

periodic drug testing is the most reliable, efficient, and cost-effective means by which to document abstinence. It is not expected that this requirement will impose a substantial burden on individuals, since most drug treatment programs have immunoassay periodic drug testing in place as part of their treatment protocols. Drug testing may also be available for individuals on probation or parole or may otherwise be provided through the criminal justice system. The Secretary has required that for Federal offenders urine drug testing must be conducted using an FDA-approved immunoassay, but in the case of State offenders has left discretion to the States to approve other methods of drug testing, including methods utilized by State courts which are approved by the State.

The Department has determined that immunoassay drug testing is sufficient for Federal offenders since the use of immunoassay drug testing for purposes of monitoring drug abstinence is the standard of practice within drug treatment programs and the criminal justice system.

The Secretary has also used a 180-day standard in defining a "long-term treatment program" which is used in determining whether an individual's denial of Federal benefits may be waived. Use of the 180-day period will ensure consistency with the standard the Secretary has set for determining that an individual has been rehabilitated and is long enough that it improves the likelihood that the treatment program will provide enduring benefits.

Research has shown that 90 days or less in treatment has no more lasting effect than detoxifications alone, and clinical consensus is that 4 to 6 months of continuous treatment is needed to produce lasting change. Thus, the Department expects that a 180-day period of treatment would improve an individual's prognosis for successful rehabilitation.

The Department has also required that a long-term treatment program as defined in the regulations must be approved by a nationally recognized accreditation program or the State in which the program is located. The Department believes this requirement will help ensure that the program meets minimum standards in providing treatment to the drug trafficker or possessor who is addicted to drugs and enters the program in order to have his or her denial of Federal benefits waived.

Regulatory Flexibility Act and Executive Order 12291

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b),

the Secretary certifies that this rule will not have a significant economic impact on a substantial number of small entities and that therefore a regulatory flexibility analysis need not be prepared.

The Secretary has determined that this rule does not meet the criteria for a major rule under Executive Order 12291 and therefore a regulatory impact analysis is not required.

Paper Reduction Act of 1980

Section 78.2(a) of this proposed rule contains information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. Comments regarding these requirements can be sent to the individual whose name appears in the address section of the preamble.

List of Subjects in 45 CFR Part 78

Drug abuse.

This proposed rule amends title 45 to add part 78. Accordingly, the Department of Health and Human Services proposes to add 45 CFR part 78 as follows:

James O. Mason,

Assistant Secretary for Health.

Approved: July 6, 1990.

Louis W. Sullivan,
Secretary.

Authority: Section 5301 of Pub. L. 100-690, the anti-Drug Abuse Act of 1988, 102 Stat. 4310, 21 U.S.C. 853a.

PART 78—CONDITIONS FOR WAIVER OF DENIAL OF FEDERAL BENEFITS

Sec.

78.1 Applicability.

78.2 Definitions.

78.3 Benefits Not Denied to Rehabilitated Offenders.

§ 78.1 Applicability.

This part is applicable to any decision to deny Federal benefits, under authority of 21 U.S.C. 853a, to an individual convicted of a Federal or State offense involving distribution or possession of a controlled substance as defined by the Controlled Substance Act, 21 U.S.C. 802.

§ 78.2 Definitions.

For the purposes of denying Federal benefits under 21 U.S.C. 853a:

(a) *Deemed to be Rehabilitated* means that an individual has abstained from the illicit use of a controlled substance for the period of at least 180 days immediately prior to the date of sentencing provided that such abstinence is documented by the results of periodic urine drug testing conducted

during that period; and provided further that such drug testing is conducted using an immunoassay test approved by the Food and Drug Administration for commercial distribution or, in the case of a State offense, either using an immunoassay test approved by the Food and Drug Administration for commercial distribution or pursuant to standards approved by the State.

(b) *Long-term treatment program or long-term drug treatment program* means any drug abuse treatment program of 180 days or more where the provider has been accredited by the Joint Commission on Accreditation of Health Organizations, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation of Services for Families and Children, or licensed or otherwise approved by the State to provide drug abuse treatment.

§ 78.3 Benefits not denied to rehabilitated offenders.

(a) No individual convicted of any Federal or State offense involving the distribution of controlled substances shall be denied Federal benefits relating to long-term drug treatment programs for addiction under 21 U.S.C. 853a(a)(1) if:

(1) The individual declares himself or herself to be an addict and submits to a long-term treatment program for addiction as defined by § 78.2(c), provided that in the determination of the sentencing court there is a reasonable body of evidence to substantiate the individual's declaration that such individual is an addict; or

(2) The individual is, in the determination of the sentencing court, deemed to be rehabilitated as defined by § 78.2(a).

(b) No individual convicted of any Federal or State offense involving the possession of controlled substances shall be denied any Federal benefit, or otherwise subject to penalties and conditions, under 21 U.S.C. 853a(b)(1) if:

(1) The individual declares himself or herself to be an addict and submits to a long-term treatment program for addiction as defined by § 78.2(c), provided that in the determination of the sentencing court there is a reasonable body of evidence to substantiate the individual's declaration that such individual is an addict; or

(2) The individual is, in the determination of the sentencing court, deemed to be rehabilitated as defined by § 78.2(a).

[FR Doc. 90-21248 Filed 9-7-90; 8:45 am]

BILLING CODE 4160-20-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Docket No. 90-312; FCC 90-229]

Denials of Federal Benefits

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing a Notice of Proposed Rule Making to propose rule and form changes to implement the provisions of section 5301 of the Anti-Drug Abuse Act of 1988 concerning the denial of Federal benefits to persons convicted of drug related crimes. The proposed certification will require applicants for professional or commercial licenses to certify that they are not subject to a section 5301 denial of benefits. The proposed rules will require licenses to report any section 5301 denials of Federal benefits imposed during the license term.

DATES: Comments are due October 11, 1990. Reply comments are due October 26, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Office of General Counsel, Federal Communications Commission (202) 254-6530.

SUPPLEMENTARY INFORMATION: The collection of information contained in these proposed rules has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of that submission may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. Persons wishing to comment on the information collection should contact Eyvette Flynn, Office of Management and Budget, 3235, NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: None.

Title: Amendment of part 1 of the Commission's Rules to Implement section 5301 of the Anti-Drug Abuse Act of 1988 (Notice of Proposed Rule Making in General Docket No. 90-312).

Respondents: Businesses, including small business, and individuals.

Estimated Annual Burden and Frequency of Response: The information collection burden will involve a certification by all applicants for professional or commercial licenses that the applicant is not subject to a denial of

Federal benefits under section 5301 of the Anti-Drug Act of 1988. It will also involve reports by existing licensees that become subject to a section 5301 denial of Federal benefits during their license term.

