraph (c) of this section, individuals eligible for compensation under

[2] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

paragraph (a) of this section will be paid at the rates indicated in this paragraph.

(1) *Owners of commercial stone fruit orchards*—(i) *Direct marketers.* Owners of commercial stone fruit orchards who APHIS has determined meet the eligibility requirements of paragraph (a)(1)(i) of this section will be compensated according to the following table on a per-acre basis at a rate based on the age of the trees destroyed. If the trees were not destroyed by the date specified on the emergency action notification, the compensation payment will be reduced by 10 percent and by any tree removal costs incurred by the State or the U.S. Department of Agriculture (USDA). The maximum USDA compensation rate is 85 percent of the loss in value, adjusted for any State-provided compensation to ensure total compensation from all sources does not exceed 100 percent of the loss in value.

Age of trees (years)	Maximum compensation rate ($/acre, equal to 85% of loss in value) based on 3-year fallow period	Maximum additional compensation ($/acre, equal to 85% of loss in value) for 4th fallow year	Maximum additional compensation ($/acre, equal to 85% of loss in value) for 5th fallow year
Less than 1	$2,403	$828	$736
1	9,584	1,710	1,520
2	13,761	1,710	1,520
3	17,585	1,710	1,520
4	21,888	1,710	1,520
5	25,150	1,710	1,520
6	25,747	1,710	1,520
7	25,859	1,710	1,520
8	25,426	1,710	1,520
9	24,938	1,710	1,520
10	24,390	1,710	1,520
11	23,774	1,710	1,520
12	23,080	1,710	1,520
13	22,300	1,710	1,520
14	21,422	1,710	1,520
15	20,434	1,710	1,520
16	19,323	1,710	1,520
17	18,185	1,710	1,520
18	17,017	1,710	1,520
19	15,814	1,710	1,520
20	14,572	1,710	1,520
21	13,287	1,710	1,520
22	12,066	1,710	1,520
23	10,915	1,710	1,520
24	9,620	1,710	1,520
25	8,163	1,710	1,520

(ii) *All other orchard owners.* Owners of commercial stone fruit orchards who meet the eligibility requirements of paragraph (a)(1)(ii) of this section will be compensated according to the following table on a per-acre basis at a rate based on the age of the trees destroyed. If the trees were not destroyed by the date specified on the emergency action notification, the compensation payment will be reduced by 10 percent and by any tree removal costs incurred by the State or the U.S. Department of Agriculture (USDA). The maximum USDA compensation rate is 85 percent of the loss in value, adjusted for any State-provided compensation to ensure total compensation from all sources does not exceed 100 percent of the loss in value.

Age of trees (years)	Maximum compensation rate ($/acre, equal to 85% of loss in value) based on 3-year fallow period	Maximum additional compensation ($/acre, equal to 85% of loss in value) for 4th fallow year	Maximum additional compensation ($/acre, equal to 85% of loss in value) for 5th fallow year
Less than 1	$2,403	$828	$736
1	4,805	828	736
2	7,394	828	736
3	9,429	828	736
4	12,268	828	736
5	14,505	828	736
6	14,918	828	736

Age of trees (years)	Maximum compensation rate ($/acre, equal to 85% of loss in value) based on 3-year fallow period	Maximum additional compensation ($/acre, equal to 85% of loss in value) for 4th fallow year	Maximum additional compensation ($/acre, equal to 85% of loss in value) for 5th fallow year
7	15,000	828	736
8	14,709	828	736
9	14,383	828	736
10	14,015	828	736
11	13,601	828	736
12	13,136	828	736
13	12,613	828	736
14	12,024	828	736
15	11,361	828	736
16	10,616	828	736
17	9,854	828	736
18	9,073	828	736
19	8,272	828	736
20	7,446	828	736
21	6,594	828	736
22	5,789	828	736
23	5,035	828	736
24	4,341	828	736
25	3,713	828	736

(2) *Owners of fruit tree nurseries.* Owners of fruit tree nurseries who meet the eligibility requirements of paragraph (a)(2) of this section will be compensated for up to 85 percent of the net revenues lost from their first and second year crops as the result of the issuance of an emergency action notification which will be calculated as follows:

(i) *First year crop.* The net revenue loss for trees that were expected to be sold in the year during which the emergency action notification was issued (*i.e.*, the first year crop) will be calculated as (*expected number of trees to be sold*) × (*average price per tree*) − (*digging, grading, and storage costs*) = net revenue lost for first year crop, where:

(A) The expected number of trees to be sold equals the number of trees in the field minus 2 percent culls minus 3 percent unsold trees; and

(B) The average price per tree is $4.65; and

(C) Digging, grading and storage costs are $0.10 per tree.

(ii) *Second year crop.* The net revenue loss for trees that would be expected to be sold in the year following the year during which the emergency action notification was issued (*i.e.*, the second year crop) will be calculated as (*expected number of trees to be sold*) × (*average price per tree*) = net revenue lost for second year crop, where:

(A) The expected number of trees to be sold equals the number of budded trees in the field minus 20 percent death loss minus 2 percent culls; and

(B) The average price per tree is $4.65 for plum and apricot trees and $3.30 for peach and nectarine trees.

(c) *How to apply.* The form necessary to submit a claim for compensation may be obtained from the Plum Pox Cooperative Eradication Program, USDA, APHIS, PPQ, 401 East Louther Street, Suite 102, Carlisle, PA 17013–2625. The completed claim form must be sent to the same address. Claims for trees or nursery stock destroyed on or before the effective date of this rule must be received within 60 days after the effective date of this rule. Claims for trees or nursery stock destroyed after the effective date of this rule must be received within 60 days after the destruction of the trees or nursery stock. Claims must be submitted as follows:

(1) *Claims by owners of stone fruit orchards who are direct marketers.* The completed application must be accompanied by:

(i) A copy of the emergency action notification ordering the destruction of the trees and its accompanying inventory that describes the acreage and ages of trees removed;

(ii) Documentation verifying that the destruction of trees has been completed and the date of that destruction; and

(iii) Records documenting that the grower meets the eligibility requirements of paragraph (a)(1)(i) of this section.

(2) *Claims by owners of commercial stone fruit orchards who are not direct marketers.* The completed application must be accompanied by a copy of the emergency action notification ordering the destruction of the trees, its accompanying inventory that describes the acreage and ages of trees removed, and documentation verifying that the destruction of trees has been completed and the date of that destruction.

(3) *Claims by owners of fruit tree nurseries.* The completed application must be accompanied by a copy of the order prohibiting the sale or movement of the nursery stock, its accompanying inventory that describes the total number of trees and the age and variety, and documentation describing the final disposition of the nursery stock.

(d) *Replanting.* Trees of susceptible *Prunus* species (*i.e.*, *Prunus* species identified as regulated articles) may not be replanted on premises within a contiguous quarantined area until 3 years from the date the last trees within that area were destroyed because of plum pox pursuant to an emergency action notification issued by APHIS.

(Approved by the Office of Management and Budget under control numbers 0579–0159 and 0579–0251)

[65 FR 55435, Sept. 14, 2000, as amended at 69 FR 30816, June 1, 2004]

Subpart—Citrus Canker

SOURCE: 50 FR 51231, Dec. 13, 1985, unless otherwise noted.

NOTICE OF QUARANTINE AND REGULATIONS

§ 301.75–1 Definitions.

ACC coverage. The crop insurance coverage against Asiatic citrus canker (ACC) provided under the Florida Fruit Tree Pilot Crop Insurance Program authorized by the Federal Crop Insurance Corporation.

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. The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Budded citrus nursery stock. Liners or rootstock citrus plants that have been grafted with a portion of a stem or branch with a vegetative bud (also known as budwood) that are maintained 1 month after grafting or until the plant reaches marketability.

Budded container/greenhouse grown citrus plants. Individual, budded citrus nursery stock maintained in climate-controlled greenhouses in 4-or 6-inch diameter pots until it is sold for commercial use.

Budded field grown citrus plants. Individual, budded citrus nursery stock maintained in the fields until it is sold for commercial use.

Certificate. An official stamp, form, or other document of the United States Department of Agriculture authorizing the interstate movement of a regulated article from a quarantined area into any area of the United States.

Certified citrus nursery stock. Citrus nursery stock, such as trees or plants, grown at a nursery that is in compliance with State certification requirements and approved for producing citrus nursery stock for commercial sale.

Citrus canker. A plant disease caused by strains of the bacterium *Xanthomonas axonopodis* pv. *citri.*

Commercial citrus grove. An establishment maintained for the primary purpose of producing citrus fruit for commercial sale.

Commercial citrus nursery. An establishment engaged in, but not limited to, the production of certified citrus nursery stock, including plants for planting or replanting in commercial groves or for wholesale or retail sales.

Commercial citrus-producing area. Any area designated as a commercial citrus-producing area in accordance with § 301.75–5 of this subpart.

Commercial packinghouse. An establishment in which space and equipment are maintained for the primary purpose of disinfecting and packing citrus fruit for commercial sale. A commercial packinghouse must also be licensed, registered, or certified for handling citrus fruit with the State in which it operates and meet all the requirements

for the license, registration, or certification that it holds.

Compliance agreement. A written agreement between the Animal and Plant Health Inspection Service and a person engaged in the business of growing or handling regulated articles for interstate movement, in which the person pledges to comply with this subpart.

Departmental permit. An official document of the United States Department of Agriculture authorizing the movement of a regulated article from a quarantined area.

Departmental tag or label. An official tag or label of the United States Department of Agriculture, which, attached to a regulated article or its container, indicates that the regulated article is eligible for interstate movement with a Departmental permit.

Exposed. Determined by an inspector to be at risk for developing citrus canker because of proximity during the past 2 years to infected plants, or to personnel, vehicles, equipment, or other articles that may have been contaminated with bacteria that cause citrus canker.

Grove. Any tree or stand of trees maintained to produce fruit and separated from other trees by a boundary, such as a fence, stream, road, canal, irrigation ditch, hedgerow, open space, or sign or marker denoting change of fruit variety.

Infected. Containing bacteria that cause citrus canker.

Infestation. The presence of a plant or plants infected with citrus canker at a particular location, except when the plant or plants contracted the infection at a previous location and the infection has not spread to any other plant at the present location.

Inspector. An individual authorized by the Administrator to perform the specified duties.

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

Limited permit. An official stamp, form, or other document of the United States Department of Agriculture authorizing the interstate movement of a regulated article from a quarantined area, but restricting the areas of the United States into which the regulated article may be moved.

Liner or rootstock. Culled seedlings in the growing stage prior to the budding process.

Lot. The inspectional unit for fruit composed of a single variety of fruit that has passed through the entire packing process in a single continuous run not to exceed a single workday (*i.e.*, a run started one day and completed the next is considered two lots).

Move. Ship, carry, transport, offer for shipment, receive for shipment, or allow to be transported by any means.

Movement. The act of shipping, carrying, transporting, offering for shipment, receiving for shipment, or allowing to be transported by any means.

Nursery. Any premises, including greenhouses but excluding any grove, at which nursery stock is grown or maintained.

Nursery stock. Living plants and plant parts intended to be planted, to remain planted, or to be replanted.

Person. Any individual, partnership, corporation, company, society, association, or other organized group.

Public order. Either an "Agreement to Destroy and Covenant Not to Sue" signed by the grove owner and the Florida Department of Food and Consumer Services, Division of Plant Industry (DPI), or an "Immediate Final Order" issued by DPI, both of which identify citrus trees infected with or exposed to citrus canker and order their destruction.

Quarantined area. Any area designated as a quarantined area in accordance with § 301.75–4 of this subpart.

Regulated article. Any article listed in § 301.75–3 (a) or (b) of this subpart or designated as a regulated article in accordance with § 301.75–3(c) of this subpart.

Regulated fruit, regulated nursery stock, regulated plant, regulated seed, regulated tree. Any fruit, nursery stock, plant, seed, or tree defined as a regulated article.

Seedlings. Certified citrus seeds densely planted in seed beds and allowed to germinate and grow until their viability as liners or rootstock can be assessed.

State. Each of the 50 States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands

of the United States, and all other territories and possessions of the United States.

United States. All of the States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

[55 FR 37450, Sept. 11, 1990, as amended at 61 FR 1521, Jan. 22, 1996; 65 FR 61080, Oct. 16, 2000; 66 FR 32717, June 18, 2001; 71 FR 33172, June 8, 2006; 72 FR 13427, Mar. 22, 2007; 72 FR 65203, Nov. 19, 2007; 74 FR 54444, Oct. 22, 2009]

§ 301.75–2 General prohibitions.

(a) Regulated articles may not be moved interstate from a quarantined area except in accordance with a protocol in §§ 301.75–6, 301.75–7, or 301.75–8, or in accordance with § 301.75–4 if less than an entire State is designated as a quarantined area. Regulated articles may be moved in accordance with the regulations in § 301.75–9 for scientific or experimental purposes only.

(b) Regulated articles moved from a quarantined area with a limited permit may not be moved interstate into any commercial citrus-producing area, except as follows: The regulated articles may be moved through a commercial citrus-producing area if they are covered, or enclosed in containers or in a compartment of a vehicle, while in the commercial citrus-producing area, and are not unloaded in the commercial citrus-producing area without the permission of an inspector.

(c) Regulated articles moved interstate with a limited permit to an area of the United States that is not a commercial citrus-producing area may not subsequently be moved interstate into any commercial citrus-producing area.

[55 FR 37450, Sept. 11, 1990; 55 FR 48208, Nov. 19, 1990; 72 FR 13427, Mar. 22, 2007]

§ 301.75–3 Regulated articles.

(a) Plants or plant parts, including fruit and seeds, or any of the following: All species, clones, cultivars, strains, varieties, and hybrids of the genera *Citrus* and *Fortunella*, and all clones, cultivars, strains, varieties, and hybrids of the species *Clausena lansium* and *Poncirus trifoliata*. The most common of these are: lemon, pummelo, grapefruit, key lime, persian lime, tangerine, satsuma, tangor, citron, sweet orange, sour orange, mandarin, tangelo, ethrog, kumquat, limequat, calamondin, trifoliate orange, and wampi.

(b) Grass, plant, and tree clippings.

(c) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraph (a) of this section, when it is determined by an inspector that it presents a risk of spread of citrus canker and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the provisions of this subpart.

[50 FR 51231, Dec. 13, 1985, as amended at 54 FR 12180, Mar. 24, 1989. Redesignated and amended at 55 FR 37450, Sept. 11, 1990]

§ 301.75–4 Quarantined areas.

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

(b) The Administrator may designate any non-quarantined area as a quarantined area in accordance with paragraphs (c) and (d) of this section upon giving written notice of this designation to the owner or persons in possession of the non-quarantined area. Thereafter, regulated articles may be moved interstate from that area only in accordance with this subpart. As soon as practicable, this area will be added to the list in paragraph (a) of this section, or the Administrator will terminate the designation. The owner or person in possession of an area for which designation is terminated will be given written notice as soon as practicable.

(c) Any State or portion of a State where an infestation is detected will be designated as a quarantined area and will remain so until the area has been without infestation for 2 years.

(d) Less than an entire State will be designated as a quarantined area only if all of the following conditions are met:

(1) *Survey.* No area has been designated a survey area.

(2) *Intrastate movement of regulated articles.* The State enforces restrictions on the intrastate movement of regulated articles from the quarantined area that are at least as stringent as those on the interstate movement of

regulated articles from the quarantined area, except as follows:

(i) Regulated fruit may be moved intrastate from a quarantined area for processing into a product other than fresh fruit if all of the following conditions are met:

(A) The regulated fruit is accompanied by a document that states the location of the grove in which the regulated fruit was produced, the variety and quantity of regulated fruit being moved intrastate, the address to which the regulated fruit will be delivered for processing, and the date the intrastate movement began,

(B) The regulated fruit and any leaves and litter are completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement.

(C) The vehicles, covers, and any containers used to carry the regulated fruit intrastate are treated in accordance with part 305 of this chapter before leaving the premises where the regulated fruit is unloaded for processing, and

(D) All leaves, litter, and culls collected from the shipment of regulated fruit at the processing facility are either incinerated at the processing facility or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs.

(ii) Regulated fruit may be moved intrastate from a quarantined area for packing, either for subsequent interstate movement with a limited permit or for export from the United States, if all of the following conditions are met:

(A) The regulated fruit is accompanied by a document that states the location of the grove in which the regulated fruit was produced, the variety and quantity of regulated fruit being moved intrastate, the address to which the regulated fruit will be delivered for packing, and the date the intrastate movement began.

(B) The regulated fruit and any leaves and litter are completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement.

(C) The vehicles, covers, and any containers used to carry the regulated fruit intrastate are treated in accordance with part 305 of this chapter before leaving the premises where the regulated fruit is unloaded for packing.

(D)Any equipment that comes in contact with the regulated fruit at the packing plant is treated in accordance with part 305 of this chapter before being used to handle any fruit eligible for interstate movement to commercial citrus-producing areas, and

(E) All leaves and litter collected from the shipment of regulated fruit at the packing plant are either incinerated at the packing plant or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs. All culls collected from the shipment of regulated fruit are either processed into a product other than fresh fruit, incinerated at the packing plant, or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs. Any culls moved intrastate for processing must be completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement, and the vehicles, covers, and any containers used to carry the regulated fruit must be treated in accordance with part 305 of this chapter before leaving the premises where the regulated fruit is unloaded for processing.

(iii) Grass, tree, and plant clippings may be moved intrastate from the quarantined area for disposal in a public landfill or for composting in a recycling facility, if all of the following conditions are met:

(A) The public landfill or recycling facility is located within the survey area described in paragraph (d)(1) of this section,

(B) The grass, tree, or plant clippings are completely covered during the movement from the quarantined area to the public landfill or recycling facility, and

(C) Any public landfill used is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs.

(3) *Inspections.* (i) In the quarantined area, every regulated plant and regulated tree, except indoor houseplants and regulated plants and regulated trees at nurseries, is inspected for citrus canker at least once a year, between May 1 through December 31, by an inspector.

(ii) In the quarantined area, every regulated plant and regulated tree at every nursery containing regulated plants or regulated trees is inspected for citrus canker by an inspector at intervals of no more than 45 days.

(4) *Treatment of personnel, vehicles, and equipment.* In the quarantined area, all vehicles, equipment, and other articles used in providing inspection, maintenance, harvesting, or related services in any grove containing regulated plants or regulated trees, or in providing landscaping or lawn care services on any premises containing regulated plants or regulated trees, must be treated in accordance with part 305 of this chapter upon leaving the grove or premises. All personnel who enter the grove or premises to provide these services must be treated in accordance with part 305 of this chapter upon leaving the grove or premises.

(5) *Destruction of infected plants and trees.* No more than 7 days after a State or Federal laboratory confirms that a regulated plant or regulated tree is infected, the State must provide written notice to the owner of the infected plant or infected tree that the infected plant or infected tree must be destroyed. The owner must have the infected plant or infected tree destroyed within 45 days after receiving the written notice.

[55 FR 37450, Sept. 11, 1990]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 301.75–4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 301.75–5 Commercial citrus-producing areas.

(a) The following are designated as commercial citrus-producing areas:

American Samoa	Guam
Arizona	Hawaii
California	Louisiana
Florida	Northern Mariana Islands
Puerto Rico	Texas
	Virgin Islands of the United States

(b) The list in paragraph (a) of this section is intended to include jurisdictions which have commercial citrus-producing areas. Less than an entire State may be designated as a commercial citrus-producing area only if the Administrator determines that the area not included as a commercial citrus-producing area does not contain commercial citrus plantings; that the State has adopted and is enforcing a prohibition on the intrastate movement from areas not designated as commercial citrus-producing areas to commercial citrus-producing areas of fruit which are designated as regulated articles and which were moved interstate from a quarantined State pursuant to a limited permit; and that the designation of less than the entire State as a commercial citrus-producing area will otherwise be adequate to prevent the interstate spread of citrus canker.

[50 FR 51231, Dec. 13, 1985, 51 FR 2873, Jan. 22, 1986; as amended at 53 FR 13242, Apr. 22, 1988; 53 FR 44173, Nov. 2, 1988. Redesignated at 55 FR 37450, Sept. 11, 1990]

§ 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 except for immediate export in accordance with paragraph (c) of this section; *Provided*, that kumquat plants may be moved interstate from a quarantined area in accordance with paragraph (b) of this section.

(b) Kumquat (*Fortunella* spp.) plants, with or without fruit attached, may be moved interstate from a quarantined area into any area of the United States except commercial citrus-producing areas if all of the following conditions are met:

(1) The plants are own-root-only and have not been grafted or budded;

(2) The plants are started, are grown, and have been maintained solely at the nursery from which they will be moved interstate.

(3) If the plants are not grown from seed, then the cuttings used for propagation of the plants are taken from

plants located on the same nursery premises or from another nursery that is eligible to produce kumquat plants for interstate movement under the requirements of this paragraph (b). Cuttings may not be obtained from properties where citrus canker is present.

(4) All citrus plants at the nursery premises have undergone State inspection and have been found to be free of citrus canker no less than three times. The inspections must be at intervals of 30 to 45 days, with the most recent inspection being within 30 days of the date on which the plants are removed and packed for shipment.

(5) All vehicles, equipment, and other articles used in providing inspection, maintenance, or related services in the nursery must be treated in accordance with part 305 of this chapter before entering the nursery to prevent the introduction of citrus canker. All personnel who enter the nursery to provide these services must be treated in accordance with part 305 of this chapter before entering the nursery to prevent the introduction of citrus canker.

(6) If citrus canker is found in the nursery, all regulated plants and plant material must be removed from the nursery and all areas of the nursery's facilities where plants are grown and all associated equipment and tools used at the nursery must be treated in accordance with part 305 of this chapter in order for the nursery to be eligible to produce kumquat plants to be moved interstate under this paragraph (b). Fifteen days after these actions are completed, the nursery may receive new kumquat seed or cuttings from a nursery that is eligible to produce kumquat plants for interstate movement under this paragraph (b).

(7) The plants, except for plants that are hermetically sealed in plastic bags before leaving the nursery, are completely enclosed in containers or vehicle compartments during movement through the quarantined area.

(8) The kumquat plants or trees are accompanied by a limited permit issued in accordance with §301.75–12. The statement "Limited permit: Not for distribution in AZ, CA, HI, LA, TX, and American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands of the United States" must be displayed on a plastic or metal tag attached to each plant, or on the box or container if the plant is sealed in plastic. In addition, this statement must be displayed on the outside of any shipping containers used to transport these plants, and the limited permit must be attached to the bill of lading or other shipping document that accompanies the plants.

(c) Regulated nursery stock produced in a nursery located in a quarantined area that is not eligible for movement under paragraph (b) of this section may be moved interstate only for immediate export. The regulated nursery stock must be accompanied by a limited permit issued in accordance with §301.75–12 and must be moved in a container sealed by APHIS directly to the port of export in accordance with the conditions of the limited permit.

[72 FR 13427, Mar. 22, 2007, as amended at 74 FR 16104, Apr. 9, 2009; 75 FR 4240, Jan. 26, 2010]

§301.75–7 Interstate movement of regulated fruit from a quarantined area.

(a) Regulated fruit produced in a quarantined area or moved into a quarantined area for packing may be moved interstate with a certificate issued and attached in accordance with §301.75-12 if all of the following conditions are met:

(1) The regulated fruit was packed in a commercial packinghouse whose owner or operator has entered into a compliance agreement with APHIS in accordance with §301.75-13.

(2) The regulated fruit was treated in accordance with part 305 of this chapter.

(3) The regulated fruit is free of leaves, twigs, and other plant parts, except for stems that are less than 1 inch long and attached to the fruit.

(4) If the fruit is repackaged after being packed in a commercial packinghouse and before it is moved interstate from the quarantined area, the person that repackages the fruit must enter into a compliance agreement with APHIS in accordance with §301.75-13 and issue and attach a certificate for the interstate movement of the fruit in accordance with §301.75-12.

(b) Regulated fruit that is not eligible for movement under paragraph (a) of this section may be moved interstate only for immediate export. The regulated fruit must be accompanied by a limited permit issued in accordance with § 301.75-12 and must be moved in a container sealed by APHIS directly to the port of export in accordance with the conditions of the limited permit.

(Approved by the Office of Management and Budget under control number 0579-0325)

[74 FR 54444, Oct. 22, 2009, as amended at 75 FR 4240, Jan. 26, 2010]

§ 301.75–8 Interstate movement of regulated seed from a quarantined area.

Regulated seed may be moved interstate from a quarantined area into any area of the United States if all of the following conditions are met:

(a) During the 2 years before the interstate movement, no plants or plant parts infected with or exposed to citrus canker were found in the grove or nursery producing the fruit from which the regulated seed was extracted.

(b) The regulated seed was treated in accordance with part 305 of this chapter.

(c) The regulated seed is accompanied by a certificate issued in accordance with § 301.75–12 of this subpart.

[55 FR 37452, Sept. 11, 1990, as amended at 75 FR 4240, Jan. 26, 2010]

§ 301.75–9 Interstate movement of regulated articles from a quarantined area for experimental or scientific purposes.

A regulated article may be moved interstate from a quarantined area if:

(a) Moved by the United States Department of Agriculture for experimental or scientific purposes;

(b) Moved pursuant to a Departmental permit issued for such article by the Administrator;

(c) Moved in accordance with conditions specified on the Departmental permit and determined by the Administrator to be adequate to prevent the spread of citrus canker, i.e., conditions of treatment, processing, growing, shipment, disposal; and

(d) Moved with a Departmental tag or label securely attached to the outside of the container containing the article or securely attached to the article itself if not in a container, with such tag or label bearing a Departmental permit number corresponding to the number of the Departmental permit issued for such article.

[50 FR 51231, Dec. 13, 1985. Redesignated and amended at 55 FR 37450, Sept. 11, 1990]

§ 301.75–10 Interstate movement of regulated articles through a quarantined area.

Any regulated article not produced in a quarantined area may be moved interstate through a quarantined area, without a certificate, limited permit, or Departmental permit, if all of the following conditions are met:

(a) The regulated article is accompanied by either: A receipt showing that the regulated article was purchased outside the quarantined area, or a bill of lading stating the location of the premises where the shipment originated, the type and quantity of regulated articles being moved interstate, and the date the interstate movement began.

(b) The regulated article is moved through the quarantined area without being unloaded, and no regulated article, except regulated fruit that qualifies for interstate movement from the quarantined area in accordance with § 301.75–7 of this subpart, is added to the shipment in the quarantined area.

(c) The regulated article is completely covered, or enclosed in containers or in a compartment of a vehicle, during movement through the quarantined area, except that, covering or enclosure is not required if the regulated article is moved through the quarantined area without stopping, except for refueling or for traffic conditions, such as traffic lights or stop signs.

[55 FR 37452, Sept. 11, 1990]

§ 301.75–11 [Reserved]

§ 301.75–12 Certificates and limited permits.

(a) *Issuance and withdrawal.* (1) Certificates and limited permits may be issued for the interstate movement of

regulated articles only by an inspector or by persons operating under a compliance agreement.

(2) A certificate or limited permit may be withdrawn by an inspector if the inspector determines that any of the applicable requirements of this subpart have not been met. The decision of the inspector and the reason for the withdrawal must be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit is withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification. 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. The Administrator must grant or deny the appeal in writing, stating the reasons for the decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

(b) *Attachment and disposition.* (1) Except as provided in §301.75–6(b)(8) for kumquat plants, certificates and limited permits accompanying regulated articles interstate must be attached during the interstate movement to one of the following:

(i) The outside of the regulated article, if the regulated article is not packed in a container, or

(ii) The outside of the container in which the regulated article is packed, or

(iii) The consignee's copy of the accompanying waybill, but only if the regulated article is described on the certificate, limited permit, or waybill in a way that allows the regulated article to be identified.

(2) Certificates and limited permits accompanying regulated articles interstate must be given to the consignee at the point of destination.

[55 FR 37453, Sept. 11, 1990, as amended at 72 FR 13428, Mar. 22, 2007; 74 FR 16104, Apr. 9, 2009]

§301.75–13 Compliance agreements.

(a) *Eligibility.* Any person engaged in the business of growing or handling regulated articles for interstate movement may enter into a compliance agreement with the Animal and Plant Health Inspection Service to facilitate the interstate movement of regulated articles in accordance with this subpart. Compliance agreements may be arranged by contacting a local office of Plant Protection and Quarantine, Animal and Plant Health Inspection Service (listed in local telephone directories), or by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737–1236.

(b) *Cancellation.* Any compliance agreement may be cancelled orally or in writing by an inspector if the inspector finds that the person who entered into the compliance agreement has failed to comply with this subpart. If the person is given notice of cancellation orally, written confirmation of the decision and the reasons for it must be provided as promptly as circumstances allow. Any person whose compliance agreement is cancelled may appeal the decision in writing to the Administrator within 10 days after receiving the written notification. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Administrator must grant or deny the appeal, in writing, stating the reasons for the decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

[55 FR 37453, Sept. 11, 1990, as amended at 59 FR 67608, Dec. 30, 1994]

§301.75–14 Costs and charges.

The services of the inspector shall be furnished without cost. The United States Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions in this subpart, other than for the services of the inspector.

[50 FR 51231, Dec. 13, 1985. Redesignated at 55 FR 37450, Sept. 11, 1990]

§ 301.75–15 Funds for the replacement of commercial citrus trees.

Subject to the availability of appropriated funds, the owner of a commercial citrus grove may be eligible to receive funds to replace commercial citrus trees in accordance with the provisions of this section.

(a) *Eligibility*. The owner of a commercial citrus grove may be eligible to receive funds to replace commercial citrus trees removed to control citrus canker if the trees were removed pursuant to a public order between 1986 and 1990 or on or after September 28, 1995.

(b) *Tree replacement payments*. The owner of a commercial citrus grove who is eligible under paragraph (a) of this section to receive funds to replace commercial citrus trees will, upon approval of an application submitted in accordance with paragraph (c) of this section, receive a payment of $26 per tree up to the following per-acre maximum payments:

Variety	Maximum payment per acre
Grapefruit, red seedless	$2,704
Orange, Valencia	3,198
Orange, early/midseason/navel	3,068
Tangelo	2,964
Lime	4,004
Other or mixed citrus	2,704

(c) *How to apply for tree replacement funds*. The form necessary to apply for funds to replace commercial citrus trees may be obtained from any local citrus canker eradication program office in Florida, or from the USDA Citrus Canker Eradication Program, 6901 West Sunrise Boulevard, Plantation, FL 33313. The completed application should be accompanied by a copy of the public order directing the destruction of the trees and its accompanying inventory that describes the number and the variety of trees removed. Your completed application must be sent to the USDA Citrus Canker Eradication Program, Attn: Commercial Tree Replacement Program, c/o Division of Plant Industry, 3027 Lake Alfred Road, Winter Haven, FL 33881. Claims for trees destroyed on or before October 16, 2000, must have been received on or before December 15, 2000. Claims for trees destroyed after October 16, 2000, must be received within 60 days after the destruction of the trees. The Administrator may, on a case-by-case basis, approve the consideration of late claims when it appears that the claim was late through no fault of the owner of the trees, in the opinion of the Administrator. However, any request for consideration of a late claim must be submitted to the Administrator on or before August 19, 2002 for trees destroyed on or before August 17, 2001, and within 1 year after the destruction of the trees for trees destroyed after August 17, 2001.

(Approved by the Office of Management and Budget under control number 0579–0163)

[65 FR 61080, Oct. 16, 2000, as amended at 66 FR 43066, Aug. 17, 2001]

§ 301.75–16 Payments for the recovery of lost production income.

