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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS–2008–0015]

RIN 0579–AC85

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

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting as a final rule, with several changes, an interim rule that quarantined the States of Florida and Georgia, Puerto Rico, the U.S. Virgin Islands, two parishes in Louisiana, and two counties in South Carolina due to the presence of citrus greening and quarantined Alabama, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, Puerto Rico, Texas, the U.S. Virgin Islands, three counties in South Carolina, portions of one county in Arizona, and all of three and portions of an additional three counties in California due to the presence of Asian citrus psyllid (ACP), a vector of the bacterial pathogen that causes citrus greening. The rule also established restrictions on the interstate movement of regulated articles from the quarantined areas. In this final rule, we are making several nonsubstantive editorial amendments to the interim rule to improve its clarity and facilitate regulatory compliance. This final rule also provides notice that we have quarantined American Samoa and the Northern Mariana Islands for ACP, have extended the boundaries of the quarantined area for ACP in California to incorporate all of one and portions of another additional county, and have quarantined portions of one county in

Texas and an area comprising portions of two counties in California for citrus greening.

**DATES:** Effective October 31, 2012.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lynn Evans-Goldner, National Program Manager, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 160, Riverdale, MD 20737; (301) 851–2286.

#### SUPPLEMENTARY INFORMATION:

##### Background

Citrus greening, also known as Huanglongbing disease of citrus, is considered to be one of the most serious citrus diseases in the world. Citrus greening is a bacterial disease caused by strains of the bacterial pathogen “*Candidatus Liberibacter asiaticus*” that attacks the vascular system of host plants. The pathogen is phloem-limited, inhabiting the food-conducting tissue of the host plant, and causes yellow shoots, blotchy mottling and chlorosis, reduced foliage, and tip dieback of citrus plants. Citrus greening greatly reduces production, destroys the economic value of the fruit, and can kill trees. Once infected, there is no cure for a tree with citrus greening disease. In areas of the world where the disease is endemic, citrus trees decline and die within a few years and may never produce usable fruit.

The bacterial pathogen causing citrus greening can be transmitted by grafting and, under laboratory conditions, by parasitic plants. There also is some evidence that seed transmission may occur. The pathogen can also be transmitted by two insect vectors in the family *Psyllidae*: *Diaphorina citri* Kuwayama, the Asian citrus psyllid (ACP), and *Trioza erytreae* (del Guercio), the African citrus psyllid. ACP can also cause economic damage to citrus in groves and nurseries by direct feeding. Both adults and nymphs feed on young foliage, depleting the sap and causing galling or curling of leaves. High populations feeding on a citrus shoot can kill the growing tip. The African citrus psyllid is not known to exist in the United States.

In an interim rule<sup>1</sup> published in the **Federal Register** and effective on June

17, 2010<sup>2</sup> (75 FR 34322–34336, Docket No. APHIS–2008–0015), we amended our domestic quarantine regulations in 7 CFR part 301 by adding a new subpart, “Citrus Greening and Asian Citrus Psyllid” (§§ 301.76 through 301.76–11, referred to below as the regulations). The interim rule quarantined the States of Florida and Georgia, Puerto Rico, the U.S. Virgin Islands, two parishes in Louisiana, and two counties in South Carolina due to the presence of citrus greening and quarantined Alabama, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, Puerto Rico, Texas, the U.S. Virgin Islands, three counties in South Carolina, portions of one county in Arizona, and all of three and portions of an additional three counties in California due to the presence of Asian citrus psyllid (ACP), a vector of the bacterial pathogen that causes citrus greening. The interim rule also established restrictions on the interstate movement of regulated articles from the quarantined areas. The interim rule was necessary on an emergency basis in order to prevent the spread of the plant pathogen and its vector to noninfested areas of the United States.

We solicited comments concerning the interim rule for 60 days, ending August 16, 2010. We received five comments by that date, from State departments of agriculture, commercial citrus nurseries, and a commercial distributor of citrus plants. The comments received are discussed below, by topic.