Average annual certifications: 500,000
Average burden per certification: 0.017 hours

Average annual reports: 5
Average burden per report: 2 hours
Total average annual burden hours: 8,510

Frequency: On occasion.

Needs and Uses: The certifications and reports will enable the Commission to meet its responsibilities to the fullest extent possible under section 5301 of the Anti-Drug Abuse Act of 1988 and the Office of National Drug Control Policy plan for implementation of section 5301. This is a summary of the Commission's Notice of Proposed Rule Making, adopted June 14, 1990, FCC 90-229. The full text of this Commission Notice is available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street, NW, Washington, DC. The full text of this Notice may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857-3800.

Summary of Notice of Proposed Rule Making

1. This Notice proposes rules to collect the information necessary to implement section 5301 of the Anti-Drug Abuse Act of 1988 with respect to professional and commercial licenses issued by the Commission. Section 5301 provides Federal and State court judges the discretion to deny Federal benefits to individuals of offenses consisting of the distribution or possession of controlled substances. Public Law 100-690, 102 Stat. 4181 (to be codified at 21 U.S.C. 853a). Federal benefits, as used in the statute, include licenses issued by the FCC. 21 U.S.C. 853a(d)(1).

2. The Office of National Drug Control Policy (ONDCP) plan for implementation of section 5301 proposes to use the General Services Administration (GSA) publication "Parties Excluded from Federal Procurement or Nonprocurement Programs" (commonly referred to as the "Debarment List") to notify agencies of those persons barred from Federal benefits under section 5301. In addition, ONDCP expects agencies to use what it refers to as a "common rule established among Federal agencies for nonprocurement programs" that requires applicants to

certify as to their eligibility. The ONDCP plan also indicates that in "instances where denial of an existing benefit is at issue" each agency "will determine the manner and time frame for benefit termination."

3. No rule changes are necessary to implement use of the Debarment List in connection with applications. The application forms used by the Commission do not, however, include the certification referred to in the ONDCP plan. We therefore propose to amend part 1 of the Commission's rules by adding a new subpart P, 47 CFR 1.2001 *et seq.*, which will require applicants to certify that neither they nor any parties to the application are subject to a section 5301 bar on Federal benefits. Applications that do not contain such a certification will be dismissed. We also propose to require licensees to inform the Commission if they or any of their principals become subject to a section 5301 bar during the course of the license term.

4. The legislative history of section 5301 suggests that an applicant will not be eligible when an "individual" who is subject to the bar remains a party to the application. See 134 Cong. Rec. S12970, S15973, S15974 (daily ed. Oct. 14, 1988) (statements of Sen. Gramm). Thus, we propose to apply the certification and information collection requirement to all parties to applications and licensee principles, including: Officers, directors, non-limited partners, holders of 5% or more of the voting stock, and non-voting stockholders or limited partners with a similar (5% or more) interest in the applicant or licensee.

5. We propose that the term "license," as used in section 5301, should be defined in accordance with section 551(8) of the Administrative Procedure Act: "[L]icense includes the whole or part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission." 5 U.S.C. 551(8). This definition includes all forms of Commission instruments of authority, including, for example, authorizations for the use of the radio spectrum, radio operator authorizations, equipment certifications, type acceptances or type approvals, and certificates of authority to construct communications lines under 47 U.S.C. 214. We believe that "professional" and "commercial" licenses, as used in section 5301, include any licenses that are professional in nature or that may be used for commercial purposes. Amateur radio operation is the only activity licensed by the Commission for which "professional" and "commercial" use is

prohibited. See 47 CFR 97.110, § 97.112. In all other instances, the Commission authorization may be used for "professional" or "commercial" purposes.¹

6. Consistent with the portions of the ONDCO plan that contemplate the termination of existing benefits, we are proposing a rule requiring licensees to notify the Commission of any section 5301 bar imposed on the licensee or any of its principals during the license term. Commenters, however, should address whether the statute contemplates revocation of license and, if so, the appropriate procedures to achieve that end.

7. An Initial Regulatory Flexibility Analysis has been prepared under the Regulatory Flexibility Act of 1980, and a copy of this Notice of Proposed Rule Making shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

8. This action is taken pursuant to authority contained in sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 303(r) and section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. 823a.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Denials of federal benefits, Drug abuse.

Federal Communications Commission.
Donna R. Searcy,
Secretary.

Rule Change

PART 1—PRACTICE AND PROCEDURE

Part 1, title 47 of the Code of Federal Regulations is proposed to be amended by adding a new subpart P to read as follows:

Subpart P—Implementation of the Anti-Drug Abuse Act of 1988

Sec.

1.2001 Purpose.

1.2002 Applicants required to submit information.

1.2003 Applications affected.

1.2004 Licensees required to submit information.

¹ Because they do not involve applications or the issuance of individual authorizations or licenses by the Commission, we do not believe that "blanket" authorizations are subject to the section 5301 bar. Although the system licences would be the subject of a section 5301 bar, under our proposal, individual users authorized by the licensee would not. See 47 CFR part 22. Similarly, we do not believe that a section 5301 denial of benefits would bar operations authorizations authorized without individual licenses. See 47 U.S.C. 307(e); 47 CFR 95.204, 94.404, 90.179(c), 90.603(b).

Subpart P—Implementation of the Anti-Drug Abuse Act of 1988

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154; Implement 21 U.S.C. 853a.

§ 1.2001 Purpose.

To determine eligibility for professional and/or commercial licenses issued by the Commission with respect to any denials of Federal benefits imposed by Federal and/or state courts under authority granted in 21 U.S.C. 853a.

§ 1.2002 Applicants required to submit information.

(a) In order to be eligible for any new, modified, and/or renewed instrument of authorization from the Commission, including authorizations issued pursuant to sections 214, 301, 302, 303(a) 308, 310(d), 318, 319, 325(b), 351, 361(b), 362(b), 381, and 385 of the Communications Act of 1934, as amended, by whatever name that instrument may be designated, all applicants shall certify that neither the applicant nor any party to the application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. 853a. If a section 5301 certification has been incorporated in the application form being filed, the applicant need not submit a separate certification. If the applicant is unable to so certify, it shall be ineligible for the authorization for which it applied, and the application shall be dismissed.

(b) A party to the application, as used in paragraph (a) of this section shall include:

(1) If the applicant is an individual, that individual;

(2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting or non-voting) of the applicant; and

(3) If the applicant is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership.

(c) The provisions of paragraphs (a) and (b) of this section are not applicable to the Amateur Radio Service, the Citizens Band Radio Service, the Remote Control Radio Service, or to users in the Public Mobile Services and the Private Land Mobile Radio Services that are not individually licensed by the Commission.

§ 1.2003 Applications affected.