Subject to the availability of appropriated funds, the owner of a commercial citrus grove may be eligible to receive payments in accordance with the provisions of this section to recover income from production that was lost as the result of the removal of commercial citrus trees to control citrus canker.

(a) *Eligibility*. The owner of a commercial citrus grove may be eligible to receive payments to recover income from production that was lost as the result of the removal of commercial citrus trees to control citrus canker if the trees were removed pursuant to a public order between 1986 and 1990 or on or after September 28, 1995.

(b) *Calculation of payments*. (1) The owner of a commercial citrus grove who is eligible under paragraph (a) of this section to receive payments to recover lost production income will, upon approval of an application submitted in accordance with paragraph (c) of this section, receive a payment calculated using the following rates:

Citrus variety	Payment (per acre)
Grapefruit	$3,342
Orange, Valencia, and tangerine	6,446
Orange, navel (includes early and midseason oranges)	6,384
Tangelo	1,989
Lime	6,503
Other or mixed citrus	3,342

(2) *Payment adjustments.* (i) In cases where the owner of a commercial citrus grove had obtained ACC coverage for trees in his or her grove and received crop insurance payments following the destruction of the insured trees, the payment provided for under paragraph (b)(1) of this section will be reduced by the total amount of the crop insurance payments received by the commercial citrus grove's owner for the insured trees.

(ii) In cases where ACC coverage was available for trees in a commercial citrus grove but the owner of the grove had not obtained ACC coverage for his or her insurable trees, the per-acre payment provided for under paragraph (b)(1) of this section will be reduced by 5 percent.

(c) *How to apply for lost production payments.* The form necessary to apply for lost production payments may be obtained from any local citrus canker eradication program office in Florida, or from the USDA Citrus Canker Eradication Program, 6901 West Sunrise Boulevard, Plantation, FL 33313. The completed application should be accompanied by a copy of the public order directing the destruction of the trees and its accompanying inventory that describes the acreage, number, and the variety of trees removed. Your completed application must be sent to the USDA Citrus Canker Eradication Program, Attn: Lost Production Payments Program, c/o Division of Plant Industry, 3027 Lake Alfred Road, Winter Haven, FL 33881. Claims for losses attributable to the destruction of trees on or before the effective date of this rule must be received on or before September 17, 2001. Claims for losses attributable to the destruction of trees after the effective date of this rule must be received within 60 days after the destruction of the trees. The Administrator may, on a case-by-case basis, approve the consideration of late claims when the circumstances appear, in the opinion of the Administrator, to warrant such consideration. However, any request for consideration of a late claim must be submitted to the Administrator on or before July 18, 2002 for trees destroyed on or before July 18, 2001, and within 1 year after the destruction of the trees for trees destroyed after July 18, 2001.

[66 FR 32717, June 18, 2001; 66 FR 33740, June 25, 2001; 71 FR 33172, June 8, 2006]

§ 301.75–17 Funds for the replacement of certified citrus nursery stock.

Subject to the availability of appropriated funds, a commercial citrus nursery may be eligible to receive funds to replace certified citrus nursery stock in accordance with the provisions of this section.

(a) *Eligibility.* A commercial citrus nursery may be eligible to receive funds to replace certified citrus nursery stock removed to control citrus canker if the nursery stock was removed pursuant to a public order after September 30, 2001, and before January 10, 2006.

(b) *Certified citrus nursery stock payments.* A commercial citrus nursery that is eligible under paragraph (a) of this section to receive funds to replace certified citrus nursery stock will, upon approval of an application submitted in accordance with paragraph (c) of this section, receive a payment calculated using the following rates:

Type of certified nursery stock	Payment (dollars)
Seedlings	0.18/plant.
Liners or rootstock	1.50/plant.
Budded field grown citrus plants	4.00/plant.
Budded container/greenhouse citrus plants.	4.50/plant.
Citrus nursery stock in containers for wholesale or retail sale:	
1 gallon	5.00/container.
3 gallon	10.00/container.
5 gallon	15.00/container.
7 gallon	20.00/container.
Larger than 7 gallon	26.00/container.

(c) *How to apply for certified nursery stock replacement funds.* The form necessary to apply for funds to replace certified nursery stock may be obtained from any local citrus canker eradication program office in Florida, or from the USDA Citrus Canker Eradication Program, 6901 West Sunrise Boulevard, Plantation, FL 33313. The completed application should be accompanied by a copy of the public order directing the destruction of the trees and its accompanying inventory that describes the number and type of the certified nursery stock removed. If the certified nursery stock was planted

in pots, the inventory should specify the size of the container. If the certified nursery stock was bare root plants or in a temporary container, the inventory should specify whether the plant was non-budded or budded. The completed application must be sent to the USDA Citrus Canker Eradication Program, Attn: Commercial Compensation, 10300 Sunset Dr., Suite 150, Miami, FL 33173. Claims for certified nursery stock must be received by August 7, 2006.

[71 FR 33172, June 8, 2006]

Subpart—Citrus Greening and Asian Citrus Psyllid

SOURCE: 75 FR 34332, June 17, 2010, unless otherwise noted.

§ 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.[1]≤

§ 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 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

[1] 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).

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 gilletiana*, *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*). 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*). 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) [2]≤ 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.

[2] An inspector may hold seize, quarantine, treat, apply other remedial measures to, destroy, or 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).

(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 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 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 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.*[3]≤ 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

[3] Examples of such articles include *Bergera* (=*Murraya*) *koenigii* leaves, as well as *Murraya paniculata* flowers or foliage.

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.[4]≤

(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 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

[4] 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.

inspector[5]/≤ 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 consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

[5]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.

§ 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.

Subpart—Witchweed

QUARANTINE AND REGULATIONS

§ 301.80 Quarantine; restriction on interstate movement of specified regulated articles.

(a) *Notice of quarantine.* Under the authority of sections 411, 412, 414, and 434 of the Plant Protection Act (7 U.S.C. 7711, 7712, 7714, and 7754), the Secretary of Agriculture quarantines the States of North Carolina and South Carolina in order to prevent the spread of witchweed (*Striga* spp.), a parasitic plant that causes a dangerous disease of corn, sorghum, and other crops of the grass family and is not widely prevalent or distributed within and throughout the United States. Through the aforementioned authorities, the Secretary imposes a quarantine on the States of North Carolina and South Carolina with respect to the interstate movement from those States of articles described in paragraph (b) of this section, issues regulations in this subpart governing the movement of such articles, and gives notice of this quarantine action.

(b) *Quarantine restrictions on interstate movement of specified regulated articles.* No common carrier or other person shall move interstate from any quarantined State any of the following articles (defined in § 301.80–1(p) as regulated articles), except in accordance with the conditions prescribed in this subpart:

(1) Soil, compost, peat, humus, muck, and decomposed manure, separately or with other things; sand; and gravel.

(2) Plants with roots.

(3) Grass sod.

(4) Plant crowns and roots for propagation.

(5) True bulbs, corms, rhizomes, and tubers of ornamental plants.

(6) Root crops, except those from which all soil has been removed.

(7) Peanuts in shells and peanut shells, except boiled or roasted peanuts.

(8) Small grains and soybeans.

(9) Hay, straw, fodder, and plant litter of any kind.

(10) Seed cotton and gin trash.

(11) Stumpwood.

(12) Long green cucumbers, cantaloupes, peppers, squash, tomatoes, and watermelons, except those from which all soil has been removed.

(13) Pickling cucumbers, string beans, and field peas.

(14) Cabbage, except firm heads with loose outer leaves removed.

(15) Leaf tobacco, except flue-cured leaf tobacco.

(16) Ear corn, except shucked ear corn.

(17) Sorghum.

(18) Used crates, boxes, burlap bags, and cotton-picking sacks, and other used farm products containers.

(19) Used farm tools.

(20) Used mechanized cultivating equipment and used harvesting equipment.

(21) Used mechanized soil-moving equipment.

(22) Any other products, articles, or means of conveyance, of any character whatsoever, not covered by paragraphs (b) (1) through (20) of this section, when it is determined by an inspector that they present a hazard of spread of witchweed, and the person in possession thereof has been so notified.

[35 FR 10553, June 30, 1970, as amended at 36 FR 24917, Dec. 24, 1971; 41 FR 27372, July 2, 1976; 58 FR 216, Jan. 5, 1993; 66 FR 21052, Apr. 27, 2001]

§ 301.80–1 Definitions.

Terms used in the singular form in this subpart shall be deemed to import the plural, and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

Certificate. A document issued or authorized to be issued under this subpart by an inspector to allow the interstate movement of regulated articles to any destination.

Compliance agreement. A written agreement between a person engaged in growing, handling, or moving regulated articles, and the Plant Protection and Quarantine Programs, wherein the former agrees to comply with the requirements of this subpart identified in the agreement by the inspector who executes the agreement on behalf of the Plant Protection and Quarantine Programs as applicable to the operations of such person.

Deputy Administrator. The Deputy Administrator of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other officer or employee of said Service to whom authority to act in his stead has been or may hereafter be delegated.

Farm tools. An instrument worked or used by hand, e.g., hoes, rakes, shovels, axes, hammers, and saws.

Generally infested area. Any part of a regulated area not designated as a suppressive area in accordance with § 301.80–2.

Infestation. The presence of witchweed or the existence of circumstances that make it reasonable to believe that witchweed is present.

Inspector. Any employee of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator to enforce the provisions of the quarantine and regulations in this subpart.

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

Limited permit. A document issued or authorized to be issued by an inspector to allow the interstate movement of noncertifiable regulated articles to a specified destination for limited handling, utilization, or processing, or for treatment.

Mechanized cultivating equipment; and mechanized harvesting equipment. Mechanized equipment used for soil tillage, including tillage attachments for farm tractors, e.g., tractors, disks, plows, harrows, planters, and subsoilers; mechanized equipment used for harvesting purposes, e.g., mechanical cotton harvesters, hay balers, corn pickers, and combines.

Mechanized soil-moving equipment. Mechanized equipment used to move or

transport soil, e.g., draglines, bulldozers, road scrapers, and dumptrucks.

Moved (*movement, move*). Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved or allowed to be moved by any means. "Movement" and "move" shall be construed accordingly.

Person. Any individual, corporation, company, society, or association, or other organized group of any of the foregoing.

Plant Protection and Quarantine Programs. The organizational unit with the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Protection Act and related legislation, quarantines, and regulations.

Regulated area. Any quarantined State, or any portion thereof, designated as a regulated area in § 301.80–2a or otherwise designated as a regulated area in accordance with § 301.80–2(b).

Regulated articles. Any articles described in § 301.80(b).

Restricted destination permit. A document issued or authorized to be issued by an inspector to allow the interstate movement of regulated articles not certifiable under all applicable Federal domestic plant quarantines to a specified destination for other than scientific purposes.

Scientific permit. A document issued by the Deputy Administrator to allow the interstate movement to a specified destination of regulated articles for scientific purposes.

Soil. That part of the upper layer of earth in which plants can grow.

State. Any State, territory, or district of the United States, including Puerto Rico.

Suppressive area. That portion of a regulated area where eradication of infestation is undertaken as an objective, as designated by the Deputy Administrator under § 301.80–2(a).

Treatment Manual. The provisions currently contained in the "Manual of Administratively Authorized Procedures to be Used Under the Witchweed Quarantine" and the "Fumigation Procedures Manual" and any amendments thereto.[1]

Witchweed. Parasitic plants of the genus *Striga* and reproductive parts thereof, including seeds.

[41 FR 27372, July 2, 1976, as amended at 66 FR 21052, Apr. 27, 2001]

§ 301.80–2 Authorization to designate, and terminate designation of, regulated areas and suppressive or generally infested areas; and to exempt articles from certification, permit, or other requirements.

(a) *Regulated areas and suppressive or generally infested areas.* The Deputy Administrator shall designate as regulated areas, in a supplemental regulation designated as § 301.80–2a, each quarantined State, or each portion thereof in which witchweed has been found or in which there is reason to believe that witchweed is present or which it is deemed necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. The Deputy Administrator, in the supplemental regulation, may designate any regulated area or portion thereof, as a suppressive area or a generally infested area in accordance with the definitions thereof in § 301.80–1. Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator is of the opinion that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the interstate spread of witchweed.

(b) *Temporary designation of regulated areas and suppressive or generally infested areas.* The Deputy Administrator

[1] Pamphlets containing such provisions are available upon request to the Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, or from an inspector.

or an authorized inspector may temporarily designate any other premises in a quarantined State as a regulated area and may designate the regulated area or portions thereof as a suppressive or generally infested area, in accordance with the criteria specified in paragraph (a) of this section for designating such area, by serving written notice thereof on the owner or person in possession of such premises, and thereafter the interstate movement of regulated articles from such premises by any person having notice of the designation shall be subject to the applicable provisions of this subpart. As soon as practicable, such premises shall be added to the list in §301.80–2a if a basis then exists for their designation.

(c) *Termination of designation as a regulated area and a suppressive or generally infested area.* The Deputy Administrator shall terminate the designation provided for under paragraph (a) of this section of any area designated as a regulated area or a suppressive or a generally infested area when he determines that such designation is no longer required under the criteria specified in paragraph (a) of this section. The Deputy Administrator or an inspector shall terminate the designation provided for under paragraph (b) of this section of any premises designated as a regulated area or a suppressive or a generally infested area when he determines that such designation is no longer required under the criteria specified in paragraph (a) of this section, and notice thereof shall be given to the owner or person in possession of the premises.

(d) *Exemption of articles from certification, permit, or other requirements.* The Deputy Administrator may, in a supplemental regulation designated as §301.80–2b, list regulated articles or movements of regulated articles which shall be exempt from the certification, permit, or other requirements of this subpart under such conditions as he may prescribe, if he finds that facts exist as to the pest risk involved in the movement of such regulated articles which make it safe to so relieve such requirements.

[41 FR 27372, July 2, 1976]

§301.80–2a Regulated areas; generally infested and suppressive areas.

The civil divisions and parts of civil divisions described below are designated as witchweed regulated areas within the meaning of this subpart.

NORTH CAROLINA

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

Bladen County. That area located north and east of the Cape Fear River.

The Hardison, H.B., farm located on a field road 0.25 mile northwest of its intersection with State Secondary Road 1719 and 0.2 mile west of its intersection with State Secondary Road 1797.

Cumberland County. That area bounded on the west by the Cape Fear River, then by a line running east and northeast along the Fayetteville city limits to U.S. Highway 301, then northeast on U.S. Highway 301 to Interstate 95, then northeast on Interstate 95 to U.S. Highway 13, then east and northeast on U.S. Highway 13 to the Cumberland-Sampson County line.

The Barker, P.R., farm located on the south side of State Secondary Road 2242, 0.2 mile south of Interstate 95 on State Secondary Road 2252.

The Jackson, Ellis, farm located on the west side of State Secondary Road 1003 and 0.4 mile south of its intersection with N.C. Highway 59.

The Lovick, Eugene, farm located on the north side of State Secondary Road 1732 and 0.9 mile west of its intersection with U.S. Highway 301.

The McLaughlin, Cornell, farm located on the south side of State Secondary Road 2221 and 0.2 mile east of its intersection with State Secondary Road 2367.

The Thigpen, William, farm located on the south side of State Secondary Road 2212 and 1 mile west of its intersection with N.C. Highway 87.

Pender County. The Cones Folly farm located along a farm road 2.3 miles south of its intersection with State Secondary Road 1201 and 2.2 miles southeast of its intersection with State Secondary Road 1200.

Robeson County. That area bounded on the west by the Robeson County/Scotland County line; then by a line running east along the Robeson County/Hoke County line to N.C. Highway 211; then southeast on N.C. Highway 211 to the Robeson County/Bladen County line; then south along the Robeson County/Bladen County line and the Robeson County/Columbus County line to U.S. Highway 74; then northwest on U.S. Highway 74 to N.C. Highway 41; then south on N.C. Highway 41 to the South Carolina State line; and then northwest along the South Carolina State line to the Robeson County/Scotland

County line. (This area may be more generally described as that part of Robeson County lying south and west of N.C. Highway 211, bounded by U.S. Highway 74 east of N.C. Highway 41 and by the South Carolina line west of N.C. Highway 41.)

The Brown, James, farm located on the south side of a private road known as Reola Drive, 0.1 mile east of its intersection with State Secondary Road 1823, which intersection is 0.7 mile south of the intersection of State Secondary Road 1823 with State Secondary Road 1774.

The Buie, Joshua, farm located on a farm road 0.8 mile south of its intersection with State Secondary Road 1529 and 0.3 mile southwest of the right of way of Interstate Highway 95.

The Lewis, Knox, farm located on the south side of State Secondary Road 1752, 0.5 mile east of its intersection with State Secondary Road 1318.

Sampson County. That area bounded on the north by N.C. Highway 24 and on the east by U.S. Highway 701.

The Brady-Johnson, William, property located on a private road in the town of Salemburg, 0.1 mile north of its intersection with Church Street and 0.1 mile west of its intersection with N.C. Highway 242.

The Carter, Raeford, farm located on the west side of State Secondary Road 1144, 0.2 mile north of its intersection with State Secondary Road 1143.

The Lucas, June, estate located at the end of State Secondary Road 1496, 1.0 mile northwest of its intersection with State Secondary Road 1233.

The Parker, David, farm located on the northwest side of the intersection of a private road known as David Parker Lane and State Secondary Road 1301, 0.5 mile north of the intersection of State Secondary Road 1301 with N.C. Highway 24.

The Riley, Troy Lee, property located 0.05 mile west of the end of a private road known as Stage Coach Lane, 0.2 mile north of the intersection of Stage Coach Lane and N.C. Highway 24, in the town of Autryville.

SOUTH CAROLINA

(1) *Generally infested areas*. None.

(2) *Suppressive areas*.

Horry County. The Bell, Richard, farm located on the east side of State Highway 90, 5.7 miles north of its intersection with State Highway 22.

The Chestnut, Jacob T., farm located on the west side of an unpaved road known as Short Cut Road, 0.2 mile north of its junction with an unpaved road known as Pint Circle Road, 0.4 mile east of its junction with and 0.8 mile north of its junction with State Highway 90.

The Cribbs, L.V., farm located on the west side of an unpaved road known as Causey Road, 3.3 miles north of its intersection with a secondary road known as Sandplant Road and 2.1 miles west of its intersection with State Highway 76.

The Cribbs, L.V., farm located on the east side of an unpaved road known as Causey Road, 2.8 miles north of its intersection with a secondary road known as Sandplant Road and 2.1 miles west of its intersection with State Highway 76.

The Gerald, Kenneth, farm located on the south side of a secondary highway known as Lake Swamp Road, 0.4 mile east of its intersection with a secondary highway known as Nichols Highway South and 1.6 miles south of its intersection with State Highway 917.

The Gerald, Ravenell, farm located on the north side of an unpaved road known as Farming Dale Road, 0.6 mile north of its junction with State Highway 917 and 1.1 miles east of its intersection with a secondary highway known as Nichols Highway.

The Hammonds, Austin J., farm located on the north side of a secondary road known as Sandplant Road, 1.5 miles west of its intersection with State Highway 76 and 1.7 miles north of its intersection with State Highway 9.

The Livingston, Pittman, farm located on the east side of State Highway 90, 2.2 miles north of its junction with State Highway 22.

The Mae, Blossie, farm located on the west side of an unpaved road known as Dela Road, 0.3 mile south of its intersection with a secondary road known as Pint Circle Road, 0.2 mile west of its intersection with State Highway 90, and 3.5 miles north of its intersection with State Highway 22.

The McDaniel, Ellis, farm located on the south side of State Highway 917, 1.4 miles west of its intersection with a secondary highway known as Nichols Highway.

The Smith, Tommy G., farm located on the south side of a secondary road known as Old Chesterfield Road, 0.5 mile east of its intersection with State Highway 90 and 2.7 miles north of its intersection with State Highway 22.

The Strickland, Quincy, farm located on the north side of State Highway 917, 1.2 miles west of its intersection with a secondary highway known as Nichols Highway.

The Stroud, J.B., farm located on the east side of an unpaved road known as Providence Drive, 1.3 miles north of its junction with an unpaved road known as Tranquil Road, 0.5 mile west of its junction with a secondary highway known as Nichols Highway North and 2.3 miles north of its intersection with State Highway 917.

The Vault, Bennie, farm located on the west side of an unpaved road known as Strawberry Road, 0.5 mile south of its junction with State Highway 90.

Vereen, Isiah, farm located on the west side of an unpaved road known as West Shore Road, 1.6 miles south of its junction with State Highway 90.

Vereen, Lula, farm located on the north side of a secondary road known as Dogwood Road, 1.6 miles north of its intersection with State Highway 22, then 0.7 mile east of its intersection with State Highway 90.

The Willoughby, Shane, farm located on the north side of an unpaved road known as Farming Dale Road, 0.4 mile north of its junction with State Highway 917 and 1.1 miles east of its intersection with a secondary highway known as Nichols Highway.

The Worley, Floyd C., farm located on both sides of a secondary road known as Sandplant Road, 1.1 miles west of its intersection with State Highway 76 and 1.7 miles north of its intersection with State Highway 9.

Marion County. The Baxley, Warner, farm located on the west side of Penderboro Road, 1.6 miles north of its intersection with the State Highway 501 Bypass.

The Best Woods Road and Bubba Road farm located on both sides of Best Woods Road, 1.4 miles south of its intersection with State Highway 76.

The Erwin, Harold, farm located on the west side of the State secondary road known as Laughin Road, 1 mile north of its intersection with State Highway 76.

The Gerald, Issaic, farm located on the west side of a secondary road known as Foxworth Road, 0.3 mile northwest of its intersection with Secondary Road 9.

The Holmes, Issaic, farm located on the east side of an unpaved road known as Phill Road, 0.5 mile south of its junction with State Highway 9 and 5 miles east of its intersection with State Highway 41–A.

The Johnson, J. D., farm located on the west side of an unpaved road known as Harold Road, 0.6 mile north of its intersection with Old Mullins Road and 1.3 miles west of its intersection with North Main Street in Nichols.

The Keen, Davis, Estate farm located on the south side of an unpaved road known as Frazier Road, 0.7 mile northwest of its intersection with Secondary Road 9.

The Richardson, Billy, farm located on the east side of Secondary Road 908, 0.8 mile north of its intersection with State Highway 378.

The Rogers, Paul, farm located on the north side of an unpaved road known as Tobacco Barn Road, 0.8 mile west of its intersection with a State secondary road known as E. Sellers Road and 1.7 miles north of its intersection with State Highway 41–A.

[68 FR 6604, Feb. 10, 2003, as amended at 68 FR 51876, Aug. 29, 2003; 72 FR 7925, Feb. 22, 2007; 72 FR 44951, Aug. 10, 2007]

§ 301.80–2b Exempted articles.[1]

(a) The following articles are exempt from the certification and permit and other requirements of this subpart if they meet the applicable conditions prescribed in paragraphs (a) (1) through (5) of this section and have not been exposed to infestation after cleaning or other handling as prescribed in said paragraph:

(1) Small grains, if harvested in bulk or into new or treated containers, and if the grains and containers for the grains have not come in contact with the soil or if they have been cleaned at a designed facility.[2]

(2) Soybeans, when determined by an inspector that the soybeans were grown, harvested, and handled in a manner to prevent contamination from witchweed seed.

(3) Pickling cucumbers, string beans, and field peas, if washed free of soil with running water.

(4) Used farm tools, if cleaned free of soil.

(5) Used mechanized cultivating equipment and used mechanized soil-moving equipment, if cleaned free of soil.

(b) The following article is exempt from the certification and permit requirements of § 301.80–4 under the applicable conditions as prescribed in paragraph (b)(1) of this section:

(1) Seed cotton, if moving to a designated gin.[2]

[42 FR 56334, Oct. 25, 1977, as amended at 53 FR 24924, July 1, 1988]

§ 301.80–3 Conditions governing the interstate movement of regulated articles from quarantined States.[3]

(a) Any regulated articles, except soil samples for processing, testing, or analysis, may be moved interstate

[1] The articles hereby exempted remain subject to applicable restrictions under other quarantines.

[2] Information as to designated facilities, gins, oil mills, and processing plants may be obtained from an inspector. Any facility, gin, oil mill, or processing plant is eligible for designation under this subpart if the operator thereof enters into a compliance agreement (as defined in § 301.80–1(b)).

[3] Requirements under all other applicable Federal domestic plant quarantines must also be met.

from any quarantined State under the following conditions:

(1) With certificate or permit issued and attached in accordance with §§ 301.80–4 and 301.80–7, if moved:

(i) From any generally infested area or any suppressive area into or through any point outside of the regulated areas; or

(ii) From any generally infested area into or through any suppressive area; or

(iii) Between any noncontiguous suppressive areas; or

(iv) Between contiguous suppressive areas when it is determined by an inspector that the regulated articles present a hazard of the spread of the witchweed and the person in possession thereof has been so notified; or

(v) Through or reshipped from any regulated area when such movement is not authorized under paragraph (a)(2)(v) of this section; or

(2) Without certificate or permit if moved:

(i) From any regulated area under the provisions of § 301.80–2b which exempts certain articles from certificate and permit requirements; or

(ii) From a generally infested area to a contiguous generally infested area; or

(iii) From a suppressive area to a contiguous generally infested area; or

(iv) Between contiguous suppressive areas unless the person in possession of the articles has been notified by an inspector that a hazard of spread of the witchweed exists; or

(v) Through or reshipped from any regulated area if the articles originated outside of any regulated area and if the point of origin of the articles is clearly indicated, their identity has been maintained, and they have been safeguarded against infestation while in the regulated area in a manner satisfactory to the inspector; or

(3) From any area outside the regulated areas, if moved:

(i) With a certificate or permit attached; or

(ii) Without a certificate or permit, if:

(A) The regulated articles are exempt from certification and permit requirements under the provisions of § 301.80–2b; or

(B) The point of origin of such movement is clearly indicated on the articles or shipping document which accompanies the articles and if the movement is not made through any regulated area.

(b) Unless specifically authorized by the Deputy Administrator in emergency situations, soil samples for processing, testing, or analysis may be moved interstate from any regulated area only to laboratories approved [4] by the Deputy Administrator and so listed by him in a supplemental regulation. [5] A certificate or permit will not be required to be attached to such soil samples except in those emergency situations where the Deputy Administrator has authorized such movement to another destination with a certificate or permit issued and attached in accordance with §§ 301.80–4(d) and 301.80–7. Soil samples originating in areas outside of the regulated areas will not require such a certificate or permit and their movement is not restricted to approved laboratories if the point of origin of such samples is clearly indicated on the articles or shipping document which accompanies the articles and if the movement is not made through any regulated area.

[41 FR 27373, July 2, 1976]

§ 301.80–4 Issuance and cancellation of certificates and permits.

(a) Certificates may be issued for any regulated articles (except soil samples for processing, testing, or analysis) by an inspector if he determines that they are eligible for certification for movement to any destination under all Federal domestic plant quarantines applicable to such articles and:

(1) Have originated in noninfested premises in a regulated area and have not been exposed to infestation while within the regulated areas; or

(2) Have been treated to destroy infestation in accordance with the treatment manual; or

[4] Pamphlets containing provisions for laboratory approval may be obtained from the Deputy Administrator, Plant Protection and Quarantine Programs, APHIS, U.S. Department of Agriculture, Washington, DC 20250.

[5] For list of approved laboratories, see (41 FR 4615 and amendments thereof).

(3) Have been grown, produced, manufactured, stored, or handled in such a manner that no infestation would be transmitted thereby.

(b) Limited permits may be issued by an inspector to allow interstate movement of regulated articles (except soil samples for processing, testing, or analysis) not eligible for certification under this subpart, to specified destinations for limited handling, utilization, or processing, or for treatment in accordance with the treatment manual, when upon evaluation of the circumstances involved in each specific case he determines that such movement will not result in the spread of witchweed and requirements of other applicable Federal domestic plant quarantines have been met.

(c) Restricted destination permits may be issued by an inspector to allow the interstate movement (for other than scientific purposes) of regulated articles (except soil samples for processing, testing, or analysis) to any destination permitted under all applicable Federal domestic plant quarantines if such articles are not eligible for certification under all such quarantines but would otherwise qualify for certification under this subpart.

(d) Scientific permits to allow the interstate movement of regulated articles, and certificates or permits to allow the movement of soil samples for processing, testing, or analysis in emergency situations, may be issued by the Deputy Administrator under such conditions as may be prescribed in each specific case by the Deputy Administrator to prevent the spread of witchweed.

(e) Certificate, limited permit, and restricted destination permit forms may be issued by an inspector to any person for use by the latter for subsequent shipments of regulated articles (except soil samples for processing, testing, or analysis) provided such person is operating under a compliance agreement; and any such person may be authorized by an inspector to reproduce such forms on shipping containers or otherwise. Any such person may execute and issue the certificate forms, or reproductions of such forms, for the interstate movement of regulated articles from the premises of such person identified in the compliance agreement if such person has treated such regulated articles to destroy infestation in accordance with the treatment manual, and if such regulated articles are eligible for certification for movement to any destination under all Federal domestic plant quarantines applicable to such articles. Any such person may execute and issue the limited permit forms, or reproductions of such forms, for interstate movement of regulated articles to specified destinations when the inspector has made the determinations specified in paragraph (b) of this section. Any such person may execute and issue the restricted destination permit forms, or reproductions of such forms, for the interstate movement of regulated articles not eligible for certification under all Federal domestic plant quarantines applicable to such articles, under the conditions specified in paragraph (c) of this section.

(f) Any certificate or permit which has been issued or authorized may be withdrawn by the inspector or the Deputy Administrator if he determines that the holder thereof has not complied with any condition for the use of such document imposed by this subpart. As soon as possible after such withdrawal, the holder of the certificate or permit shall be notified in writing by the Deputy Administrator or an inspector of the reason therefor and afforded reasonable opportunity to present his views thereon, and if there is a conflict as to any material fact, a hearing shall be held to resolve such conflict.

[35 FR 10553, June 30, 1970, as amended at 36 FR 24917, Dec. 24, 1971; 41 FR 27374, July 2, 1976]

§ 301.80–5 Compliance agreements; and cancellation thereof.

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of such articles under this subpart. Compliance agreement forms may be obtained from the Deputy Administrator or an inspector.

(b) Any compliance agreement may be canceled by the inspector who is supervising its enforcement whenever he finds that such other party has failed

to comply with the conditions of the agreement. As soon as possible after such cancellation, such party shall be notified in writing by the Deputy Administrator or an inspector of the reason therefor and afforded reasonable opportunity to present views thereon, and if there is a conflict as to any material fact, a hearing shall be held to resolve such conflict.

[35 FR 10553, June 30, 1970, as amended at 36 FR 24917, Dec. 24, 1971; 41 FR 27374, July 2, 1976]

§ 301.80–6 Assembly and inspection of regulated articles.

Persons (other than those authorized to use certificates, limited permits, or restricted destination permits, or reproductions thereof, under § 301.80–4(e)) who desire to move interstate regulated articles which must be accompanied by a certificate or permit shall, as far in advance as possible, request an inspector to examine the articles prior to movement. Such articles shall be assembled at such points and in such a manner as the inspector designates to facilitate inspection.

[35 FR 10553, June 30, 1970, as amended at 36 FR 24917, Dec. 24, 1971; 41 FR 27374, July 2, 1976]

§ 301.80–7 Attachment and disposition of certificates or permits.

