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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2007–0032]

RIN 0579–AC38

Citrus Canker; Interstate Movement of Regulated Nursery Stock From Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the citrus canker regulations to explicitly prohibit, with limited exceptions, the interstate movement of regulated nursery stock from a quarantined area. The interim rule provided two exceptions to this prohibition, one that allowed nursery stock to be moved interstate for immediate export under certain conditions and another that allowed calamondin and kumquat plants to be moved interstate in accordance with a protocol designed to ensure their freedom from citrus canker. Our decision to provide for the interstate movement of calamondin and kumquat plants was based on their apparent resistance to citrus canker infection. However, since the publication of the interim rule, we have confirmed that 47 calamondin plants growing in an area quarantined for citrus canker were infected with the disease. Therefore, this final rule amends the protocol to exclude calamondin plants. The interim rule was necessary to clarify our regulations and to address the risk associated with the interstate movement of regulated nursery stock from areas quarantined for citrus canker.

DATES: *Effective Date:* May 11, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Senior Operations Officer, Emergency and Domestic Programs, Plant Protection and Quarantine, APHIS, 4700 River Road, Unit 137, Riverdale, MD 20737–1231; (301) 734–8899.

SUPPLEMENTARY INFORMATION:

Background

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

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

The regulations to prevent the interstate spread of citrus canker are contained in ''Subpart—Citrus Canker'' (7 CFR 301.75–1 through 301.75–14, referred to below as the regulations). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker. Regulated articles are plants and plant parts of all species, clones, cultivars, strains, varieties, or hybrids of the genera *Citrus* and *Fortunella*, and all clones, cultivars, strains, varieties and hybrids of the species *Clausena lansium* and *Poncirus trifoliata*. Plants and plant parts include fruit, seed, grass clippings, plant clippings, tree clippings, and nursery stock. The regulations also provide conditions under which regulated fruit and regulated seed may be moved from quarantined areas.

Preventing the spread of citrus canker is of great importance, and the regulations are therefore necessary, not only because of the severity of the disease, but also because commercial citrus production is of considerable significance to the U.S. agricultural economy. Since 2002, an average of 939,360 acres within the United States has been devoted annually to citrus grown for commercial production.[1] During the same time period, these acres have produced, on average, more than 13 million tons of fresh citrus a year.[2] The average estimated annual value of citrus produced in the United States during that time period was $2.55 billion (packinghouse door equivalent).

Florida accounts for the majority of commercial citrus produced in the United States, but there is substantial commercial citrus production in other States. Between 2002 and 2007, Arizona, California, and Texas, three States that the United States Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS) has designated as commercial citrus-producing areas in § 301.75–5, maintained, on average, 305,500 acres devoted to commercial citrus production annually and produced an average of more than 3.64 million tons of fresh citrus articles each year.[3]

Moreover, commercial citrus production in Florida has declined in recent years, from approximately 11.5 million tons in 2002 to approximately 7.8 million tons in 2006. The primary reason for this decline was the exceptionally active hurricane seasons of 2004 and 2005, which were devastating to Florida's citrus

[1] Source: Florida Agricultural Statistic Service (FASS), National Agricultural Statistics Service (NASS), USDA, ''Citrus Summary 2006–2007,'' February 2008.

[2] Data for 2002–2006 are derived from: NASS/USDA, ''Citrus Fruits 2006 Summary,'' 2006. 2007 data are from: NASS/USDA, ''Citrus Summary 2006–2007,'' February 2008.

[3] Data for 2002–2006 are derived from: NASS/USDA, ''Citrus Fruits 2006 Summary,'' 2006. 2007 data are from: NASS/USDA, ''Citrus Summary 2006–2007,'' February 2008.

production. Not only was extensive damage to citrus plants wrought during each hurricane, but the storms also widely disseminated diseases affecting citrus, including citrus canker, within the State.

Before the 2004 and 2005 hurricane seasons, we had sought to quarantine those areas within the State where the disease was found and to promote eradication efforts, while allowing the normal movement of regulated citrus articles from those areas within Florida where the disease was not present. In areas quarantined for citrus canker, the regulations required a number of measures prior to the interstate movement of any regulated articles: Inspections at set intervals of all regulated citrus plants and trees within the area, except indoor house plants; treatment of all vehicles, equipment, personnel, and other articles used in providing inspection, maintenance, harvesting, or related services in any grove containing regulated plants or trees, as well as in providing landscaping or lawn care services on any premises containing regulated plants or regulated trees; and destruction of all plants and trees within the area that were determined to be infected with citrus canker, except plants and trees at nurseries and indoor house plants.

We based this earlier approach on the localized nature of quarantined areas within Florida during that time period. Such areas were usually no greater than a county.[4] Because of the relatively small size of these quarantined areas, we were confident that this approach would allow us to identify and quarantine newly infected areas quickly enough to prevent the further spread of the disease within Florida and to eradicate citrus canker within the State.