The certification required by § 1.2002 of this part must be filed with the following applications as well as any

other requests for authorization filed with the Commission, regardless of whether a specific form exists.

FCC 301—Application for Construction Permit for Commercial Broadcast Station;

FCC 301-A—Application for Authority to Operate a Broadcast Station by Remote Control or to Make Changes in a Remote Control Authorization;

FCC 302—Application for New Broadcast Station License;

FCC 303-S—Application for Renewal of License for Commercial and Noncommercial AM, FM or TV Broadcast Station;

FCC 307—Application for Extension of Broadcast Construction Permit or to Replace Expired Construction Permit;

FCC 308—Application for Permit to Deliver Programs to Foreign Broadcast Stations;

FCC 309—Application for Authority to Construct or Make Changes in an International or Experimental Broadcast Station;

FCC 310—Application for an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station License;

FCC 311—Application for Renewal of an International or Experimental Broadcast License;

FCC 313—Application for Authorization in the Auxiliary Radio Broadcast Services;

FCC 313-R—Application for Renewal of Auxiliary Broadcast License;

FCC 314—Application for Consent to Assignment of Broadcast Station Construction Permit or License;

FCC 315—Application for Consent to Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License;

FCC 316—Application for Consent to Assignment of Radio Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Radio Broadcast Station Construction Permit or License;

FCC 327—Application for Cable Television Relay Service Station Authorization;

FCC 330—Application for Authorization to Construct New or Make Changes in an Instructional Television Fixed and/or Response Station(s), or to assign or Transfer Such Stations;

FCC 330-L—Application for Instructional Television Fixed Station License;

FCC 330-R—Application for Renewal of Instructional Television Fixed Station and/or Response Station(s) and Low Power Relay Station(s) License;

- FCC 340—Application for Construction Permit for Noncommercial Educational Broadcast Station;
- FCC 345—Application for transfer of Control of a Corporate Licensee or Permittee, or Assignment of License or Permit, for an FM or TV Translator Station, or a Low Power Television Station;
- FCC 346—Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or TV Booster Station;
- FCC 347—Application for a Low Power TV, TV Translator or TV Booster Station License;
- FCC 348—Application for Renewal of License for Translator or Low Power Power Television Broadcast Station;
- FCC 349—Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station;
- FCC 350—Application for an FM Translator or FM Booster Station License;
- FCC 401—Application for New or Modified Common Carrier Radio Station Authorization Under Part 22;
- FCC 402—Application for Station Authorization in the Private Operational Fixed Microwave Radio Service;
- FCC 402-R—Renewal Notice and Certification in the Private Operational Fixed Microwave Radio Service;
- FCC 403—Application for Radio Station License or Modification Thereof Under parts 23 or 25;
- FCC 404—Application for Aircraft Radio Station License;
- FCC 405—Application for Renewal of Radio Station License in Specified Services;
- FCC 405-A—Application for Renewal of Radio Station License and/or Notification of Change to License Information;
- FCC 405-B—Ship/Aircraft License Expiration Notice and/or Renewal Application;
- FCC 406—Application for Ground Station Authorization in the Aviation Services;
- FCC 407—Application for New or Modified Radio Station Construction Permit;
- FCC 409—Airborne Mobile Radio Telephone License Application;
- FCC 410—Registration of Canadian Radio Station Licensee and Application for Permit to Operate (Land Mobile);
- FCC 442—Application for New or Modified Radio Station Authorization Under part 5 of FCC Rules—Experimental Radio Service (Other than Broadcast);
- FCC 490—Application for Assignment or Transfer of Control Under part 22;
- FCC 493—Application for Earth Station Authorization or (Proposed)—Modification of Station License;
- FCC 494—Application for a New or Modified Microwave Radio Station License Under part 21;
- FCC 494-A—Certification of Completion of Construction Under part 21;
- FCC 503—Application for Land Radio Station License in the Maritime Services;
- FCC 506—Application for Ship Radio Station License;
- FCC 574—Application for Private Land Mobile and General Mobile Radio Services;
- FCC 574-R—Application for Renewal of Radio Station License;
- FCC 701—Application for Additional Time to Construct a Radio Station;
- FCC 702—Application for Consent to Assignment of Radio Station Construction Permit or License;
- FCC 703—Application for Consent to Transfer Control of Corporation Holding Station License;
- FCC 704—Application for Consent to Transfer of Control of Corporation Holding Common Carrier Radio Station Construction Permit or License;
- FCC 730—Application for Registration of Equipment to be Connected to the Telephone Network;
- FCC 731—Application for Equipment Authorization;
- FCC 753—Restricted Radiotelephone Operator Permit Application;
- FCC 755—Application for Restricted Radiotelephone Operator Permit—Limited Use;
- FCC 756—Application for Commercial Radio Operator License.

§ 1.2004 Licensees required to submit information.

With the exception of the services exempted in § 1.2002(c) of this part, if a licensee, permittee, or holder of any other instrument of Commission authorization, or any party thereto as defined in § 1.2002(b) of this part, is denied Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. 853a, the licensee, permittee, or holder of any other instrument of Commission authorization must notify the Commission of that action within 30 days for the issuance of the judicial order imposing the section 5301 bar, and such notification must provide the following information:

(a) The identity of the individual(s) declared ineligible for Federal benefits and his or her (or their) relationship to the applicant;

(b) The court in which the individual(s) were convicted;

(c) The offense for which the individual(s) were convicted; and

(d) The sentence imposed, the date on which it was imposed, and the beginning and ending dates of the ineligibility imposed as a part of the sentence.

[FR Doc. 90-21249 Filed 9-7-90; 8:45 am]

BILLING CODE 6712-01-M

Final Rule

**Tuesday
September 11, 1990**

Part V

Department of Agriculture

**Animal and Plant Health Inspection
Service**

**7 CFR Part 301
Citrus Canker; Final Rule**

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 90-114]

RIN 0579-AA29

Citrus Canker

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are removing all regulations related to what has been called the Florida nursery strain of citrus canker. Recent scientific reports and articles indicate that the organism that causes this disease is different from *Xanthomonas campestris* pv. *citri*, the bacterium that causes citrus canker, and that the nursery strain disease should not be considered citrus canker. In addition, our experience in Florida during the past 5 years, as well as those reports and articles that address the potential for the Florida nursery strain to harm plants, indicate that the various forms of Florida nursery strain do not cause a disease dangerous to citrus or other plants or fruit.

Further, we are removing from quarantine all areas of Florida outside a portion of Manatee County where infestations caused by the Asiatic strains of *Xanthomonas campestris* pv. *citri* have been detected during the past 2 years. This action, in conjunction with the removal of regulations related to the nursery strain, will relieve restrictions on the interstate movement of citrus and certain other plants, fruit, seeds, and other regulated articles from all areas of Florida except for part of Manatee County.

Designation of less than the entire State as a quarantined area is contingent upon certain inspection requirements being met, and upon Florida enforcing certain restrictions on the intrastate movement of regulated articles from the quarantined area.

This final rule also revises the regulations on the interstate movement of regulated articles from and through the quarantined area by adding some restrictions to prevent the interstate spread of citrus canker and by removing some restrictions that are no longer necessary.

EFFECTIVE DATE: September 18, 1990.

FOR FURTHER INFORMATION CONTACT: Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room

661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 436-8385.

SUPPLEMENTARY INFORMATION:

Background

Regulations to prevent the interstate spread of citrus canker are contained in 7 CFR 301.75 through 301.75-16, "Subpart - Citrus Canker." These regulations were established in 1984 after several central Florida nurseries were found to be infested with what was thought to be citrus canker caused by a previously undescribed strain of *Xanthomonas campestris* pv. *citri*.

By the end of 1984, plants infected with this new strain, which came to be called the Florida nursery strain, had been found at nine citrus nurseries in Florida. The disease was detected at nine additional nurseries in 1985, at two more in 1986, 3 more in 1987, four more in 1988, and at 29 nurseries in 1989. On three occasions the Florida nursery strain was found on young nursery trees (resets) that had been moved into citrus groves from infested nurseries.

It should be noted that the term "nursery strain" has come to be used to refer to a group of closely related organisms, "nursery strains," differing primarily in their degree of pathogenicity.

In 1986, the Asiatic form of citrus canker disease was detected in Florida for the first time since it was eradicated from the State in 1927. Since then, infestations caused by Asiatic strains have been found in two commercial groves in Manatee County and several residential areas in Manatee, Pinellas, and Sarasota Counties.

Initially, the regulations did not distinguish between the Asiatic form of citrus canker and the disease caused by the Florida nursery strain. Over time, however, both laboratory research and observations made in the field yielded data suggesting that the Florida nursery strain was different from the Asiatic strains and caused what is now known to be a much less serious citrus leaf spot disease. Based on this growing body of information, we have amended the regulations several times, to reflect the differences between the two types of disease and to ease restrictions related to the Florida nursery strain.

On March 27, 1990, we published in the Federal Register (55 FR 11209-11220, Docket No. 89-040) a proposed rule to again amend the citrus canker regulations. Docket 89-040 proposed to remove all regulations pertaining to what had been called the Florida nursery strain of citrus canker, and to remove from quarantine all areas of Florida outside a portion of Manatee County where infestations caused by the

Asiatic strains had been detected within the past 2 years. The boundaries of the proposed quarantined area encompassed, and were at least 5 miles from, the sites of these infestations. Quarantine of less than the entire State was to be contingent upon certain inspection requirements being met, and upon the State of Florida enforcing certain restrictions on the intrastate movement of regulated articles from the quarantined area. We also proposed to place some additional restrictions on the interstate movement of regulated articles from and through the quarantined area, and to remove the requirement that regulated fruit from groves of fewer than 10 trees be restricted to "household" destinations when moved interstate.

We solicited written comments on the proposed rule for 60 days, ending May 29, 1990. We also held two public hearings on the proposed rule, one in Palmetto, Florida, on April 25, 1990, and the other in Ontario, California, on May 15, 1990. The public hearing in Florida was announced in Docket 89-040, the public hearing in California, scheduled in response to a request received during the comment period, was announced by Federal Register notice on May 2, 1990 (55 FR 18342, Docket No. 90-061).

We received 42 written comments by the close of the comment period. These were from citrus growers, packers, gift fruit shippers, State agricultural officials, owners of landscaping and lawn care businesses, and others affected by the regulations. A total of 32 persons spoke at the two public hearings, 22 in Florida and 10 in California.

Based on the comments, we have made several changes to the proposed rule. These changes concern: (1) The boundaries of the quarantined area, (2) the time period for inspecting groves, (3) the interstate movement of regulated articles through the quarantined area, (4) the interstate movement of regulated fruit produced within a half-mile of a property that has had an infestation of citrus canker within the previous 2 years, and (5) the intrastate movement, for disposal, of plant, tree, and grass clippings collected in the quarantined area. Except for these changes, we are adopting the proposed rule as a final rule, based on the reasons given in the proposal and in this document.

All issues raised by commenters are discussed below.

The Florida Nursery Strain

Thirteen commenters opposed the removal of restrictions related to what has been called the Florida nursery

strain of citrus canker. The commenters expressed the opinion that the moderately aggressive and aggressive forms present a threat to citrus and require further evaluation before any restrictions are removed.

Intensive surveys of citrus nurseries in Florida have turned up no sign of the aggressive isolates of the nursery strain in over 2 years. Since the aggressive form of the nursery disease would be easily detected if infections were present on nursery plants, it appears that this form of nursery disease has been eradicated. Nevertheless, and as we stated in the proposed rule, recent scientific reports and articles, as well as our experience in Florida during the past 5 years, indicate that none of the various forms of Florida nursery strain causes a disease dangerous to citrus or other plants or fruit. All outbreaks of the Florida nursery disease appear to have originated in nurseries, never in a grove or dooryard planting, the disease has never been found to infect fruit-bearing trees in groves, or mature trees of any commercial variety, and the disease, even when incited by one of the more aggressive isolates of the nursery strain, appears to be controllable with copper sprays and other currently available management techniques.

Further, research indicates that the Florida nursery strain of *Xanthomonas campestris* is sufficiently different from the Asiatic strains of citrus canker (*Xanthomonas campestris* pv. *citri*) to warrant a separate taxonomic placement. Although further evaluation may be necessary to determine the appropriate taxonomic designation, all information reviewed by the Department indicates that the disease caused by the nursery strain is not citrus canker.

Therefore, we are removing all restrictions related to the Florida nursery strain from "Subpart—Citrus Canker."

Other comments on removal of the nursery strain restrictions included four that specifically objected to the removal of a Federal prohibition in the movement of citrus plant material from Florida to other commercial citrus-producing States. Under the terms of the proposal and this final rule, citrus plant material may not be moved interstate from the area quarantined because of the Asiatic strains of citrus canker. Lifting the quarantine from the rest of the State, however, means that regulated articles, including citrus plant material, may be moved interstate without restriction under 7 FR 301.75 *et seq.* As discussed above, we have determined that the Florida nursery strain does not cause a dangerous plant

disease and, therefore, does not warrant a Federal quarantine.

The Quarantined Area

Under the current regulations, the entire State of Florida is quarantined because of citrus canker, and an area comprising all of Manatee County and parts of Sarasota and Hillsborough Counties is under special restriction because of the Asiatic strains (A-strains) of citrus canker.