(a) If a certificate or permit is required for the interstate movement of regulated articles, the certificates or permit shall be securely attached to the outside of the container in which such articles are moved except that, where the certificate or permit is attached to the waybill or other shipping document, and the regulated articles are adequately described on the certificate, permit or shipping document, the attachment of the certificate or permit to each container of the articles is not required.

(b) In all cases, certificates or permits shall be furnished by the carrier to the consignee at the destination of the shipment.

[35 FR 10553, June 30, 1970, as amended at 36 FR 24917, Dec. 24, 1971]

§ 301.80–8 Inspection and disposal of regulated articles and pests.

Any properly identified inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of, or require disposal of regulated articles and witchweed as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754), in accordance with instructions issued by the Deputy Administrator.

[35 FR 10553, June 30, 1970, as amended at 36 FR 24917, Dec. 24, 1971; 41 FR 27374, July 2, 1976; 66 FR 21052, Apr. 27, 2001]

§ 301.80–9 Movement of witchweed.

Regulations requiring a permit for, and otherwise governing the movement of witchweed in interstate or foreign commerce are contained in the Federal plant pest regulations in part 330 of this chapter. Applications for permits for the movement of the pest may be made to the Deputy Administrator.

[35 FR 10553, June 30, 1970, as amended at 36 FR 24917, Dec. 24, 1971]

§ 301.80–10 Nonliability of the Department.

The U.S. Department of Agriculture disclaims liability for any costs incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

[35 FR 10553, June 30, 1970, as amended at 36 FR 24917, Dec. 24, 1971]

Subpart—Imported Fire Ant

SOURCE: 57 FR 57327, Dec. 4, 1992, unless otherwise noted.

QUARANTINE AND REGULATIONS

§ 301.81 Restrictions on interstate movement of regulated articles.

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.

§ 301.81–1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture (APHIS).

Certificate. A document in which an inspector or a person operating under a compliance agreement affirms that a specified regulated article meets the requirements of this subpart and may be moved interstate to any destination.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles that are moved interstate, in which the person agrees to comply with the provisions of this subpart and any conditions imposed under this subpart.

Imported fire ant. Living imported fire ants of the species *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, and hybrids of these species.

Infestation (infested). The presence of an imported fire ant queen or a reproducing colony of imported fire ants, except that on grass sod and plants with roots and soil attached, an infestation is the presence of any life form of the imported fire ant.

Inspector. An APHIS employee or other person authorized by the Administrator to enforce the provisions of this subpart.

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

Limited permit. A document in which an inspector affirms that a specified regulated article not eligible for a certificate is eligible for interstate movement only to a specified destination and in accordance with conditions specified on the permit.

Movement (moved). The act of shipping, transporting, delivering, or receiving for movement, or otherwise aiding, abetting, inducing or causing to be moved.

Noncompacted soil. Soil that can be removed from an article by brisk brushing or washing with water under normal city water pressure (at least 4 gallons per minute at 40 to 50 pounds per square inch through a ½-inch orifice).

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

Reproducing colony. A combination of one or more imported fire ant workers and one or more of the following immature imported fire ant forms: Eggs, larvae, or pupae.

Soil. Any non-liquid combination of organic and/or inorganic material in which plants can grow.

Soil-moving equipment. Equipment used for moving or transporting soil, including, but not limited to, bulldozers, dump trucks, or road scrapers.

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

§ 301.81–2 Regulated articles.

The following are regulated articles:

(a) Imported fire ant queens and reproducing colonies of imported fire ants.[1]

(b) Soil,[2] separately or with other articles, except potting soil that is shipped in original containers in which the soil was placed after commercial preparation.

(c) Baled hay and baled straw stored in direct contact with the ground;

(d) Plants and sod with roots and soil attached, except plants maintained indoors in a home or office environment and not for sale;

(e) Used soil-moving equipment, unless removed of all noncompacted soil; and

(f) Any other article or means of conveyance when:

(1) An inspector determines that it presents a risk of spread of the imported fire ant due to its proximity to an infestation of the imported fire ant; and

(2) The person in possession of the product, article, or means of conveyance has been notified that it is regulated under this subpart.

(Approved by the Office of Management and Budget under control number 0579–0102)

[57 FR 57327, Dec. 4, 1992, as amended at 59 FR 67133, Dec. 29, 1994]

[1] Permit and other requirements for the interstate movement of imported fire ants are contained in part 330 of this chapter.

[2] The movement of soil from Puerto Rico is subject to additional provisions in part 330 of this chapter.

§ 301.81–3 Quarantined areas.

(a) The Administrator will quarantine each State or each portion of a State that is infested.

(b) Less than an entire State will be listed as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81–2 that are equivalent to the interstate movement restrictions imposed by this subpart; and

(2) Designating less than the entire State as a quarantined area will prevent the spread of the imported fire ant.

(c) The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or inseparability from the infested locality for quarantine purposes, as determined by:

(1) Projections of spread of imported fire ant around the periphery of the infestation, as determined by previous years' surveys;

(2) Availability of natural habitats and host materials, within the uninfested acreage, suitable for establishment and survival of imported fire ant populations; and

(3) Necessity of including uninfested acreage within the quarantined area in order to establish readily identifiable boundaries.

(d) The Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area in accordance with the criteria specified in paragraphs (a), (b), and (c) of this section. The Administrator will give written notice of this designation to the owner or person in possession of the nonquarantined area, or, in the case of publicly owned land, to the person responsible for the management of the nonquarantined area; thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area either will be added to the list of designated quarantined areas in paragraph (e) of this section, or the Administrator will terminate the designation. The owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation is terminated will be given written notice of the termination as soon as practicable.

(e) The areas described below are designated as quarantined areas:

ALABAMA

The entire State.

ARKANSAS

Ashley County. The entire county.
Bradley County. The entire county.
Calhoun County. The entire county.
Chicot County. The entire county.
Clark County. The entire county.
Cleveland County. The entire county.
Columbia County. The entire county.
Dallas County. The entire county.
Desha County. The entire county.
Drew County. The entire county.
Faulkner County. The entire county.
Garland County. The entire county.
Grant County. The entire county.
Hempstead County. The entire county.
Hot Spring County. The entire county.
Howard County. The entire county.
Jefferson County. The entire county.
Lafayette County. The entire county.
Lincoln County. The entire county.
Little River County. The entire county.
Lonoke County. The entire county.
Miller County. The entire county.
Montgomery County. The entire county.
Nevada County. The entire county.
Ouachita County. The entire county.
Perry County. The entire county.
Pike County. The entire county.
Polk County. The entire county.
Pulaski County. The entire county.
Saline County. The entire county.
Sevier County. The entire county.
Union County. The entire county.
Yell County. The entire county.

CALIFORNIA

Los Angeles County. That portion of Los Angeles County in the Cerritos area bounded by a line beginning at the intersection of Artesia Boulevard and Marquardt Avenue; then south along Marquardt Avenue to the Los Angeles/Orange County Line; then south and west along the Los Angeles/Orange County Line to Carson Street; then west along Carson Street to Norwalk Boulevard; then north along Norwalk Boulevard to Centralia Street; then west along Centralia Street to Pioneer Boulevard; then north along Pioneer Boulevard to South Street; then east along South Street to Norwalk Boulevard; then north along Norwalk Boulevard to 183rd Street; then east along 183rd Street to Bloomfield Avenue; then north along Bloomfield Avenue to Artesia Boulevard; then east along Artesia Boulevard to the point of beginning.

That portion of Los Angeles County in the Azusa area bounded by a line beginning at the intersection of Irwindale Avenue and Foothill Boulevard; then east along Foothill Boulevard to Azusa Avenue; then south along Azusa Avenue to East Fifth Street; then east along East Fifth Street to North Cerritos Avenue; then south along North Cerritos Avenue to Arrow Highway; then west along Arrow Highway to Azusa Avenue, then south along Azusa Avenue to Covina Boulevard; then west along an imaginary line to the intersection of Martinez Street and Irwindale Avenue; then north along Irwindale Avenue to the point of beginning.

Orange County. The entire county.

Riverside County. That portion of Riverside County in the Indio area bounded by a line beginning at the intersection of Avenue 50 and Jackson Street; then south along Jackson Street to 54th Avenue; then west along 54th Avenue to Madison Street; then north along Madison Street to Avenue 50; then east along Avenue 50 to the point of beginning.

That portion of Riverside County in the Moreno Valley area bounded by a line beginning at the intersection of Reche Vista Drive and Canyon Ranch Road; then southeast along Canyon Ranch Road to Valley Ranch Road; then east along Valley Ranch Road to Michael Way; then south along Michael Way to Casey Court; then east along Casey Court to the Moreno Valley City Limits; then south and east along the Moreno Valley City Limits to Pico Vista Way; then southwest along Pico Vista Way to Los Olivos Drive; then south along Los Olivos Drive to Jaclyn Avenue; then west along Jaclyn Avenue to Perris Boulevard; then south along Perris Boulevard to Kalmia Avenue; then west along Kalmia Avenue to Hubbard Street; then north along Hubbard Street to Nightfall Way; then west and south along Nightfall Way to Sundial Way; then west along Sundial Way to Indian Avenue; then south along Indian Avenue to Ebbtide Lane; then west along Ebbtide Lane to Ridgecrest Lane; then south along Ridgecrest Lane to Moonraker Lane; then west along Moonraker Lane to Davis Street; then south along Davis Street to Gregory Lane; then west along Gregory Lane to Heacock Street; then northwest along an imaginary line to the intersection of Lake Valley Drive and Breezy Meadow Drive; then north along Breezy Meadow Drive to its intersection with Stony Creek; then north along an imaginary line to the intersection of Old Lake Drive and Sunnymead Ranch Parkway; then northwest along Sunnymead Ranch Parkway to El Granito Street; then east along El Granito Street to Lawless Road; then east along an imaginary line to the intersection of Heacock Street and Reche Vista Drive; then north along Reche Vista Drive to the point of beginning.

That portion of Riverside County in the Bermuda Dunes, Palm Desert, and Rancho Mirage areas bounded by a line beginning at the intersection of Ramon Road and Bob Hope Drive; then south along Bob Hope Drive to Dinah Shore Drive; then east along Dinah Shore Drive to Key Largo Avenue; then south along Key Largo Avenue to Gerald Ford Drive; then west along Gerald Ford Drive to Bob Hope Drive; then south along Bob Hope Drive to Frank Sinatra Drive; then east along Frank Sinatra Drive to Vista Del Sol; then south along Vista Del Sol to Country Club Drive; then east along Country Club Drive to Adams Street; then south along Adams Street to 42nd Avenue; then east along 42nd Avenue to Tranquillo Place; then south along Tranquillo Place to its intersection with Harbour Court; then southwest along an imaginary line to the intersection of Granada Drive and Caballeros Drive; then southeast along Caballeros Drive to Kingston Drive; then west along Kingston Drive to Mandeville Road; then east along Mandeville Road to Port Maria Road; then south along Port Maria Road to Fred Waring Drive; then west along Fred Waring Drive to its intersection with Dune Palms Road; then southwest along an imaginary line to the intersection of Adams Street and Miles Avenue; then west along Miles Avenue to Washington Street; then northwest along Washington Street to Fred Waring Drive; then west along Fred Waring Drive to Joshua Road; then north along Joshua Road to Park View Drive; then west along Park View Drive to State Highway 111; then northwest along State Highway 111 to Magnesia Fall Drive; then west along Magnesia Fall Drive to Gardess Road; then northwest along Gardess Road to Dunes View Road; then northeast along Dunes View Road to Halgar Road; then northwest along Halgar Road to Indian Trail Road; then northeast along Indian Trail Road to Mirage Road; then north along Mirage Road to State Highway 111; then northwest along State Highway 111 to Frank Sinatra Drive; then west along Frank Sinatra Drive to Da Vall Drive; then north along Da Vall Drive to Ramon Road; then east along Ramon Road to the point of beginning.

That portion of Riverside County in the Palm Springs area bounded by a line beginning at the intersection of Tramway Road, State Highway 111, and San Rafael Drive; then east along San Rafael Drive to Indian Canyon Drive; then south along Indian Canyon Drive to Francis Drive; then east along Francis Drive to North Farrell Drive; then south along North Farrell Drive to Verona Road; then east along Verona Road to Whitewater Club Drive; then east along an imaginary line to the intersection of Verona Road and Ventura Drive; then east along Verona Road to Avenida Maravilla; then east and

south along Avenida Maravilla to 30th Avenue; then west along 30th Avenue to its end; then due west along an imaginary line to the Whitewater River; then southeast along the Whitewater River to Dinah Shore Drive; then west along an imaginary line to the east end of 34th Avenue; then west along 34th Avenue to Golf Club Drive; then south along Golf Club Drive to East Palm Canyon Drive; then south along an imaginary line to the intersection of Desterto Vista and Palm Hills Drive; then south along Palm Hills Drive to its end; then southwest along an imaginary line to the intersection of Murray Canyon and Palm Canyon Drive; then northwest along Palm Canyon Drive to the Palm Springs city limits; then west and north along Palm Springs city limits to Tahquitz Creek; then due north along an imaginary line to Tramway Road; then northeast along Tramway Road to the point of beginning.

FLORIDA

The entire State.

GEORGIA

The entire State.

LOUISIANA

The entire State.

MISSISSIPPI

The entire State.

NEW MEXICO

Dona Ana County. The entire county.

NORTH CAROLINA

Anson County. The entire county.

Beaufort County. The entire county.

Bertie County. That portion of the county bounded by a line beginning at the intersection of State Highway 11/42 and the Hertford/Bertie County line; then east along the Hertford/Bertie County line to the Bertie/Chowan County line; then south along the Bertie/Chowan County line to the Bertie/Martin County line; then west along the Bertie/Martin County line to State Highway 11/42; then north along State Highway 11/42 to the point of beginning.

Bladen County. The entire county.

Brunswick County. The entire county.

Cabarrus County. The entire county.

Camden County. That portion of the county bounded by a line beginning at the intersection of State Road 1112 and State Highway 343; then east along State Highway 343 to State Road 1107; then south along State Road 1107 to the Camden/Pasquotank County line; then north along the Camden/Pasquotank County line to State Road 1112; then north along State Road 1112 to the point of beginning.

Carteret County. The entire county.

Chatham County. The entire county.

Cherokee County. That portion of the county lying south and west of a line beginning at the intersection of the Cherokee/Clay County line and the North Carolina/Georgia State line; then north to U.S. Highway 64; then northwest along the southern shoreline of Hiwassee Lake to the Tennessee State line.

Chowan County. That portion of the county bounded by a line beginning at the intersection of the Chowan/Gates County line and State Highway 32; then south along State Highway 32 to State Highway 37; then east along State Highway 37 to the Chowan/Perquimans County line; then south along the Chowan/Perquimans County line to the shoreline of the Albemarle Sound; then west along the shoreline of the Albemarle Sound to the Chowan/Bertie County line; then north along the Chowan/Bertie County line to the Chowan/Hertford County line; then north along the Chowan/Hertford County line to the Chowan/Gates County line; then east along the Chowan/Gates County line to the point of beginning.

Clay County. That portion of the county lying southwest of State Highway 69 and the North Carolina/Georgia State line; then north along Interstate 70 to its intersection with U.S. Highway 64; then west along U.S. Highway 64 to the Clay/Cherokee County boundary.

Cleveland County. The entire county.

Columbus County. The entire county.

Craven County. The entire county.

Cumberland County. The entire county.

Currituck County. That portion of the county bounded by a line beginning at the intersection of the Currituck/Camden County line and State Road 1112; then east along State Road 1112 to U.S. Highway 158; then south along U.S. Highway 158 to State Road 1111; then east along State Road 1111 to the shoreline of the Atlantic Ocean; then south along the shoreline of the Atlantic Ocean to the Currituck/Duck County line; then south and west along the Currituck/Duck County line to the Currituck/Camden County line; then north along the Currituck/Camden County line to the point of beginning.

Dare County. The entire county, excluding the portion of the barrier islands south of Oregon Inlet.

Duplin County. The entire county.

Durham County. That portion of the county lying south of Interstate 85.

Edgecombe County. That portion of the county lying south of a line beginning at the intersection of State Highway 111 and the Martin/Edgecombe County line; then southwest on State Highway 111 to U.S. Highway 64 Alternate; then west on U.S. Highway 64 Alternate to County Route 1252; then west of this northerly line to County Route 1408; then west on County Route 1408 to County

Route 1407; then south on County Route 1407 to the Edgecombe/Nash County line.

Gaston County. The entire county.

Greene County. The entire county.

Harnett County. The entire county.

Hertford County. That portion of the county lying south and east of a line beginning at the intersection of State Highway 11 and the Bertie/Hertford county line; then northeast on State Highway 11 to the U.S. Highway 13 Bypass; then northeast on U.S. Highway 13 to the Hertford/Gates County line.

Hoke County. The entire county.

Hyde County. The entire county.

Iredell County. That portion of the county lying south of State Highway 150.

Johnston County. The entire county.

Jones County. The entire county.

Lee County. The entire county.

Lenoir County. The entire county.

Lincoln County. That portion of the county lying east of State Highway 321.

Martin County. That portion of the county lying south of a line beginning at the intersection of State Highway 111 and the Edgecombe/Martin County line; then north and east on State Highway 111 to State Highway 11/42; then northeast along State Highway 11/42 to the Martin/Bertie County line.

Mecklenburg County. The entire county.

Montgomery County. The entire county.

Moore County. The entire county.

Nash County. That portion of the county lying south and east of the line beginning at the intersection of U.S. Highway 64 and the Franklin/Nash County line; then northeast on U.S. Highway 64 to Interstate 95; then north on Interstate 95 to State Highway 4; then east on State Highway 4 to U.S. Highway 301; then east along a straight line from the intersection of State Highway 64 and U.S. Highway 301 to the Nash/Edgecombe County line.

New Hanover County. The entire county.

Onslow County. The entire county.

Orange County. The portion of the county that lies south of Interstate 85.

Pamlico County. The entire county.

Pasquotank County. That portion of the county bounded by a line beginning at the intersection of the Pasquotank/Perquimans County line and U.S. Highway 17; then east along U.S. Highway 17 to the Pasquotank/Camden County line; then south along the Pasquotank/Camden County line to the shoreline of the Albemarle Sound; then west along the shoreline of the Albemarle Sound to the Pasquotank/Perquimans County line; then north along the Pasquotank/Perquimans County line to the point of beginning.

Pender County. The entire county.

Perquimans County. That portion of the county bounded by a line beginning at the intersection of the Perquimans/Chowan County line and State Road 1118; then east along State Road 1118 to State Road 1200; then north along State Road 1200 to State Road 1213; then east along State Road 1213 to State Road 1214; then southeast along State Road 1214 to State Road 1221; then northeast along State Road 1221 to the Perquimans/Pasquotank County line; then south along the Perquimans/Pasquotank County line to the shoreline of the Albemarle Sound; then west along the shoreline of the Albemarle Sound to the Perquimans/Chowan County line; then north along the Perquimans/Chowan County line to the point of beginning.

Pitt County. The entire county.

Polk County. The entire county.

Randolph County. That portion of the county lying south of the line beginning at the intersection of State Highway 49 and the Davidson/Randolph County line; then east on State Highway 49 to U.S. Highway 64; then east on U.S. Highway 64 to its intersection with the Randolph/Chatham County line.

Richmond County. The entire county.

Robeson County. The entire county.

Rutherford County. That portion of the county lying south of State Highway 74.

Sampson County. The entire county.

Scotland County. The entire county.

Stanly County. The entire county.

Tyrrell County. The entire county.

Union County. The entire county.

Wake County. The entire county.

Washington County. The entire county.

Wayne County. The entire county.

Wilson County. The entire county.

OKLAHOMA

Bryan County. The entire county.

Carter County. The entire county.

Choctaw County. The entire county.

Comanche County. The entire county.

Johnston County. The entire county.

Love County. The entire county.

Marshall County. The entire county.

McCurtain County. The entire county.

PUERTO RICO

The entire State.

South Carolina

The entire State.

TENNESSEE

Anderson County. That portion of the county lying east and south of a line beginning at the intersection of the Roane/Anderson County line and Tennessee Highway 330; then northeast on Tennessee Highway 330 to Tennessee Highway 116; then north on Tennessee Highway 116 to Interstate 75; then southeast on Interstate 75 to the Anderson/Knox County line.

Bedford County. The entire county.

Benton County. The entire county.

Bledsoe County. The entire county.

Blount County. The entire county.

Bradley County. The entire county.

Carroll County. The entire county.

Chester County. The entire county.

Coffee County. That portion of the county lying west and south of a line beginning at the intersection of the Cannon/Coffee County line and Tennessee Highway 53; then south on Tennessee Highway 53 to Riddle Road; then southeast on Riddle Road to Keele Road; then northeast on Keele Road to Tennessee Highway 55; then northeast on Tennessee Highway 55 to Swann Road; then east on Swann Road to Wiser Road; then north on Wiser Road to Rock Road; then east on Rock Road to Pleasant Knoll Road; then north on Pleasant Knoll Road to Marcrom Road; then east on Marcrom Road to the Coffee/Warren County line.

Crockett County. That portion of the county lying east of a line beginning at the intersection of the Haywood/Crockett County line and U.S. Highway 70A/79; then northeast on U.S. Highway 70A/79 to Tennessee Highway 88; then north on Tennessee Highway 88 to Tennessee Highway 54; then northeast on Tennessee Highway 54 to the Crockett/Gibson County line.

Cumberland County. That portion of the county lying southeast of a line beginning at the intersection of the White/Cumberland County line and U.S. Highway 70; then east on U.S. Highway 70 to Market Street (in Crab Orchard); then north on Market Street to Main Street; then west on Main Street to Chestnut Hill Road; then northeast on Chestnut Hill Road to Westchester Drive; then north on Westchester Drive to Peavine Road; then east on Peavine Road to Hebbertsburg Road; then northeast on Hebbertsburg Road to the Cumberland/Morgan County line.

Davidson County. That portion of the county lying southeast of a line beginning at the intersection of the Williamson/Davidson County line and U.S. Highway 431; then northeast on U.S. Highway 431 to Tennessee Highway 254; then east on Tennessee Highway 254 to U S. Highway 31A/41A; then north on U.S. Highway 31A/41A to Tennessee Highway 255; then northeast on Tennessee Highway 255 to Interstate 40; then east on Interstate 40 to the Davidson/Wilson County line.

Decatur County. The entire county.

Fayette County. The entire county.

Franklin County. The entire county.

Gibson County. That portion of the county lying southeast of a line beginning at the intersection of the Madison/Gibson County line and U.S. Highway 45W; then northwest on U.S. Highway 45W to U.S. Highway 45 Bypass (Tennessee Highway 366); then north on U.S. Highway 45 Bypass to U.S. Highway 79/70A; then northeast on U.S. Highway 79/70A to the Gibson/Carroll County line.

Giles County. The entire county.

Grundy County. The entire county.

Hamilton County. The entire county.

Hardeman County. The entire county.

Hardin County. The entire county.

Haywood County. That portion of the county lying southeast of Tennessee Highway 54.

Henderson County. The entire county.

Hickman County. The entire county.

Humphreys County. That portion of the county lying south of a line beginning at the intersection of the Benton/Humphreys County line and the line of latitude 36°; then continuing east along the line of latitude 36° to Forks River Road; then south on Forks River Road to Old Highway 13; then southeast on Old Highway 13 to Tennessee Highway 13; then south on Tennessee Highway 13 to Interstate 40; then east on Interstate 40 to the Humphreys/Hickman County line.

Knox County. That portion of the county lying southwest of a line beginning at the intersection of the Union/Knox County line and Tennessee Highway 33; then south on Tennessee Highway 33 to the Tennessee River; then northeast along the Tennessee River to the French Broad River; then east along the French Broad River to the Knox/Sevier County line.

Lawrence County. The entire county.

Lewis County. The entire county.

Lincoln County. The entire county.

Loudon County. The entire county.

Madison County. The entire county.

Marion County. The entire county.

Marshall County. That portion of the county lying south of a line beginning at the intersection of the Maury/Marshall County line and Moses Road; then northeast on Moses Road to Wilson School Road; then southeast on Wilson School Road to Lunns Store Road; then south on Lunns Store Road to Tennessee Highway 99; then east on Tennessee Highway 99 to U.S. Highway 31A; then south on U.S. Highway 31A to James Shaw Road; then south on James Shaw Road to Clay Hill Road; then east on Clay Hill Road to Warner Road; then south on Warner Road to Batten Road; then southeast on Batten Road to the Marshall/Bedford County line.

Maury County. That portion of the county lying south of a line beginning at the intersection of the Hickman/Maury County line and Jones Valley Road; then east on Jones Valley Road to Leipers Creek Road; then south on Leipers Creek Road to Tennessee Highway 247; then northeast on Tennessee Highway 247 to Tennessee Highway 246; then north on Tennessee Highway 246 to the Maury/Williamson County line.

McMinn County. The entire county.

McNairy County. The entire county.

Meigs County. The entire county.

Monroe County. The entire county.

Moore County. The entire county.

Morgan County. That portion of the county lying south of a line beginning at the intersection of the Cumberland/Morgan County line and Tennessee Highway 298; then

northeast on Tennessee Highway 298 to Tennessee Highway 62; then southeast on Tennessee Highway 62 to the Morgan/Roane County line.

Perry County. The entire county.

Polk County. The entire county.

Rhea County. The entire county.

Roane County. The entire county.

Rutherford County. The entire county.

Sequatchie County. The entire county.

Shelby County. The entire county.

Tipton County. That portion of the county lying south of a line beginning at the intersection of the Shelby/Tipton County line and Tennessee Highway 14; then northeast on Tennessee Highway 14 to Tennessee Highway 179; then southeast on Tennessee Highway 179 to the Tipton/Haywood County line.

Van Buren County. The entire county.

Warren County. That portion of the county lying southeast of a line beginning at the intersection of the Coffee/Warren County line and Marcrom Road; then east on Marcrom Road to Fred Hoover Road; then north on Fred Hoover Road to Tennessee Highway 287; then northwest on Tennessee Highway 287 to Vervilla Road; then northeast on Vervilla Road to Swan Mill Road; then east on Swan Mill Road to Grove Road; then southeast on Grove Road to Tennessee Highway 108/127; then northeast on Tennessee Highway 108/127 to the split between Tennessee Highway 108 and Tennessee Highway 127; then northeast on Tennessee Highway 127 to Tennessee Highway 56; then southeast on Tennessee Highway 56 to Fairview Road; then northeast on Fairview Road to Tennessee Highway 8; then southeast on Tennessee Highway 8 to Dark Hollow Road; then north on Dark Hollow Road to Tennessee Highway 30; then northeast on Tennessee Highway 30 to the Warren/Van Buren County line.

Wayne County. The entire county.

Williamson County. That portion of the county lying northeast of a line beginning at the intersection of the Davidson/Williamson County line and U.S. Highway 31; then southwest on U.S. Highway 31 to U.S. Highway Business 431; then southeast on U.S. Highway Business 431 to Mack Hatcher Parkway; then north on Mack Hatcher Parkway to South Royal Oaks Boulevard; then northeast on South Royal Oaks Boulevard to Tennessee Highway 96; then east on Tennessee Highway 96 to Clovercroft Road; then northeast on Clovercroft Road to Wilson Pike; then north on Wilson Pike to Clovercroft Road; then northeast on Clovercroft Road to Rocky Fork Road; then east on Rocky Fork Road to the Rutherford/Williamson County line. Also, that portion of the county enclosed by a line beginning at the intersection of the Maury/Williamson County line and Tennessee Highway 246; then north on Tennessee Highway 246 to Thompson Station Road West; then east on Thompson Station Road West to Thompson Station Road East; then east on Thompson Station Road East to Interstate 65; then south on Interstate 65 to the Williamson/Maury County line.

TEXAS

Anderson County. The entire county.
Angelina County. The entire county.
Aransas County. The entire county.
Atascosa County. The entire county.
Austin County. The entire county.
Bandera County. The entire county.
Bastrop County. The entire county.
Bee County. The entire county.
Bell County. The entire county.
Bexar County. The entire county.
Blanco County. The entire county.
Bosque County. The entire county.
Bowie County. The entire county.
Brazoria County. The entire county.
Brazos County. The entire county.
Brooks County. The entire county.
Brown County. The entire county.
Burleson County. The entire county.
Burnet County. The entire county.
Caldwell County. The entire county.
Calhoun County. The entire county.
Cameron County. The entire county.
Camp County. The entire county.
Cass County. The entire county.
Chambers County. The entire county.
Cherokee County. The entire county.
Collin County. The entire county.
Colorado County. The entire county.
Comal County. The entire county.
Comanche County. The entire county.
Cooke County. The entire county.
Coryell County. The entire county.
Dallas County. The entire county.
Delta County. The entire county.
Denton County. The entire county.
De Witt County. The entire county.
Dimmit County. The entire county.
Duval County. The entire county.
Eastland County. The entire county.
Ector County. The entire county.
Edwards County. The entire county.
Ellis County. The entire county.
Erath County. The entire county.
Falls County. The entire county.
Fannin County. The entire county.
Fayette County. The entire county.
Fort Bend County. The entire county.
Franklin County. The entire county.
Freestone County. The entire county.
Frio County. The entire county.
Galveston County. The entire county.
Gillespie County. The entire county.
Goliad County. The entire county.
Gonzales County. The entire county.
Grayson County. The entire county.
Gregg County. The entire county.
Grimes County. The entire county.
Guadalupe County. The entire county.
Hamilton County. The entire county.
Hardin County. The entire county.
Harris County. The entire county.

Harrison County. The entire county.
Hays County. The entire county.
Henderson County. The entire county.
Hidalgo County. The entire county.
Hill County. The entire county.
Hood County. The entire county.
Hopkins County. The entire county.
Houston County. The entire county.
Hunt County. The entire county.
Jack County. The entire county.
Jackson County. The entire county.
Jasper County. The entire county.
Jefferson County. The entire county.
Jim Wells County. The entire county.
Johnson County. The entire county.
Jones County. The entire county.
Karnes County. The entire county.
Kaufman County. The entire county.
Kendall County. The entire county.
Kenedy County. The entire county.
Kerr County. The entire county.
Kimble County. The entire county.
Kinney County. The entire county.
Kleberg County. The entire county.
La Salle County. The entire county.
Lamar County. The entire county.
Lampasas County. The entire county.
Lavaca County. The entire county.
Lee County. The entire county.
Leon County. The entire county.
Liberty County. The entire county.
Limestone County. The entire county.
Live Oak County. The entire county.
Llano County. The entire county.
Madison County. The entire county.
Marion County. The entire county.
Mason County. The entire county.
Matagorda County. The entire county.
Maverick County. The entire county.
McCulloch County. The entire county.
McLennan County. The entire county.
McMullen County. The entire county.
Medina County. The entire county.
Midland County. The entire county.
Milam County. The entire county.
Montague County. The entire county.
Montgomery County. The entire county.
Morris County. The entire county.
Nacogdoches County. The entire county.
Navarro County. The entire county.
Newton County. The entire county.
Nueces County. The entire county.
Orange County. The entire county.
Palo Pinto County. The entire county.
Panola County. The entire county.
Parker County. The entire county.
Polk County. The entire county.
Rains County. The entire county.
Real County. The entire county.
Red River County. The entire county.
Refugio County. The entire county.
Robertson County. The entire county.
Rockwall County. The entire county.
Rusk County. The entire county.
Sabine County. The entire county.
San Augustine County. The entire county.
San Jacinto County. The entire county.
San Patricio County. The entire county.
San Saba County. The entire county.
Shelby County. The entire county.
Smith County. The entire county.
Somervell County. The entire county.
Stephens County. The entire county.
Tarrant County. The entire county.
Taylor County. The entire county.
Titus County. The entire county.
Tom Green County. The entire county.
Travis County. The entire county.
Trinity County. The entire county.
Tyler County. The entire county.
Upshur County. The entire county.
Uvalde County. The entire county.
Val Verde County. The entire county.
Van Zandt County. The entire county.
Victoria County. The entire county.
Walker County. The entire county.
Waller County. The entire county.
Washington County. The entire county.
Webb County. The entire county.
Wharton County. The entire county.
Wichita County. The entire county.
Willacy County. The entire county.
Williamson County. The entire county.
Wilson County. The entire county.
Wise County. The entire county.
Wood County. The entire county.
Young County. The entire county.
Zavala County. The entire county.