However, after the hurricane seasons of 2004 and 2005, at one point approximately 75 percent of all commercial citrus trees in the State were located within 5 miles of a location where citrus canker had been detected. It thus became apparent that, because of the size and distribution of the newly affected areas, the existing approach would no longer be adequate to eradicate the disease or prevent its spread within Florida. Therefore, on January 10, 2006, APHIS announced that it had determined that the established eradication program was no longer a scientifically feasible option to address citrus canker within Florida.[5]

We later codified this decision in an interim rule[6] effective and published in the **Federal Register** on August 1, 2006 (71 FR 43345–43352, Docket No. APHIS–2006–0114), in which we declared the State of Florida a quarantined area for citrus canker and amended the requirements for the movement of regulated citrus articles from Florida.

Specifically, in that rule, we moved provisions of the regulations requiring inspections at set intervals of regulated plants and trees, except indoor house plants; the treatment of articles used in providing landscaping services; and the destruction of plants and trees, except for plants and trees at nurseries and indoor house plants, from § 301.75–6, which sets conditions that must be met in order for any regulated articles to be moved interstate from a quarantined area, to paragraph (d) of § 301.75–4, which sets out conditions that must be met in order for less than an entire State to be designated as a quarantined area. We stated that these provisions were only appropriate for a regulatory program focused on eradication, and thus were no longer applicable to Florida.

After the publication of the August 2006 interim rule, it was determined that the amendments that the 2006 interim rule made to § 301.75–6 could be construed as allowing the interstate movement of citrus nursery stock from an area quarantined for citrus canker. Citrus nursery stock, however, is considered to be one of the most likely pathways for the introduction of *Xcc* to previously unaffected areas.[7] Therefore, we determined that it was necessary to amend the regulations to clarify that such movement was not allowed. At the same time, we recognized that there were many citrus producers within Florida who had been adversely affected by the restrictions imposed by the interim rule. Accordingly, we also sought to provide them with a degree of regulatory relief appropriate under the circumstances.

As a result, in an interim rule[8] effective March 16, 2007, and published in the **Federal Register** on March 22, 2007 (72 FR 13423–13428, Docket No. APHIS–2007–0032), we amended the regulations to explicitly prohibit the movement of citrus nursery stock from an area quarantined for citrus canker. This action was necessary to clarify our regulations and address the risk associated with the interstate movement of nursery stock from a quarantined area. The interim rule also included two exceptions to the prohibition, one that allowed citrus nursery stock to be moved interstate for immediate export, subject to certain restrictions, and another that allowed calamondin and kumquat plants to be moved interstate under a protocol designed to ensure their freedom from citrus canker prior to movement.

We solicited comments concerning the interim rule for 60 days ending May 21, 2007. We subsequently reopened and extended the deadline for comments until June 11, 2007, in a document published in the **Federal Register** on May 23, 2007 (72 FR 28827, Docket No. APHIS–2007–0032). For reasons we discuss below in the section entitled ''Comments Regarding the Interstate Movement of Calamondins and Kumquats,'' we reopened and extended the deadline for comments once more, until February 28, 2008, in a document published in the **Federal Register** on January 29, 2008 (73 FR 5085, Docket No. APHIS–2007–0032).

We received 18 comments by that date, from State departments of agriculture, greenhouses, citrus nursery stock growers, brokers for stock growers, and a plant board. The comments are discussed below by topic.

General Comments on the Interim Rule

Two commenters stated that the interim rule contained no scientific analysis evaluating the risks associated with the interstate movement of citrus nursery stock from a quarantined area. In the absence of such an analysis, the commenters suggested that APHIS had not adequately examined the possible risks posed by such movement or the availability of control measures that may mitigate or eliminate these risks. Because of this, they stated that we ought to withdraw the interim rule. Similarly, two commenters stated that APHIS had overstated the risk of spread

[4] In the decade preceding the end of the 2005 hurricane season, APHIS issued three interim rules (61 FR 1519–1521, Docket No. 95–086–1; 65 FR 53528–53531, Docket No. 00–036–1; 69 FR 55315–55320, Docket No. 04–045–1) designating areas in Florida as quarantined areas. Two of these three rules added counties or portions of counties.

[5] APHIS, Letter to Charles H. Bronson, Commissioner of Agriculture, Florida Department of Agriculture and Consumer Services, January 10, 2006.

[6] To view the interim rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0114.*

[7] APHIS, ''Movement of Commercially Packed Citrus Fruit from Citrus Canker Disease Quarantine Area: Revised Risk Management Analysis,'' September 2007, ppg. 25–26. To view this document, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0022.*

[8] To view the interim rule or the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0032.*

of citrus canker associated with the interstate movement of nursery stock from the State of Florida.

Our prohibition on the interstate movement of nursery stock reflects the fact that the movement of citrus nursery stock has been considered one of the most likely pathways for the spread of citrus canker. In virtually every case worldwide where citrus canker has been introduced into a previously unaffected area, it is considered likely to have occurred through the movement of infected nursery stock. Moreover, USDA has historically prohibited the interstate movement of citrus nursery stock from areas quarantined because of citrus canker. The purpose of the interim rule was therefore to make explicit our long-standing historical practice and science-based policy of prohibiting the interstate movement of citrus nursery stock from areas quarantined for citrus canker. Because this prohibition was not new, we did not prepare a risk assessment for the interim rule.