##### Regulated Articles

In § 301.76–2 of the interim rule, we designated all plant parts, including leaves (except fruit), of several genera and species, including *Murraya paniculata* (orange jasmine), as regulated articles for ACP and citrus greening.

One commenter agreed that orange jasmine is a host of ACP and citrus greening. Moreover, the commenter stated that recent studies conducted by American, Brazilian, and Chinese phytopathologists have determined that orange jasmine that is infected with citrus greening may spread the disease to other plants if ACP serves as the means of transmission. However, the commenter stated that the same

<sup>1</sup> To view the interim rule, its supporting and related materials, and the comments we received, go to <http://www.regulations.gov/#/docketDetail;D=APHIS-2008-0015>.

<sup>2</sup> Section 301.76–4 of that rule was effective on September 15, 2010, rather than June 17, 2010.

researchers had also found titer levels of the bacterial pathogen associated with citrus greening in these newly infected plants to be low, and to decrease over time. (Titers are antibodies for a particular pathogen that are present within an organism's vascular system.) For this reason, the commenter suggested that APHIS should reevaluate whether to consider orange jasmine a regulated article for citrus greening.

We agree with the commenter that recent studies suggest that, if citrus greening is transmitted from an orange jasmine plant to other host plants, these host plants do not exhibit high densities of the bacterial pathogen associated with the disease. However, the preponderance of available scientific evidence, including the evidence cited by the commenter, suggests that orange jasmine can serve as a source of transmission of citrus greening. Hence we are making no change to the regulations in response to this comment.

#### *Labeling Requirements*

In § 301.76–4 of the interim rule, in order to forestall the inadvertent but unauthorized noncommercial interstate movement of regulated nursery stock from an area quarantined for citrus greening, we required all nursery stock offered for commercial sale in such an area to be affixed with a plastic or metal tag with a prominent and legible statement alerting consumers to Federal prohibitions on the movement of the article. Alternatively, if the article is sold in a box or container, we allowed the statement to be printed on the box or container. We stated that 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.

One commenter stated that we should allow the statement to be printed on the back of existing identification tags required under State and local regulations.

Provided that the statement is prominently and legibly displayed, it may be printed on the back of such tags.

Another commenter pointed out that, as written, § 301.76–4 would require nursery stock produced in an area that is not quarantined for citrus greening, but shipped to a quarantined area for commercial sale, to be labeled prior to shipment or to be labeled by the person offering the plant for commercial sale. The commenter stated that commercial retailers of citrus nursery stock are unlikely to label their inventory; hence, it would fall to producers to label the nursery stock prior to shipment. The commenter further stated that smaller producers in the citrus industry often do

not know the final destination of their nursery stock prior to shipment. The commenter concluded that § 301.76–4 would effectively require such producers to label their entire inventory, unless they were certain the nursery stock would not be shipped to an area quarantined for citrus greening. Accordingly, the commenter suggested that we modify the section so that all producers who ship regulated nursery stock interstate would have to label their plants, or so that the requirement would pertain to regulated nursery stock that is produced within an area quarantined for citrus greening, rather than offered for commercial sale within such an area.

Requiring all regulated nursery stock that will be moved in interstate commerce to be labeled in accordance with § 301.76–4 would place an undue burden on producers in areas that are not quarantined for citrus greening who ship primarily or exclusively to areas of the United States that also are not quarantined for this disease, and lacks a basis in risk.

Nursery stock that is offered for commercial sale in an area quarantined for citrus greening may not be safeguarded in a manner that precludes citrus greening from being introduced to the plants; this risk of introduction is especially pronounced for nursery stock offered for sale in an area quarantined both for citrus greening and for ACP, citrus greening's vector for short-distance spread. Accordingly, a regulated plant that was produced in an area that is not quarantined for citrus greening may become infected with the disease while it is being offered for commercial sale within such a quarantined area. Hence we consider it necessary to require that all consumers who purchase the regulated nursery stock within the quarantined area be alerted to Federal prohibitions on the interstate movement of the articles.