[57 FR 57327, Dec. 4, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 301.81–3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 301.81–4 Interstate movement of regulated articles from quarantined areas.

(a) Any regulated article may be moved interstate from a quarantined area into or through an area that is not quarantined only if moved under the following conditions:

(1) With a certificate or limited permit issued and attached in accordance with §§ 301.81–5 and 301.81–9 of this subpart;

(2) Without a certificate or limited permit, provided that each of the following conditions is met:

(i) The regulated article was moved into the quarantined area from an area that is not quarantined;

(ii) The point of origin is indicated on a waybill accompanying the regulated article;

(iii) The regulated article is moved through the quarantined area (without stopping except for refueling, or for traffic conditions, such as traffic lights

or stop signs), or has been stored, packed, or parked in locations inaccessible to the imported fire ant, or in locations that have been treated in accordance with part 305 of this chapter, while in or moving through any quarantined area; and

(iv) The article has not been combined or commingled with other articles so as to lose its individual identity; or

(3) Without a certificate or limited permit provided the regulated article is a soil sample being moved to a laboratory approved by the Administrator[3] to process, test, or analyze soil samples.

(b) Inspectors are authorized to stop any person or means of conveyance moving in interstate commerce they have probable cause to believe is moving regulated articles, and to inspect the articles being moved and the means of conveyance. Articles found to be infested by an inspector, and articles not in compliance with the regulations in this subpart, may be seized, quarantined, treated, subjected to other remedial measures, destroyed, or otherwise disposed of. Any treatments will be in accordance with part 305 of this chapter.

(Approved by the Office of Management and Budget under control number 0579–0102)

[57 FR 57327, Dec. 4, 1992, as amended at 59 FR 67133, Dec. 29, 1994; 59 FR 67609, Dec. 30, 1994; 67 FR 8464, Feb. 25, 2002; 70 FR 33268, June 7, 2005; 75 FR 4240, Jan. 26, 2010]

§ 301.81–5 Issuance of a certificate or limited permit.

(a) An inspector[4] or person operating under a compliance agreement will issue a certificate for the interstate movement of a regulated article approved under such compliance agreement if he or she determines that the regulated article:

(1) Is eligible for unrestricted movement under all other applicable Federal domestic plant quarantines and regulations;

(2) Is to be moved interstate in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the imported fire ant;[5] and

(3)(i) Is free of an imported fire ant infestation, based on his or her visual examination of the article;

(ii) Has been grown, produced, manufactured, stored, or handled in a manner that would prevent infestation or destroy all life stages of the imported fire ant;

(iii) Has been treated in accordance with part 305 of this chapter; or.

(iv) If the article is containerized nursery stock, it has been produced in accordance with § 301.81-11.

(b) An inspector will issue a limited permit for the interstate movement of a regulated article not eligible for a certificate if the inspector determines that the regulated article:

(1) Is to be moved interstate to a specified destination for specified handling, utilization, or processing (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the imported fire ant because the imported fire ant will be destroyed by the specified handling, utilization, or processing;

(2) Is to be moved interstate in compliance with any conditions that the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the imported fire ant; and

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

[3] Criteria that laboratories must meet to become approved to process, test, or analyze soil, and the list of currently approved laboratories, may be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737–1236.

[4] Inspectors are assigned to local offices of APHIS, which are listed in local telephone directories. Information on 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, Maryland 20737–1236.

[5] An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destory, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

(c) An inspector shall issue blank certificates to a person operating under a compliance agreement (in accordance with § 301.81–6 of this subpart) or authorize reproduction of the certificates on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates may then be completed and used, as needed, for the interstate movement of regulated articles that have met all of the requirements of paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 0579–0088)

[57 FR 57327, Dec. 4, 1992, as amended at 59 FR 67133, Dec. 29, 1994; 59 FR 67609, Dec. 30, 1994; 66 FR 21052, Apr. 27, 2001; 75 FR 4240, Jan. 26, 2010]

§ 301.81–6 Compliance agreements.

Persons who grow, handle, or move regulated articles interstate may enter into a compliance agreement[6] if such persons review with an inspector each stipulation of the compliance agreement, have facilities and equipment to carry out disinfestation procedures or application of chemical materials in accordance with part 305 of this chapter, and meet applicable State training and certification standards as authorized by the Federal Insecticide, Fungicide, and Rodenticide Act (86 Stat. 983; 7 U.S.C. 136b). Any person who enters into a compliance agreement with APHIS must agree to comply with the provisions of this subpart and any conditions imposed under this subpart.

[57 FR 57327, Dec. 4, 1992, as amended at 59 FR 67609, Dec. 30, 1994; 75 FR 4240, Jan. 26, 2010]

§ 301.81–7 Cancellation of a certificate, limited permit, or compliance agreement.

Any certificate, limited permit, or compliance agreement may be canceled orally or in writing by an inspector whenever the inspector determines that the holder of the certificate or limited permit, or the person who has entered into the compliance agreement, has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances allow within 20 days after oral notification of the cancellation. Any person whose certificate, limited permit, or compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve any conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

(Approved by the Office of Management and Budget under control number 0579–0102)

[57 FR 57327, Dec. 4, 1992, as amended at 59 FR 67133, Dec. 29, 1994]

§ 301.81–8 Assembly and inspection of regulated articles.

(a) Persons requiring certification or other services must request the services from an inspector[7] at least 48 hours before the services are needed.

(b) The regulated articles must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

(Approved by the Office of Management and Budget under control number 0579–0088)

[57 FR 57327, Dec. 4, 1992, as amended at 59 FR 67133, Dec. 29, 1994]

§ 301.81–9 Attachment and disposition of certificates and limited permits.

(a) The consignor must ensure that the certificate or limited permit authorizing interstate movement of a

[6] Compliance agreements may be initiated by contacting a local office of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices of Plant Protection and Quarantine 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, Maryland 20737–1236.

[7] See footnote 4 to § 301.81–5(a).

regulated article is, at all times during interstate movement, attached to:

(1) The outside of the container encasing the regulated article;

(2) The article itself, if it is not in a container; or

(3) The consignee's copy of the accompanying waybill: *Provided,* that the descriptions of the regulated article on the certificate or limited permit, and on the waybill, are sufficient to identify the regulated article; and

(b) The carrier must furnish the certificate or limited permit authorizing interstate movement of a regulated article to the consignee at the shipment's destination.

(Approved by the Office of Management and Budget under control number 0579–0088)

[57 FR 57327, Dec. 4, 1992, as amended at 59 FR 67133, Dec. 29, 1994]

§ 301.81–10 Costs and charges.

The services of the inspector during normal business hours will be furnished without cost to persons requiring the services. The United States Department of Agriculture will not be responsible for any other costs or charges.

§ 301.81-11 Imported fire ant detection, control, exclusion, and enforcement program for nurseries producing containerized plants.

This detection, control, exclusion, and enforcement program is designed to keep nurseries free of the imported fire ant and provides a basis to certify containerized nursery stock for interstate movement. Participating regulated establishments must be operating under a compliance agreement in accordance with § 301.81-6. Such compliance agreements shall state the specific requirements that a shipper agrees to follow to move plants in accordance with the requirements of the program. Certificates and a nursery identification number may be issued to the nursery for use on shipments of regulated articles.

(a) *Detection.* (1) Nursery owners are required to visually survey their entire premises twice monthly for the presence of imported fire ants.

(2) Nurseries participating in this program will be inspected by Federal or State inspectors at least twice per year. More frequent inspections may be necessary depending upon imported fire ant infestation levels immediately surrounding the nursery, the thoroughness of nursery management in maintaining imported-fire-ant-free premises, and the number of previous detections of imported fire ants in or near containerized plants. Inspections by Federal and State inspectors should be more frequent just before and during the peak shipping season. Any nurseries determined during nursery inspections to have imported fire ant colonies must be immediately treated to the extent necessary to eliminate the colonies.

(b) *Control.* Nursery plants that are shipped under this program must originate in a nursery that meets the requirements of this section. Nursery owners must implement a treatment program with registered bait and contact insecticides. The premises, including growing and holding areas, must be maintained free of the imported fire ant. As part of this treatment program, all exposed soil surfaces (including sod and mulched areas) on property where plants are grown, potted, stored, handled, loaded, unloaded, or sold must be treated in accordance with part 305 of this chapter at least once every 6 months. The first application must be performed early in the spring. Followup treatments with a contact insecticide in accordance with part 305 of this chapter must be applied to eliminate all remaining colonies.

(c) *Exclusion.* (1) For plants grown on the premises, treatment of soil or potting media in accordance with part 305 of this chapter prior to planting is required.

(2) For plants received from outside sources, to prevent the spread into a nursery free of the imported fire ant by newly introduced, infested nursery plants, all plants must be:

(i) Obtained from nurseries that comply with the requirements of this section and that operate under a compliance agreement in accordance with § 301.81-6; or

(ii) Treated upon delivery in accordance with part 305 of this chapter, and within the specified number of days be either:

(A) Repotted in treated potting soil media;

(B) Retreated in accordance with part 305 of this chapter at the specified interval; or

(C) Shipped.

(d) *Enforcement.* (1) The nursery owner must maintain records of the nursery's surveys and treatments for the imported fire ant. These records must be made available to State and Federal inspectors upon request.

(2) If imported fire ants are detected in nursery stock during an inspection by a Federal or State inspector, issuance of certificates for movement will be suspended until necessary treatments are applied and the plants and nursery premises are determined to be free of the imported fire ant. A Federal or State inspector may declare a nursery to be free of the imported fire ant upon reinspection of the premises. This inspection must be conducted no sooner than 30 days after treatment. During this period, certification may be based upon treatments for plants in accordance with part 305 of this chapter.

(3) Upon notification by the department of agriculture in any State of destination that a confirmed imported fire ant infestation was found on a shipment from a nursery considered free of the imported fire ant, the department of agriculture in the State of origin must cease its certification of shipments from that nursery. An investigation by Federal or State inspectors will commence immediately to determine the probable source of the problem and to ensure that the problem is resolved. If the problem is an infestation, issuance of certification for movement on the basis of imported-fire-ant-free premises will be suspended until treatment and elimination of the infestation is completed. Reinstatement into the program will be granted upon determination that the nursery premises are free of the imported fire ant, and that all other provisions of this subpart are being followed.

(4) In cases where the issuance of certificates is suspended through oral notification, the suspension and the reasons for the suspension will be confirmed in writing within 20 days of the oral notification of the suspension. Any person whose issuance of certificates has been suspended may appeal the decision, in writing, within 10 days after receiving the written suspension notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve any conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

[75 FR 4240, Jan. 26, 2010]

Subpart—Unshu Oranges [Reserved]

Subpart—Golden Nematode

SOURCE: 37 FR 24330, Nov. 16, 1972, unless otherwise noted.

QUARANTINE AND REGULATIONS

§ 301.85 Quarantine; restriction on interstate movement of specified regulated articles.

(a) *Notice of quarantine.* Under the authority of sections 411, 412, 414, and 434 of the Plant Protection Act (7 U.S.C. 7711, 7712, 7714, and 7754), the Secretary of Agriculture quarantines the State of New York in order to prevent the spread of the golden nematode (*Globodera rostochiensis*), which causes a dangerous disease of potatoes and certain other plants and is not widely prevalent or distributed within and throughout the United States. Through the aforementioned authorities, the Secretary imposes a quarantine on the State of New York with respect to the interstate movement from that State of the articles described in paragraph (b) of this section, issues regulations in this subpart governing the movement of such articles, and gives notice of this quarantine action.

(b) *Quarantine restrictions on interstate movement of specified regulated articles.* No common carrier or other person shall move interstate from any quarantined State any of the following articles (defined in § 301.85–1 as regulated articles), except in accordance with the conditions prescribed in this subpart:

(1) Soil, compost, humus, muck, peat, and decomposed manure, separately or with other things.

(2) Plants with roots, except soil-free aquatic plants.

(3) Grass sod.

(4) Plant crowns and roots for propagation.

(5) True bulbs, corms, rhizomes, and tubers of ornamental plants.

(6) Irish potatoes included within any one or more of the following paragraph (b)(6)(i), (ii), or (iii) of this section:

(i) Irish potatoes for seed; and

(ii) Irish potatoes unless—

(A) Each is at least 1½ inches in diameter based on measurement by a sizing screen or sizing chain, each is substantially free of soil as a result of grading (a method of removing soil mechanically) under a compliance agreement in accordance with § 301.85–5(b), and they are moved in an approved container; or

(B) Each is substantially free of soil as a result of washing or fluming under a compliance agreement in accordance with § 301.85–5(b), and they are moved in an approved container; or

(iii) Irish potatoes harvested from a field tested and found by an inspector to contain an identifiable population of viable golden nematodes, unless such field had been subsequently treated in accordance with paragraph (b)(6)(iii)(A), (B), or (C) of this section under the supervision of an inspector and in accordance with any additional conditions found necessary by the inspector to assure effective application of the pesticide used; and unless headlands and farm roads are treated in accordance with paragraph (b)(6)(iii)(D) of this section:

(A) Applications of 140.3 liters of Vorlex (1,3 dichloropropene; 1,2 dichloropropane, and other related compounds, 80 percent; plus methyl isothiocyanate, 20 percent active ingredients) per hectare (15 gallons per acre); two applications 5 to 10 days apart with a third application 5 to 10 days after the second application to areas in which the inspector finds upon microscopic examination of soil samples that viable golden nematodes may still exist; soil to be from 3 °C to 29 °C (38 °F to 84 °F).

(B) Applications of 280.6 liters of D-D (1,3 dichloropropene; 1,2 dichloropropane, and other related compounds, 100 percent active ingredients) per hectare (30 gallons per acre); two applications 5 to 10 days apart with a third application 5 to 10 days after the second application to areas in which the inspector finds upon microscopic examination of soil samples that viable golden nematodes may still exist (consult product label for heavier dosage in muck or peat soils); soil to be from 4.5 °C to 29 °C (40 °F to 84 °F).

(C) Applications of 168.4 liters of Telone II (1,3 dichloropropene, 92 percent active ingredient) per hectare (18 gallons per acre); two applications 5 to 10 days apart with a third application 5 to 10 days after the second application to areas in which the inspector finds upon microscopic examination of soil samples that viable golden nematodes may still exist (consult product label for heavier dosage in muck or peat soils); soil to be from 4.5 °C to 32 °C (40 °F to 90 °F).

(D) Application of Vapam (sodium-N-methyl dithiocarbamate, 32.7 percent active ingredient) mixed with water at the rate of 1 part Vapam to 60 parts water and applied as a drench at the rate of 14.96 cubic meters per hectare (1600 gallons per acre); soil to be from 4.5 °C to 32 °C (40 °F to 90 °F).

(7) Root crops other than Irish potatoes.

(8) Small grains and soybeans.

(9) Hay, straw, fodder, and plant litter, of any kind.

(10) Ear corn, except shucked ear corn.

(11) Used crates, boxes, and burlap bags, and other used farm products containers.

(12) Used farm tools.

(13) Used mechanized cultivating equipment and used harvesting equipment.

(14) Used mechanized soil-moving equipment.

(15) Any other products, articles, or means of conveyance of any character whatsoever, not covered by paragraphs (b) (1) through (14) of this section, when it is determined by an inspector that

they present a hazard of spread of golden nematode, and the person in possession thereof has been so notified.

[37 FR 24330, Nov. 16, 1972, as amended at 47 FR 12331, Mar. 23, 1982; 66 FR 21052, Apr. 27, 2001; 67 FR 8465, Feb. 25, 2002; 69 FR 21040, Apr. 20, 2004]

§ 301.85–1 Definitions.

Terms used in the singular form in this subpart shall be deemed to import the plural and vice versa, as the case may demand. The following terms, when used in this subpart shall be construed respectively to mean:

Certificate. A document issued or authorized to be issued under this subpart by an inspector to allow the interstate movement of regulated articles to any destination.

Compliance agreement. A written agreement between a person engaged in growing, handling, or moving regulated articles, and the Plant Protection and Quarantine Programs, wherein the former agrees to comply with the requirements of this subpart identified in the agreement by the inspector who executes the agreement on behalf of the Plant Protection and Quarantine Programs as applicable to the operations of such person.

Deputy Administrator. The Deputy Administrator of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other officer or employee of said service to whom authority to act in his stead has been or may hereafter be delegated.

Farm tools. An instrument worked or used by hand, e.g., hoes, rakes, shovels, axes, hammers, and saws.

Generally infested area. Any part of a regulated area not designated as a suppressive area in accordance with § 301.85–2.

Golden nematode. The nematode known as the golden nematode (*Globodera rostochiensis*), in any stage of development.

Infestation. The presence of the golden nematode or the existence of circumstances that make it reasonable to believe that the golden nematode is present.

Inspector. Any employee of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator to enforce the provisions of the Quarantine and regulations in this subpart.

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

Limited permit. A document issued or authorized to be issued by an inspector to allow the interstate movement of noncertifiable regulated articles to a specified destination for limited handling, utilization or processing or for treatment.

Mechanized cultivating equipment; and mechanized harvesting equipment. Mechanized equipment used for soil tillage, including tillage attachments for farm tractors, e.g., tractors, disks, plows, harrows, planters, and subsoilers; mechanized equipment used for harvesting purposes, e.g., combines, potato conveyors, and harvesters and hay balers.

Mechanized soil-moving equipment. Equipment used for moving or transporting soil, e.g., draglines, bulldozers, dump trucks, road scrapers, etc.

Moved (movement, move). Shipped, deposited for transmission in the mail, otherwise offered for shipment, received for transportation, carried, or otherwise transported, or moved, or allowed to be moved, by mail or otherwise. "Movement" and "move" shall be construed in accordance with this definition.

Person. Any individual, corporation, company, society, or association, or other organized group of any of the foregoing.

Plant Protection and Quarantine Programs. The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Protection Act and related legislation, quarantines, and regulations.

Regulated area. Any quarantined State, or any portion thereof, listed as a regulated area in § 301–85–2a, or otherwise designated as a regulated area in accordance with § 301.85–2(b).

Regulated article. Any articles as described in § 301.85(b).

Restricted destination permit. A document issued or authorized to be issued

by an inspector to allow the interstate movement of regulated articles not certifiable under all applicable Federal domestic plant quarantines to a specified destination for other than scientific purposes.

Scientific permit. A document issued by the Deputy Administrator to allow the interstate movement to a specified destination of regulated articles for scientific purposes.

Soil. That part of the upper layer of earth in which plants can grow.

State. Any State, territory, or district of the United States, including Puerto Rico.

Suppressive area. That portion of a regulated area where eradication of infestation is undertaken as an objective, as designated under § 301.85–2(a).

[37 FR 24330, Nov. 16, 1972, as amended at 47 FR 12331, Mar. 23, 1982; 66 FR 21052, Apr. 27, 2001; 67 FR 8465, Feb. 25, 2002; 70 FR 33268, June 7, 2005]

§ 301.85–2 Authorization to designate, and terminate designation of, regulated areas and suppressive or generally infested areas; and to exempt articles from certification, permit, or other requirements.

(a) *Regulated areas and suppressive or generally infested areas.* The Deputy Administrator shall list as regulated areas, in a supplemental regulation designated as § 301.85–2a, each quarantined State; or each portion thereof in which golden nematode has been found or in which there is reason to believe that golden nematode is present, or which it is deemed necessary to regulate because of their proximity to infestation or their inseparability for quarantine enforcement purposes from infested localities. The Deputy Administrator, in the supplemental regulation, may divide any regulated area into a suppressive area or a generally infested area in accordance with the definitions thereof in § 301.85–1. Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator is of the opinion that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the interstate spread of the golden nematode.

(b) *Temporary designation of regulated areas and suppressive or generally infested areas.* The Deputy Administrator or an authorized inspector may temporarily designate any other premises in a quarantined State as a regulated area and a suppressive or generally infested area, in accordance with the criteria specified in paragraph (a) of this section for listing such area, by serving written notice thereof on the owner or person in possession of such premises, and thereafter the interstate movement of regulated articles from such premises by any person having notice of the designation shall be subject to the applicable provisions of this subpart. As soon as practicable, such premises shall be added to the list in § 301.85–2a if a basis then exists for their designation; otherwise the designation shall be terminated by the Deputy Administrator or an authorized inspector and notice thereof shall be given to the owner or person in possession of the premises.

(c) *Termination of designation as a regulated area and a suppressive or generally infested area.* The Deputy Administrator shall terminate the designation provided for under paragraph (a) of this section of any area listed as a regulated area and suppressive or generally infested area when he determines that such designation is no longer required under the criteria specified in paragraph (a) of this section.

(d) *Exemption of articles from certification, permit, or other requirements.* The Deputy Administrator may, in a supplemental regulation designated as § 301.85–2b, list regulated articles or movements of regulated articles which shall be exempt from the certification, permit, or other requirements of this subpart under such conditions as he or she may prescribe, if he or she finds

that facts exist as to the pest risk involved in the movement of such regulated articles which make it safe to so relieve such requirements.

[37 FR 24330, Nov. 16, 1972, as amended at 70 FR 33268, June 7, 2005]

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

The civil divisions and parts of civil divisions described below are designated as golden nematode regulated areas within the meaning of the provisions of this subpart; and such regulated areas are hereby divided into generally infested areas or suppressive areas as indicated below:

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(1) *Generally infested area:*

Cayuga County. (A) The Town of Montezuma;

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

Genesee County. The towns of Elba and Byron.

Livingston County. The towns of Avon, Caledonia, Geneseo, Groveland, Leicester, Lima, Livonia, Mount Morris, West Sparta, and York.

Nassau County. The entire county.

Orleans County. The towns of Barre and Clarendon.

Seneca County. The town of Tyre.

Steuben County. (A) The towns of Prattsburg and Wheeler;

(B) That area known as "Arkport Muck" located in the town of Dansville and bounded by a line beginning at a point where the Conrail right-of-way (Erie Lackawanna Railroad) intersects County Road 52 (known as Burns Road), then north and northeast along County Road 52 to its junction with New York Route 36, then south and southeast along New York Route 36 to its intersection with the Dansville Town line, then west along the Dansville Town line to its intersection with the Conrail right-of-way (Erie Lackawanna Railroad), then north and northwest along the Conrail right-of-way to the point of beginning;

(C) The Werth, Dale farm, known as the "Werthwhile Farm," located in the town of Cohocton on the north side of County Road 5 (known as Brown Hill Road), and 0.2 mile west of the junction of County Road 5 with County Road 58 (known as Wager Road); and

(D) The property located in the town of Fremont that is bounded as follows: Beginning at a point on Babcock Road that intersects a farm road marked by latitude/longitude coordinates 42°26′12.5″, −77°34′30.4″; then west along the farm road to coordinates 42°26′12.2″, −77°34′41.0″; then south to coordinates 42°26′09.6″, −77°34′40.9″; then west to coordinates 42°26′09.4″, −77°34′50.7″; then south to coordinates 42°26′00.7″, −77°34′50.3″; then east to coordinates 42°25′59.9″, −77°34′40.4″; then south to coordinates 42°25′54.7″, −77°34′40.0″; then east to coordinates 42°25′56.3″, −77°34′37.7″; then north to coordinates 42°25′58.9″, −77°34′35.0″; then east to coordinates 42°25′58.9″, −77°34′34.1″; then north to coordinates 42°26′05.8″, −77°34′32.5″; then east to coordinates 42°26′05.7″, −77°34′29.9″; then north to the point of beginning at coordinates 42°26′12.5″, −77°34′30.4″.

Suffolk County. The entire county.

Wayne County. The town of Savannah.

(2) *Suppressive area:* None.

[51 FR 30050, Aug. 22, 1986, as amended at 69 FR 249, Jan. 5, 2004; 69 FR 64640, Nov. 8, 2004]

§ 301.85–2b Exempted articles.[1]

(a) The following articles are exempt from the certification and permit requirements of this subpart if they meet the applicable conditions prescribed in paragraphs (a) (1) through (4) of this section and have not been exposed to infestation after cleaning or other handling as prescribed in said paragraphs:

(1) Small grains, if harvested in bulk or directly into approved containers, and if the small grains and containers thereof have not come into contact with the soil; or, if they have been cleaned to meet State seed sales requirements.

(2) Soybeans (other than for seed), if harvested in bulk or directly into approved containers, and if the soybeans and containers thereof have not come into contact with the soil.

(3) Unshucked ear corn, if harvested in bulk or directly into approved containers, and if the corn and containers thereof have not come into contact with the soil.

(4) Used farm tools, if cleaned free of soil.

[1] The articles hereby exempted remain subject to applicable restrictions under other quarantines and other provisions of this subpart.

(b) The following articles are exempt from the certification and permit requirements of this subpart if they meet the applicable conditions prescribed in paragraphs (b) (1) through (3) of this section and have not been exposed to infestation after cleaning or other handling as prescribed in said paragraphs: *Provided*, That this exemption shall not apply to any class of regulated articles specified by an inspector in a written notification to the owner or person in possession of the premises that the movement of such articles from such premises under this exemption would involve a hazard of spread of the golden nematode:

(1) Root crops (other than Irish potatoes and sugar beets), if moved in approved containers.

(2) Hay, straw, fodder, and plant litter, if moved in approved containers.

(c) Containers of the following types are approved for the purposes of this section:

(1) New paper bags; and consumer packages of any material except cloth or burlap.

(2) Crates, pallet boxes, trucks, and boxcars, if free of soil.

[35 FR 4692, Mar. 18, 1970, as amended at 47 FR 12331, Mar. 23, 1982; 67 FR 8465, Feb. 25, 2002]

§ 301.85–3 Conditions governing the interstate movement of regulated articles from quarantined States.[2]

(a) Any regulated articles except soil samples for processing, testing, or analysis may be moved interstate from any quarantined State under the following conditions:

(1) With certificate or permit issued and attached in accordance with §§ 301.85–4 and 301.85–7 if moved:

(i) From any generally infested area or any suppressive area into or through any point outside of the regulated areas; or

(ii) From any generally infested area into or through any suppressive area; or

(iii) Between any noncontiguous suppressive areas; or

(iv) Between contiguous suppressive areas when it is determined by an inspector that the regulated articles present a hazard of the spread of the golden nematode and the person in possession thereof has been so notified; or

(v) Through or reshipped from any regulated area when such movement is not authorized under paragraph (a)(2)(v) of this section; or

(2) From any regulated area, without certificate or permit if moved:

(i) Under the provisions of § 301.85–2b which exempts certain articles from certificate and permit requirements; or

(ii) From a generally infested area to a contiguous generally infested area; or

(iii) From a suppressive area to a contiguous generally infested area; or

(iv) Between contiguous suppressive areas unless the person in possession of the articles has been notified by an inspector that a hazard of spread of the golden nematode exists; or

(v) Through or reshipped from any regulated area if the articles originated outside of any regulated area and if the point of origin of the articles is clearly indicated, their identity has been maintained, and they have been safeguarded against infestation while in the regulated area in a manner satisfactory to the inspector; or

(3) From any area outside the regulated areas, if moved:

(i) With a certificate or permit attached; or

(ii) Without a certificate or permit, if:

(*a*) The regulated articles are exempt from certification and permit requirements under the provisions of § 301.85–2b; or

(*b*) The point of origin of such movement is clearly indicated on the articles or shipping document which accompanies the articles and if the movement is not made through any regulated area.

(b) Unless specifically authorized by the Deputy Administrator in emergency situations, soil samples for processing, testing or analysis may be moved interstate from any regulated area only to laboratories approved[3] by

[2] Requirements under all other applicable Federal domestic plant quarantines must also be met.

[3] Pamphlets containing provisions for laboratory approval may be obtained from the Deputy Administrator, Plant Protection and

the Deputy Administrator and so listed by him in a supplemental regulation.[4] A certificate or permit is not required to be attached to such soil samples except in those situations where the Deputy Administrator has authorized such movement only with a certificate or permit issued and attached in accordance with §§ 301.85–4 and 301.85–7. A certificate or permit is not required to be attached to soil samples originating in areas outside of the regulated areas if the point of origin of such movement is clearly indicated on the articles or shipping document which accompanies the articles and if the movement is not made through any regulated area.

[37 FR 24330, Nov. 16, 1972, as amended at 67 FR 8465, Feb. 25, 2002]

§ 301.85–4 Issuance and cancellation of certificates and permits.

(a) Certificates may be issued for any regulated articles (except soil samples for processing, testing, or analysis) by an inspector if the inspector determines that they are eligible for certification for movement to any destination under all Federal domestic plant quarantines applicable to such articles and:

(1) Have originated in noninfested premises in a regulated area and have not been exposed to infestation while within the regulated areas; or

(2) Have been treated to destroy infestation in accordance with part 305 of this chapter; or

(3) Have been grown, produced, manufactured, stored, or handled in such a manner that no infestation would be transmitted thereby.

(b) Limited permits may be issued by an inspector to allow interstate movement of regulated articles (except soil samples for processing, testing or analysis) not eligible for certification under this subpart, to specified destinations for limited handling, utilization, or processing, or for treatment in accordance with part 305 of this chapter, when, upon evaluation of the circumstances involved in each specific case he determines that such movement will not result in the spread of the golden nematode and requirements of other applicable Federal domestic plant quarantines have been met.

(c) Restricted destination permits may be issued by an inspector to allow the interstate movement (for other than scientific purposes) of regulated articles (except soil samples for processing, testing, or analysis) to any destination permitted under all applicable Federal domestic plant quarantines if such articles are not eligible for certification under all such quarantines but would otherwise qualify for certification under this subpart.

(d) Scientific permits to allow the interstate movement of regulated articles and certificates or permits to allow the movement of soil samples for processing, testing, or analysis in emergency situations may be issued by the Deputy Administrator under such conditions as may be prescribed in each specific case by the Deputy Administrator to prevent the spread of the golden nematode.

(e) Certificate, limited permit, and restricted destination permit forms may be issued by an inspector to any person for use for subsequent shipments of regulated articles (except for soil samples for processing, testing, or analysis) provided such person is operating under a compliance agreement; and any such person may be authorized by an inspector to reproduce such forms on shipping containers or otherwise. Any such person may execute and issue the certificate forms, or reproductions of such forms, for the interstate movement of regulated articles from the premises of such person identified in the compliance agreement if such person has treated such regulated articles to destroy infestation in accordance with part 305 of this chapter, and if such regulated articles are eligible for certification for movement to any destination under all Federal domestic plant quarantines applicable to such articles. Any such person may execute and issue the limited permit forms, or reproductions of such forms, for interstate movement of regulated articles to specified destinations when the inspector has made the determinations specified in paragraph (b) of this

Quarantine Programs, APHIS, U.S. Department of Agriculture, Washington, DC 20250.