We also note that the dispersion of *Xcc* was widespread within the State of Florida as a result of the 2004 and 2005 hurricane seasons and that there were, consequently, many newly infected citrus plants within the State, including citrus nursery stock. These two considerations had, in fact, formed the basis for designating the entire State of Florida as a quarantined area in August 2006.

In deciding within that same rule to codify a protocol that allowed the interstate movement of calamondin and kumquat plants under certain conditions, we relied on a peer-reviewed scientific article on citrus canker and the long-standing, but informal, consensus of scientists regarding the strong biological resistance of calamondins and kumquats to *Xcc*.[9] We have since obtained epidemiological results that indicate that calamondins are not as resistant to citrus canker as we had previously believed. We discuss this information in greater detail in the section entitled ''Comments Regarding the Interstate Movement of Calamondins and Kumquats.''

Several commenters questioned the need for the interim rule on other grounds. Some stated that in Florida, the only State currently quarantined for citrus canker, nursery inspections mandated by Federal and State authorities suffice to prevent the movement of nursery stock infected with citrus canker. Others asserted that the biosecurity measures many nursery stock growers voluntarily undertake in order to market their plants, beyond those required by Federal or State regulations, provide adequate protection against the spread of citrus canker through the movement of nursery stock.

There are currently no Federal regulations requiring the inspection of citrus nursery stock in Florida. When an entire State has been designated as an area quarantined for citrus canker, there are no Federal regulations requiring inspection of citrus nursery stock within that area. In the August 2006 interim rule that designated the entire State of Florida as a quarantined area for citrus canker, we had intended to remove any reference to inspections from § 301.75–6 because that provision was appropriate only for a program focused on eradication and conducted in a quarantined area smaller than a State. The provision was therefore no longer appropriate for Florida, given our January 2006 determination that the widespread dispersion of *Xcc* that had occurred throughout the State as a result of the 2004 and 2005 hurricane seasons had rendered an eradication-based approach unfeasible. Likewise, we recognized in 2006 that the provision more appropriately belonged in § 301.75–4, which contains provisions under which an area less than an entire State may be designated as a quarantined area for *Xcc*. Our intention in the August 2006 interim rule was therefore to remove the provision from § 301.75–6 and add it to § 301.75–4. While we did the latter, we did not do the former. Our mistake in leaving the inspection provision in § 301.75–6 is demonstrated by the fact that, after publication of the August 2006 interim rule, § 301.75–6 appeared not to require inspected plants to yield negative results for the presence of citrus canker. Our regulations could then be read to allow infected nursery stock, whether visibly affected or asymptomatic, to be transported interstate. As these provisions did not conform to our long-standing historical practice and science-based policy, we removed the provisions from § 301.75–6 in the March 2007 interim rule.

We acknowledge that the inspections for citrus canker mandated by Florida's Department of Agriculture and Consumer Services/Division of Plant Industry (FDACS/DPI) serve to lessen the risk of the spread of *Xcc* to unaffected producers within the quarantined area. However, we have determined that these inspections do not adequately address the risk associated with the interstate movement of citrus nursery stock from Florida.

The inspections are, however, part of a larger program for citrus nursery stock produced in the State of Florida, the Citrus Nursery Stock Certification Program. We address the program itself in greater detail below, in the section entitled ''Comments Proposing Florida's Citrus Nursery Stock Certification Program as an Alternative to Rulemaking.''

Finally, we recognize that the biosecurity measures stock growers employ often reduce the likelihood that their plants may become infected with citrus canker. However, because these measures are voluntary, we cannot assume that all producers within Florida adhere to these standards. This is important, because, as we mentioned above, the movement of citrus nursery stock is considered to be one of the most likely pathways for the spread of *Xcc.* Standards and protocols that may not be uniformly followed do not adequately address the risk associated with the interstate movement of citrus nursery stock from an area quarantined for citrus canker.

Several commenters suggested that the interim rule should be withdrawn because citrus canker poses no human health risk and is not transmissible to plants other than citrus. Similarly, three commenters stated that the rule should be withdrawn because, they stated, APHIS' basis for issuing the rule was solely to protect and promote the economic interests of other commercial citrus-producing areas, rather than to prevent the further dissemination of *Xcc* within the United States.

As noted above, our intent in issuing the interim rule was to clarify our long-standing historical practice and science-based policy of prohibiting the movement of nursery stock from areas quarantined for citrus canker. The existing prohibitions on the interstate movement of citrus nursery stock from areas quarantined because of citrus canker fall within the authority delegated to APHIS under the PPA. The PPA authorizes APHIS to take measures to prohibit or restrict movement in interstate commerce of any plant or plant product, if we determine that the prohibition or restriction is necessary to prevent the dissemination of a plant disease within the United States. Citrus canker is highly transmissible to citrus plants and can cause extensive damage to affected plants. Furthermore, as we mentioned above, citrus nursery stock is considered to be one of the most likely pathways for the introduction of citrus canker to previously unaffected areas.

[9] We adopted a similar protocol in a final rule published in the **Federal Register** on March 24, 1989 (54 FR 12175–12183, Docket No. 88–105); we removed the protocol from the regulations, without giving a reason for doing so, in a final rule published in the **Federal Register** on September 11, 1990 (55 FR 37441–37453, Docket No. 90–114).

Moreover, we note that it was likewise appropriate for APHIS, in particular, to take such measures, since it was in keeping with our mission as an Agency to protect American agriculture.

One commenter stated that the interim rule should be withdrawn because APHIS lacked adequate personnel to enforce it and should be replaced with a risk-based approach that assigns personnel to the pathways through which citrus canker is most likely to travel.

We are confident that we have adequate personnel to effectively enforce this rule, which does not impose new prohibitions on the interstate movement of citrus nursery stock but rather clarifies our long-standing historical practice and science-based policy of prohibiting the movement of nursery stock from areas quarantined for citrus canker.

Comments Proposing Florida's Citrus Nursery Stock Certification Program as an Alternative to Rulemaking

Several commenters stated that APHIS had not adequately considered less stringent measures to prevent the spread of citrus canker through the interstate movement of citrus nursery stock. Many of the commenters asserted that Florida's Citrus Nursery Stock Certification Program, which is designed to prevent the spread of citrus canker and citrus greening within and from that State and which was enacted by the State of Florida on December 26, 2006, would provide an effective, yet less restrictive, alternative to the regulations established by the interim rule.[10] They pointed out that:

- The certification program requires all citrus nursery stock propagations after January 1, 2007, to be made within structures approved by FDACS/DPI to prevent the introduction of citrus canker, citrus greening, and the Asian citrus psyllid, a vector of citrus greening;
- The program contains provisions to prohibit the sale and distribution of nursery stock not grown in a structure and a site approved by FDACS/DPI;
- The program requires all nurseries in which citrus nursery stock is grown after December 26, 2006, to be fenced and to limit access to those areas within the nursery which contain citrus nursery stock;
- The program requires the decontamination of all personnel and equipment before entering a nursery;
- The program requires all parent trees from which propagations are taken after December 26, 2006, to be tested and found free of citrus canker, citrus greening, and other citrus pathogens that are transmissible through grafting; and
- The program requires nurseries to be inspected every 30 days, and allocates funds and personnel to this end.

The commenters asserted that these safeguards, collectively, provide adequate phytosanitary security to allow the interstate movement of citrus nursery stock from the quarantined area.

To consider these comments, we examined the various provisions of the certification program. We determined that certain provisions of Florida's program did not adequately address the risk of the spread of citrus canker or citrus greening from Florida. For example, the program exempts retail outlets and retail sales areas having fewer than 500 citrus plants in stock at any given time from having to place nursery stock in screened enclosures or even segregate it from other plants on-site; does not regulate citrus plants propagated in nurseries prior to implementation of the program, regardless of the phytosanitary conditions under which the plants were propagated; and does not require that all such plants be inspected for freedom from citrus canker or citrus greening prior to sale. Moreover, the State regulations that implement the Citrus Nursery Stock Certification Program do not provide a scientific rationale for not addressing the risk associated with these provisions. For these reasons, we came to the conclusion that Florida's program was not an adequate alternative to the restrictions on the interstate movement of nursery stock in our regulations.

In response to this determination, Florida requested APHIS' assistance in crafting a systems approach that would provide adequate phytosanitary measures to allow the interstate movement of citrus nursery stock from areas quarantined for citrus canker, citrus greening, and Asian citrus psyllid, a vector of citrus greening, to areas of the United States that APHIS has not designated as commercial citrus-producing areas. To this end, APHIS convened a technical working group, which recommended sourcing from a pest-exclusionary production facility and testing for all germplasm and budwood destined for propagation in nurseries within the State, construction and maintenance of pest-exclusionary production facilities and buffer zones, safeguarding, routine inspections, cleaning and disinfection protocols, and other measures that would be sufficient to address the concerns raised in our earlier evaluation.

As a result of this collaboration with APHIS, FDACS/DPI presented a draft systems approach to us for evaluation in December 2008. The mitigation measures proposed in that systems approach appear consistent with the recommendations of the technical working group; therefore, we have reason to believe that they may provide a basis for allowing the limited interstate movement of citrus nursery stock from Florida. However, because citrus nursery stock is known to be a high-risk pathway for citrus canker and citrus greening, we have decided to initiate a formal assessment of the risk associated with interstate movement of citrus nursery stock under the provisions of the systems approach. If the assessment finds the systems approach to provide effective mitigation measures, we will initiate rulemaking to codify the approach. Until such time, we will retain the existing prohibition on the interstate movement of citrus nursery stock from areas quarantined for citrus canker. Therefore, we are making no change in response to these comments.

One commenter suggested that if we did not recognize Florida's program as an alternative to rulemaking, we needed to amend the regulations to establish a similar, federally regulated certification program. The commenter stated that, without such a program, our citrus canker regulations would be inconsistent with APHIS regulations governing other plant diseases, such as *Ralstonia solanacearum* and *Phytophthora ramorum,* which allow the importation or interstate movement of plants or plant parts from an area quarantined for a disease if the plants have been produced under conditions that prevent those plants from being infected with that disease.