Finally, we appreciate the commenter's concern that commercial retailers may be disinclined to label such nursery stock in accordance with § 301.76–4. To that end, we have been working with commercial retailers since issuance of the interim rule to find methods to ensure that means exist for the retailers to comply with the provisions of § 301.76–4 in a manner that is not economically burdensome or disruptive.

#### *Conditions for Interstate Movement*

Section 301.76–6 of the interim rule contained regulations governing the interstate movement of regulated articles from areas quarantined for ACP, but not for citrus greening. Paragraph (b)

provides for the issuance of limited permits for the interstate movement of regulated nursery stock to areas of the United States other than American Samoa, Northern Mariana Islands, and those portions of Arizona, California, and South Carolina not quarantined due to the presence of ACP or citrus greening, if certain conditions were fulfilled.

One of these conditions was that the nursery stock be treated for ACP with an APHIS-approved soil drench or in-ground granular application no more than 30 days and no fewer than 20 days before shipment, followed by an APHIS-approved foliar spray no more than 10 days before shipment. Treatments must be applied according to their Environmental Protection Agency (EPA) label, including directions on application, restrictions on place of application and other restrictions, and precautions, and including statements pertaining to worker protection standards.

The interim rule also required the nursery stock to be moved in a container sealed with an agricultural seal placed by an inspector.

Several commenters stated that these conditions unnecessarily hindered interstate commerce.

Two commenters pointed out that, in requiring application of soil drenches or granular applications no more than 30 days and no fewer than 20 days before shipment of articles, we were providing a 10-day timeframe for such application. The commenters stated that this timeframe was insufficient for smaller producers, who often did not know the expected date of interstate movement of an article that far in advance. While recognizing the need for optimal absorption of the soil drench, the commenters requested a longer window of time for the application of that treatment.

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

The points raised by these commenters were addressed in an interim rule published in the **Federal**

**Register** and effective on April 27, 2011 (76 FR 23449–23459, Docket No. APHIS–2010–0048). In that rule, we amended the regulations to provide that soil drenches may be applied no more than 90 but no less than 30 days prior to shipment, thus widening the window of time for applications to 60 days. We also amended the regulations to provide that nursery stock does not have to be moved interstate in a sealed shipping container unless it will transit a commercial citrus-producing area.

#### *Miscellaneous Changes*

We are making several nonsubstantive editorial amendments to various provisions of the June 2009 interim rule in order to improve their clarity and facilitate regulatory compliance. These changes are described below.

In § 301.76–1 of the interim rule, we defined *citrus greening* as “a plant disease caused by several strains of the uncultured, phloem-limited bacterial pathogen ‘*Candidatus Liberibacter asiaticus*’.” This definition, while accurate, did not specify that citrus greening is also commonly referred to as Huanglongbing disease of citrus by the international taxonomic community. We are amending the definition to specify that the disease is known by both names.

In the interim rule, paragraph (a) of § 301.76–6 provided for the issuance of certificates for the unrestricted movement of any regulated article from an area quarantined only for ACP, if, among other conditions, the article was treated with methyl bromide prior to movement. While the preamble of the rule noted that EPA and State and local environmental authorities may not authorize the use of methyl bromide on certain regulated articles, the regulatory text for paragraph (a) of § 301.76–6 did not. We are adding a footnote containing this information to paragraph (a).

As we mentioned above, in the interim rule, paragraph (b) of § 301.76–6 provided for the issuance of limited permits for the interstate movement of regulated nursery stock from an area quarantined only for ACP, subject to certain conditions. As we also mentioned above, one of these conditions required the nursery stock to be 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, or to be otherwise labeled with this statement. We stated that the

limited permit statement was necessary in order to help prevent the introduction of ACP into areas with commercial citrus production but without established populations of ACP through the movement of regulated nursery stock.

However, since the interim rule was issued, established populations of ACP have been detected in two additional commercial citrus-producing areas, Northern Mariana Islands and American Samoa. In the April 2011 interim rule mentioned earlier in this document, we amended the regulations governing the statement on the limited permit to reflect the presence of ACP in American Samoa. In this final rule, we are again amending it to reflect the presence of ACP in Northern Mariana Islands.