[4] For list of approved laboratories, see PP 639 (37 FR 7813, 15525, and amendments thereof).

section. Any such person may execute and issue the restricted destination permit forms, or reproductions of such forms, for the interstate movement of regulated articles not eligible for certification under all Federal domestic plant quarantines applicable to such articles, under the conditions specified in paragraph (c) of this section.

(f) Any certificate or permit which has been issued or authorized may be withdrawn by the inspector or the Deputy Administrator if he or she determines that the holder thereof has not complied with any condition for the use of such document imposed by this subpart. Prior to such withdrawal, the holder of the certificate of permit shall be notified of the proposed action and the reason therefor and afforded reasonable opportunity to present his or her views thereon.

[37 FR 24330, Nov. 16, 1972, as amended at 70 FR 33268, June 7, 2005]

§ 301.85–5 Compliance agreement and cancellation thereof.

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of such articles under this subpart. Compliance agreement forms may be obtained from the Deputy Administrator or an inspector.

(b) Any person engaged in the business of removing soil from Irish potatoes by the process of grading, washing, or fluming may enter into a compliance agreement concerning such operations. The compliance agreement shall be a written agreement between the person conducting such operations and Plant Protection and Quarantine wherein such person agrees to conduct such operations in a manner which, in the judgment of the inspector supervising enforcement of the quarantine and regulations, will substantially remove the soil from the potatoes.

(c) Any compliance agreement may be canceled by the inspector who is supervising its enforcement whenever the inspector finds, after notice and reasonable opportunity to present views has been accorded to the other party thereto, that such other party has failed to comply with the conditions of the agreement.

[37 FR 24330, Nov. 16, 1972, as amended at 47 FR 12332, Mar. 23, 1982; 70 FR 33268, June 7, 2005]

§ 301.85–6 Assembly and inspection of regulated articles.

Persons (other than those authorized to use certificates, limited permits, or restricted destination permits, or reproductions thereof, under § 301.85–4(e)) who desire to move interstate regulated articles which must be accompanied by a certificate or permit shall, as far in advance as possible, request an inspector to examine the articles prior to movement. Such articles shall be assembled at such points and in such manner as the inspector designates to facilitate inspection.

§ 301.85–7 Attachment and disposition of certificates and permits.

(a) If a certificate or permit is required for the interstate movement of regulated articles, the certificate or permit shall be securely attached to the outside of the container in which such articles are moved, except that, where the certificate or permit is attached to the waybill or other shipping document, and the regulated articles are adequately described on the certificate, permit, or shipping document, the attachment of the certificate or permit to each container of the articles is not required.

(b) In all cases, certificates or permits shall be furnished by the carrier to the consignee at the destination of the shipment.

§ 301.85–8 Inspection and disposal of regulated articles and pests.

Any properly identified inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of, or require disposal of regulated articles and golden nematodes as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754) in accordance with instructions issued by the Deputy Administrator.

[37 FR 24330, Nov. 16, 1972, as amended at 66 FR 21052, Apr. 27, 2001]

§ 301.85–9 Movement of live golden nematodes.

Regulations requiring a permit for and otherwise governing the movement of live golden nematodes in interstate or foreign commerce are contained in the Federal Plant Pest Regulations in part 330 of this chapter. Applications for permits for the movement of the pest may be made to the Deputy Administrator.

§ 301.85–10 Nonliability of the Department.

The U.S. Department of Agriculture disclaims liability for any costs incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

Subpart—Pale Cyst Nematode

SOURCE: 72 FR 51984, Sept. 12, 2007, unless otherwise noted.

§ 301.86 Restrictions on interstate movement of regulated articles.

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart. [1]

§ 301.86–1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

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

Associated field. A field that has been found to be at risk for infestation with pale cyst nematode in accordance with § 301.86–3(c)(2).

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of pale cyst nematode and may be moved interstate to any destination.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with this subpart.

Departmental permit. A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.86–4.

Field. A defined production site that is managed separately from surrounding areas for phytosanitary purposes.

Infestation (infested). The presence of the pale cyst nematode or the existence of circumstances that makes it reasonable to believe that the pale cyst nematode is present.

Infested field. A field that has been found to be infested with pale cyst nematode in accordance with § 301.86–3(c)(1).

Inspector. Any employee of APHIS or other person 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 in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.86–5(b) only to a specified destination and only in accordance with specified conditions.

Moved (move, movement). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

Nursery stock. Living plants and plant parts intended to be planted, to remain planted, or to be replanted.

Pale cyst nematode. The pale cyst nematode (*Globodera pallida*), in any stage of development.

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

[1] 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 regulated articles as provided in section 414 of the Plant Protection Act (7 U.S.C. 7714).

Plant Protection and Quarantine. The Plant Protection and Quarantine program of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

Quarantined area. Any State or portion of a State designated as a quarantined area in accordance with the provisions in § 301.86–3.

Regulated article. Any article listed in § 301.86–2 or otherwise designated as a regulated article in accordance with § 301.86–2(i).

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

[72 FR 51984, Sept. 12, 2007, as amended at FR 19381, Apr. 29, 2009]

§ 301.86–2 Regulated articles.

The following are regulated articles:

(a) Pale cyst nematodes.[2]

(b) The following pale cyst nematode host crops:

Eggplant (*Solanum melongena* L.)
Pepper (*Capsicum* spp.)
Potato (*Solanum tuberosum* L.)
Tomatillo (*Physalis philadelphica*)
Tomato (*Lycopersicon esculentum* L.)

(c) Root crops.

(d) Garden and dry beans (*Phaseolus* spp.) and peas (*Pisum* spp.).

(e) All nursery stock.

(f) Soil, compost, humus, muck, peat, and manure, and products on or in which soil is commonly found, including grass sod and plant litter.

(g) Hay, straw, and fodder.

(h) Any equipment or conveyance used in an infested or associated field that can carry soil if moved out of the field.

(i) Any other product, article, or means of conveyance not listed in paragraphs (a) through (h) of this section that an inspector determines presents a risk of spreading the pale cyst nematode, 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.

[72 FR 51984, Sept. 12, 2007, as amended at 74 FR 19381, Apr. 29, 2009]

§ 301.86–3 Quarantined areas.

(a) *Designation of quarantined areas.* In accordance with the criteria listed in paragraph (c) of this section, the Administrator will designate as a quarantined area each field that has been found to be infested with pale cyst nematode, each field that has been found to be associated with an infested field, and any area that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from infested or associated fields. The Administrator will publish the description of the quarantined area on the Plant Protection and Quarantine Web site, *http://www.aphis.usda.gov/plant_health/plant_pest_info/potato/pcn.shtml*. The description of the 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. The description of the quarantined area may also be obtained by request from any local office of PPQ; local offices are listed in telephone directories. After a change is made to the quarantined area, 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.

(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 only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the 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 the pale cyst nematode.

(c) *Criteria for designation of fields as infested fields and associated fields.* (1) *Infested fields.* The Administrator will designate a field as an infested field

[2] Permit and other requirements for the interstate movement of pale cyst nematodes are contained in part 330 of this chapter.

when a pale cyst nematode is found in the field.

(2) *Associated fields.* The Administrator will designate a field as an associated field when pale cyst nematode host crops, as listed in § 301.86–2(b), have been grown in the field in the last 10 years and

(i) The field shares a border with an infested field; or

(ii) The field came into contact with a regulated article listed in § 301.86–2 from an infested field within the last 10 years; or

(iii) Within the last 10 years, the field shared ownership, tenancy, seed, drainage or runoff, farm machinery, or other elements of shared cultural practices with an infested field that could allow spread of the pale cyst nematode, as determined by the Administrator.

(d) *Removal of fields from quarantine*—(1) *Infested fields.* An infested field will be removed from quarantine when a protocol approved by the Administrator as sufficient to support removal of infested fields from quarantine has been completed and the field has been found to be free of pale cyst nematode.

(2) *Associated fields.* An associated field will be removed from quarantine when the field has been found to be free of pale cyst nematode according to a protocol approved by the Administrator as sufficient to support removal of associated fields from quarantine.

(3) *Removal of other areas from quarantine.* If the Administrator has quarantined any area other than infested or associated fields because of its inseparability for quarantine enforcement purposes from infested or associated fields, as provided in paragraph (a) of this section, that area will be removed from quarantine when the relevant infested or associated fields are removed from quarantine.

[72 FR 51984, Sept. 12, 2007, as amended at 74 FR 19381, Apr. 29, 2009]

§ 301.86–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

(a) Any regulated article may be moved interstate from a quarantined area only if moved under the following conditions:

(1) With a certificate or limited permit issued and attached in accordance with §§ 301.86–5 and 301.86–8;

(2) Without a certificate or limited permit if:

(i) The regulated article is moved by the United States Department of Agriculture for experimental or scientific purposes; or

(ii) The regulated article originates outside the quarantined area and is moved interstate through the quarantined area under the following conditions:

(A) The points of origin and destination are indicated on a waybill accompanying the regulated article; and

(B) The regulated article is moved through the quarantined area without stopping (except for refueling and for traffic conditions such as traffic lights and stop signs); and

(C) The regulated article is not unpacked or unloaded in the quarantined area; and

(D) The article has not been combined or commingled with other articles so as to lose its individual identity.

(b) When an inspector has probable cause to believe a person or means of conveyance is moving a regulated article interstate, the inspector is authorized to stop the person or means of conveyance to determine whether a regulated article is present and to inspect the regulated article. Articles found to be infested by an inspector, and articles not in compliance with the regulations in this subpart, may be seized, quarantined, treated, subjected to other remedial measures, destroyed, or otherwise disposed of.

§ 301.86–5 Issuance and cancellation of certificates and limited permits.

(a) *Certificates.* An inspector[3] or person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if the inspector determines that

[3] Inspectors are assigned to local offices of APHIS, which are listed in local telephone directories. Information concerning such 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, Maryland 20737–1236.

the regulated article satisfies the general requirements for a certificate in paragraph (a)(1) of this section and any requirements that may apply to the regulated article under paragraphs (a)(2) through (a)(7) of this section.

(1) *Certification requirements for all regulated articles.* The regulated article must 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)[4] to prevent the spread of the pale cyst nematode. In addition, the regulated article must be eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(2) *Certification requirements for nursery stock*—(i) *Potatoes.* Potatoes intended for use as nursery stock (*i.e.*, seed potatoes) are prohibited from being moved interstate from the quarantined area.

(ii) *Nursery stock of other host crops.* An inspector may issue a certificate for the interstate movement of nursery stock of pale cyst nematode host crops other than potatoes, as listed in § 301.86–2(b), if the nursery stock was grown in a field that meets the following requirements:

(A) The field has been surveyed by an inspector for pale cyst nematode at least once in the last 3 years;

(B) The pale cyst nematode has not been found in the field; and

(C) No more than one pale cyst nematode host crop, as listed in § 301.86–2(b), has been grown in the last 3 years.

(iii) *Nursery stock of non-host crops*—(A) *With soil.* An inspector may issue a certificate for the interstate movement of nursery stock of non-host crops moved with soil if the nursery stock was grown in a field that meets the following requirements:

(*1*) The field has been surveyed by an inspector for pale cyst nematode at least once in the last 3 years;

(*2*) The pale cyst nematode has not been found in the field; and

(*3*) No more than one pale cyst nematode host crop, as listed in § 301.86–2(b), has been grown in the field in the last 3 years.

(B) *Without soil (bare-rooted).* An inspector may issue a certificate for the interstate movement of nursery stock of non-host crops moved without soil if the inspector finds the nursery stock to be free of soil on its roots and on all other parts of the plant.

(3) *Certification requirements for potatoes for consumption, root crops for consumption, garden or dry beans, and peas.* An inspector may issue a certificate for the movement of potatoes intended for consumption, root crops intended for consumption, garden or dry beans, or peas from the quarantined area only if the field in which the potatoes, root crops, garden or dry beans, or peas were grown meets the following requirements:

(i) The field has been surveyed by an inspector for pale cyst nematode at least once in the last 3 years and prior to the planting of the potatoes or root crops;

(ii) Pale cyst nematode has not been found in the field; and

(iii) No more than one pale cyst nematode host crop, as listed in § 301.86–2(b), has been grown in the field in the last 3 years.

(4) *Certification requirements for soil and associated products.* An inspector may issue a certificate for the interstate movement of a regulated article listed in § 301.86–2(e) only if the article originated in a field that meets the following requirements:

(i) The field has been surveyed by an inspector for pale cyst nematode at least once in the last 3 years;

(ii) The pale cyst nematode has not been found in the field; and

(iii) No more than one pale cyst nematode host crop, as listed in § 301.86–2(b), has been grown in the last 3 years.

(5) *Certification requirements for hay, straw, and fodder.* An inspector may issue a certificate for the movement of

[4] Section 414 of the Plant Protection Act (7 U.S.C. 7714) provides that the Secretary of Agriculture may, under certain conditions, hold, seize, quarantine, treat, apply other remedial measures to destroy or otherwise dispose of any plant, plant pest, plant product, article, or means of conveyance that is moving, or has moved into or through the United States or interstate if the Secretary has reason to believe the article is a plant pest or is infested with a plant pest at the time of movement.

hay, straw, or fodder from the quarantined area only if:

(i) The field where the hay, straw, or fodder was produced meets the following requirements:

(A) The field has been surveyed by an inspector for pale cyst nematode at least once in the last 3 years;

(B) The pale cyst nematode has not been found in the field; and

(C) No more than one pale cyst nematode host crop, as listed in § 301.86–2(b), has been grown in the field in the last 3 years; or

(ii) The hay, straw, or fodder is produced according to procedures judged by an inspector to be sufficient to isolate it from soil throughout its production.

(6) *Certification requirements for equipment used in infested or associated fields.* An inspector may issue a certificate for the interstate movement of equipment that has been used in an infested or associated field and that can carry soil if moved out of the field only after the equipment has been pressure-washed under the supervision of an inspector to remove all soil or steam-treated in accordance with part 305 of this chapter.

(b) *Limited permits*—(1) *General conditions.* An inspector[5] may issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(i) 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 this interstate movement will not result in the spread of the potato cyst nematode because life stages of the pale cyst nematode will be destroyed by the specified handling, processing, or utilization;

(ii) The regulated article 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 the potato cyst nematode; and

(iii) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(2) *Specific conditions for potatoes for consumption.* An inspector may issue a limited permit to allow the interstate movement of potatoes from the quarantined area for processing or packing only if:

(i) The potatoes are transported in a manner that prevents the potatoes and soil attached to the potatoes from coming into contact with agricultural premises outside the quarantined area; and

(ii) The potatoes are processed or packed at facilities that handle potatoes, waste, and waste water in a manner approved by APHIS to prevent the spread of potato cyst nematode.

(c) Certificates and limited permits for the interstate movement of regulated articles 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 an inspector has determined that the regulated article is eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article after an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(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 provisions in this subpart for the use of the certificate or limited permit or has not complied with all the conditions contained in the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly 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

[5] See footnote 3 to § 301.86–5(a).

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.

(Approved by the Office of Management and Budget under control number 0579–0322)

[72 FR 51984, Sept. 12, 2007, as amended at 74 FR 19381, Apr. 29, 2009]

§ 301.86–6 Compliance agreements and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person is aware of this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.[6]

(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 any of the provisions of 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, to the Administrator, 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 wrongfully 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 hearing will be adopted by the Administrator.

[6] Compliance agreement forms are available without charge from local Plant Protection and Quarantine offices, which are listed in telephone directories.

§ 301.86–7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.86–5(c)) who desires a certificate or limited permit to move a regulated article interstate must notify an inspector[7] as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

§ 301.86–8 Attachment and disposition of certificates and limited permits.

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

(1) Attached to the outside of the container containing the regulated article; or

(2) Attached to the regulated article itself if not in a container; or

(3) Attached to the consignee's copy of the accompanying waybill. If the certificate or limited permit is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier or the carrier's representative to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

(Approved by the Office of Management and Budget under control number 0579–0322)

§ 301.86–9 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

[7] See footnote 3 to § 301.86–5(a).

this subpart, other than for the services of the inspector.

Subpart—Sugarcane Diseases

SOURCE: 48 FR 50059, Oct. 31, 1983, unless otherwise noted.

QUARANTINE AND REGULATIONS

§ 301.87 Quarantine; restrictions on interstate movement of specified articles. [1,2]

(a) *Notice of quarantine.* Under the authority of sections 411, 412, 414, and 434 of the Plant Protection Act (7 U.S.C. 7711, 7712, 7714, and 7754), the Secretary of Agriculture quarantines Hawaii to prevent the artificial spread of leaf scald disease and quarantines Puerto Rico to prevent the artificial spread of gummosis disease and leaf scald disease. The regulations in this subpart govern the interstate movement from Hawaii and Puerto Rico of the regulated articles described in § 301.87–2.

(b) *Quarantine restrictions on interstate movement of regulated articles.* No common carrier or other person shall move interstate from any regulated area any regulated article except in accordance with the conditions prescribed in this subpart.

[48 FR 50059, Oct. 31, 1983, as amended at 66 FR 21052, Apr. 27, 2001]

§ 301.87–1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

Certificate. A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that the article is eligible for interstate movement in accordance with § 301.87–5(a) of this subpart.

Compliance agreement. A written agreement between Plant Protection and Quarantine and a person engaged in the business of growing, handling, or moving regulated articles, in which the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant to such provisions.

Deputy Administrator. The Deputy Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture for Plant Protection and Quarantine, or any officer or employee of the Department to whom authority to act in his or her stead has been or may hereafter be delegated.

Gummosis disease. A dangerous plant disease of sugarcane which is caused by the highly infectious bacterium, *Xanthomonas vasculorum* (Cobb) Dowson, and which is not widely prevalent or distributed within and throughout the United States.

Inspector. Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator in accordance with law to enforce the provisions of the quarantine and regulations in this subpart.

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

Leaf scald disease. A dangerous plant disease of sugarcane which is caused by the highly infectious bacterium, *Xanthomonas albilineans* (Ashby) Dowson, and which is not widely prevalent or distributed within and throughout the United States.

Limited permit. A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that the regulated article is eligible for interstate movement in accordance with § 301.87–5(b) of this subpart.

Moved (movement, move). Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or caused or allowed to be moved by any means.

[1] Any inspector is authorized to stop and inspect persons and means of conveyance, and to hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

[2] Regulations concerning the movement of gummosis bacteria and leaf scald bacteria in interstate or foreign commerce are contained in part 330 of this chapter.

"Movement" and "move" shall be construed in accordance with this definition.

Person. Any individual, partnership, corporation, company, society, association, or other organized group.

Plant Protection and Quarantine. The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Protection Act and related legislation, quarantines, and regulations.

Regulated area. Any quarantined State, or any portion thereof, listed as a regulated area in § 301.87–3(c) of this subpart, or otherwise designated as a regulated area in accordance with § 301.87–3(b) of this subpart.

Regulated article. Any article listed in § 301.87–2(a), (b), (c), (d), or otherwise designated as a regulated article in accordance with § 301.87–2(e).

State. Any State, Territory, or District of the United States, including the Commonwealth of Puerto Rico.

Sugarcane disease. This means leaf scald disease with respect to activities in Hawaii, and means gummosis disease or leaf scald disease with respect to activities in Puerto Rico.

[48 FR 50059, Oct. 31, 1983, as amended at 52 FR 31374, Aug. 20, 1987; 66 FR 21052, Apr. 27, 2001]

§ 301.87–2 Regulated articles.

(a) Sugarcane plants, whole or in part, including true seed and bagasse, but not including pieces of cane boiled for a minimum of 30 minutes during processing into sugarcane chews;

(b) Used sugarcane processing equipment (sugarcane mill equipment, such as equipment used for extracting and refining sugarcane juice; and experimental devices, such as devices used for extracting sugarcane juice);

(c) Used sugarcane field equipment (equipment used for sugarcane field production purposes, e.g. planters, tractors, discs, cultivators, and vehicles);

(d) Sugarcane juice; and

(e) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraph (a), (b), (c), or (d) of this section, when it is determined by an inspector that it presents a risk of spread of a sugarcane disease and the person in possession of it has actual notice that the product, article, or means of conveyance is subject to the restrictions of this section.

[48 FR 50059, Oct. 31, 1983, as amended at 52 FR 31374, Aug. 20, 1987]

§ 301.87–3 Regulated areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Deputy Administrator shall list as a regulated area in paragraph (c) of this section, each quarantined State, or each portion thereof, in which a sugarcane disease has been found by an inspector or in which the Deputy Administrator has reason to believe that a sugarcane disease is present, or each portion of a quarantined State which the Deputy Administrator deems necessary to regulate because of its proximity to a sugarcane disease or its inseparability for quarantine enforcement purposes from localities in which a sugarcane disease occurs. Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator is of the opinion that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of a sugarcane disease.

(b) The Deputy Administrator or an inspector may temporarily designate any nonregulated area in a quarantined State as a regulated area in accordance with the criteria specified in paragraph (a) of this section for listing such an area. Written notice of the designation shall be given to the owner or person in possession of the nonregulated area and, thereafter, the interstate movement of any regulated article from the area shall be subject to the applicable provisions of this subpart. As soon as practicable, the area shall be added to the list in paragraph (c) of this section or the designation shall be terminated

by the Deputy Administrator or an inspector, and notice thereof shall be given to the owner or person in possession of the area.

(c) The areas described below are designated as regulated areas;

Hawaii

All of Hawaii.

Puerto Rico.

All of Puerto Rico.

§ 301.87–4 Conditions governing the interstate movement of regulated articles from regulated areas in quarantined States.[3]

Any regulated article may be moved interstate from any regulated area in a quarantined State if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.87–5 and 301.87–8 of this subpart, or

(b) Without a certificate or limited permit, if

(1) Moved directly through any regulated area, and

(2) The article originated outside of any regulated area, and

(3) The point of origin of the article is clearly indicated by shipping documents, its identity has been maintained, and it has not been used for the production of sugarcane while in the regulated area.

§ 301.87–5 Issuance and cancellation of certificates and limited permits.

(a) A certificate shall be issued by an inspector for the movement of a regulated article if the inspector:

(1)(i) Determines that it has been treated under the direction of an inspector[4] in accordance with part 305 of this chapter, or

(ii) Determines based on inspection of the article and the premises of origin that it is free from sugarcane diseases;[5]

(2) Determines that it is to be moved in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714)[6] to prevent the spread of sugarcane diseases; and

(3) Determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines applicable to the article.

(b) A limited permit shall be issued by an inspector for the movement of a regulated article if the inspector:

(1) Determines, in consultation with the Deputy Administrator, that it is to be moved:

(i) For a specified purpose (such as for consumption or manufacturing) stated on the limited permit, other than for processing or harvesting sugarcane; and

(ii) To a specified destination stated on the limited permit, which is not in a county or parish where sugarcane is produced, and which is not within 10 miles of a sugarcane field;

(2) Determines that it is to be moved in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714)[6] to prevent the spread of sugarcane diseases; and

(3) Determines that it is eligible for such movement under all other Federal domestic plant quarantines applicable to the article.

(c) Certificates and limited permits for shipments of regulated articles may be issued by an inspector or by any person engaged in the business of growing, handling, or moving regulated articles provided such person is operating under a compliance agreement. Any such person may execute and issue a certificate for the interstate movement of a regulated article if the person has treated the regulated article to destroy infection in accordance with the provisions of § 301.87–10 of this subpart and

[3] Requirements under all other applicable Federal domestic plant quarantines must also be met.

[4] Treatments shall be monitored by inspectors in order to assure compliance with requirements in this subpart.

[5] The term *sugarcane diseases* means leaf scald disease with respect to movement of regulated articles from Hawaii and means gummosis disease and leaf scald disease with respect to movements of regulated articles from Puerto Rico.

[6] An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

the inspector has made the determination that the article is otherwise eligible for a certificate in accordance with paragraph (a) of this section; or if the inspector has made the determination that the article is eligible for a certificate in accordance with paragraph (a) of this section without such treatment. Any such person may execute and issue a limited permit for interstate movement of a regulated article when the inspector has made the determination that the article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit which has been issued or authorized may be withdrawn by an inspector if the inspector determines that its holder has not complied with any condition under the regulations for its use. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal in writing, stating the reasons for the decision as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve the conflict under rules of practice which shall be adopted by the Administrator of the Animal and Plant Health Inspection Service, USDA, for the proceeding.

[48 FR 50059, Oct. 31, 1983, as amended at 66 FR 21053, Apr. 27, 2001; 75 FR 4241, Jan. 26, 2010]

§ 301.87–6 Compliance agreement; cancellation.

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of regulated articles under this subpart.[7] The compliance agreement shall be a written agreement between a person engaged in such a business and Plant Protection and Quarantine, in which the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant to such provisions.

(b) Any compliance agreement may be canceled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant to such provisions. If the cancellation is oral, the decision and the reasons for the cancellation shall be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, to the Deputy Administrator within ten days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for the decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve the conflict under rules of practice which shall be adopted by the Administrator of the Animal and Plant Health Inspection Service, USDA, for the proceeding.

[48 FR 50059, Oct. 31, 1983, as amended at 59 FR 67609, Dec. 30, 1994]

§ 301.87–7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.87–5(c) of this subpart) who desires to move interstate a regulated article accompanied by a certificate or limited permit shall, as far in advance as possible (should be no less than 48 hours before the desired

[7] 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, Maryland 20737–1236, and from local offices of Plant Protection and Quarantine. (Local offices are listed in telephone directories.)

movement), request an inspector[8] to take any necessary action under this subpart prior to movement of the regulated article.

(b) The regulated article shall be assembled at whatever point and in whatever manner the inspector designates as necessary to comply with the requirements of this subpart.

[48 FR 50059, Oct. 31, 1983, as amended at 59 FR 67609, Dec. 30, 1994]

§ 301.87–8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, at all times during such movement, shall be securely attached to the outside of the container containing the regulated article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document; provided however, that the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill or other shipping document only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify the article.

(b) The certificate or limited permit for the movement of a regulated article shall be furnished by the carrier to the consignee at the destination of the shipment.

§ 301.87–9 Costs and charges.

The services of the inspector shall be furnished without cost. The U.S. Department of Agriculture 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.

[8] Inspectors are assigned to local offices of Plant Protection and Quarantine, which are listed in 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, Maryland 20737–1236.

§ 301.87–10 [Reserved]

Subpart—Karnal Bunt

SOURCE: 61 FR 52207, Oct. 4, 1996, unless otherwise noted.

§ 301.89–1 Definitions.

Actual price received. The net price after adjustment for any premiums or discounts stated on the sales receipt.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

Certificate. A document in which an inspector or a person operating under a compliance agreement affirms that a specified regulated article meets the requirements of this subpart and may be moved to any destination.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, in which the person agrees to comply with the provisions of this subpart and any conditions imposed under this subpart.

Contaminated seed. Seed from sources in which the Karnal bunt pathogen (*Tilletia indica* (Mitra) Mundkur) has been determined to exist by the presence of bunted kernels or teliospores.

Contract price. The net price after adjustment for any premiums or discounts stated in the contract.

Conveyances. Containers used to move wheat, durum wheat, or triticale, or their products, including trucks, trailers, railroad cars, bins, and hoppers.

Distinct definable area. A commercial wheat production area of contiguous fields that is separated from other wheat production areas by desert, mountains, or other nonagricultural terrain as determined by an inspector, based on survey results.

Grain. Wheat, durum wheat, and triticale used for consumption or processing.

Grain storage facility. That part of a grain handling operation or unit or a grain handling operation, consisting or

structures, conveyances, and equipment that receive, unload, and store, grain, and that is able to operate as an independent unit from other units of the grain handling operation. A grain handling operation may be one grain storage facility or may be comprised of many grain storage facilities on a single premises.

Hay. Host crops cut and dried for feeding to livestock. Hay cut after reaching the dough stage may contain mature kernels of the host crop.

Host crops. Plants or plant parts, including grain, seed, or hay, of wheat, durum wheat, and triticale.

Infestation (infected). The presence of Karnal bunt, or any identifiable stage of development (*i.e.,* bunted kernels in grain, bunted kernels or teliospores in seed) of the fungus *Tilletia indica* (Mitra) Mundkur, or the existence of circumstances that make it reasonable to believe that Karnal bunt is present.

Inspector. An APHIS employee or designated cooperator/collaborator authorized by the Administrator to enforce the provisions of this subpart.

Karnal bunt. A plant disease caused by the fungus *Tilletia indica* (Mitra) Mundkur.

Limited permit. A document in which an inspector affirms that a specified regulated article not eligible for a certificate is eligible for movement only to a specified destination and in accordance with conditions specified on the permit.

Mechanized cultivating equipment and mechanized harvesting equipment. Mechanized equipment used for soil tillage, including tillage attachments for farm tractors—*e.g.*, tractors, disks, plows, harrows, planters, and subsoilers; mechanized equipment used for harvesting purposes—*e.g.*, combines, grain buggies, trucks, swathers, and hay balers.

Movement (moved). The act of shipping, transporting, delivering, or receiving for movement, or otherwise aiding, abetting, inducing or causing to be moved.

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

Plant. Any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

Seed. Wheat, durum wheat, and triticale used for propagation.

Soil. The loose surface material of the earth in which plants grow, in most cases consisting of disintegrated rock with an admixture of organic material.

Soil-moving equipment. Equipment used for moving or transporting soil, including, but not limited to, bulldozers, dump trucks, or road scrapers.

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

Straw. The vegetative material left after the harvest of host crops. Straw is generally used as animal feed, bedding, mulch, or for erosion control.

Tilling. The turning of a minimum of the top 6 inches of soil.

[61 FR 52207, Oct. 4, 1996, as amended at 62 FR 23624, May 1, 1997; 62 FR 24751, May 6, 1997; 63 FR 31599, June 10, 1998; 64 FR 23752, May 4, 1999; 69 FR 8095, Feb. 23, 2004]

§ 301.89–2 Regulated articles.

The following are regulated articles:

(a) Conveyances, including trucks, railroad cars, and other containers used to move host crops produced in a regulated area that have tested positive for Karnal bunt through the presence of bunted kernels;

(b) Grain elevators/equipment/structures used for storing and handling host crops produced in a regulated area that have tested positive for Karnal bunt through the presence of bunted kernels;

(c) Seed conditioning equipment and storage/handling equipment/structures that have been used in the production of wheat, durum wheat, and triticale found to contain the spores of *Tilletia indica;*

(d) Plants or plant parts (including grain, seed, and straw) and hay cut after reaching the dough stage of all varieties of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*) that are produced in a regulated area, except for straw/stalks/seed heads for decorative purposes that have been processed or manufactured prior

to movement and are intended for use indoors;

(e) *Tilletia indica* (Mitra) Mundkur;

(f) Mechanized harvesting equipment that has been used in the production of wheat, durum wheat, or triticale that has tested positive for Karnal bunt through the presence of bunted kernels; and

(g) Any other product, article, or means of conveyance when:

(1) An inspector determines that it presents a risk of spreading Karnal bunt based on appropriate testing and the intended use of the product, article, or means of conveyance; and

(2) The person in possession of the product, article, or means of conveyance has been notified that it is regulated under this subpart.

[69 FR 8095, Feb. 23, 2004]

§ 301.89–3 Regulated areas.

(a) The Administrator will regulate each State or each portion of a State that is infected.

(b) Less than an entire State will be listed as a regulated area only if the Administrator:

(1)(i) Determines that the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.89–2 that are equivalent to the movement restrictions imposed by this subpart; and

(ii) Determines that designating less than the entire State as a regulated area will prevent the spread of Karnal bunt; or

(2) Exercises his or her extraordinary emergency authority under 7 U.S.C. 150dd.