We implemented those certification programs based on an examination of the severity and prevalence of each specific disease, its likelihood of transmission, and the efficacy of various mitigation measures at preventing its spread. As noted above, we are currently conducting such an examination for the interstate movement of citrus nursery stock for areas quarantined for citrus canker and citrus greening.

Two commenters suggested that, in greatly restricting the movement of citrus nursery stock from Florida, APHIS had effectively encouraged States that are not commercial citrus-producing States and that have few or

[10] To view Florida's regulations implementing the Citrus Nursery Stock Certification Program, go to *http://www.flrules.org/gateway/ChapterHome.asp?Chapter=5B-62.*

no regulations governing citrus products to promote commercial citrus production. As evidence, one of the commenters stated that Georgia has initiated plans to produce citrus nursery stock within that State as a result of the interim rule without also establishing production requirements equivalent to those required by the State governments of other commercial citrus-producing areas. Poorly regulated production of citrus nursery stock, both commenters asserted, constitutes a significant pathway for the spread of citrus canker and other citrus diseases.

The temperate climate of most States not listed in the regulations as commercial citrus-producing States renders outdoor commercial citrus production impracticable. Current indoor citrus production in those States, whether commercial or noncommercial, is minimal.

We do recognize that Georgia and several other States that are not listed in the regulations as commercial citrus-producing States contain areas whose climates may be conducive to outdoor commercial citrus production. However, if these States begin commercial citrus production, we will designate them as commercial citrus-producing areas in our regulations and if citrus canker or any other quarantine disease of citrus is discovered in any of these States, we will take appropriate measures to eradicate the disease or control its spread.

Comments Proposing Changes to the Interim Rule

Several commenters suggested that APHIS should allow movement of regulated citrus nursery stock to States with a temperate climate that are not designated as commercial citrus-producing States. Citrus nursery stock moved to these States, they asserted, is primarily destined for outdoor use during the summer months or for ornamental, indoor use. If destined for outdoor use, diseased nursery stock would not survive the winter in an area with a temperate climate, and both the plant and *Xcc* would perish. If destined for indoor use, the possibility for disease aggregation or dispersion would be minimal.

We are making no changes to the interim rule in response to these comments. Allowing the movement of citrus nursery stock to areas of the United States not designated as commercial citrus-producing areas does not preclude the subsequent movement of the plants to commercial citrus-producing areas. Since nursery stock is not intended for immediate consumption, and can survive for years after it leaves the commercial distribution system, the possibility of this subsequent movement must be taken into consideration. Nor does the commenters' suggestion address the possible airborne dispersion of *Xcc* while the plants are being moved. When blown by the wind, the bacteria associated with citrus canker have been shown to survive at distances of more than 100 feet from their host.[13]

Moreover, while we are confident that we have sufficient personnel to ensure that producers in the quarantined area are adhering to the provisions of this rule, we do not have sufficient personnel to monitor every possible commercial or non-commercial pathway in each State that could result in the movement of infected but asymptomatic citrus nursery stock to other areas of the country.

Several commenters suggested that the final rule be amended to explicitly forbid the smuggling of nursery stock from an area quarantined for citrus canker.

Any movement of citrus nursery stock other than those movements authorized by the regulations is prohibited. Individuals who engage in such movements may be subject to both civil and criminal penalties.

Another commenter expressed concern about the exception in the interim rule allowing the regulated movement of nursery stock for immediate export. Such movement, the commenter suggested, appears to present a risk of introducing citrus canker into unaffected areas of the United States or other countries where the disease is not known to occur. The commenter suggested that APHIS either prohibit such movement or allow the interstate movement of citrus nursery stock, subject to the same disease control measures that allow its exportation.

In the August 2006 interim rule that quarantined the entire State of Florida for citrus canker, we established provisions under which citrus fruit and nursery stock from an area quarantined for citrus canker could be moved interstate for immediate export. We adopted these provisions to provide a degree of regulatory relief to growers, packers, and others who were adversely affected by new restrictions on the movement of citrus articles imposed by the rule.

Any nursery stock moved interstate for immediate export must be accompanied by a limited permit and must be moved in a sealed conveyance directly to the port of export. We have determined that these requirements adequately address the risk of disease spread while the articles are in transit within the United States to their port of export.

Foreign countries set their own requirements for importing commodities, including citrus nursery stock, from the United States, and thus may choose whether or not to accept nursery stock from areas quarantined for citrus canker.

Two commenters expressed concern that nursery stock imported into the United States could be infected with citrus canker or harbor vectors of the disease. These commenters suggested that APHIS consider restricting or prohibiting the importation of citrus nursery stock and other citrus products into the United States.

The regulations in 7 CFR 319.19 prohibit the importation of citrus nursery stock from other countries, unless the nursery stock is imported for experimental or scientific purposes or imported into Guam. Similarly, the regulations in 7 CFR 319.28 prohibit the importation of citrus fruit and peels from most countries quarantined for citrus canker, with certain, limited exceptions.