In the interim rule, § 301.76–7 provided for the issuance of limited permits from areas quarantined for citrus greening. Paragraph (a) of § 301.76–7 provided for the issuance of limited permits for the interstate movement of regulated nursery stock for immediate export, if, among other conditions, the nursery stock is treated with an APHIS-approved soil drench or in-ground granular application, followed by an APHIS-approved foliar spray; with methyl bromide; or with irradiation. We intended these treatment options to mirror those contained in § 301.76–6 for regulated nursery stock moved interstate from an area quarantined only for ACP. However, while § 301.76–6 authorized regulated nursery stock to be treated with APHIS-approved soil drenches, granular applications, and foliar sprays, or fumigated with methyl bromide, it did not authorize nursery stock to be treated with irradiation. We are amending § 301.76–7 accordingly. (The April 2011 interim rule referenced above redesignated paragraph (a) as paragraph (b); hence we would amend paragraph (b) of § 301.76–7.)

#### *Notice of Quarantine*

In § 301.76–3 of the interim rule, paragraph (c) provided that a State or territory within the United States will be designated a quarantined area for ACP in which an established population of ACP has been detected. Paragraph (b) of § 301.76–3 provided that we may designate less than an entire State or territory as a quarantined area for ACP if the State or territory has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles; and if the designation of less than the entire State

or territory will still prevent the interstate spread of ACP.

As we mentioned above, we have detected established populations of ACP in American Samoa and Northern Mariana Islands; neither of these territories has adopted intra-territorial restrictions on the movement of regulated articles. We have also detected established populations of ACP in Ventura County and Santa Barbara County, CA, and detected citrus greening in portions of Hidalgo County, TX, and an area comprising portions of Los Angeles County and Orange County, CA.

Accordingly, we are designating both American Samoa and Northern Mariana Islands, in their entireties, as quarantined areas for ACP, and are expanding the quarantined area for ACP in California to include Ventura County in its entirety and portions of Santa Barbara County. We are also designating portions of Hidalgo County, TX, and an area comprising portions of Los Angeles County and Orange County, CA, as quarantined areas for citrus greening. The updated list of quarantined areas is available on the Internet, at [http://www.aphis.usda.gov/plant\\_health/plant\\_pest\\_info/citrus\\_greening/index.shtml](http://www.aphis.usda.gov/plant_health/plant_pest_info/citrus_greening/index.shtml).

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 regarding Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, this action has been determined to be not significant for the purposes of Executive Orders 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

#### **Regulatory Flexibility Act**

This final rule follows an interim rule that quarantined the States of Florida and Georgia, Puerto Rico, the U.S. Virgin Islands, two parishes in Louisiana, and two counties in South Carolina due to the presence of citrus greening and quarantined Alabama, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, Puerto Rico, Texas, the U.S. Virgin Islands, three counties in South Carolina, portions of one county in Arizona, and all of three and portions of an additional three counties in California due to the presence of Asian citrus psyllid, a vector of the bacterial pathogen that causes citrus greening. In this final rule, the list of quarantined areas for Asian citrus psyllid is being updated to

include American Samoa, the Northern Mariana Islands, and all of one and portions of another additional county in California. Likewise, the list of quarantined areas for citrus greening is being updated to include portions of one county in Texas and an area comprising portions of two counties in California. The analysis that accompanies this rule considers the economic effects of the regulations on the current quarantined area and the benefits of imposing the quarantine.

Expected benefits and costs are examined, in accordance with Executive Orders 12866 and 13563, including expected economic impacts for small entities as required by the Regulatory Flexibility Act.