(c) The Administrator may include noninfected acreage within a regulated area due to its proximity to an infestation or inseparability from the infected locality for regulatory purposes, as determined by:

(1) Projections of the spread of Karnal bunt along the periphery of the infestation;

(2) The availability of natural habitats and host materials within the noninfected acreage that are suitable for establishment and survival of Karnal bunt; and

(3) The necessity of including uninfected acreage within the regulated area in order to establish readily identifiable boundaries.

(d) The Administrator or an inspector may temporarily designate any nonregulated area as a regulated area in accordance with the criteria specified in paragraphs (a), (b), and (c) of this section. The Administrator will give written notice of this designation to the owner or person in possession of the nonregulated area, or, in the case of publicly owned land, to the person responsible for the management of the nonregulated area. Thereafter, the movement of any regulated article from an area temporarily designated as a regulated area is subject to this subpart. As soon as practicable, this area either will be added to the list of designated regulated areas in paragraph (g) of this section, or the Administrator will terminate the designation. The owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation is terminated will be given written notice of the termination as soon as practicable.

(e) The Administrator will classify a field or area as a regulated area when:

(1) It is a field planted with seed from a lot found to contain a bunted wheat kernel; or

(2) It is a distinct definable area that contains at least one field that was found during survey to contain a bunted wheat kernel (the distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to a field found during survey to contain a bunted kernel); or

(3) It is a distinct definable area that contains at least one field that has been determined to be associated with grain at a handling facility containing a bunted kernel of a host crop (the distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to the field associated with the bunted kernel at the handling facility).

(f) A field known to have been infected with Karnal bunt, as well as any non-infected acreage surrounding the

field, will be released from regulation if:

(1) The field has been permanently removed from crop production; or

(2) The field is tilled at least once per year for a total of 5 years (the years need not be consecutive). After tilling, the field may be planted with a crop or left fallow. If the field is planted with a host crop, the crop must test negative, through the absence of bunted kernels, for Karnal bunt.

(g) The following areas or fields are designated as regulated areas (maps of the regulated areas may be obtained by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 4700 River Road Unit 98, Riverdale, MD 20737–1236):

ARIZONA

La Paz County. Beginning at the northeast corner of sec. 24, T. 8 N., R. 21 W.; then south to the southeast corner of sec. 1, T. 7 N., R. 21 W.; then east to the northeast corner of sec. 7, T. 7 N., R. 20 W.; then south to the southeast corner of sec. 19, T. 7 N., R. 20 W.; then west to the southwest corner of sec. 19, T. 7 N., R. 20 W.; then south to the southeast corner of sec. 36, T. 7 N., R. 21 W.; then west to the southwest corner of sec. 36, T. 7 N., R. 21 W.; then south to the southeast corner of sec. 2, T. 6 N., R. 21 W.; then west to the southwest corner of sec. 2, T. 6 N., R. 21 W.; then south to the southeast corner of sec. 10, T. 6 N., R. 21 W.; then west to the southwest corner of sec. 8, T. 6 N., R. 21 W.; then north to the southwest corner of sec. 5, T. 6 N., R. 21 W.; then west to the southwest corner of sec. 6, T. 6 N., R. 21 W.; then north to the northwest corner of sec. 6, T. 6 N., R. 21 W.; then west to the southwest corner of sec. 36, T. 7 N., R. 22 W., then north to the northwest corner of sec. 24, T. 7 N., R. 22 W.; then east to the northeast corner of sec. 24, T. 7 N., R. 22 W.; then north from that point to the Colorado River; then northeast along the Colorado River to the northern boundary of sec. 16, T. 8 N., R. 21 W.; then east to the northeast corner of sec. 14, T. 8 N., R. 21 W.; then south to the southeast corner of sec. 14, T. 8 N., R. 21 W.; then east to the point of beginning.

Maricopa County. (1) Beginning at the southeast corner of sec. 8, T. 1 S., R. 2 E.; then west to the southwest corner of sec. 8, T. 1 S., R. 2 E.; then south to the southeast corner of sec. 18, T. 1 S., R. 2 E.; then west to the southwest corner of sec. 14, T. 1 S., R. 1 E.; then north to the northwest corner of sec. 14, T. 1 S., R. 1 E.; then west to the southwest corner of sec. 9, T. 1 S., R. 1 E.; then north to the northwest corner of sec. 9, T. 1 S., R. 1 E.; then west to the southwest corner of sec. 5, T. 1 S., R. 1 E.; then north to the northwest corner of sec. 5, T. 1 S., R. 1 E.; then west to the northeast corner of sec. 6, T. 1 S., R. 1 W.; then south to the southeast corner of sec. 7, T. 1 S., R. 1 W.; then west to the northeast corner of sec. 14, T. 1 S., R. 2 W.; then south to the southeast corner of sec. 14, T. 1 S., R. 2 W.; then west to the northeast corner of sec. 20, T. 1 S., R. 2 W.; then south to the southeast corner of sec. 20, T. 1 S., R. 2 W.; then west to the northeast corner of sec. 29, T. 1 S., R. 3 W.; then south to the southeast corner of sec. 29, T. 1 S., R. 3 W.; then west to the southwest corner of sec. 26, T. 1 S., R. 5 W.; then north to the northwest corner of sec. 14, T. 1 N., R. 5 W.; then east to the southwest corner of sec. 7, T. 1 N., R. 2 W.; then north to the northwest corner of sec. 7, T. 1 N., R. 2 W.; then east to the northeast corner of sec. 7, T. 1 N., R. 2 W.; then north to the northwest corner of sec. 5, T. 1 N., R. 2 W.; then east to the northeast corner of sec. 5, T. 1 N., R. 2 W.; then north to the northwest corner of sec. 33, T. 2 N., R. 2 W.; then east to the northeast corner of sec. 33, T. 2 N., R. 2 W.; then north to the northwest corner of sec. 3, T. 3 N., R. 2 W.; then east to the northeast corner of sec. 1, T. 3 N., R. 1 W.; then south to the northwest corner of sec. 19, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 20, T. 3 N., R. 1 E.; then south to the northeast corner of sec. 29, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 27, T. 3 N., R. 1 E.; then south to the southeast corner of sec. 27, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 35, T. 3 N., R. 1 E.; then south to the southeast corner of sec. 35, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 1, T. 2 N., R. 1 E.; then south to the northeast corner of sec. 1, T. 1 N., R. 1 E.; then east to the northeast corner of sec. 4, T. 1 N., R. 2 E.; then south to the northwest corner of sec. 15, T. 1 N., R. 2 E.; then east to the northeast corner of sec. 14, T. 1 N., R. 2 E.; then south to the southeast corner of sec. 35, T. 1 N., R. 2 E.; then west to the northeast corner of sec. 3, T. 1 S., R. 2 E.; then south to the southeast corner of sec. 3, T. 1 S., R. 2 E.; then west to the southwest corner of sec. 4, T. 1 S., R. 2 E.; then south to the point of beginning.

(2) Beginning at the intersection of the Maricopa/Pinal County line and the southeast corner of sec. 36, T. 2 S., R. 7 E.; then west along the Maricopa/Pinal County line to the southwest corner of sec. 33, T. 2 S., R. 5 E.; then north to the northwest corner of sec. 33; then west to the southwest corner of sec. 30, T. 2 S., R. 5 E.; then north to the southeast corner of sec. 25, T. 2 S., R. 4 E.; then west to the southwest corner of sec. 25, T. 2 S., R. 4 E.; then north to the southwest corner of sec. 13, T. 2 S., R. 4 E.; then west to the southwest corner of sec. 15, T. 2 S., R. 4 E.; then north to the northwest corner of

sec. 3, T. 2 S., R. 4 E.; then east to the southwest corner of sec. 35, T. 1 S., R. 4 E.; then north to the northwest corner of sec. 35, T. 1 S., R. 4 E.; then east to the northeast corner of sec. 33, T. 1 S., R. 5 E.; then north to the northwest corner of sec. 27, T. 1 S., R. 5 E.; then east to the northeast corner of sec. 27, T. 1 S., R. 5 E.; then north to the northwest corner of sec. 23, T. 1 S., R. 5 E.; then east to the northeast corner of sec. 21,T. 1 S., R. 6 E.; then south to the southeast corner of sec. 21, T. 1 S., R. 6 E.; then east to the northeast corner of sec. 27, T. 1 S., R. 6 E.; then south to the southeast corner of sec. 27, T. 1 S., R. 6 E.; then east to the northeast corner of sec. 31, T. 1 S., R. 7 E.; then south to the northwest corner of sec. 5, T. 2 S., R. 7 E.; then east to the northeast corner of sec. 3, T. 2 S., R. 7 E.; then north to the northwest corner of sec. 35, T. 1 S., R. 7 E.; then east to the northeast corner of sec. 36, T. 1 S., R. 7 E. and the Maricopa/Pinal County line; then south along the Maricopa/Pinal County line to the point of beginning.

Pinal County: (1) Beginning at the intersection of the Maricopa/Pinal County line and the northwest corner of sec. 31, T. 1 S., R. 8 E.; then east to the northeast corner of sec. 32, T. 1 S., R. 8 E.; then south to the northwest corner of sec. 4, T. 2 S., R. 8 E.; then east to the northeast corner of sec. 4, T. 2 S., R. 8 E.; then south to the southeast corner of sec. 4, T. 3 S., R. 8 E.; then west to the northeast corner of sec. 8, T. 3 S., R. 8 E.; then south to the southeast corner of sec. 8, T. 3 S., R. 8 E.; then west to the southwest corner of sec. 12, T 3 S., R. 7 E.; then north to the southeast corner of sec. 2, T. 3 S., R. 7 E.; then west to the northeast corner of sec. 9, T. 3 S., R. 6 E.; then south to the southeast corner of sec. 28, T. 3 S., R. 6 E.; then west to the southwest corner of sec. 28, T. 3 S., R. 6 E.; then south to the southeast corner of sec. 32, T. 3 S., R. 6 E.; then west to the southwest corner of sec. 35, T. 3 S., R. 5 E.; then north to the northwest corner of sec. 35, T. 3 S., R. 5 E.; then west to the southwest corner of sec. 27, T. 3 S., R. 5 E.; then north to the northwest corner of sec. 10, T. 3 S., R. 5 E.; then west to the southwest corner of sec. 4, T. 3 S., R. 5 E.; then north to the northwest corner of sec. 4, T. 3 S., R. 5 E. and the intersection of the Maricopa/Pinal County line; then east along the Maricopa/Pinal County line to the northwest corner of sec. 6, T. 3 S., R. 8 E.; then north along the Maricopa/Pinal County line to the point of beginning.

(2) Beginning at the southeast corner of sec. 5, T. 6 S., R. 4 E.; then west to the southwest corner of sec. 1, T. 6 S., R. 3 E.; then south to the southeast corner of sec. 14, T. 6 S., R. 3 E.; then west to the southwest corner of sec. 14, T. 6 S., R. 3 E.; then south to the southeast corner of sec. 22, T. 6 S., R. 3 E.; then west to the northeast corner of sec. 30, T. 6 S., R. 3 E.; then south to the southeast corner of sec. 30, T. 6 S., R. 3 E.; then west to the southwest corner of sec. 30, T. 6 S., R. 3 E.; then north to the southeast corner of sec. 25, T. 6 S., R. 2 E.; then west to the southwest corner of sec. 25, T. 6 S., R. 2 E.; then north to the southeast corner of sec. 11, T. 6 S., R. 2 E.; then west to the southwest corner of sec. 11, T. 6 S., R. 2 E.; then north to the northwest corner of sec. 35, T. 4 S., R. 2 E.; then east to the northeast corner of sec. 35, T. 4 S., R. 2 E.; then north to the northwest corner of sec. 25, T. 4 S., R. 2 E.; then east to the southwest corner of sec. 20, T. 4 S., R. 3 E.; then north to the northwest corner of sec. 20, T. 4 S., R. 3 E.; then east to the northeast corner of sec. 24, T. 4 S., R. 3 E.; then south to the southeast corner of sec. 24, T. 4 S., R. 3 E.; then east to the northeast corner of sec. 28, T. 4 S., R. 4 E.; then south to the northwest corner of sec. 34, T. 4 S., R. 4 E.; then east to the northeast corner of sec. 35, T. 4 S., R. 4 E.; then south to the northwest corner of sec. 1, T. 5 S., R. 4 E.; then east to the northeast corner of sec. 1, T. 5 S., R. 4 E.; then south to the southeast corner of sec. 1, T. 5 S., R. 4 E.; then west to the northeast corner of sec. 12, T. 5 S., R. 4 E.; then south to the southeast corner of sec. 24, T. 5 S., R. 4 E.; then west to the southwest corner of sec. 24, T. 5 S., R. 4 E.; then south to the northeast corner of sec. 35, T. 5 S., R. 4 E.; then west to the northwest corner of sec. 35, T. 5 S., R. 4 E.; then south to the southeast corner of sec. 37, T. 5 S., R. 4 E.; then west to the northwest corner of sec. 50, T. 5 S., R. 4 E.; then south to the southeast corner of sec. 49, T. 6 S., R. 4 E.; then west to the northeast corner of sec. 5, T. 6 S., R. 4 E.; then south to the point of beginning.

CALIFORNIA

Riverside County. That portion of Riverside County known as the Palo Verde Valley (in part) bounded by a line drawn as follows: Beginning at the intersection of 22nd Avenue and State Highway 78; then north on State Highway 78 to an unnamed road at 33.548088 latitude and −114.656718 longitude; then east on the unnamed road to an unnamed canal at 33.548066 latitude and −114.647868 longitude; then north on the unnamed canal to 33.548360 latitude and ;–114.647877 longitude; then east from that point to 33.548360 latitude and −114.643696 longitude; then north from that point to 33.550088 latitude and −114.643692 longitude; then east from that point to 33.550044 latitude and −114.639367 longitude; then north from that point to 33.551705 latitude and −114.639367 longitude; then east from that point to the Atchison, Topeka, and Santa Fe Railroad tracks at 33.551740 latitude and −114.634545 longitude; then southwest along the Atchison, Topeka, and Santa Fe Railroad tracks to 33.548300 latitude and −114.637487 longitude; then east from that point to the C Canal at 33.548277 latitude and

−114.626363 longitude; then north along the C Canal to 33.549084 latitude and −114.626372 longitude; then east from that point to South Defrain Boulevard at 33.549145 latitude and −114.621792 longitude; then south on South Defrain Boulevard to 33.548217 latitude and −114.621774 longitude; then east from that point to Lovekin Drain at 33.548338 latitude and −114.612488 longitude; then south along Lovekin Drain to 22nd Avenue; then east on 22nd Avenue to South Lovekin Boulevard; then south on South Lovekin Boulevard to 33.541141 latitude and –114.603889 longitude; then east from that point to 33.541274 latitude and −114.595394 longitude; then southeast from that point to 33.540357 latitude and −114.59219 longitude; then south from that point to 33.536702 latitude and −114.595261 longitude; then northeast from that point to 33.537766 latitude and −114.593187 longitude; then east from that point to an unnamed canal beginning at 33.537887 latitude and −114.586582 longitude; then south along the unnamed canal to 33.534809 latitude and −114.586554 longitude; then southeast from that point to S C and D Boulevard at 33.534561 latitude and −114.586228 longitude; then south on S C and D Boulevard to 33.523400 latitude and −114.585948 longitude; then east from that point to the D–10–11 Canal at 33.523596 latitude and −114.577832 longitude; then southwest along the D–10–11 Canal to the boundary line of Riverside County at 33.540900 latitude and −114.544620 longitude; then southeast along the Riverside County boundary line to 33.455829 latitude and –114.623143 longitude; then west from that point to 33.455783 latitude and −114.669038 longitude; then north from that point to South End Drain at 33.456190 latitude and −114.669076 longitude; then north along South End Drain to 34th Avenue; then west on 34th Avenue to 33.463226 latitude and −114.682378 longitude; then north from that point to the C–18–1 Canal; then west along the C–18–1 Canal to 33.470427 latitude and −114.691076 longitude; then north from that point to an unnamed canal at latitude 33.474836 and −114.691197 longitude; then southwest along the unnamed canal to Palo Verde Lagoon; then northeast along Palo Verde Lagoon to Rannells Drain; then north along Rannells Drain to 33.499639 latitude and –114.961526 longitude; then north from that point to the C–03 Canal; then north along the C–03 Canal to 33.522835 latitude and −114.687051 longitude; then north from that point to 24th Avenue; then east on 24th Avenue to the C–03 Canal; then north along the C–03 Canal to 33.537501 latitude and −114.682892 longitude; then east from that point to Stephenson Boulevard; then north on Stephenson Boulevard to 22nd Avenue; then east on 22nd Avenue to the point of beginning.

[61 FR 52207, Oct. 4, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §301.89–3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 301.89–4 Planting.

Any wheat, durum wheat, or triticale that originates within a regulated area must be tested and found free from bunted wheat kernels and spores before it may be used as seed within or outside a regulated area.

[69 FR 8096, Feb. 23, 2004]

§ 301.89–5 Movement of regulated articles from regulated areas.

(a) Any regulated article may be moved from a regulated area into or through an area that is not regulated only if moved under the following conditions:

(1) With a certificate or limited permit issued and attached in accordance with §§301.89–6 and 301.89–10;

(2) Without a certificate or limited permit, provided that each of the following conditions is met:

(i) The regulated article was moved into the regulated area from an area that is not regulated;

(ii) The point of origin is indicated on a waybill accompanying the regulated article;

(iii) The regulated article is moved through the regulated area without stopping, or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of contamination with Karnal bunt, or has been treated in accordance with part 305 of this chapter while in or moving through any regulated area; and

(iv) The article has not been combined or commingled with other articles so as to lose its individual identity;

(b) When an inspector has probable cause to believe a person or means of conveyance is moving a regulated article, the inspector is authorized to stop the person or means of conveyance to determine whether a regulated article is present and to inspect the regulated article. Articles found to be infected by an inspector, and articles not in compliance with the regulations in this subpart, may be seized, quarantined, treated, subjected to other remedial

measures, destroyed, or otherwise disposed of. Any treatments will be in accordance with part 305 of this chapter.

[61 FR 52207, Oct. 4, 1996, as amended at 62 FR 23627, May 1, 1997; 63 FR 50751, Sept. 23, 1998; 69 FR 8096, Feb. 23, 2004; 75 FR 4241, Jan. 26, 2010; 75 FR 68945, Nov. 10, 2010]

§ 301.89–6 Issuance of a certificate or limited permit.

(a) An inspector[1] or person operating under a compliance agreement will issue a certificate for the movement of a regulated article outside a regulated area if he or she determines that the regulated article:

(1) Is eligible for unrestricted movement under all other applicable Federal domestic plant quarantines and regulations;

(2) Is to be moved in compliance with any conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714)[2] to prevent the artificial spread of Karnal bunt; and

(3)(i) Is free of Karnal bunt infestation, based on laboratory results of testing, and history of previous infestation;

(ii) Has been grown, produced, manufactured, stored, or handled in a manner that would prevent infestation or destroy all life stages of Karnal bunt; or

(iii) Has been treated in accordance with part 305 of this chapter.

(b) To be eligible for movement under a certificate, hay cut after the dough stage or grain from a field within a regulated area must be tested prior to its movement from the field or before it is commingled with similar commodities and must be found free from bunted kernels. If bunted kernels are found, the grain or hay will be eligible for movement only under a limited permit issued in accordance with paragraph (c) of this section, and the field of production will be considered positive for Karnal bunt.

(c) An inspector or a person operating under a compliance agreement will issue a limited permit for the movement outside the regulated area of a regulated article not eligible for a certificate if the inspector determines that the regulated article:

(1) Is to be moved to a specified destination for specified handling, utilization, or processing (the destination and other conditions to be listed in the limited permit and/or compliance agreement), and this movement will not result in the artificial spread of Karnal bunt because Karnal bunt will be destroyed or the risk mitigated by the specified handling, utilization, or processing;

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

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

(d) An inspector shall issue blank certificates and limited permits to a person operating under a compliance agreement in accordance with § 301.89–7 or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates and limited permits may then be completed and used, as needed, for the movement of regulated articles that have met the applicable requirements of paragraphs (a) and (b) of this section for the issuance of certificates or of paragraph (c) of this section for the issuance of limited permits.

[61 FR 52207, Oct. 4, 1996, as amended at 62 FR 23627, May 1, 1997; 63 FR 50751, Sept. 23, 1998; 64 FR 23754, May 4, 1999; 66 FR 21053, Apr. 27, 2001; 67 FR 21161, Apr. 30, 2002; 69 FR 8096, Feb. 23, 2004; 75 FR 4241, Jan. 26, 2010; 75 FR 68945, Nov. 10, 2010]

[1] Inspectors are assigned to local offices of APHIS, which are listed in local telephone directories. Information concerning such local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Surveillance and Emergency Programs Planning and Coordination, 4700 River Road Unit 98, Riverdale, Maryland 20737–1236.

[2] An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 431 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

§ 301.89–7 Compliance agreements.

Persons who grow, handle, or move regulated articles may enter into a compliance agreement[3] if such persons review with an inspector each provision of the compliance agreement, have facilities and equipment to carry out disinfestation procedures or application of chemical materials in accordance with part 305 of this chapter, and meet applicable State training and certification standards under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136b). Any person who enters into a compliance agreement with APHIS must agree to comply with the provisions of this subpart and any conditions imposed under this subpart.

[61 FR 52207, Oct. 4, 1996, as amended at 62 FR 23628, May 1, 1997; 69 FR 8096, Feb. 23, 2004; 75 FR 4241, Jan. 26, 2010; 75 FR 68945, Nov. 10, 2010]

§ 301.89–8 Cancellation of a certificate, limited permit, or compliance agreement.

Any certificate, limited permit, or compliance agreement may be canceled orally or in writing by an inspector whenever the inspector determines that the holder of the certificate or limited permit, or the person who has entered into the compliance agreement, has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances allow, but within 20 days after oral notification of the cancellation. Any person whose certificate, limited permit, or compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve any conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

§ 301.89–9 Assembly and inspection of regulated articles.

(a) Persons requiring certification or other services must request the services of an inspector[4] at least 24 hours before the services are needed.

(b) The regulated articles must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

[61 FR 52207, Oct. 4, 1996, as amended at 62 FR 23628, May 1, 1997; 64 FR 29550, June 2, 1999; 75 FR 68945, Nov. 10, 2010]

§ 301.89–10 Attachment and disposition of certificates and limited permits.

(a) The consignor must ensure that the certificate or limited permit authorizing movement of a regulated article is, at all times during movement, attached to:

(1) The outside of the container encasing the regulated article;

(2) The article itself, if it is not in a container; or

(3) The consignee's copy of the accompanying waybill: Provided, that the descriptions of the regulated article on the certificate or limited permit, and on the waybill, are sufficient to identify the regulated article; and

(b) The carrier must furnish the certificate or limited permit authorizing movement of a regulated article to the consignee at the shipment's destination.

§ 301.89–11 Costs and charges.

The services of the inspector during normal business hours will be furnished without cost to persons requiring the services.

[3] Compliance agreements may be initiated by contacting a local office of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices of Plant Protection and Quarantine may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Surveillance and Emergency Program Planning and Coordination, 4700 River Road Unit 98, Riverdale, Maryland 20737–1236.

[4] See footnote 1.

The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

§ 301.89–12 Cleaning, disinfection, and disposal.

(a) Mechanized harvesting equipment that has been used to harvest host crops that test positive for Karnal bunt based on the presence of bunted kernels must be cleaned and, if disinfection is determined to be necessary by an inspector, disinfected in accordance with part 305 of this chapter prior to movement from a regulated area.

(b) Seed conditioning equipment that was used in the conditioning of seed that was tested and found to contain spores or bunted kernels of *Tilletia indica* must be cleaned and disinfected in accordance with part 305 of this chapter prior to being used in the conditioning of seed that has tested negative for the spores of *Tilletia indica* or to being moved from a regulated area.

(c) Any grain storage facility, including on-farm storage, that is used to store seed that has tested bunted-kernel or spore positive or grain that has tested bunted-kernel positive must be cleaned and, if disinfection is determined to be necessary by an inspector, disinfected in accordance with part 305 of this chapter if the facility will be used to store grain or seed in the future.

(d) Conveyances used to move bunted-kernel-positive host crops, including trucks, railroad cars, and other containers, that have sloping metal sides leading directly to a bottom door or slide chute, are self cleaning, and will not be required to be cleaned and disinfected.

(e) Spore-positive wheat, durum wheat, or triticale seed that has been treated with any chemical that renders it unfit for human or animal consumption must be disposed of by means of burial under a minimum of 24 inches of soil in a nonagricultural area that will not be cultivated or in an approved landfill.

[69 FR 8096, Feb. 23, 2004, as amended at 75 FR 4241, Jan. 26, 2010]

§§ 301.89–13—14 [Reserved]

§ 301.89–15 Compensation for growers, handlers, and seed companies in the 1999–2000 and subsequent crop seasons.

Growers, handlers, and seed companies are eligible to receive compensation from the United States Department of Agriculture (USDA) for the 1999–2000 and subsequent crop seasons to mitigate losses or expenses incurred because of the Karnal bunt regulations and emergency actions, as follows:

(a) *Growers, handlers, and seed companies in areas under first regulated crop season.* Growers, handlers, and seed companies are eligible to receive compensation for the loss in value of their wheat in accordance with paragraphs (a)(1) and (a)(2) of this section if: The wheat was grown in a State where the Secretary has declared an extraordinary emergency; and the wheat was grown in an area of that State that became regulated for Karnal bunt after the crop was planted, or for which an Emergency Action Notification (PPQ Form 523) was issued after the crop was planted; and the wheat was grown in an area that remained regulated or under Emergency Action Notification at the time the wheat was sold. Growers and handlers of wheat grown in Oklahoma during the 2000–2001 growing season are eligible to receive compensation if the wheat was commingled in storage with wheat that meets the above requirements of this paragraph. Growers, handlers, and seed companies in areas under the first regulated crop season are eligible for compensation for 1999–2000 or subsequent crop season wheat and for wheat inventories in their possession that were unsold at the time the area became regulated. The compensation provided in this paragraph is for wheat grain, certified wheat seed, wheat held back from harvest by a grower in the 2000–2001 growing season for use as seed in the next growing season, and wheat grown with the intention of producing certified wheat seed.

(1) *Growers.* Growers of wheat in an area under the first regulated crop season, who sell wheat that was tested by APHIS and found positive for Karnal bunt prior to sale, or that was tested by APHIS and found positive for

Karnal bunt after sale and the price received by the grower is contingent on the test results, are eligible to receive compensation as described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section. However, compensation for positive-testing wheat will not exceed $1.80 per bushel under any circumstances.

(i) If the wheat was grown under contract and a price was determined in the contract before the area where the wheat was grown became regulated, compensation will equal the contract price minus the actual price received by the grower.

(ii) If the wheat was not grown under contract or a price was determined in the contract after the area where the wheat was grown became regulated, compensation will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the actual price received by the grower. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) during the harvest months for the area, with adjustments for transportation and other handling costs. Separate estimated market prices will be calculated for certified wheat seed and wheat grown with the intention of producing certified wheat seed, and wheat grain.

(2) *Handlers and seed companies.* Handlers and seed companies who sell wheat grown in an area under the first regulated crop season are eligible to receive compensation only if the wheat was not tested by APHIS prior to purchase by the handler or seed company, but was tested by APHIS and found positive for Karnal bunt after purchase by the handler or seed company, as long as the price to be paid is not contingent on the test results. Compensation will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the actual price received by the handler or seed company. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) during the harvest months for the area, with adjustments for transportation and other handling costs. Separate estimated market prices will be calculated for certified wheat seed and wheat grown with the intention of producing certified wheat seed, and wheat grain. However, compensation will not exceed $1.80 per bushel under any circumstances.

(b) *Growers, handlers, and seed companies in previously regulated areas.* For the 1999–2000 crop season and the 2000–2001 crop season only, growers, handlers, and seed companies are eligible to receive compensation for the loss in value of their wheat in accordance with paragraphs (b)(1) and (b)(2) of this section if: The wheat was grown in a State where the Secretary has declared an extraordinary emergency; and the wheat was grown in an area of that State that became regulated for Karnal bunt before the crop was planted, or for which an Emergency Action Notification (PPQ Form 523) was issued before the crop was planted; and the wheat was grown in an area that remained regulated or under Emergency Action Notification at the time the wheat was sold. Growers, handlers, and seed companies in previously regulated areas will not be eligible for compensation for wheat from the 2001–2002 and subsequent crop seasons; except that, for growers or handlers of wheat harvested in any field in the Texas counties of Archer, Baylor, Throckmorton, and Young during the 2000–2001 crop season that has not been found to contain a bunted wheat kernel, this requirement applies to compensation for wheat from the 2002–2003 and subsequent crop seasons. The compensation provided in this paragraph is for wheat grain, certified wheat seed, and wheat grown with the intention of producing certified wheat seed.

(1) *Growers.* Growers of wheat in a previously regulated area who sell wheat that was tested by APHIS and found positive for Karnal bunt prior to sale, or that was tested by APHIS and found positive for Karnal bunt after sale and the price received by the grower is contingent on the test results, are eligible to receive compensation at the rate of $.60 per bushel of positive testing wheat.

(2) *Handlers and seed companies.* Handlers and seed companies who sell wheat grown in a previously regulated area are eligible to receive compensation only if the wheat was not tested by APHIS prior to purchase by the handler, but was tested by APHIS and found positive for Karnal bunt after purchase by the handler or seed company, as long as the price to be paid by the handler or seed company is not contingent on the test results. Compensation will be at the rate of $.60 per bushel of positive testing wheat.

(c) *To claim compensation.* Compensation payments to growers, handlers, and seed companies under paragraphs (a) and (b) of this section will be issued by the Farm Service Agency (FSA). Claims for compensation for the 1999–2000 crop season must be received by FSA on or before December 4, 2001. Claims for compensation for subsequent crop seasons must be received by FSA on or before March 1 of the year following that crop season. The Administrator may extend the deadline, upon request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before these dates. To claim compensation, a grower, handler, or seed company must complete and submit to the local FSA county office the following documents:

(1) *Growers, handlers, and seed companies.* A grower, handler, or seed company must submit a Karnal Bunt Compensation Claim form, provided by FSA. If the wheat was grown in an area that is not a regulated area, but for which an Emergency Action Notification (PPQ Form 523) (EAN) has been issued, the grower, handler, or seed company must submit a copy of the EAN. Growers, handlers, and seed companies must also submit a copy of the Karnal bunt certificate issued by APHIS that shows the Karnal bunt test results, and verification as to the actual (not estimated) weight of the wheat that tested positive (such as a copy of a facility weigh ticket, or other verification). For compensation claims for wheat seed, a grower or seed company must submit documentation showing that the wheat is either certified seed or was grown with the intention of producing certified seed (this documentation may include one or more of the following types of documents: an application to the State seed certification agency for field inspection; a bulk sale certificate; certification tags or labels issued by the State seed certification agency; or a document issued by the State seed certification agency verifying that the wheat is certified seed);

(2) *Growers.* In addition to the documents required in paragraph (c)(1) of this section, growers must submit a copy of the receipt for the final sale of the wheat, showing the total bushels sold and the total price received by the grower. Growers compensated under paragraph (b)(1) of this section (previously regulated areas) whose wheat was not tested prior to sale must submit documentation showing that the price paid to the grower was contingent on test results (such as a copy of the receipt for the final sale of the wheat or a copy of the contract the grower has for the wheat, if this information appears on those documents).

(3) *Handlers and seed companies.* In addition to the documents required in paragraph (c)(1) of this section, handlers and seed companies must submit a copy of the receipt for the final sale of the wheat, showing the total bushels sold and the total price received by the handler or seed company. The handler or seed company must also submit documentation showing that the price paid or to be paid to the grower is not contingent on the test results (such as a copy of the receipt for the purchase of the wheat or a copy of the contract the handler or seed company has with the grower, if this information appears on those documents).

(d) *Special allowance for negative wheat grown in Archer, Baylor, Throckmorton, and Young Counties, TX, in the 2000–2001 growing season.* Notwithstanding any other provision of this section, wheat that was harvested from fields in Archer, Baylor, Throckmorton, or Young Counties, TX, in the 2000–2001 growing season, and that tested negative for Karnal bunt after harvest, is eligible for compensation in accordance with paragraph (a) of this section.

(e) *Special allowance for disposal costs for treated uncertified wheat seed in Archer, Baylor, Throckmorton, and Young Counties, TX, in the 2000–2001 growing season.* Notwithstanding any other provision of this section, growers in Archer, Baylor, Throckmorton, or Young Counties, TX, who own treated uncertified wheat seed that tested positive for Karnal bunt spores during the 2000–2001 growing season are eligible for compensation in accordance with this paragraph. The grower is eligible for compensation for the costs of disposing of such wheat seed, by burial on the grower's premises, by burial at a landfill, or through another means approved by APHIS. The compensation for disposing of wheat seed by burial on the grower's premises is $1.00 per bushel. The compensation for disposing of wheat seed by burial at a landfill, or through another means approved by APHIS, is the actual cost of disposal, up to $1.20 per bushel, as verified by receipts for disposal costs. To apply for this compensation, the grower must submit a Karnal Bunt Compensation Claim form, provided by FSA, and must also submit a copy of the Karnal bunt certificate issued by APHIS that shows the Karnal bunt test results, and verification as to the actual (not estimated) weight of the uncertified wheat seed that tested positive for spores (such as a copy of a facility weigh ticket, or other verification). For seed disposed of by burial at a landfill the grower must also submit one or more receipts for the disposal costs of the uncertified wheat seed, showing the total bushels destroyed and the total disposal costs (landfill fees, transportation costs, etc.).

[63 FR 31599, June 10, 1998, as amended at 64 FR 34113, June 25, 1999; 66 FR 40842, Aug. 6, 2001; 67 FR 21566, May 1, 2002]

§ 301.89–16 Compensation for grain storage facilities, flour millers, National Survey participants, and certain custom harvesters and equipment owners or lessees for the 1999–2000 and subsequent crop seasons.

Owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey are eligible to receive compensation from the United States Department of Agriculture (USDA) for the 1999–2000and subsequent crop seasons to mitigate losses or expenses incurred because of the Karnal bunt regulations and emergency actions, as follows:

(a) *Decontamination of grain storage facilities.* Owners of grain storage facilities that are in States where the Secretary has declared an extraordinary emergency, and who have decontaminated their grain storage facilities pursuant to either an Emergency Action Notification (PPQ Form 523) issued by an inspector or a letter issued by an inspector ordering decontamination of the facilities, are eligible to be compensated, on a one time only basis for each facility for each covered crop year wheat, for up to 50 percent of the direct cost of decontamination. However, compensation will not exceed $20,000 per grain storage facility (as defined in § 301.89–1). General clean-up, repair, and refurbishment costs are excluded from compensation. Compensation payments will be issued by APHIS. To claim compensation, the owner of the grain storage facility must submit to an inspector records demonstrating that decontamination was performed on all structures, conveyances, or materials ordered by APHIS to be decontaminated. The records must include a copy of the Emergency Action Notification or the letter from an inspector ordering decontamination, contracts with individuals or companies hired to perform the decontamination, receipts for equipment and materials purchased to perform the decontamination, time sheets for employees of the grain storage facility who performed activities connected to the decontamination, and any other documentation that helps show the cost to the owner and that decontamination has been completed. Claims for compensation for the 1999–2000 crop season must be received by APHIS on or before December 4, 2001. Claims for compensation for the 2000–2001 crop season and beyond must be received by March 1 of the year following that crop season. The Administrator may extend these deadlines upon written request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before these dates.

(b) *Flour millers.* Flour millers who, in accordance with a compliance agreement with APHIS, heat treat millfeed that is required by APHIS to be heat treated are eligible to be compensated at the rate of $35.00 per short ton of millfeed. The amount of millfeed compensated will be calculated by multiplying the weight of wheat from the regulated area received by the miller by 25 percent (the average percent of millfeed derived from a short ton of grain). Compensation payments will be issued by APHIS. To claim compensation, the miller must submit to an inspector verification as to the actual (not estimated) weight of the wheat (such as a copy of a facility weigh ticket or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification). Flour millers must also submit verification that the millfeed was heat treated (such as a copy of the limited permit under which the wheat was moved to a treatment facility and a copy of the bill of lading accompanying that movement; or a copy of PPQ Form 700 (which includes certification of processing) signed by the inspector who monitors the mill). Claims for compensation for the 1999–2000 crop season must be received by APHIS on or before December 4, 2001. Claims for compensation for the 2000–2001 crop season and beyond must be received by March 1 of the year following that crop season. The Administrator may extend these deadlines upon written request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before these dates.

(c) *National Karnal Bunt Survey participants.* If a grain storage facility participating in the National Karnal Bunt Survey tests positive for Karnal bunt, the facility will be regulated, and may be ordered decontaminated, pursuant to either an Emergency Action Notification (PPQ Form 523) issued by an inspector or a letter issued by an inspector ordering decontamination of the facility. If the Secretary has declared an extraordinary emergency in the State in which the grain storage facility is located, the owner will be eligible for compensation as follows:

(1) *Loss in value of positive wheat.* The owner of the grain storage facility will be compensated for the loss in value of positive wheat. Compensation will equal the estimated market price for the relevant class of wheat minus the actual price received for the wheat. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) during the relevant time period for that facility, with adjustments for transportation and other handling costs. However, compensation will not exceed $1.80 per bushel under any circumstances. Compensation payments for loss in value of wheat will be issued by the Farm Service Agency (FSA). To claim compensation, the owner of the facility must submit to the local FSA office a Karnal Bunt Compensation Claim form, provided by FSA. The owner of the facility must also submit to FSA a copy of the Emergency Action Notification or letter from an inspector under which the facility is or was quarantined; verification as to the actual (not estimated) weight of the wheat (such as a copy of a facility weigh ticket or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification); and a copy of the receipt for the final sale of the wheat, showing the total bushels sold and the total price received by the owner of the grain storage facility. Claims for compensation for the 1999–2000 crop season must be received by APHIS on or before December 4, 2001. Claims for compensation for the 2000–2001 crop season and beyond must be received by March 1 of the year following that crop season. The Administrator may extend these deadlines upon written request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before these dates.

(2) *Decontamination of grain storage facilities.* The owner of the facility will be compensated on a one time only basis for each grain storage facility for each covered crop year wheat for the direct costs of decontamination of the facility at the same rate described under

paragraph (a) of this section (up to 50 per cent of the direct costs of decontamination, not to exceed $20,000 per grain storage facility). Compensation payments for decontamination of grain storage facilities will be issued by APHIS, and claims for compensation must be submitted in accordance with the provisions in paragraph (a) of this section. Claims for compensation for the 1999–2000 crop season must be received by APHIS on or before December 4, 2001. Claims for compensation for the 2000–2001 crop season and beyond must be received by March 1 of the year following that crop season. The Administrator may extend these deadlines upon written request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before these dates.

(d) *Special allowances for custom harvesters and equipment owners or lessees for costs related to cleaning and disinfection of mechanized harvesting and other equipment in Archer, Baylor, Throckmorton, and Young Counties, TX, in the 2000–2001 crop season.* All claims for compensation under this paragraph § 301.89–16(d) must be received by APHIS on or before September 6, 2005. The Administrator may extend this deadline upon written request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before this date. All compensation payments made under this paragraph § 301.89–16(d) will be issued by APHIS. Claims for compensation should be sent to Plant Protection and Quarantine, APHIS, USDA, 304 West Main Street, Olney, TX 76374.

(1) *Custom harvesters.* (i) *Cleaning and disinfection of mechanized harvesting equipment.* Custom harvesters who harvested host crops that an inspector determined to be infected with Karnal bunt and that were grown in Archer, Baylor, Throckmorton, or Young Counties, TX, during the 2000–2001 crop season are eligible to receive compensation for the cost of cleaning and disinfecting their mechanized harvesting equipment as required by § 301.89–12(a). Compensation for the cost of cleaning and disinfection mechanized harvesting equipment used to harvest Karnal bunt-infected host crops will be either the actual cost or $750 per cleaned machine, whichever is less. To claim compensation, a custom harvester must provide copies of a contract or other signed agreement for harvesting in Archer, Baylor, Throckmorton, or Young County during the 2000–2001 crop season, signed on a date prior to the designation of the county as a regulated area for Karnal bunt, or an affidavit stating that the custom harvester entered into an agreement to harvest in Archer, Baylor, Throckmorton, or Young County during the 2000–2001 crop season prior to the designation of the county as a regulated area for Karnal bunt, signed by the customer with whom the custom harvester entered into the agreement; a copy of the PPQ–540 certificate issued to allow the movement of mechanized harvesting equipment from a regulated area after it had been used to harvest host crops that an inspector determined to be infected with Karnal bunt and had been subsequently cleaned and disinfected; and a receipt showing the cost of the cleaning and disinfection.

(ii) *Contracts lost due to cleaning and disinfection.* Custom harvesters who harvested host crops that an inspector determined to be infected with Karnal bunt and that were grown in Archer, Baylor, Throckmorton, or Young Counties, TX, during the 2000–2001 crop season are also eligible to be compensated for the revenue lost if they lost one contract due to downtime necessitated by cleaning and disinfection, if the contract to harvest Karnal bunt-infected host crops in a previously nonregulated area was signed before the area was declared a regulated area for Karnal bunt. Compensation will only be provided for one contract lost due to cleaning and disinfection. Compensation for any contract that was lost due to cleaning and disinfection will be either the full value of the contract or $23.48 for each acre that was to have been harvested under the contract, whichever is less. To claim compensation, a custom harvester must provide copies of a contract or other signed agreement for harvesting in Archer, Baylor, Throckmorton, or Young County during the 2000–2001 crop season,

signed on a date prior to the designation of the county as a regulated area for Karnal bunt, or an affidavit stating that the custom harvester entered into an agreement to harvest in Archer, Baylor, Throckmorton, or Young County during the 2000–2001 crop season prior to the designation of the county as a regulated area for Karnal bunt, signed by the customer with whom the custom harvester entered into the agreement; a copy of the PPQ–540 certificate issued to allow the movement of mechanized harvesting equipment from a regulated area after it has been used to harvest host crops that an inspector determined to be infected with Karnal bunt and had been subsequently cleaned and disinfected; and the contract for harvesting in an area not regulated for Karnal bunt that had been lost due to time lost to cleaning and disinfecting harvesting equipment, signed on a date prior to the designation of the relevant county as a regulated area for Karnal bunt, for which the custom harvester will receive compensation, or an affidavit stating that the custom harvester entered into an agreement to harvest in an area not regulated for Karnal bunt prior to the designation of the county as a regulated area for Karnal bunt and stating the number of acres that were to have been harvested and the amount the custom harvester was to have been paid under the agreement, signed by the customer with whom the custom harvester entered into the agreement.

(iii) *Fixed costs incurred during cleaning and disinfection.* Custom harvesters who harvested host crops that an inspector determined to be infected with Karnal bunt and that were grown in Archer, Baylor, Throckmorton, or Young Counties, TX, during the 2000–2001 crop season who do not apply for compensation for a contract lost due to cleaning and disinfection as described in paragraph (d)(1)(ii) of this section are eligible for compensation for fixed costs incurred during cleaning and disinfection. Compensation for fixed costs incurred during cleaning and disinfection will be $2,000. To claim compensation, a custom harvester must provide copies of a contract or other signed agreement for harvesting in Archer, Baylor, Throckmorton, or Young County during the 2000–2001 crop season, signed on a date prior to the designation of the county as a regulated area for Karnal bunt, or an affidavit stating that the custom harvester entered into an agreement to harvest in Archer, Baylor, Throckmorton, or Young County during the 2000–2001 crop season prior to the designation of the county as a regulated area for Karnal bunt, signed by the customer with whom the custom harvester entered into the agreement; and a copy of the PPQ–540 certificate issued to allow the movement of mechanized harvesting equipment from a regulated area after it has been used to harvest host crops that an inspector determined to be infected with Karnal bunt and has been subsequently cleaned and disinfected.

(2) *Other equipment; cleaning and disinfection.* Owners or lessees of equipment other than mechanized harvesting equipment and seed conditioning equipment that came into contact with host crops that an inspector determined to be infected with Karnal bunt in Archer, Baylor, Throckmorton, or Young Counties, TX, during the 2000–2001 crop season and that was required by an inspector to be cleaned and disinfected are eligible for compensation for the cost of cleaning and disinfection. Compensation for the cleaning and disinfection of such equipment will be $100. To receive this compensation, owners or lessees must submit a copy of the PPQ–540 certificate issued to allow the movement of the equipment from a regulated area after it had been in contact with host crops that an inspector determined to be infected with Karnal bunt and had been subsequently cleaned and disinfected.

(Approved by the Office of Management and Budget under control number 0579–0248.)

[63 FR 31600, June 10, 1998, as amended at 64 FR 34113, June 25, 1999; 66 FR 40842, Aug. 6, 2001; 69 FR 24915, May 5, 2004; 69 FR 41181, July 8, 2004; 70 FR 24302, May 9, 2005]

Subpart—Corn Cyst Nematode [Reserved]

Subpart—European Larch Canker

SOURCE: 49 FR 18992, May 4, 1984, unless otherwise noted.

QUARANTINE AND REGULATIONS

§ 301.91 Quarantine and regulations; restrictions on interstate movement of regulated articles.[1]

(a) *Quarantines and regulations.* The secretary of agriculture hereby quarantines the State of Maine in order to prevent the artificial spread of European larch canker, *Lachnellula willkommi* (Dasycypha), a dangerous plant disease of trees of the *Larix* and *Pseudolarix* species not hereto fore widely prevalent or distributed within and throughout the United States; and hereby establishes regulations governing the interstate movement of regulated articles specified in § 301.91–2

(b) *Restrictions on interstate movement of regulated articles.* No common carrier or other person shall move interstate from any regulated area any regulated article except in accordance with the conditions prescribed in this subpart.

[49 FR 18992, May 4, 1984, as amended at 66 FR 21053, Apr. 27, 2001]

§ 301.91–1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

Certificate. A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such article is eligible for interstate movement in accordance with § 301.91–5(a).

Compliance agreement. A written agreement between Plant Protection and Quarantine and a person engaged in the business of growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

Deputy Administrator. The Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, or any officer or employee of the Department to whom authority to act in his/her stead has been or may hereafter be delegated.

European larch canker. The plant disease known as European larch canker, *Lachnellula willkommi* (Dasycypha), in any stage of development.

Infestation. The presence of European larch canker or the existence of circumstances that make it reasonable to believe that the European larch canker is present.

Inspector. Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator in accordance with law to enforce the provisions of the quarantines and regulations in this subpart.

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

Limited permit. A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such regulated article is eligible for interstate movement in accordance with § 301.91–5(b).

Moved (movement, move). Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved or caused to be moved by any means. "Movement" and "move" shall be construed accordingly.

Person. Any individual, partnership, corporation, company, society, association, or other organized group.

Plant Protection and Quarantine. The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Protection Act and related legislation, quarantines, and regulations.

Regulated area. Any State, or any portion thereof, listed in § 301.91–3(c) or otherwise designated as a regulated area in accordance with § 301.91–3(b).

Regulated article. Any article listed in § 301.91–2(a) or otherwise designated as a regulated article in accordance with § 301.91–2(b).

[1] 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 regulated articles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

State. Each of the several States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States and all other Territories and Possessions of the United States.

[49 FR 18992, May 4, 1984, as amended at 66 FR 21053, Apr. 27, 2001]

§ 301.91–2 Regulated articles.

The following are regulated articles:

(a) Logs, pulpwood, branches, twigs, plants, scion and other propagative material of the *Larix* or *Pseudolarix* spp. except seeds;

(b) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraph (a) of this section, when it is determined by an inspector that it presents a risk of spread of European larch canker and the person in possession thereof has actual notice that the product, article or means of conveyance is subject to the restrictions in the quarantine and regulations.

§ 301.91–3 Regulated areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Deputy Administrator shall list as a regulated area in paragraph (c) of this section, the State, or any portion thereof, in which European larch canker has been found by an inspector or in which the Deputy Administrator has reason to believe that European larch canker is present, or any portion of a quarantined State which the Deputy Administrator deems necessary to regulate because of its proximity to a European larch canker infestation or its inseparability for quarantine enforcement purpose from localities in which European larch canker occurs. Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artifical interstate spread of European larch canker.

(b) The Deputy Administrator or an inspector may temporarily designate any nonregulated area in a quarantined State as a regulated area in accordance with the criteria specified in paragraph (a) of this section for listing such area. Written notice of such designation shall be given to the owner or person in possession of such nonregulated area, and, thereafter, the interstate movement of any regulated article from such area shall be subject to the applicable provisions of this subpart. As soon as practicable, such area shall be added to the list in paragraph (c) of this section or such designation shall be terminated by the Deputy Administrator or an inspector, and notice thereof shall be given to the owner or person in possession of the area.

(c) The areas described below are designated as regulated areas:

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Hancock County. The entire townships of Gouldsboro, Serrento, Sullivan, Winter Harbor, 7th Southern Division, 9th Southern Division, 10th Southern Division, and 16th Middle Division.

Knox County. The entire townships of Appleton, Camden, Cushing, Friendship, Hope, Owls Head, Rockland City, Rockport, South Thomaston, St. George, Thomaston, Union, Warren, and Washington.

Lincoln County. The entire townships of Alna, Boothbay Harbor, Bremen, Bristol, Damariscotta, Edgecomb, Jefferson, Newcastle, Nobleboro, Somerville, Southport, Waldoboro, Westport, and Wiscassett.

Waldo County. The entire townships of Lincolnville and Searsmont.

Washington County. The entire townships of Addison, Baring, Beals, Calais City, Centerville, Charolotte, Cherryfield, Columbia, Columbia Falls, Cooper, Cutler, Debolis, Dennysville, East Machias, Eastport, Edmunds, Harrington, Jonesboro, Jonesport, Lubec, Machias, Machiasport, Marion, Marshfield, Meddybemps, Milbridge, Northfield, Plantation 14, Pembroke, Perry, Robbinston, Roque Bluffs, Steuben, Trescott, Whiting, Whitneyville, 18th Eastern Division, 18th Middle Division, and 19th Middle Division.

[49 FR 18992, May 4, 1984, as amended at 49 FR 36817, Sept. 20, 1984; 50 FR 7033, Feb. 20, 1985; 50 FR 13178, Apr. 3, 1985]

§ 301.91–4 Conditions governing the interstate movement of regulated articles from regulated areas in quarantined States.[2]

Any regulated article may be moved interstate from any regulated area in a quarantined State only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.91–5 and 301.91–8 of this subpart; or

(b) Without a certificate or limited permit;

(1) If moved to a contiguous regulated area; or

(2)(i) If moved directly through (moved without stopping except under normal traffic conditions such as traffic lights or stop signs) any regulated area in an enclosed vehicle or in an enclosed container on a vehicle to prevent the introduction of European larch canker;

(ii) If the article originated outside of any regulated area; and

(iii) If the point of origin of any article is clearly indicated by shipping documents and its identity has been maintained.

§ 301.91–5 Issuance and cancellation of certificates and limited permits.

(a) A certificate shall be issued by an inspector, except as provided in paragraph (c) of this section, for the movement of a regulated article if such inspector:

(1)(i) Determines based on inspection of the premises of origin that the premises are free from European larch canker; or

(ii) Determines that it has been grown, processed, stored, or handled in such a manner that the regulated article is free of European larch canker; and

(2) Determines that it is to be moved in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714)[3] to prevent the spread of European larch canker; and

(3) Determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such article.

(b) A limited permit shall be issued by an inspector, except as provided in paragraph (c) of this section, for the movement of a regulated article if such inspector:

(1) Determines, in consultation with the Deputy Administrator, that it is to be moved to a specified destination for specified handling, utilization, or processing (such destination and other conditions to be specified on the limited permit), when, upon evaluation of all of the circumstances involved in each case, it is determined that such movement will not result in the spread of European larch canker because the disease will be destroyed by such specified handling, utilization, or processing;

(2) Determines that it is to be moved in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714)[3] to prevent the spread of European larch canker; and

(3) Determines that it is eligible for such movement under all other Federal domestic plant quarantines and regulations applicable to such article.

(c) Certificates and limited permits may be issued by any person engaged in the business of growing, handling, or moving regulated articles provided such person has entered into and is operating under a compliance agreement. Any such person may execute and issue a certificate or limited permit for the interstate movement of a regulated article if an inspector has previously made the determination that the article is eligible for a certificate in accordance with § 301.91–5(a) or is eligible for a limited permit in accordance with § 301.91–5(b).

(d) Any certificate or limited permit which has been issued or authorized may be withdrawn by an inspector if such inspector determines that the holder thereof has not complied with any conditions under the regulations

[2] Requirements under all other applicable Federal domestic plant quarantines must also be met.

[3] An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

for the use of such document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances permit. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal, in witing, stating the reasons for such decision, as promptly as circmstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

[49 FR 18992, May 4, 1984, as amended at 66 FR 21053, Apr. 27, 2001]

§ 301.91–6 Compliance agreement and cancellation thereof.

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of regulated articles under this subpart.[4] The compliance agreement shall be a written agreement between a person engaged in such a business and Plant Protection and Quarantine, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(b) Any compliance agreement may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant thereto. If the cancellation is oral, the decision and the reasons therefor shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, to the Deputy Administrator within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

[49 FR 18992, May 4, 1984, as amended at 59 FR 67609, Dec. 30, 1994]

§ 301.91–7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.91–5(c)), who desires to move interstate a regulated article accompanied by a certificate or limited permit shall, as far in advance as possible (should be no less than 48 hours before the desired movement), request an inspector[5] to take any necessary action under this subpart prior to movement of the regulated article.

(b) Such articles shall be assembled at such point and in such manner as the inspector designates as necessary to comply with the requirements of this subpart.

[49 FR 18992, May 4, 1984, as amended at 59 FR 67609, Dec. 30, 1994]

§ 301.91–8 Attachment and disposition of certificates and limited permits.

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

[4] 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, Maryland 20737–1236, and from local offices of the Plant Protection and Quarantine. (Local offices are listed in telephone directories).

[5] Inspectors are assigned to local offices of Plant Protection and Quarantine which are listed in telephone directories. Information concerning such 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, Maryland 20737–1236.

such movement, shall be securely attached to the outside of the containers containing the regulated article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document; *Provided, however*, That the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill or other shipping documents only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify such article.

(b) The certificate or limited permit for the movement of a regulated article shall be furnished by the carrier to the consignee at the destination of the shipment.

§ 301.91–9 Costs and charges.

The services of the inspector shall be furnished without cost, except as provided in 7 CFR part 354. The U.S. Department of Agriculture 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.

Subpart—Phytophthora Ramorum

SOURCE: 72 FR 8597, Feb. 27, 2007, unless otherwise noted.

§ 301.92 Restrictions on interstate movement.

(a) No person may move interstate from any quarantined area any regulated, restricted, or associated article or any other nursery stock except in accordance with this subpart.[1]

(b) No person may move interstate from any nursery in any regulated area any nursery stock except in accordance with this subpart.

(c) No person may move interstate from any quarantined or regulated area any regulated restricted, or associated article or nursery stock that has been tested with a test approved by APHIS and found infected with *Phytophthora ramorum*, or that is part of a plant that was found infected with *Phytophthora ramorum*, unless such movement is in accordance with part 330 of this chapter.

§ 301.92–1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

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

Associated article. Any article listed in § 301.92–2(c).

Bark chips. Bark fragments broken or shredded from a log or tree.

Certificate. A document, stamp, or imprint by which an inspector or person operating under a compliance agreement affirms that a specified regulated or associated article meets applicable requirements of this subpart and may be moved interstate to any destination.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, processing, handling, or moving regulated or associated articles, wherein the person agrees to comply with this subpart.

Duff. Decaying plant matter that includes leaf litter, green waste, stem material, bark, and any other plant material that, upon visual inspection, does not appear to have completely decomposed.

Firewood. Wood that has been cut, sawn, or chopped into a shape and size commonly used for fuel, or other wood intended for fuel.

Forest stock. All flowers, trees, shrubs, vines, scions, buds, or other plants that are wild-grown, backyard-grown, or naturally occurring.

From. An article is considered to be "from" a specific site or location for the purposes of this subpart if it was grown or propagated in, stored or sold, or distributed from the site or location.

[1] 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 regulated or restricted articles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

Growing media. Any material in which plant roots are growing or intended for that purpose.

Inspector. Any employee of APHIS, the U.S. Department of Agriculture, or other person authorized by the Administrator to perform the duties required under this subpart.

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

Log. The bole of a tree; trimmed timber that has not been sawn further than to form cants.

Lot. A contiguous block of plants of the same species or cultivar, of the same container size and from the same source, if known.

Lumber. Logs that have been sawn into boards, planks, or structural members such as beams.

Moved (move, movement). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

Mulch. Bark chips, wood chips, wood shavings, or sawdust, or a mixture thereof, that could be used as a protective or decorative ground cover or as part of a growing media mixture.

Non-host nursery stock. Any taxa of nursery stock not listed in § 301.92–2 as a regulated or associated article.

Nursery. Any location where nursery stock is grown, propagated, stored, or sold, or any location from which nursery stock is distributed. Locations that grow trees for sale without roots (*e.g.*, as Christmas trees) are considered to be nurseries for the purposes of this subpart.

Nursery stock. All plants for planting, including houseplants, propagative material that is grown in a nursery, and tree seedlings for reforestation, except the following: Seeds; turf or sod; bulbs, tubers, corms, or rhizomes;[2] greenhouse grown cactus, succulents, and orchids; aquarium grown aquatic plants; greenhouse, container, or field grown palms; greenhouse, container, or field grown cycads, and tissue culture plants grown in vitro; and plants meeting the definition of forest stock.

Permit. A written authorization issued by APHIS to allow the interstate movement of restricted articles in accordance with part 330 of this chapter.

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

Plant Protection and Quarantine. The Plant Protection and Quarantine program of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

Quarantined area. Any State, or any portion of a State, listed in § 301.92–3(a)(3) of this subpart or otherwise designated as a quarantined area in accordance with § 301.92–3(a)(2) of this subpart.

Regulated area. Any area listed in § 301.92–3(b) of this subpart.

Regulated article. Any article listed in § 301.92–2(b) of this subpart.

Restricted article. Any article listed in § 301.92–2(a) of this subpart.

Soil. The loose surface material of the earth in which plants grow, in most cases consisting of disintegrated rock with an admixture of organic material.

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

§ 301.92–2 Restricted, regulated, and associated articles; lists of proven hosts and associated plant taxa.

(a) *Restricted articles*. The following are restricted articles:

(1) Bark chips or mulch[3] located in a quarantined area and that are proven host plant taxa listed in paragraph (d) of this section.

(2) Forest stock located or grown in a quarantined area and that are proven host plant taxa or associated plant taxa listed in paragraph (d) or (e) of this section.

(3) Any other product or article that an inspector determines to present a risk of spreading *Phytophthora ramorum*, if an inspector notifies the

[2] Bulbs, tubers, corms, or rhizomes are only considered nursery stock (and therefore, regulated under this subpart) if they are of plant taxa listed in § 301.92–2 as regulated articles or associated articles.

[3] Bark chips or mulch of species listed in paragraph (d) of this section and that are marked with an asterisk (*) are not restricted articles.

person in possession of the product or article that it is a restricted article.

(b) *Regulated articles.* The following are regulated articles:

(1) Nursery stock, decorative trees without roots, unprocessed wood and wood products, and plant products, including firewood, logs, lumber,[4] wreaths, garlands, and greenery of proven host plant taxa listed in paragraph (d) of this section.

(2) Soil and growing media.

(3) Any other product or article that an inspector determines to present a risk of spreading *Phytophthora ramorum* if an inspector notifies the person in possession of the product or article that it is subject to the restrictions in the regulations.

(c) *Associated articles.* The following are associated articles: Nursery stock of associated plant taxa listed in paragraph (e) of this section.

(d) *Proven host plant taxa.* The following are proven hosts of *Phytophthora ramorum:*

**Acer macrophyllum* Bigleaf maple
Acer pseudoplatanus Planetree maple
**Adiantum aleuticum* Western maidenhair fern
**Adiantum jordanii* California maidenhair fern
**Aesculus californica* California buckeye
Aesculus hippocastanum horse chestnut
**Arbutus menziesii* Madrone
**Arctostaphylos manzanita* Manzanita
**Calluna vulgaris* Scotch heather
**Camellia* spp. Camellia—all species, hybrids and cultivars
**Castanea sativa* Sweet chestnut
Fagus sylvatica European beech
**Frangula californica* (≡*Rhamnus californica*) California coffeeberry
**Frangula purshiana* (≡*Rhamnus purshiana*) Cascara
Fraxinus excelsior European ash
**Griselinia littoralis* Griselinia
**Hamamelis virginiana* Witch hazel
**Heteromeles arbutifolia* Toyon
**Kalmia* spp. Kalmia—includes all species, hybrids, and cultivars
**Laurus nobilis* Bay laurel
Lithocarpus densiflorus Tanoak
**Lonicera hispidula* California honeysuckle
**Maianthemum racemosum* (=*Smilacina racemosa*) False Solomon's seal
**Michelia doltsopa* Michelia
**Parrotia persica* Persian ironwood
**Photinia fraseri* Red tip photinia
**Pieris* spp. Pieris—includes all species, hybrids, and cultivars
**Pseudotsuga menziesii* var. *menziesii* and all nursery-grown *P. menziesii* Douglas fir
Quercus agrifolia Coast live oak
Quercus cerris European turkey oak
Quercus chrysolepis Canyon live oak
Quercus falcata Southern red oak
**Quercus ilex* Holm oak
Quercus kelloggii California black oak
Quercus parvula var. *shrevei* and all nursery grown *Q. parvula* Shreve's oak
**Rhododendron* spp. Rhododendron (including azalea)—includes all species, hybrids, and cultivars
**Rosa gymnocarpa* Wood rose
**Salix caprea* Goat willow
**Sequoia sempervirens* Coast redwood
**Syringa vulgaris* Lilac
**Taxus baccata* European yew
**Trientalis latifolia* Western starflower
**Umbellularia californica* California bay laurel, pepperwood, Oregon myrtle
**Vaccinium ovatum* Evergreen huckleberry
**Viburnum* spp. Viburnum-all species, hybrids, and cultivars

(e) *Associated plant taxa.* The following plant taxa are considered to be associated with *Phytophthora ramorum:*

Abies concolor White fir
Abies grandis Grand fir
Abies magnifica Red fir
Acer circinatum Vine maple
Acer davidii Striped bark maple
Acer laevigatum Evergreen maple
Arbutus unedo Strawberry tree
Arctostaphylos columbiana Manzanita
Arctostaphylos uva-ursi Kinnikinnick, bearberry
Ardisia japonica Ardisia
Calycanthus occidentalis Spicebush
Castanopsis orthacantha Castanopsis
Ceanothus thyrsiflorus Blueblossom
Cinnamomum camphora Camphor tree
Clintonia andrewsiana Andrew's clintonia bead lily
Cornus kousa x *Cornus capitata* Cornus Norman Haddon
Corylus cornuta California hazelnut
Distylium myricoides Myrtle-leafed distylium
Drimys winteri Winter's bark
Dryopteris arguta California wood fern
Eucalyptus haemastoma Scribbly gum
Euonymus kiautschovicus Spreading euonymus
Fraxinus latifolia Oregon ash
Gaultheria shallon Salal, Oregon wintergreen
Hamamelis mollis Chinese witch-hazel
Hamamelis x *intermedia* (*H. mollis* & *H. japonica*) Hybrid witchhazel
Ilex purpurea Oriental holly
Leucothoe axillaris Fetter-bush, dog hobble
Leucothoe fontanesiana Drooping leucothoe
Loropetalum chinense Lorapetalum

[4] Firewood, logs, and lumber of species listed in paragraph (d) of this section and that are marked with an asterisk (*) are not regulated articles.

Magnolia grandiflora Southern magnolia
Magnolia stellata Star magnolia
Magnolia x *loebneri* Loebner magnolia
Magnolia x *soulangeana* Saucer magnolia
Manglietia insignis Red lotus tree
Michelia maudiae Michelia
Michelia wilsonii Michelia
Nerium oleander Oleander
Nothofagus obliqua Roble beech
Osmanthus decorus (≡*Phillyrea decora;* ≡*P. vilmoriniana*) Osmanthus
Osmanthus delavayi Delavay Osmanthus, Delavay tea olive
Osmanthus fragrans Sweet olive
Osmanthus heterophyllus Holly olive
Osmorhiza berteroi Sweet Cicely
Parakmeria lotungensis Eastern joy lotus tree
Pittosporum undulatum Victorian box
Prunus laurocerasus English laurel, cherry laurel
Prunus lusitanica Portuguese laurel cherry
Pyracantha koidzumii Formosa firethorn
Quercus acuta Japanese evergreen oak
Quercus petraea Sessile oak
Quercus rubra Northern red oak
Rosa (specific cultivars)
Royal Bonica (tagged: "MEImodac")
Pink Meidiland (tagged: "MEIpoque")
Pink Sevillana (tagged: "MEIgeroka")
Rosa rugosa Rugosa rose
Rubus spectabilis Salmonberry
Schima wallichii Chinese guger tree
Taxus brevifolia Pacific yew
Taxus x *media* Yew
Torreya californica California nutmeg
Toxicodendron diversilobum Poison oak
Vancouveria planipetala Redwood ivy

§ 301.92–3 Quarantined and regulated areas.

(a) *Quarantined areas.* (1) Except as otherwise provided in paragraph (a)(2) of this section, the Administrator will list as a quarantined area in paragraph (a)(3) of this section each State, or each portion of a State, in which *Phytophthora ramorum* has been confirmed by an inspector to be established in the natural environment, in which the Administrator has reason to believe that *Phytophthora ramorum* is present in the natural environment, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which *Phytophthora ramorum* has been found in the natural environment. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(i) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated, restricted, and associated articles that are substantially the same as those imposed by this subpart on the interstate movement of regulated, restricted, and associated articles; and

(ii) The designation of less than the entire State as a quarantined area will prevent the interstate spread of *Phytophthora ramorum.*

(2) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with paragraph (a)(1) of this section. The Administrator will give a copy of this regulation along with a written notice for the temporary designation to the owner or person in possession of the nonquarantined area. Thereafter, the interstate movement of any regulated, restricted, or associated article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (a)(3) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(3) The following areas are designated as quarantined areas:

CALIFORNIA

Alameda County. The entire county.
Contra Costa County. The entire county.
Humboldt County. The entire county.
Lake County. The entire county.
Marin County. The entire county.
Mendocino County. The entire county.
Monterey County. The entire county.
Napa County. The entire county.
San Francisco County. The entire county.
San Mateo County. The entire county.
Santa Clara County. The entire county.
Santa Cruz County. The entire county.
Solano County. The entire county.
Sonoma County. The entire county.

OREGON

Curry County. That portion of the county as follows: In T. 39 S., R. 13 W., secs. 32, 33, and 34; T. 40 S., R. 13 W., secs. 3, 4, 5, 8, 9, 10, southeast quarter of sec. 11, southwest quarter of sec. 12, northwest quarter of sec. 13, northeast quarter of secs. 14, 15, 16, and 17, east half of sec. 18, east half of secs. 19, 20, 21, 22, 28, and 29, northeast quarter of secs. 30, 32, 33, and 34; T. 40 S., R. 14 W., southeast quarter of sec. 23, southwest quarter of sec.

24, northwest quarter of sec. 25, and the northeast quarter of sec. 26.

(b) *Regulated areas.* The following areas are designated as regulated areas:

CALIFORNIA

All counties in the State not listed in paragraph (a) of this section as quarantined areas.

OREGON

All areas in the State not listed in paragraph (a) of this section as quarantined areas.

WASHINGTON

The entire State.

§ 301.92–4 Conditions governing the interstate movement of regulated, restricted, and associated articles, and non-host nursery stock from quarantined and regulated areas.

(a) *Interstate movement of regulated and associated articles from quarantined areas.* Regulated and associated articles may be moved interstate from a quarantined area[5] only in accordance with this subpart.

(1) *With a certificate.* Any regulated or associated article may be moved interstate from a quarantined area if accompanied by a certificate issued and attached in accordance with §§ 301.92–5 and 301.92–8, and provided that the regulated or associated article is moved through the quarantined area without stopping except for refueling, rest stops, emergency repairs, and for traffic conditions, such as traffic lights or stop signs.

(2) *Without a certificate.*

(i) The regulated or associated article originated outside the quarantined area and the point of origin of the article is indicated on the waybill of the vehicle transporting the article; and

(ii) The regulated or associated article is moved from outside the quarantined area through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs, and the article is not unpacked or unloaded in the quarantined area.

[5] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

(b) *Interstate movement of restricted articles from quarantined areas.* Restricted articles may be moved interstate from a quarantined area[6] only in accordance with this section.

(1) *With a permit.* Any restricted article may be moved interstate from a quarantined area only if the article is moved pursuant to a permit issued by the Administrator in accordance with part 330 of this chapter.

(2) *Without a permit.*

(i) The restricted article originated outside the quarantined area and the point of origin of the article is indicated on the waybill of the vehicle transporting the article; and

(ii) The restricted article is moved from outside the quarantined area through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs, and the article is not unpacked or unloaded in the quarantined area.

(c) *Interstate movement of nursery stock from nurseries in quarantined areas*—(1) *Regulated articles of nursery stock and associated articles.* Regulated articles of nursery stock and associated articles may only be moved interstate from nurseries in quarantined areas in accordance with paragraph (a) of this section.

(2) *Non-host nursery stock.* Any nursery stock of a taxon not listed in § 301.92–2 as a regulated or associated article may only be moved interstate from nurseries in quarantined areas as follows:

(i) *With a certificate.* If the non-host nursery stock originates from a nursery in a quarantined area that contains regulated or associated articles, the nursery stock must be accompanied by a certificate issued and attached in accordance with §§ 301.92–5 and 301.92–8, and be moved through the quarantined area without stopping except for refueling, rest stops, emergency repairs, and for traffic conditions, such as traffic lights or stop signs.

(ii) *Without a certificate.* If the non-host nursery stock originates from a nursery in a quarantined area that does not contain regulated or associated articles, the nursery stock may be

[6] See footnote 4 of this subpart.

moved interstate without a certificate, provided that:

(A) The nursery from which plants originate has been inspected and found free of evidence of *Phytophthora ramorum* in accordance with § 301.92–11(b)(3), and

(B) The nursery stock is not rooted in soil or growing media.[7]

(d) *Interstate movement of nursery stock from nurseries in regulated areas*—(1) *Regulated and associated articles of nursery stock.* Regulated articles of nursery stock and associated articles may only be moved interstate from nurseries in regulated areas if accompanied by a certificate issued and attached in accordance with §§ 301.92–5 and 301.92–8, and provided that, if moved through a quarantined area en route to another State, the regulated articles of nursery stock or associated articles are moved through the quarantined area without stopping except for refueling, rest stops, emergency repairs, and for traffic conditions, such as traffic lights or stop signs.

(2) *Non-host nursery stock.* Any nursery stock of a taxon not listed in § 301.92–2 as a regulated or associated article may only be moved interstate from nurseries in regulated areas as follows:

(i) *With a certificate.* If non-host nursery stock originates from a nursery in a regulated area that contains regulated or associated articles, the nursery stock must be accompanied by a certificate issued and attached in accordance with §§ 301.92–5 and 301.92–8, and provided that, if moved through a quarantined area en route to another State, the nursery stock is moved through the quarantined area without stopping except for refueling, rest stops, emergency repairs, and for traffic conditions, such as traffic lights or stop signs.

(ii) *Without a certificate.* If non-host nursery stock originates from a nursery in a regulated area that does not contain regulated or associated articles, the nursery stock may be moved interstate without a certificate, provided that the nursery from which plants originate has been inspected and found free of evidence of *Phytophthora ramorum* in accordance with § 301.92–11(d)(3).

§ 301.92–5 Issuance and cancellation of certificates.

(a) *Movements from quarantined areas.* (1) An inspector[8] may issue a certificate for the interstate movement of regulated articles, associated articles, or non-host nursery stock[9] from a quarantined area if the inspector determines that:

(i) The regulated articles have been treated under the direction of an inspector in accordance with part 305 of this chapter; or

(ii) The regulated articles are wood products such as firewood, logs, or lumber that are free of bark;[10] or

(iii) The regulated article is soil or growing media that has not been in direct physical contact with any article infected with *Phytophthora ramorum*, and from which all duff has been removed; or

(iv) The articles are nursery stock or regulated articles of decorative trees without roots, wreaths, garlands, or greenery that:

(A) Are shipped from a nursery in a quarantined area that has been inspected in accordance with the inspection and sampling protocol described in § 301.92–11(a)(1), and the nursery is free of evidence of *Phytophthora ramorum* infestation; and

(B) Are part of a shipment of nursery stock, decorative trees without roots,

[7] To be eligible for interstate movement, non-host nursery stock that is rooted in soil or growing media requires certification that the soil or growing media meets the requirements of § 301.92–5(a)(1)(iii).

[8] Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 160, Riverdale, MD 20737, or the APHIS Web site at *http://www.aphis.usda.gov/ppq/sphd/*.

[9] Paragraph (d)(2)(ii) of § 301.92–4 allows the interstate movement of non-host nursery stock without a certificate under certain conditions.

[10] Firewood, logs, lumber of species listed in 301.92–2(d) and marked with an asterisk are not regulated articles, as noted in § 301.92–2(b)(1).

wreaths, garlands, or greenery that has been inspected prior to interstate movement in accordance with § 301.92–11(a)(2), and the regulated articles in the shipment are free of evidence of *Phytophthora ramorum* infection; and

(C) Have been kept separate from regulated and associated articles and non-host nursery stock not inspected between the time of the inspection and the time of interstate movement; and

(D) Have not been grown in, or moved from, other areas within a quarantined area except nurseries that are annually inspected for *Phytophthora ramorum* in accordance with § 301.92–11 and that have been found free of evidence of *Phytophthora ramorum* infestation, *except that* certified nurseries which receive articles from a non-certified nursery in a quarantined or regulated area may continue to ship other plants interstate, provided that the uncertified plants are safeguarded, segregated, and withheld from interstate movement until the plants are inspected and tested and found free of evidence of *Phytophthora ramorum*.

(v) The regulated or associated article or non-host nursery stock 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)[11] to prevent the spread of *Phytophthora ramorum*; and

(vi) The regulated or associated article or non-host nursery stock is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated or associated article.

(2) [Reserved]

(b) *Movements from regulated areas.* (1) An inspector[12] may issue a certificate for the interstate movement of regulated articles of nursery stock, associated articles, or non-host nursery stock[13] from a nursery in a regulated area if an inspector determines that:

(i) The nursery from which the nursery stock originates has been inspected in accordance with § 301.92–11(c) and found free of evidence of *Phytophthora ramorum* infestation; and

(ii) All nursery stock in the nursery have not been grown in, or moved from, nurseries except those that have been inspected for *Phytophthora ramorum* in accordance with § 301.92–11(c) and that have been found free of evidence of *Phytophthora ramorum* infestation, *except that* certified nurseries which receive articles from a non-certified nursery in a quarantined or regulated area may continue to ship other plants interstate, provided that the uncertified plants are safeguarded, segregated, and withheld from interstate movement until the plants are inspected and tested and found free of evidence of *Phytophthora ramorum*; and

(iii) The nursery stock 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)[14] to prevent the spread of *Phytophthora ramorum*; and

(iv) The nursery stock is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the nursery stock.

(2) [Reserved]

(c) Certificates issued under paragraphs (a) and (b) of this section may be issued by any person engaged in the business of growing, processing, handling, or moving regulated or associated articles or nursery stock provided such person has entered into and is operating under a compliance agreement in accordance with § 301.92–6. Any such person may execute and issue a certificate for the interstate movement of regulated or associated articles or nursery stock if an inspector has previously made the determination that the article is eligible for a certificate

[11] Sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754) provide that the Secretary of Agriculture may, under certain conditions, hold, seize, quarantine, treat, apply other remedial measures to destroy or otherwise dispose of any plant, plant pest, plant product, article, or means of conveyance that is moving, or has moved into or through the United States or interstate if the Secretary has reason to believe the article is a plant pest or is infested with a plant pest at the time of movement.

[12] See footnote 7 of this subpart.

[13] Paragraph (d)(2)(ii) of § 301.92–4 allows the interstate movement of non-host nursery stock without a certificate under certain conditions.

[14] See footnote 7 of this subpart.

in accordance with any applicable section of this subpart.

(d) Any certificate 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 has not complied with all conditions in this subpart for the use of the certificate. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose certificate 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 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.

(Approved by the Office of Management and Budget under control numbers 0579–0310 and 0579–0088)

[72 FR 8597, Feb. 27, 2007, as amended at 75 FR 4241, Jan. 26, 2010]

§ 301.92–6 Compliance agreements and cancellation.

(a) Any person engaged in growing, processing, handling, or moving regulated articles, associated articles, or non-host nursery stock 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.[15]

(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 wrongfully 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 hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control numbers 0579–0310)

§ 301.92–7 Availability of inspectors; assembly for inspection.

(a) Any person (other than a person authorized to issue certificates under § 301.92–5(c)) who desires to move a regulated or associated article or non-host nursery stock interstate accompanied by a certificate must notify an inspector[16] as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired time of inspection.

(b) The regulated or associated article or non-host nursery stock must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

§ 301.92–8 Attachment and disposition of certificates and recordkeeping.

(a) A certificate required for the interstate movement of a regulated article, associated article, or non-host nursery stock must, at all times during the interstate movement, be:

(1) Attached to the outside of the container containing the regulated article, associated article, or non-host nursery stock; or

[15] Compliance agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 160, Riverdale, MD 20737–1236, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories. Forms are also available on the Internet at *http://www.aphis.usda.gov/ppq/ispm/pramorum/resources.html*.

[16] See footnote 7 of this subpart.

(2) Attached to the regulated article, associated article, or non-host nursery stock itself if not in a container; or

(3) Attached to the consignee's copy of the accompanying waybill. If the certificate is attached to the consignee's copy of the waybill, the regulated article, associated article, or non-host nursery stock must be sufficiently described on the certificate and on the waybill to identify the regulated article, associated article, or non-host nursery stock.

(b) The certificate for the interstate movement of a regulated article, associated article, or non-host nursery stock must be furnished by the carrier to the consignee listed on the certificate upon arrival at the location provided on the certificate.

(c) All nurseries that are operating under compliance agreements must maintain records of all incoming shipments of plants for a minimum of 24 months and must make them available to inspectors upon request. In addition, all nurseries that are operating under compliance agreements, except retail dealers, must maintain records of outgoing shipments for a minimum of 24 months and must make them available to inspectors upon request.

(Approved by the Office of Management and Budget under control numbers 0579–0088 and 0579–0310)

§ 301.92–9 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. The user will be responsible for all costs and charges arising from inspection and other services provided outside normal business hours.

§ 301.92–10 [Reserved]

§ 301.92–11 Inspection and sampling protocols.

Type(s) of plants in the nursery	Type(s) of plants shipped interstate	Inspection and certification protocol	
		Origin: Quarantined areas	Origin: Regulated areas
Regulated articles only	None	Not regulated	Not regulated.
Regulated articles only	Regulated articles	§ 301.92–11(a)	§ 301.92–11(c).
Associated articles only	None	Not regulated	Not regulated.
Associated articles only	Associated articles	§ 301.92–11(a)	§ 301.92–11(c).
Regulated and associated articles only.	Regulated or associated articles, or both.	§ 301.92–11(a)	§ 301.92–11(c).
Regulated and associated articles and non-hosts.	None	Not regulated	Not regulated.
Regulated and associated articles and non-hosts.	Regulated or associated articles, or both.	§ 301.92–11(a)	§ 301.92–11(c).
Regulated and associated articles and non-hosts.	Non-hosts only	§ 301.92–11(a)	§ 301.92–11(c).
Non-hosts only	None	Not regulated	Not regulated.
Non-hosts only	Non-hosts	§ 301.92–11(b)	§ 301.92–11(d).
Decorative trees without roots (e.g., Christmas trees).	Proven host plant taxa	§ 301.92–11(a)	Not regulated.
Decorative trees without roots (e.g., Christmas trees).	Associated plant taxa	Not regulated	Not regulated.

(a) *Nurseries in quarantined areas shipping regulated articles of nursery stock and associated articles interstate.* To meet the requirements of § 301.92–5(a)(1)(iv), nurseries located in quarantined areas and that move regulated articles of nursery stock, decorative trees without roots, wreaths, garlands, or greenery, associated articles, or non-host nursery stock interstate must meet the requirements in this section. Nurseries in quarantined areas that do not meet the requirements of this section are prohibited from moving regulated articles and associated articles interstate. Nurseries in quarantined areas that do not meet the requirements of this section or paragraph (b) of this section are prohibited from moving non-host nursery stock interstate.

(1) *Annual inspection, sampling, and testing*—(i) *Inspection.* The nursery

must be inspected annually for symptoms of *Phytophthora ramorum* by an inspector.[17] Inspectors will visually inspect for symptomatic plants throughout the nursery, and inspection will focus on, but not be limited to, regulated articles and associated articles.

(ii) *Sampling.* A minimum of 40 plant samples must be tested per nursery location. Samples must be taken from all symptomatic plants if symptomatic plants are present. If fewer than 40 symptomatic plants are present, each symptomatic plant must be sampled and the remainder of the 40 sample minimum must be taken from asymptomatic plants. If no symptomatic plants are present, 40 asymptomatic plants must be sampled; biased toward proven hosts. Each sample may contain more than one leaf, and may come from more than one plant, but all plants in the sample must be from the same lot. Asymptomatic samples, if collected, must be taken from regulated and associated articles and nearby plants. Inspectors must conduct inspections at times when the best expression of symptoms is anticipated and must take nursery fungicide programs into consideration. Nursery owners must keep records of fungicide applications for 2 years and must make them available to inspectors upon request.

(iii) *Testing.* Samples must be labeled and sent for testing to a laboratory approved by APHIS and must be tested using a test method approved by APHIS, in accordance with § 301.92–12.

(iv) *Annual certification.* If all plant samples tested in accordance with this section and § 301.92–12 return negative results for *Phytophthora ramorum,* an inspector may certify that the nursery is free of evidence of *Phytophthora ramorum* infestation at the time of inspection, and the nursery will be eligible to enter into a compliance agreement in accordance with § 301.92–6.[18]

(2) *Pre-shipment inspection, sampling, and testing*—(i) *Inspection.* During the 30 days prior to interstate movement from a nursery in a quarantined area, regulated articles or associated articles intended for interstate movement must be inspected for symptoms of *Phytophthora ramorum* by an inspector.[19] Inspection will focus on, but not be limited to, regulated articles and associated articles. No inspections of shipments will be conducted unless the nursery from which the shipment originates has a current and valid annual certification in accordance with paragraph (a)(1)(iv) of this section.

(A) If no symptomatic plants are found upon inspection, the shipment may be considered free of evidence of *Phytophthora ramorum* infection and is eligible for interstate movement, provided that the nursery is operating under a compliance agreement with APHIS in accordance with § 301.92–6.

(B) If symptomatic plants are found upon inspection, the inspector will collect at least one sample per symptomatic plant, and one sample per regulated article or associated article that is in close proximity to, or that has had physical contact with, a symptomatic plant.

(ii) *Testing and withholding from interstate movement.* Samples taken in accordance with paragraph (a)(2)(i)(B) of this section must be labeled and sent for testing to a laboratory approved by APHIS and must be tested using a test method approved by APHIS, in accordance with § 301.92–12. The interstate movement of plants in the shipment is prohibited until the plants in the shipment are determined to be free of evidence of *Phytophthora ramorum* infection in accordance with § 301.92–12.

(b) *Nurseries in quarantined areas shipping non-host nursery stock interstate.* Nurseries located in quarantined areas and that move non-host nursery stock interstate must meet the requirements of this paragraph or the requirements of paragraph (a) of this section.[20] If such nurseries contain any regulated or associated articles, the nursery

[17] Persons operating under compliance agreements are eligible to issue certificates for the interstate movement of regulated and associated articles, but only inspectors are authorized to conduct nursery inspections required under the regulations.

[18] See footnote 14 of this subpart.

[19] See footnote 7 of this subpart.

[20] In addition, to be eligible for interstate movement, non-host nursery stock that is rooted in soil or growing media requires certification that the soil or growing media meets the requirements of § 301.92–5(a)(1)(iii).

must meet the requirements of paragraph (a). This paragraph (b) only applies if there are no regulated or associated articles of nursery stock in the nursery. Nurseries that do not meet the requirements of paragraphs (a) or (b) of this section are prohibited from moving non-host nursery stock interstate.

(1) *Annual visual inspection.* The nursery must be visually inspected annually for symptoms of *Phytophthora ramorum.* Inspections and determinations of freedom from evidence of *Phytophthora ramorum* infestation must occur at the time when the best expression of symptoms is anticipated.

(2) *Sampling.* All plants showing symptoms of infection with *Phytophthora ramorum* upon inspection will be sampled and tested in accordance with § 301.92–12. If symptomatic plants are found upon inspection, the following plants must be withheld from interstate shipment until testing is completed and the nursery is found free of evidence of *Phytophthora ramorum* in accordance with this paragraph (b)(3) of this section and § 301.92–12: All symptomatic plants, any plants located in the same lot as the suspect plant, and any plants located within 2 meters of this lot of plants.

(3) *Certification.* If all plant samples tested in accordance with this section and § 301.92–12 return negative results for *Phytophthora ramorum,* or if an inspector determines that plants in a nursery exhibit no signs of infection with *Phytophthora ramorum,* the inspector may certify that the nursery is free of evidence of *Phytophthora ramorum* infestation at the time of inspection. Certification is valid for 1 year and must be renewed each year to continue shipping plants interstate.

(c) *Nurseries in regulated areas shipping regulated articles of nursery stock or associated articles interstate.* To meet the conditions of § 301.92–5(b), any nursery that is located in a regulated area and contains regulated articles of nursery stock or associated articles, and ships any nursery stock interstate must meet the following requirements:

(1) *Annual inspection.* The nursery must be inspected annually for symptoms of *Phytophthora ramorum* by an inspector.[21] Inspection will focus on, but not be limited to, regulated articles of nursery stock and associated articles.

(2) *Sampling.* Samples must be taken from all symptomatic plants. If fewer than 40 symptomatic plants are present, each symptomatic plant must be sampled and additional samples must be taken from asymptomatic plants so that the minimum number of plants sampled is 40. If no symptomatic plants are present, 40 asymptomatic plants must be sampled. Each sample may contain more than one leaf, and may come from more than one plant, but all plants in the sample must be from the same lot. If samples are collected from asymptomatic plants, the samples must be taken from regulated and associated articles and nearby plants. Inspectors must conduct inspections at times when the best expression of symptoms is anticipated and must take nursery fungicide programs into consideration. Nursery owners must keep records of fungicide applications for 2 years and must make them available to inspectors upon request.

(3) *Annual certification.* If all plant samples tested in accordance with this section and § 301.92–12 return negative results for *Phytophthora ramorum,* the inspector may certify that the nursery is free of evidence of *Phytophthora ramorum* infestation at the time of inspection. Nurseries in a regulated area must have current and valid certification to ship regulated articles of nursery stock and associated articles interstate. If annual certification expires prior to reinspection, all plants in the nursery are prohibited interstate movement until the nursery is inspected, tested, and re-certified in accordance with this section and § 301.92–12.

(d) *Nurseries in regulated areas shipping non-host nursery stock interstate.* Nurseries located in regulated areas and that move non-host nursery stock interstate must meet the requirements in this paragraph or the requirements of paragraph (c) of this section. If such nurseries contain any regulated or associated articles, the nursery must meet the requirements of paragraph (c). This paragraph (d) only applies if

[21] See footnote 7 of this subpart.

there are no regulated or associated articles in the nursery. Nurseries that do not meet the requirements of paragraphs (c) or (d) of this section are prohibited from moving non-host nursery stock interstate.

(1) *Annual visual inspection.* The nursery must be visually inspected annually for symptoms of *Phytophthora ramorum.* Inspections and determinations of apparent pest freedom for such nurseries must occur at the time when the best expression of symptoms is anticipated.

(2) *Sampling.* All plants showing symptoms infection with *Phytophthora ramorum* upon inspection will be sampled and tested in accordance with § 301.92–12. If symptomatic plants are found upon inspection, the following plants must be withheld from interstate shipment until testing is completed and the nursery is found free of evidence of *Phytophthora ramorum* in accordance with § 301.92–12: All symptomatic plants, any plants located in the same lot as the symptomatic plant, and any plants located within 2 meters of that lot of plants.

(3) *Certification.* If all plant samples tested in accordance with this section and § 301.92–12 return negative results for *Phytophthora ramorum,* or if an inspector determines that plants in the nursery exhibit no signs of infection with *Phytophthora ramorum,* the inspector may certify that the nursery is free of evidence of *Phytophthora ramorum* infestation at the time of inspection. Certification is valid for 1 year and must be renewed each year to continue shipping plants interstate.

(e) *Additions to the lists of proven hosts and associated plants.* In the event that APHIS informs a nursery owner that additional proven hosts or associated plants exist, but those taxa are not yet listed in this subpart, the following provisions apply:

(1) Nurseries operating under a compliance agreement in accordance with § 301.92–6 may continue to ship plants interstate in accordance with this subpart.

(2) Nurseries that had not previously contained any regulated or associated articles, and that had been inspected in accordance with § 301.92–11(b)(3) and allowed to ship plants interstate without certificate, but that contain a newly identified proven host or associated plant must cease interstate shipments of regulated articles and associated hosts until the nursery is reinspected and found free of evidence of *Phytophthora ramorum* in accordance with § 301.92–11. Nurseries that come under regulation during winter dormancy periods and that are not able to be inspected in accordance with § 301.92–11 prior to desired shipments of non-host nursery stock may be allowed to ship non-host nursery stock interstate at the discretion of an inspector.

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§ 301.92–12 Testing protocols.

Samples must be analyzed using a methodology approved by APHIS at a laboratory approved by APHIS. The following methodology is approved by APHIS.

(a) *Optional ELISA Prescreening.* An APHIS-approved ELISA may be used to prescreen plant samples to determine the presence of *Phytophthora* spp.

(1) *Negative prescreening results.* If all samples from a single nursery are found to be negative through APHIS-approved ELISA prescreening, no further testing is required. The nursery may be considered free of evidence of *Phytophthora ramorum,* and plants in the nursery are eligible for interstate movement under certificate in accordance with § 301.92–5.

(2) *Positive prescreening results.* If ELISA prescreening reveals the presence of *Phytophthora* spp. in any plants, each sample that returns positive ELISA results must be tested as provided in paragraph (b) of this section.

(b) *Mandatory testing procedures.* If ELISA prescreening is not performed, or if results of ELISA prescreening are positive for *Phytophthora* spp. in any sample, the sample must be analyzed using an APHIS-approved test. Samples will be considered positive for *Phytophthora ramorum* based on positive results of any approved test. Positive PCR or other molecular tests do not require confirmatory culture tests, nor do positive culture tests require confirmatory PCR or other molecular tests; however, if culture tests return other than positive results, an APHIS-

approved PCR or other molecular test must be conducted, as provided in paragraph (b)(1) of this section.

(1) *PCR or other molecular tests*—(i) *Negative results.* If the results of PCR or other molecular tests are negative for all samples in a nursery, no further testing is required. The nursery may be considered free of evidence of *Phytophthora ramorum* and plants in the nursery are eligible for interstate movement under certificate in accordance with §301.92–5.

(ii) *Positive results.* If any samples tested using PCR or other molecular tests return positive results for *Phytophthora ramorum*, the nursery from which they originate is prohibited from moving plants interstate. The nursery will be eligible to ship certain plants interstate when an inspector determines that those plants are free of evidence of *Phytophthora ramorum.*

(2) *Culture Test*—(i) *Negative results.* If the results of culture tests are other than positive for any samples taken from a single nursery, plants in the nursery must continue to be withheld from shipment in accordance with §301.92–11 and each plant sample must be tested again using a PCR or other molecular test, as described in this section.

(ii) *Positive results.* If any culture tests return positive results for *Phytophthora ramorum*, the nursery from which they originate is prohibited from moving plants interstate as directed by an inspector. The nursery will be eligible to ship certain plants interstate when an inspector determines that those plants are free of evidence of *Phytophthora ramorum.*

(c) *Other test methods.* Other test methods may be acceptable if approved by APHIS.

PART 302—DISTRICT OF COLUMBIA; MOVEMENT OF PLANTS AND PLANT PRODUCTS

Sec.

302.1 Definitions.
302.2 Movement of plants and plant products.

AUTHORITY: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

SOURCE: 66 FR 1016, Jan. 5, 2001, unless otherwise noted.

§302.1 Definitions.

Inspector. Any employee of the Animal and Plant Health Inspection Service or other person authorized by the Administrator to inspect and certify the plant health status of plants and products under this part.

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

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

§302.2 Movement of plants and plant products.

Inspection or documentation of the plant health status of plants or plant products to be moved interstate from the District of Columbia may be obtained by contacting the State Plant Health Director, Plant Protection and Quarantine, APHIS, Wayne A. Cawley, Jr. Building, Room 350, 50 Harry S. Truman Parkway, Annapolis, MD 21401–7080; phone: (410) 224–3452; fax: (410) 224–1142.

[66 FR 54641, Oct. 30, 2001]

PART 305—PHYTOSANITARY TREATMENTS

Sec.

305.1 Definitions.
305.2 Approved treatments.
305.3 Processes for adding, revising, or removing treatment schedules.
305.4 Monitoring and certification of treatments.
305.5 Chemical treatment requirements.
305.6 Cold treatment requirements.
305.7 Quick freeze treatment requirements.
305.8 Heat treatment requirements.
305.9 Irradiation treatment requirements.

AUTHORITY: 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.

SOURCE: 75 FR 4241, Jan. 26, 2010, unless otherwise noted.

§305.1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any person delegated to act for the Administrator in matters affecting this part.