Comments Regarding the Interstate Movement of Calamondins and Kumquats

In the interim rule, we allowed the interstate movement of calamondin and kumquat plants under a protocol designed to ensure that they were free of the disease prior to movement. The protocol allowed interstate movement if the following conditions were met:

- The plants are own-root-only, and have not been grafted or budded.
- The plants are started, are grown, and have been maintained solely at the nursery from which they will be moved interstate.
- 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 calamondin and kumquat plants for interstate movement under the requirements of the regulations. Cuttings may not be obtained from properties where citrus canker is present.
- All citrus plants at the nursery premises have undergone State inspection and have been found to be free of citrus canker by State authorities

[13] See Gottwald, T.R., Graham, J.H., and Schubert, T.S., 2002. Citrus canker, The pathogen and its impact. Plant Health Progress doi: 10.1094/PHP–2002–0812–01–RV. Available at *http://www.plantmanagementnetwork.org/pub/php/review/citruscanker/*.

no less than three times, at 30- to 45-day intervals, prior to movement, with the most recent inspection being within 30 days of the date on which the plants are removed and packed for shipment.

- All vehicles, equipment, and other articles used in providing inspection, maintenance, or related services in the nursery, as well as all personnel employed in providing inspection, maintenance, or related services in the nursery, must be treated in accordance with the regulations before entering the nursery in order to prevent the introduction of citrus canker.
- 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 the regulations in order for the nursery to be eligible to produce calamondin and kumquat plants to be moved interstate under the protocol. Fifteen days after these actions are completed, the nursery may receive new calamondin and kumquat seed or cuttings from a nursery that is eligible to produce calamondin and kumquat plants for interstate movement.
- 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.
- The plants are accompanied by a limited permit displayed on a plastic or metal tag attached to the outside of the articles or the outside of their containers, stating that they are not to be distributed to commercial citrus-producing areas. The statement must also be displayed on the outside of the shipping containers used to transport the plants, and the limited permit must be attached to the bill of lading or any other shipping document.

In the interim rule, we stated that we had implemented a substantively similar protocol in 1989, which we removed from the regulations in 1990 without giving a reason for doing so. We also stated that, in issuing our August 2006 interim rule quarantining the entire State of Florida for citrus canker, we had reexamined the movement of calamondin and kumquat plants and decided to allow their movement. We allowed this movement through administrative action. Our intent, therefore, was to modify this 1989 protocol slightly and codify it in the regulations, in order to provide stock growers with a degree of relief appropriate under the circumstances from restrictions imposed by the interim rule and to mitigate the economic impact associated with the August 2006 quarantine.

In deciding to reinstitute the protocol, we cited a peer-reviewed article on citrus canker.[14] Although we did not cite it in the interim rule, we also relied upon the views of a 1987 panel of plant pathologists and other experts in the field of diseases affecting citrus regarding the high degree of biological resistance to *Xcc* that the calamondin and kumquat plants appeared to possess.

Several commenters expressed concerns regarding the protocol. Noting that the scientific literature cited in the interim rule did not indicate that calamondins and kumquats are entirely immune to citrus canker, one commenter suggested that APHIS had effectively adopted a risk-based approach for the interstate movement of these two plants. The commenter stated that APHIS had provided no evidence in the interim rule that the calamondin and kumquat protocol precludes the artificial spread of citrus canker through the interstate movement of these plants, nor had APHIS considered similar protocols by which other citrus articles more susceptible to citrus canker might be moved interstate. The same commenter stated that calamondins and kumquats are not as resistant to citrus canker as the interim rule suggested.

Two other commenters reiterated this last point, and added that most nurseries do not take more restrictive biosecurity measures to limit the exposure of calamondins and kumquats to citrus canker than they impose on other citrus nursery stock. All three commenters suggested that APHIS reevaluate the protocol or consider similar protocols to allow the interstate movement of other citrus nursery stock.

In response to these comments, APHIS reexamined the results of surveys and inspections conducted on citrus nursery stock within the quarantined area and on calamondin and kumquat plants growing in groves and residential settings within that area. While no infected kumquat plants were reported, in March 2006, State officials and PPQ inspectors had reported finding a nursery with several calamondin plants infected with citrus canker. Plant pathologists from FDACS/DPI subsequently conducted laboratory testing of 48 samples from these plants. These tests confirmed the presence of citrus canker in 47 of the samples.

In July 2007, in order to independently assess the accuracy of FDACS/DPI's testing, APHIS collected samples from 15 of the infected plants and sent them to PPQ's Center for Plant Health Science and Technology for corroborative testing. Officials there examined the samples using two different standard diagnostic methods. Under both methods, each sample tested positive for citrus canker. In addition, the infected plants were confirmed to be calamondin plants.

The protocol codified in the interim rule, as well as the 1989 protocol on which it was modeled, had been predicated on calamondin and kumquat plants being highly resistant to *Xcc*. As a result of these positive samples, we determined that calamondins were not highly resistant, and that the interstate movement of calamondin nursery stock, even under the conditions of the protocol, was a possible pathway for the spread of citrus canker. Accordingly, we decided that it would be prudent to amend the regulations to remove calamondin nursery stock from the protocol in a final rule.

However, in order to provide the public with an opportunity to comment on this possible change, we reopened the comment period for the interim rule, in a document published in the **Federal Register** on January 29, 2008 (73 FR 5085, Docket No. APHIS–2007–0032). In that document, we specifically asked for comments regarding calamondin plants and the interstate movement protocol.

Several commenters pointed out that the State inspections that discovered the infected calamondin plants were conducted before the implementation of Florida's Citrus Nursery Stock Certification Program. The commenters stated that calamondin plants grown under the provisions of the program cannot become infected with *Xcc* and that calamondin plants should therefore not be removed from the protocol.

As we mentioned above, we have found the Citrus Nursery Stock Certification Program does not sufficiently address the risk associated with the interstate movement of nursery stock from the State of Florida, but we are currently evaluating the adequacy of a draft systems approach proposed by the State. While we conduct our evaluation, we consider it necessary to maintain our long-standing policy prohibiting the interstate movement of citrus nursery stock from areas quarantined for citrus canker. In accordance with that policy and based on our findings, we must consider calamondin plants to be a host of citrus canker and thus must prohibit their interstate movement.

Other commenters suggested that we should allow calamondin nursery stock to be shipped to areas of the country

[14] *See* footnote 13.

that have not been designated as commercial citrus-producing areas.

We address the substantial risk associated with the shipment of citrus nursery stock to such areas above, in the section entitled ''Comments Proposing Changes to the Interim Rule.''

Accordingly, we are amending § 301.75–6 in this final rule to remove calamondin from the protocol. Wherever the text of that section has referred to ''calamondin and kumquats,'' it will now refer only to ''kumquats.'' We are also amending § 301.75–12 in a similar manner to reflect the removal of calamondin.

Comments Concerning the Economic Impact of the Interim Rule

Many commenters stated that the rule had had a substantive effect on their operations, or appeared to disproportionately impact small entities, and asked that APHIS include such impacts in the economic analysis in the final rule.

The interim rule codified existing policies, but did not establish new procedures for quarantine operations. We determined that the rule therefore had no new economic effect on any entities.

Rather, it was our August 2006 interim rule quarantining the entire State of Florida for citrus canker that resulted in new economic effects on entities involved in the production, packing, and movement of citrus fruit and nursery stock in that State. The August 2006 interim rule included a preliminary economic analysis of the effects of the State-wide quarantine; when we publish a final action following that interim rule, we will provide an updated and more comprehensive analysis of those economic effects.

However, this final rule does make a substantive change in the regulations by removing calamondins from eligibility for interstate movement. Accordingly, we examine the economic effects of that action in this final rule under the heading ''Executive Order 12866 and Regulatory Flexibility Act.''

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Orders 12372 and 12988.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This final rule follows an interim rule that amended the citrus canker regulations by explicitly prohibiting, with limited exceptions, the interstate movement of regulated citrus nursery stock from an area quarantined for citrus canker. In the interim rule, we allowed calamondin and kumquat plants to be moved interstate from a quarantined area in accordance with a protocol designed to ensure their freedom from citrus canker. In this final rule, we have amended the protocol to exclude calamondin plants.

According to Small Business Administration (SBA) criteria, a nursery (North American Industry Classification System code 111422) is considered to be a small entity if its annual receipts are not more than $750,000. In 2003, there were 1,360 nursery operators in the State of Florida, 88 percent of which were classified as small entities.[15] Of these 1,360 nurseries, 57 produced fruit and nut nursery stock. Citrus nursery stock producers fall within this larger category of fruit and nut nursery stock producers.

Although APHIS has not yet been able to confirm the number of citrus nursery stock producers in the State of Florida currently engaged in calamondin nursery stock production, correspondence with State officials has suggested that there are nine such producers.[16] There are, moreover, at least five nurseries in the State that engage exclusively in calamondin propagation.[17]

The average size of the affected nurseries is unknown. However, it is reasonable to assume that most of the nurseries are small entities, since the vast majority of all nursery operators in the State of Florida are small entities, according to SBA standards.

On January 11, 2008, APHIS issued a Federal Order designating the State of Florida as an area quarantined for citrus greening.[18] In order to prevent the spread of citrus greening to unaffected areas of the United States, the order also prohibited the interstate movement of all citrus plants from the State of Florida, as well as other citrus articles that could serve as potential host material for the citrus greening bacterium, unless the articles were destined for immediate export. Because the interstate movement of calamondin nursery stock other than for immediate export is already prohibited under that order, and because this rule does not regulate the intrastate movement of calamondin nursery stock, we expect that the impact of this rule on those producers will be minimal, at most.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The March 2007 interim rule contained information collection requirements. On March 27, 2007, the Office of Management and Budget (OMB) approved the collection of information with respect to the interim rule under OMB control number 0579–0317 (expires November 30, 2010).

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 301

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

■ Accordingly, the interim rule amending 7 CFR part 301 that was published at 72 FR 13423–13428 on March 22, 2007, is adopted as a final rule with the following changes:

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

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

[15] Source: USDA, NASS, July 2004. ''Nursery Crops 2003 Summary.'' Washington, DC.

[16] Source: Florida's Department of Agricultural and Consumer Services/Bureau of Plant and Apiary Inspection. Correspondence with APHIS, November 2007.

[17] Ibid.

[18] To view the Federal Order, go to *http://www/usda.gov/plant_health/plant_pest_info/citrusgreening/downloads/pdf_files/federalorder-01-11-2008.pdf*.