In the interim rule, APHIS imposed measures to prevent the spread of citrus greening and ACP to other commercial citrus-producing areas by prohibiting or restricting the movement of host material outside of areas quarantined for the pest or the disease. Although the majority of affected establishments in the quarantined areas are small entities, the effects of the interim rule on these businesses were minor. Affected entities were nursery operations and other production sites in Alabama, California, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, Puerto Rico, South Carolina, Texas, and the U.S. Virgin Islands that produce citrus trees, orange jasmine, curryleaf, and other articles regulated by the rule.

This final rule designates American Samoa and the Northern Mariana Islands as quarantined areas for ACP, and extends the boundaries of the quarantine area for ACP in California to include all of one county (Ventura County) and portions of another additional county (Santa Barbara County). Producers in these areas that have relied on markets in commercial citrus-producing areas that are not currently quarantined for ACP or citrus greening will suffer the loss of those markets. However, it is unlikely that producers of citrus nursery stock in these areas currently produce citrus nursery stock intended for markets outside of the quarantine area. The effort to mitigate the further spread of ACP and citrus greening will serve to benefit to other citrus producing areas.

#### 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 parts 301 and 305 that was published at 75 FR 34322 on June

10, 2011, is adopted as a final rule, with the following changes:

#### PART 301—DOMESTIC QUARANTINE NOTICES

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

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

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

- 2. In § 301.76–1, the definition of citrus greening is revised to read as follows:

##### § 301.76–1 Definitions.

\* \* \* \* \*

*Citrus greening.* A plant disease, also commonly referred to as Huanglongbing disease of citrus, that is caused by several strains of the uncultured, phloem-limited bacterial pathogen “*Candidatus Liberibacter asiaticus*”.

\* \* \* \* \*

##### §§ 301.76–6, 301.76–7, 301.76–8, and 301.76–9 [Amended]

- 3. In §§ 301.76–6, 301.76–7, 301.76–8, and 301.76–9, footnotes 3 through 7 are redesignated as footnotes 4 through 8, respectively.

- 4. Section 301.76–6 is amended as follows:

- a. In paragraph (a)(1), by adding a footnote 3; and

- b. In paragraph (c)(1)(iv), by removing the words “Northern Mariana Islands or”.

The addition reads as follows:

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

(a) \* \* \*

(1) The article is treated with methyl bromide<sup>3</sup> in accordance with 7 CFR part 305 of this chapter.

\* \* \* \* \*

##### § 301.76–7 [Amended]

- 5. In § 301.76–7, paragraph (b)(1) is amended by removing the words “or irradiation”.

Done in Washington, DC, this 26th day of September 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–24112 Filed 9–28–12; 8:45 am]

BILLING CODE 3410–34–P

<sup>3</sup> EPA and State and local environmental authorities may restrict the use of methyl bromide on certain articles.

#### DEPARTMENT OF ENERGY

##### 10 CFR Parts 429 and 430

[Docket Number EERE–2011–BT–STD–0060]

RIN 1904–AC64

##### Energy Conservation Program: Energy Conservation Standards for Dishwashers

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of effective date and compliance dates for direct final rule.

**SUMMARY:** The U.S. Department of Energy (DOE) published a direct final rule to establish amended energy conservation standards for dishwashers in the **Federal Register** on May 30, 2012. DOE has determined that the adverse comments received in response to the direct final rule were not sufficiently “adverse” as to provide a reasonable basis for withdrawing the direct final rule. Therefore, DOE provides this document confirming adoption of the energy conservation standards established in the direct final rule and announcing the effective date of those standards.

**DATES:** The September 27, 2012, effective date for the direct final rule published on May 30, 2012 (77 FR 31918) is confirmed. Compliance with the standards in the direct final rule will be required on May 30, 2013.

**ADDRESSES:** The docket is available for review at regulations.gov, including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the regulations.gov index. Not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure. The docket web page can be found at <http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR;rpp=25;po=0;D=EERE-2011-BT-STD-0060>.

For further information on how to submit or review public comments or view hard copies of the docket, contact Ms. Brenda Edwards at (202) 586–2945 or email: [Brenda.Edwards@ee.doe.gov](mailto:Brenda.Edwards@ee.doe.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen L. Witkowski, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121; telephone: