

Rules and Regulations

Federal Register

Vol. 76, No. 31

Tuesday, February 15, 2011

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2008–0052]

RIN 0579–AD07

Citrus Seed Imports; Citrus Greening and Citrus Variegated Chlorosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations governing the importation of nursery stock to prohibit the importation of propagative seed of several Rutaceae (citrus family) genera from certain countries where citrus greening or citrus variegated chlorosis (CVC) is present. The interim rule also required propagative seed of these genera from all other countries to be accompanied by a phytosanitary certificate with an additional declaration that neither citrus greening nor CVC are known to occur in the country where the seed was produced. We took that action because scientific evidence indicated that seed of certain genera of the family Rutaceae may be a pathway for the introduction of those diseases. The interim rule was necessary in order to prevent the introduction or dissemination of citrus greening or CVC within the United States.

DATES: Effective on February 15, 2011, we are adopting as a final rule the interim rule published at 75 FR 17289–17295 on April 6, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Tschanz, Senior Plant Pathologist, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133,

Riverdale, MD 20737–1231; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

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

CVC is also a highly injurious disease of citrus. Caused by a strain of the bacterium *Xylella fastidiosa*, CVC causes severe chlorosis between veins on the leaves of affected plants. Leaves on affected plants frequently have discoloration of the upper leaf coupled with brown lesions underneath. CVC may reduce plant growth and lead to abnormal flowering and fruit production. CVC is currently not known to occur in the United States.

The regulations in 7 CFR part 319, “Foreign Quarantine Notices,” prohibit or restrict the importation of certain plants and plant products to prevent the introduction or dissemination of plant pests and noxious weeds into the United States. The regulations in “Subpart-Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products,” §§ 319.37 through 319.37–14 (referred to below as the regulations), restrict, among other things, the importation of seeds for propagation.

In an interim rule¹ effective and published in the **Federal Register** on April 6, 2010 (75 FR 17289–17295, Docket No. APHIS–2008–0052), we amended the regulations to prohibit the importation of propagative seed of several Rutaceae (citrus family) genera from certain countries where HLB or CVC is present, and to require propagative seed of these genera from all other countries to be accompanied by a phytosanitary certificate with an additional declaration that neither HLB nor CVC is known to occur in the country where the seed was produced.

Comments on the interim rule were required to be received on or before June 7, 2010. We received three comments by that date, from a citrus nursery, a company engaged in the commercial production, packing, and shipping of citrus products, and a State department of agriculture. The comments are addressed below, by topic.

General Comments on the Interim Rule

One commenter stated that countries in which HLB or CVC is present would respond to the prohibitions of the interim rule by in turn prohibiting the importation of citrus articles from the United States. Because the loss of foreign markets would adversely impact the U.S. citrus industry, the commenter stated that the rule should be withdrawn.

On September 19, 2005, the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) reported the first two confirmed detections of HLB within the United States to the International Plant Protection Convention. Since that time, it has been at the discretion of foreign countries to promulgate regulations prohibiting or restricting the importation of host articles of HLB from the United States, based on an assessment of the potential risk to plants, plant parts, and plant products within those countries that could be associated with the introduction or dissemination of the disease. We note, however, that countries that are members of the World Trade Organization have committed

¹ To view the interim rule, its supporting and related materials, and the comments we received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0052>.

themselves to basing prohibitions or restrictions on the importation of articles (such as, in this case, citrus from the United States) on scientific evidence and risk assessment.

Comments Regarding Transmission of HLB Through Propagative Seed

In the interim rule, our stated rationale for imposing prohibitions on the importation of seed of genera that are hosts of HLB was that emerging evidence suggested that such seed could transmit the disease. To that end, we cited a peer-reviewed article by Susan Halbert and Keremane Manjunath that detailed that, when seedlings are generated from seed that is infected with HLB, a small percentage of those seedlings have been found to be infected with HLB.²

All three commenters stated that the Halbert and Manjunath article did not provide an adequate scientific basis for considering seed to be a pathway for the transmission of HLB. Two of the commenters pointed out that Halbert and Manjunath did not conduct original research regarding seed transmission, but instead referenced a 1981 study. The same commenters also pointed out that researchers in the 1981 study collected only a small number of seeds, and did not test the seedlings derived from this seed for the disease, but rather determined them to have the same stunted, chlorotic appearance as infected plants. Both commenters concluded by citing Halbert and Manjunath's assessment that the 1981 experiment "bears repeating" as evidence that Halbert and Manjunath themselves had concerns about the study's findings. Finally, one commenter cited two more recent studies, published in 2009, that the commenter asserted conclude that HLB is not seed-borne. All three commenters stated that we should amend the interim rule to allow the importation of propagative seed from countries where only HLB is present.

We disagree with the commenters' interpretation of Halbert and Manjunath's assessment of the 1981 experiment; stating that an experiment bears repeating is not tantamount to stating that one has concerns with its findings, and is, in fact, consistent with the basic elements of the scientific method.

Moreover, the Halbert and Manjunath article was not our sole basis for taking

regulatory action; we referenced it in order to illustrate some of the information that factored into our determination. We considered other evidence. For example, as we mentioned in an interim rule that established domestic quarantine regulations for HLB and that was published in the **Federal Register** and effective on June 17, 2010 (75 FR 34322–34336, Docket No. APHIS–2008–0015), researchers at USDA's Agricultural Research Service (ARS) and APHIS' Center for Plant Health Science and Technology (CPHST) have recently undertaken extensive studies to determine the likelihood of seed transmission of HLB. Both the ARS and CPHST studies found that a percentage of seedlings from infected seed tested positive for HLB via polymerase chain reaction (PCR) analysis; in the ARS study, the infection rate varied, but was as great as 78.5 percent in certain instances.³ ARS researchers did note, however, that the bacterium causing HLB remained at a very low titer in affected plants, and that most infected seedlings remained largely or entirely asymptomatic several years after testing positive for the disease.

One of the 2009 articles⁴ referenced by the commenter does not contradict, and in fact is generally consistent with, the findings of the ARS study. The article details a 2007 study, conducted by Ute Albrecht and Kim Bowman, in which more than 15,000 seeds were obtained from symptomatic trees of the following species: *Citrus macrophylla* Webster, *Citrus vungay* bojer, *X Poncirus trifoliata*, *Citrus reticulata* Blanco, *Citrus aurantium* L., and *Citrus sinensis*. Of the seedlings grown from these seeds, 769 were tested for HLB via PCR analysis at time periods ranging from 7 weeks to 9 months after sowing. Five of these 769 seedlings tested positive for the disease. However, titer levels of the bacterium were low, and the plants remained asymptomatic. In addition, repeated retesting of the positive plants several months after the initial test yielded negative PCR results.

The other article⁵ referenced by the commenter details an experiment that

³ Benyon, L.S., et al. *Transmission of 'Candidatus Liberibacter asiaticus' from seeds to seedlings in citrus along with a low bacterial titer and atypical HLB symptoms*. Available by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

⁴ Albrecht, Ute and Kim D. Bowman. 2009. *Candidatus Liberibacter asiaticus and Huanglongbing Effects on Citrus Seeds and Seedlings*. HortScience 44: 1967–1973. Available at <http://ddr.nal.usda.gov/bitstream/10113/38868/1/IND44303043.pdf>.

⁵ Shokrollah, Hajivand, et al. *Determination of the Presence of Huanglongbing in Seeds and Movement*

Hajivand Shokrollah conducted in order to determine the transmissibility of HLB through seed obtained from infected *Citrus reticulata* plants. As part of the experiment, Shokrollah tested 20 seedlings grown from such seed by using PCR analysis. While each seedling tested negative for HLB, we do not consider 20 plants, all of the same species, to be a large enough or varied enough sample size to yield conclusive results regarding disease transmission.

We acknowledge that all the studies referenced above suggest that the transmission of HLB via propagative seed is fundamentally different than its transmission via other vectors, such as budwood or Asian citrus psyllid: The bacterium is present in infected seedlings at low concentration levels, plants remain largely asymptomatic, and plants may test negative for the disease after initially testing positive. However, it is well-documented that the bacterium associated with HLB may be unevenly distributed throughout an infected plant, that the latency period for expression of symptoms may be pronounced, and that the manner in which those symptoms are expressed is influenced by a multitude of factors. Accordingly, because of the severity of HLB, in order for us to deregulate propagative seed as a host of the disease, we would need clear evidence that the disease cannot be transmitted via propagative seed or that infected seedlings cannot serve as vectors of the disease. Such evidence does not currently exist. Hence we are making no change to the interim rule in response to these comments.

One commenter stated that hot water dips are effective in treating seed for HLB. However, the commenter failed to provide any evidence in support of this assertion.

Comments Regarding CVC Transmission Through Propagative Seed

In the preamble of the interim rule, our stated rationale for imposing prohibitions on the importation of seed of genera that are hosts of CVC was that there was also emerging evidence that propagative seed could transmit this disease. To that end, we cited a 2003 study⁶ by W.B. Li et al. (referred to below as Li et al.).

One commenter pointed out that Li et al. was conducted only on three

of the Pathogen in Citrus reticulata. American Journal of Applied Sciences 6: 60: 1180–1185. Available at <http://www.allbusiness.com/medicine-health/disease-agents-vectors/13080162-1.html>.

⁶ Li, W.B., W.D. Pria, Jr., P.M. Lacava, et al. Presence of *Xylella fastidiosa* in Sweet Orange Fruit and Seeds and Its Transmission to Seedlings. *Phytopathology* (Vol. 93, No. 8) 2003, 953–958.

² Halbert, Susan and Keremane L. Manjunath. Asian Citrus Psyllids (*Sternorrhyncha: Psyllidae*) and Greening Disease of Citrus: A Literature Review and Assessment of Risk in Florida. Found at [http://www.bioone.org/doi/pdf/10.1653/0015-4040\(2004\)087\[0330:ACPSPA\]2.0.CO;2](http://www.bioone.org/doi/pdf/10.1653/0015-4040(2004)087[0330:ACPSPA]2.0.CO;2).

subspecies of sweet oranges, did not evaluate disease transmission from seeds taken from asymptomatic fruit, and was aborted before conclusive findings could be drawn. The commenter therefore asserted that seed should not be regulated as a host of CVC until further research is conducted.

The commenter is right in pointing out that Li *et al.* was aborted abruptly, because of a hurricane, and that only a study on three subspecies of sweet oranges was concluded by that time. However, CVC seed infection rates were greater than 22 percent for one subspecies evaluated in that study, and the transmission from seeds to seedlings was determined to be "efficient." Moreover, research had begun on several other species, and was tending towards the results of the sweet orange study. Finally, we note that no studies have been conducted since 2003 that call into question the findings of Li *et al.* For these reasons, we have determined that Li *et al.*'s conclusion, that the study "demonstrated that [CVC] can be transmitted through seed to seedlings," is correct, and constitutes a sufficient basis for the prohibitions in the interim rule.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12988 and the Paperwork Reduction Act.

Further, this action 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.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the regulations governing the importation of nursery stock to prohibit the importation of propagative seed of several Rutaceae (citrus family) genera from certain countries where citrus greening or citrus variegated chlorosis (CVC) is present. The interim rule also required propagative seed of these genera from all other countries to be accompanied by a phytosanitary certificate with an additional declaration that neither citrus greening nor CVC are known to occur in the country where the seed was produced. The action was necessary in order to prevent the introduction or dissemination of citrus greening or CVC within the United States.

We have prepared a final regulatory flexibility analysis addressing the economic effects of the interim rule on small entities, as required by the

Regulatory Flexibility Act. The analysis identifies importers of citrus seed as entities potentially affected by the interim rule. The full analysis may be viewed on the Regulations.gov Web site (*see ADDRESSES* above for instructions for accessing Regulations.gov) or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 319 and that was published at 75 FR 17289–17295 on April 6, 2010.

Done in Washington, DC, this 9th day of February 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–3367 Filed 2–14–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1113; Directorate Identifier 2010–NM–121–AD; Amendment 39–16603; AD 2011–04–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 and 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During flight-testing of a wing anti-ice piccolo tube containing a deliberate small breach, it was determined that the wing leading edge thermal switches Part Number (P/N) 601R59320–1 were not detecting the consequent bleed leak at the design

threshold. As a result, Airworthiness Limitation (AWL) tasks, consisting of a functional check of the wing leading edge thermal switches (P/N 601R59320–1) and an inspection of the wing anti-ice duct piccolo tubes on aeroplanes with these switches installed, have been introduced. These tasks will limit exposure to dormant failure of the wing leading edge thermal switches in the event of piccolo tube failure, which could potentially compromise the structural integrity of the wing leading edge and the effectiveness of the wing anti-ice system.

* * * * *

The unsafe condition is loss of control of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective March 22, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 22, 2011.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 15, 2010 (75 FR 69609). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During flight-testing of a wing anti-ice piccolo tube containing a deliberate small breach, it was determined that the wing leading edge thermal switches Part Number (P/N) 601R59320–1 were not detecting the consequent bleed leak at the design threshold. As a result, Airworthiness Limitation (AWL) tasks, consisting of a functional check of the wing leading edge thermal switches (P/N 601R59320–1) and an inspection of the wing anti-ice duct piccolo tubes on aeroplanes with these switches installed, have been introduced. These tasks will limit exposure to dormant failure of the wing leading edge thermal switches in the event of piccolo tube failure, which could potentially compromise the structural integrity of the wing leading edge and the effectiveness of the wing anti-ice system.