§ 301.75–6 [Amended]

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

■ a. In paragraph (a), by removing the words ''calamondin and''.

■ b. In the introductory text of paragraph (b), by removing the words ''Calamondin (*Citrus mitus*) and kumquat'' and adding the word ''Kumquat'' in their place.

■ c. In paragraph (b)(3), by removing the words ''calamondin and''.

■ d. In paragraph (b)(6), by removing the words ''calamondin and''.

■ e. In paragraph (b)(8), by removing the words ''calamondin or''.

§ 301.75–12 [Amended]

■ 3. In § 301.75–12, the introductory text of paragraph (b)(1) is amended by removing the words ''calamondin and''.

Done in Washington, DC, this 6th day of April 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–8103 Filed 4–8–09; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 392

[Docket No. 00–019F; FDMS Docket No. FSIS–2005–0020]

RIN 0583–AC81

Petitions for Rulemaking

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its administrative regulations to add a new part that establishes regulations governing the submission to FSIS of petitions for rulemaking. The new regulations supersede existing guidance on the submission of petitions to FSIS to issue, amend, or repeal its regulations. FSIS is taking this action to help ensure the filing of well-supported petitions that contain information that the Agency needs to proceed with consideration of the requested rulemaking in a timely manner.

DATES: *Effective Date:* June 8, 2009.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Director, Policy Issuances Division, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Background

On January 12, 2006, FSIS published a proposal in the **Federal Register** to establish regulations governing the submission to FSIS of petitions to issue, amend, or repeal a regulation administered by the Agency (71 FR 1988). As discussed in that proposed rulemaking, FSIS had previously published guidelines in 1993 on how to submit petitions for rulemaking to the Agency (58 FR 63570, December 2, 1993). Despite the existence of this guidance, rulemaking petitions are submitted to FSIS in various forms, often without adequate data and supporting documentation for FSIS to properly evaluate the merits of the requested action. The measures proposed in the January 12, 2006, proposed rule are designed to encourage the filing of well-supported petitions that contain information that the Agency needs to evaluate a requested rulemaking in a timely manner. The comment period for the proposed rule closed on March 12, 2006.

Comments and FSIS Response

FSIS received only one comment in response to the January 12, 2006, proposal. The comment was generally supportive of the proposed regulations but also expressed the view that when preparing Notices and Directives, FSIS should provide an opportunity for public comment prior to the issuance of these documents. According to the comment, FSIS Notices and Directives may have the same effect on the industry as regulations. The comment recommended that FSIS adopt a rule that would specifically provide opportunity for stakeholders to participate in the development of these documents.

The January 12, 2006, proposed rule proposed to establish regulations for the submission to FSIS of petitions for rulemaking. Establishing a new process for making draft FSIS Notices and Directives available for comment is outside the scope of this rulemaking. Under this final rule, however, persons may certainly petition the Agency to issue, amend or repeal such documents.

The comment also stated that, when evaluating petitions for rulemaking, FSIS must take into account that small and very small establishments have limited resources and may not have access to all of the data that FSIS considers necessary to evaluate a petition for rulemaking.

In the preamble to the proposed rule, FSIS acknowledged that some small entities may not have access to certain data that is readily available to large companies or industry trade associations. As stated in the preamble, the Agency will take these limitations into consideration when it evaluates petitions submitted by small entities.

The Final Rule

In this final rule FSIS is establishing regulations governing the submission to FSIS of petitions for rulemaking. As noted above, the one comment submitted in response to the January 12, 2006, proposed rule raised no objections that were within the scope of the proposed rulemaking. Therefore, FSIS is finalizing the proposed rule without changes.

As was proposed, FSIS is adding a new part 392—Petitions for rulemaking to title 9, subchapter D of the CFR. As stated in § 392.1, part 392 contains provisions governing the submission to FSIS of petitions for rulemaking and applies to all requests to initiate rulemaking, except to the extent that other provisions in the FSIS regulations prescribe procedures for submitting requests to amend a regulation. As discussed in the preamble to the proposed rule, § 392.1 includes this exception because FSIS' regulations already contain procedures on how to submit requests to amend certain sections of the regulations. For example, as noted in the proposal, a request to amend the regulations to authorize a new Reference Amount or Product Category identified in 9 CFR 317.312(b) and 381.412(b) must be submitted as a labeling application in accordance with the provisions of 9 CFR 317.312(g) and 381.412(g).

Section 392.2 defines a ''petition'' as a written request to issue, amend, or repeal a regulation administered by the Agency. Section 392.2 also provides that a request to issue, amend, or repeal a document that interprets a regulation administered by the Agency, such as an FSIS Directive, Notice, or compliance guide, may be made by petition.

Section 392.3 describes the information that a petition is required to contain to be considered by FSIS. Section 392.3(a) requires that a petition include the name, address and telephone number, and e-mail address (if available) of the person submitting the petition. Section 392.3(b) requires that a petition contain a full statement of the action requested by the petitioner, including the citation and exact wording of any existing regulation affected by the requested action. Section 392.3(c) requires that a petition include a statement of the factual and legal basis for the requested action, including all relevant information known to the