We proposed to remove all of Florida from quarantine except that portion of Manatee County bounded by the Gulf of Mexico and Tampa Bay, the Manatee County-Hillsborough County line east from Tampa Bay to U.S. Highway 301, U.S. Highway 301 south to Fort Hamer Road, Fort Hamer Road south to the Manatee River, Manatee River west to Interstate 75, Interstate 75 south to Oneco Road, Oneco Road west to 66th Street West, 66th Street West north to Cortez Road, Cortez Road west to Anna Maria Key, and all of Anna Maria Key and School Key, including the entire communities of Anna Maria, Holmes Beach, and Bradenton Beach. These proposed boundaries encompassed and were at least 5 miles from the site of any A-strain infestation that had occurred during the 2 years prior to the proposal.

The boundaries of the proposed quarantined area were based on: the location and extent of citrus canker infestations during the 2 years prior to the proposal, the eradication measures taken at the sites of those infestations, the distance citrus canker bacteria might naturally move from the sites of those infestations, the proximity of commercial groves and contiguous residential properties that contained host plants and trees, and the location of the nearest readily identifiable boundary lines.

Seven commenters maintained that a larger area of Florida should be quarantined until more time has elapsed without further outbreaks of citrus canker. One of these commenters wanted the entire State of Florida to remain under quarantine, three said we should maintain the current A-strain area as the quarantined area, and two stated that the boundaries of the quarantined area should be somewhere between the boundaries of the current A-strain area and the boundaries of the proposed quarantined area. They maintained that 2 years is not a sufficient amount of time without an outbreak to be certain that citrus canker has been eradicated. Suggested time frames ranged from 3 to 5 years. One of the commenters who advocated a wait of 4 to 5 years cited a reinfestation in a Manatee County grove that occurred

nearly 3 years after the last infected trees in that grove had been destroyed.

The comments that 2 years may not be a long enough time for detecting citrus canker express a valid concern—under certain circumstances, i.e., when minimal eradication measures are taken in commercial groves where heavy infestations have occurred, the risk of reinfestation may remain even after 2 years have elapsed without detection of the disease. In the Manatee County grove referred to by one of the commenters, all infected trees were destroyed and all adjacent trees pruned back, or "buckhorned," following discovery of the initial infestation. These same measures had led to eradication of citrus canker within 2 years from residential areas of the county. However, they were not completely successful in the commercial grove, which experienced a recurrence of citrus canker in 5 blocks.

Upon reviewing all of the data related to the infestations in this grove, we concluded that, if the eradication measures in a commercial grove and on a residential property are the same, the threat of reinfestation is greater in the commercial grove than on the residential property. The increased risk can be attributed to the density of plantings in a commercial grove, which facilitates natural spread, and the use of harvesting and maintenance equipment, which can provide an efficient method of spreading bacteria throughout a grove. The application of copper, which is routinely sprayed in groves to control a number of plant diseases, can suppress the expression of citrus canker symptoms, delaying detection. Also, the size and spacing of trees in commercial groves make these trees more difficult to examine than the typically smaller and less densely planted trees on residential properties.

The additional risks of reinfestation created by these factors can be neutralized by taking aggressive eradication measures. Such measures have recently been taken in the two commercial groves in Manatee County that have been infested with citrus canker. One of the groves has been destroyed entirely by uprooting and burning all the citrus trees in the grove. In the other, all infected trees, as well as most of the noninfected trees in the infested blocks and nearby trees in adjacent blocks, were destroyed. The destruction of entire areas of the grove, rather than just individual infected trees, drastically reduces the chances of reinfestation. The absence of any active infestations in the State—in groves or in residential areas, and the

aggressiveness of the eradication measures taken to date provide the basis for limiting the quarantined area and for continuing to use 2 years' freedom from the disease as a prerequisite for removing quarantine restrictions.

Twenty commenters maintained that the proposed quarantined area was too large. They put forth a number of arguments in support of this position, including: (1) That there is no biological basis for a quarantine radius as large as 5 miles, (2) that there is no reason to penalize groves where regular inspections have turned up no evidence of citrus canker, (3) that A-strain is more reluctant to spread than was once thought, and (4) that eradication efforts have reduced the threat from A-strain—all trees in infested areas have been "pushed and burned." Their various suggestions for reducing this area ranged from quarantining only those sites where an infestation had occurred, or only those sites and adjacent properties, to quarantining areas up to 1/4 mile, 1/2 mile, or 2 miles around the infested sites. Several commenters advocated the use of natural boundaries wherever possible, such as the Manatee River and Terra Ceia Bay, or other significant physical barriers to spread, such as Highway 41 and Interstate 75.

For reasons explained above, the measures taken to eradicate citrus canker at infested sites are an important consideration in determining the boundaries of the quarantined area. All infected trees on all residential properties in the State were citrus canker occurred have been destroyed and all adjacent citrus trees have been buckhorned. The last infestation on a residential property occurred on Palmetto Point over 2 years ago, and was destroyed on June 24, 1988. One of the two commercial groves where A-strain has occurred was completely destroyed as of April 6, 1990. Destruction of infested areas in the other commercial grove was completed on May 5, 1990. Upon reviewing the eradication measures taken at previously infested sites, particularly the two commercial groves, we have concluded that the proposed quarantined area can be reduced without significantly increasing the risk that citrus canker will be spread interstate.

The boundaries of the quarantined area in this final rule are approximately 1 1/2 to 2 miles from either of the previously infested groves. As discussed, these distances are based on the eradication measures taken, how far citrus canker bacteria might naturally

move from the previously infested groves, the proximity to those sites of other commercial groves and contiguous residential properties that contain host plants and trees, and the location of the nearest readily identifiable boundary lines. Where possible, we have used natural boundaries or other significant physical barriers. Where none existed, we have used political boundaries. Where political boundaries, rather than physical barriers, are used, citrus plantings are sparse, creating minimal risk that citrus canker could spread naturally across those lines.

The quarantined area in this final rule includes that portion of Manatee County bounded by the Manatee River, beginning at Interstate 75 and extending west of Gulf and Bay Estates to Terra Ceia Bay, Terra Ceia Bay northeast to the Terra Ceia River, the Terra Ceia River north to Interstate 275, Interstate 275 east to Bishop Harbor Road, Bishop Harbor Road north and east to where it becomes Elletton Gillette and then Moccasin Wallow Road, Moccasin Wallow Road east to Interstate 75, Interstate 75 south to the Manatee River, and the following portions of Manatee County east of Interstate 75: Township 23, Range 18, Sections 21, 22, 27, 28, 33, and 34, and Township 34, Range 13, Sections 3 and 4 north 37th Street East and Lake Shore Drive.

Movement of Regulated Fruit from the Quarantined Area

We proposed to prohibit the interstate movement of regulated fruit from the quarantined area to any commercial citrus-producing area of the United States. We also proposed to prohibit the interstate movement—to any destination—of regulated fruit produced within 1/2 mile of any property where an infestation was found within the 2 years prior to the movement. Under certain conditions, our proposal would have allowed regulated fruit produced in groves at least 1/2 mile from any property on which infestation was found within the past 2 years to move interstate to noncommercial citrus-producing areas of the country under limited permit. As a condition for designating less than the entire State of Florida as a quarantined area, we proposed to require that Florida enforce restrictions on the intrastate movement of regulated articles, including fruit, that were at least as stringent as the restrictions on interstate movement (with 2 exceptions). This meant that Florida would have had to prohibit the intrastate movement of regulated articles, including fruit, except under certain conditions for packing or processing.

Thirty-one commenters said that the proposed restrictions on the movement of regulated fruit from the quarantined area were too severe and should be reduced. Several reasons were offered, including: eradication efforts in the State have reduced the threat of A-strain, A-strain is more reluctant to spread than was once thought, and regulated fruit presents a relatively low risk, compared to other regulated articles, of transmitting citrus canker.

The commenters made various recommendations:

With respect to the interstate movement of regulated fruit produced in groves located within 1/2 mile of the site of a property on which an infestation was found within the past 2 years, commenters suggested that we: (1) Allow the fruit to move under limited permit to noncommercial citrus-producing areas of the United States, (2) allow the fruit to move under limited permit to noncommercial citrus-producing areas of the United States on a case-by-case basis after risk assessment, (3) allow the fruit to move to the northeastern United States after treatment, (4) allow the fruit to move to the northeastern United States on a case-by-case basis after risk assessment.

With respect to the interstate movement of regulated fruit produced in groves located at least 1/2 mile from a property on which an infestation was found within the past 2 years, commenters suggested that we: (1) Allow the fruit to move to any destination after treatment with sodium hypochlorite or sodium o-phenyl phenate (SOPP), (2) allow the fruit to move under limited permit to noncommercial citrus-producing areas of the United States after washing and waxing.

With respect to the intrastate movement of regulated fruit, commenters suggested that we: (1) Allow the fruit to move intrastate from any part of the quarantined area without restriction, (2) allow the fruit to move intrastate from any part of the quarantined area under State regulation, (3) allow the fruit to move intrastate from any part of the quarantined area on a case-by-case basis after risk assessment, (4) if produced in a grove located at least 1/2 mile from the site of an infestation within the past 2 years, allow the fruit to move intrastate without restriction, (5) if produced in a grove located at least 1/2 mile from the site of an infestation within the past 2 years, allow the fruit to move intrastate after treatment with sodium hypochlorite or SOPP, (6) if produced in

a grove located at least 1/2 mile from the site of an infestation within the past 2 years, allow the fruit to move intrastate after washing and waxing.

This final rule reduces the quarantined area from what was proposed, to an area with borders no closer than 1 1/2 miles, and an average of 1 1/2 to 2 miles, from sites where an infestation has occurred within the past 2 years. Beyond this area, there will be no restrictions on the interstate movement of regulated articles, including fruit. The movement of regulated articles from the new quarantined area must continue to be restricted because of the risk that they could be infected with or contaminated by citrus canker. We agree that eradication measures have reduced this risk, but not to the extent that it would be prudent to allow regulated articles, including fruit, to be moved from any part of the quarantined area to other commercial citrus-producing areas. Most scientists and regulatory officials continue to view citrus canker as a very serious disease of citrus. And, although citrus fruit does present a relatively low risk of transmitting citrus canker, the infection could be spread by infected fruit under certain circumstances. For this reason, this final rule continues to prohibit the interstate movement from the quarantined area of any regulated article, including regulated fruit, to commercial citrus-producing areas of the United States.

Also, as proposed, this final rule requires that the State of Florida prohibit the intrastate movement of regulated fruit from the quarantined area, except for processing into a product other than fresh fruit or packing, as a condition for having less than the entire State designated as a quarantined area. Regulated fruit moved intrastate from the quarantined area, except under the safeguards proposed for processing into a product other than fresh fruit and packing could transmit citrus canker to host material elsewhere in the State. As explained above, while citrus fruit may present a relatively low risk of spreading citrus canker, the seriousness of the disease makes it prudent to prohibit the movement of regulated fruit from the quarantined area into other commercial citrus-producing areas of the United States.

We have, however, reconsidered the proposed restrictions for fruit grown within 1/2 mile of a property where an infestation has been found within 2 years. Given the extent of destruction at the only two sites where an infestation has been found within the past 2 years, it does not appear that fruit from within

1/2 mile of these sites is any more likely to be infected with citrus canker than fruit from any other part of the quarantined area. Therefore, this final rule allows regulated fruit produced in any part of the quarantined area, except a grove where an infestation has occurred within the past 2 years, to be moved interstate under limited permit to noncommercial citrus-producing areas of the United States. The fruit must be treated with SOPP or sodium hypochlorite to destroy any bacteria that might be present on its surface.

Regulated fruit moved into the quarantined area for packing. We proposed that regulated fruit produced outside the quarantined area but brought into the quarantined area for packing be treated prior to interstate movement. One commenter maintained that treatment should not be required because mature fruit is not susceptible to citrus canker infection.

Regulated fruit brought into the quarantined area for packing is not required by this final rule to be segregated at the packing house from fruit produced in the quarantined area. Since fruit from outside the quarantined area could be contaminated as a result of being commingled with other fruit at the packing house, it must be treated to remove bacteria that might be on the surface of the fruit. Also, requiring treatment of all regulated fruit ensures that fruit produced in the quarantined area is not inadvertently moved interstate without treatment. Therefore, we have made no change based on this comment.

Regulated fruit moved from the quarantined area for packing. We proposed to allow regulated fruit to be moved intrastate from the quarantined area for packing or processing, but only under certain conditions necessary to prevent the spread of citrus canker. One commenter objected to the restrictions on fruit moved intrastate for packing, saying that they would drive down the price of fresh fruit grown in the quarantined area.

Because regulated fruit produced in the quarantined area is at some risk for being contaminated or infected with citrus canker, it cannot be allowed to move intrastate from the quarantined area without restriction. The necessary for restricting the movement of regulated fruit from the quarantined area has already been discussed in connection with other comments. Therefore, we have made no change based on this comment.

Regulated fruit moved interstate through the quarantined area. We proposed to add restrictions on the

interstate movement of regulated articles through the quarantined area. Specifically, we proposed that the regulated articles be completely covered, or enclosed in containers or in a compartment of a vehicle, during movement through the quarantined area, that no regulated articles be added to or removed from the shipment in the quarantined area, and that the regulated articles be accompanied by a receipt or bill of lading to indicate that the regulated articles originated outside the quarantined area.

A number of commenters objected to the prohibition on unloading regulated articles from, or adding regulated articles to, a shipment of regulated articles moving through the quarantined area. They said that these restrictions should not apply to regulated fruit intended for interstate movement. They explained that it is a routine practice within the gift fruit industry to gather packed fruit from small growers across the State, including the quarantined area, and take it to a central location for sorting and shipping. Fruit produced in the quarantined area must be from a grove that has been inspected and found free of citrus canker, and must be treated with sodium hypochlorite or SOPP as a condition of interstate movement. The commenters maintained that if this fruit were added to a load of regulated fruit moving through the quarantined area, there would be little, if any, risk of cross-contamination.

We agree. Therefore, this final rule allows regulated fruit that meets the requirements for interstate movement from the quarantined area to any area of the United States except commercial citrus producing areas to be added to shipments of regulated articles moving through the quarantined area. The regulated articles may be moved interstate to any place in the United States, the regulated fruit added to the shipment in the quarantined area may be moved to any area of the United States except to commercial citrus producing areas.

Time Frame for Grove Inspections

We proposed to require that every regulated plant and tree (except indoor houseplants and regulated plants and trees at nurseries) in the quarantined area and in a surrounding area be inspected for citrus canker at least once a year, between May 1 and October 31. Several commenters stated that we should allow inspections to be conducted as late as December 31 since citrus canker may express itself in November and December.

We agree that citrus canker may be expressed in November and December. Therefore, this final rule allows the required annual inspections to be conducted between May 1 and December 31, inclusive.

Disinfection of Vehicles, Equipment, and Personnel

We proposed that all vehicles, equipment, and other articles used in providing inspection, maintenance, harvesting, or related services in any grove in the quarantined area that contains regulated trees or plants, or in providing lawn care on any premises in the quarantined area containing regulated trees or plants, be cleaned and treated with a disinfectant upon leaving the grove or premises. We also proposed that all personnel who enter a grove or premises to provide these services be treated with disinfectant upon leaving the grove or premises. Currently, similar cleaning and disinfection requirements apply only to vehicles, equipment, and personnel entering or leaving a grove of 10 or more regulated trees producing fruit for interstate movement. As we explained in our proposal, a broader application of these provisions is necessary to prevent the spread of citrus canker.

Thirty-four persons representing lawn service and landscaping businesses objected to the proposed requirements, stating that they would be too expensive and impracticable. They argued that lawn service and landscaping personnel are no more likely than any one else to spread canker, that one of the chemicals listed for treatment (Gallex) is corrosive, and that our estimated costs (\$1-2 per day for materials and hand-held sprayers) are far too low. Several of the commenters suggested that vehicles, equipment, and personnel providing landscaping or lawn services on residential properties be exempt from these requirements. One of the commenters also complained that disposal of lawn wastes and tree clippings in sanitary landfills would conflict with State directives and be very expensive. Recycling was suggested.

We realize that lawn service and landscaping personnel will be inconvenienced by these requirements. However, lawn service and landscaping vehicles, equipment, and personnel are the most likely means of spread in residential areas, since they have direct contact with regulated plants and trees and move from yard to yard. The extensive spread of citrus canker on Anna Maria Island in 1986 and 1987 appears to have been largely due to the movement of landscaping and lawn

services from property to property. Therefore, the requirements for cleaning and disinfecting vehicles, equipment, and personnel that provide these services must be kept in this final rule.

We believe, however, that landscaping and lawn service owners may be overestimating the impact of these provisions. Several of the commenters said that it would cost them \$15-40 per residence, per day, for materials and labor, to comply with our requirements. These figures are too high, based on our expectations that cleaning and disinfection can be accomplished in a relatively short time by knocking off debris and using hand-held sprayers to apply disinfectant. To ensure that owners of these businesses understand what will be required, the Citrus Canker Project Office will conduct workshops and demonstrations. The times, dates, and locations will be published in a notice in the Federal Register and advertised locally, the first workshop/demonstration will be held during the week following publication of this final rule.

We have made changes in this final rule to address concerns about disposal of plant, tree, and grass clippings. Our proposal did not contain any provisions for disposal of these wastes. However, with certain exceptions for regulated fruit, the proposal would have prohibited the intrastate movement of regulated articles from the quarantined area. Most residential properties in the quarantined area contain citrus trees or plants, and clippings from these properties would in all likelihood contain regulated plant material. Because the quarantined area does not contain adequate disposal facilities for these waste products, the prohibition on intrastate movement of regulated articles from the quarantined area could leave landscaping and lawn service operators without any place to dispose of their clippings. Therefore, this final rule will allow grass, tree, and plant clippings to be moved intrastate from the quarantined area for disposal in a public landfill or for composting in a recycling facility if all of the following conditions are met: (1) the public landfill or recycling facility is located within the area that will continue to be inspected for citrus canker (referred to in this final rule as the survey area), (2) the clippings are completely covered during the movement from the quarantined area to the public landfill or recycling facility, and (3) the public landfill is fenced, prohibits the movement of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs. Citrus canker bacteria

covered with dirt are not likely to survive more than 60 days. Recycling facilities that compost plant material are also acceptable disposal sites because the high temperatures to which plant material is subjected during composting will kill citrus canker bacteria. We are limiting disposal outside the quarantined area to the survey area as an added precaution, this area will continue to be inspected for citrus canker.

As for Gallex being corrosive, we recognize that disinfectants in general have corrosive qualities. We recommend that vehicles and equipment be rinsed periodically to remove corrosive residues. Gallex 1027 antimicrobial soap, one of the disinfectants listed for personnel, is widely used in hospitals and is less harsh, for example, than alcohol or chlorine bleach solution.

Movement of Fruit from the Quarantined Area for Packing

One commenter said that when fruit from the quarantined area is packed in the same house as fruit that will move to commercial citrus-producing States, the possibility exists for mislabeling. He urged that regulatory officials be diligent and keep fruit from the quarantined area out of packing houses where this occurs.

Packing houses that handle both types of regulated fruit are required to store the two types of fruit separately, and to treat any equipment that comes in contact with quarantined area fruit before using the equipment with any other fruit. If these requirements are not met, regulated fruit from that packing house will not be eligible for interstate movement to commercial citrus-producing areas.

Labeling of Fruit Moved to Commercial Citrus-Producing States

One commenter requested that all regulated fruit that is produced outside the quarantined area and moved interstate to commercial citrus-producing areas be packed in boxes free of any markings, including inked out or covered limited permit labels. He was apparently concerned that boxes pre-printed with a limited permit would continue to be used for regulated fruit that, under the rule we proposed, could move interstate without limited permit or certificate. Regulatory officials in the receiving State would not know whether the fruit was eligible for entry into their State.

It is likely that Florida shippers will have a large stock of boxes pre-printed with limited permits when this rule becomes effective. These boxes must be ordered well ahead of the shipping

season. Prohibiting their use would prevent these businesses from shipping fruit. However, we understand the commenter's concern about inked out or covered limited permits, since a limited permit under this final rule could indicate that the fruit originated in the quarantined area. Therefore, we will issue certificates for those boxes until the stock is depleted. This will ensure that this fruit can be identified as eligible for interstate movement to commercial citrus-producing States.

State-Wide Grove and Nursery Inspections

Several commenters opposed the elimination of grove and nursery inspections outside the quarantined area. Some recommended that all groves in the State be inspected on a 4-year cycle, and that all nurseries in the State continue to be inspected every 3-4 months. Three commenters maintained that we should continue to require inspections of all groves in the State that produce regulated fruit for interstate movement to commercial citrus-producing areas.

Multiple inspections throughout the State have turned up no evidence that citrus canker exists outside the quarantined area as drawn in this final rule. As a safeguard, we are continuing to require annual inspections of all regulated plants and trees, except indoor houseplants and regulated plants and trees at nurseries, in an area surrounding the quarantined area (the survey area). In addition, all regulated plants and trees at every nursery in the survey area must be inspected at intervals of no more than 45 days. Further, at every grove in the survey area producing regulated fruit for interstate movement, an inspector must walk through the grove no more than 30 days before harvest begins and inspect every regulated plant and tree. The survey area includes all of the area beyond the quarantined area that is included in the current A-strain area: Hillsborough County south of State Highway 672 and west of State Highway 39, Sarasota County south of the Manatee County line, west of Interstate 75, and north of State Highway 72, County Road 789, and an imaginary line extending due west to the Gulf of Mexico, and all of Manatee County outside the quarantined area. We believe these inspections will ensure the prompt detection of citrus canker, and allow timely action to prevent the interstate spread of citrus canker, should the disease spread beyond the quarantined area.

Treatment of Fruit Intended for Commercial Citrus-Producing Areas

Several commenters recommended that we continue to require chemical treatment of regulated fruit destined for commercial citrus-producing areas. Regulated fruit produced in the quarantined area is not eligible for interstate movement to commercial citrus-producing areas. As explained above, we have no evidence that citrus canker exists outside the quarantined area as drawn in this final rule, and, therefore, no reason to require continued treatment of regulated fruit produced outside the quarantined area.

Definition of "Grove"

One commenter supported our defining "grove" as "any tree or stand of trees * * *," because inspection and other requirements would apply to any size grove, even a single tree. However, he said he hoped that inspection of commercial groves would not suffer as a result.

Because inspections will be required in a fairly small area of Florida under this final rule, there will be sufficient resources available to conduct the inspections.

Other

One commenter asserted that the citrus canker regulations in § 301.75 *et seq.* should be the same as the regulations for Unshu oranges, which are found at 7 CFR 319.28. These latter regulations concern the importation into the United States of Unshu oranges grown in Japan, where citrus canker is endemic.

The regulations applicable to the importation of Unshu oranges require, among other things, that the oranges be grown in canker-free export areas. The regulations do not appear to fit the circumstances in Florida, where all but a small portion of the State is free of citrus canker.

One commenter complained that, under the proposed rule, thousand of truckloads of regulated fruit moving through the quarantined area enroute to a processing facility would have to be covered with a tarp. This comment apparently refers to the provision in proposed § 301.75-10(c), which states that regulated articles moved through the quarantined area for interstate movement be completely covered, or enclosed in containers or in a compartment of a vehicle, during movement through the quarantined area. In accordance with proposed § 301.75-4(d)(2), the State would be required to impose a similar requirement on regulated articles moved through the

quarantined area during the course of intrastate movement. The covering requirement was intended to prevent contamination of the regulated articles being moved through the quarantined area. Upon further consideration, however, we have concluded that regulated articles move directly through the quarantined area, without being unloaded and without stopping except for traffic conditions, would be very unlikely to become contaminated. Therefore, our final rule does not require regulated articles moving interstate through the quarantined area to be covered, or enclosed in containers or in a compartment of a vehicle, if the regulated articles are moved through the quarantined area without stopping, except for refueling or for traffic conditions, such as traffic lights or stop signs.

Effective Date: Pursuant to the provisions of 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the *Federal Register*. This rule removes unnecessary restrictions from the citrus canker regulations. Because the shipping season for Florida citrus is under way, prompt implementation of this rule is necessary to provide relief to those persons adversely affected by restrictions that are no longer warranted. Implementation upon publication is not practicable because the rule requires that the State of Florida adopt and enforce certain restrictions on the intrastate movement of regulated articles. However, State officials in Florida have indicated that 7 days is sufficient time for the State to have a parallel quarantine in place. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective 7 days after the day of publication in the *Federal Register*.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 603, we performed an Initial Regulatory Flexibility Analysis regarding the potential impact of the proposed rule on small entities. This analysis was published in the Federal Register on March 27, 1990, as part of the proposed rule. Comments on the economic impact of the proposed rule on small entities were received from growers, gift fruit shippers, and landscaping and lawn service owners who expected to be adversely affected. As explained earlier in this Supplementary Information, we have responded by making several changes to the proposal, where it was possible to do so without creating a significant risk that citrus canker would be spread interstate. The Federal Plant Pest Act and the Plant Quarantine Act authorize the Secretary of Agriculture to promulgate regulations concerning the importation or interstate movement of articles to prevent the spread of any dangerous plant disease.

Following is the final regulatory flexibility analysis, based on the provisions contained in this final rule.

General

The citrus canker regulations have had the most impact on Florida citrus growers who sell to the fresh fruit market, and on other entities concerned with producing and marketing fresh fruit. These entities represent a small part of Florida's citrus industry, since about 80 percent of the regulated fruit produced in Florida is processed, primarily for juice. Much of the remaining 20 percent is consumed within the State or is exported to foreign countries. With few exceptions, the current regulations affect only those entities involved in producing or handling regulated fruit for interstate movement. Under this final rule, which would reduce the quarantined area for citrus canker from the entire State of Florida to a small area on Florida's Gulf Coast, the number of entities subject to the regulations would be significantly decreased. In addition, State and Federal offices currently responsible for conducting inspections and monitoring compliance with the regulations over a large part of the State can concentrate their resources in a relatively small geographic area on preventing the spread of and eradicating citrus canker associated with the Asiatic strains. Federal regulations on the interstate movement of regulated articles from and through the proposed quarantined area will be removed following eradication of the Asiatic strains.

Removal of Regulations Pertaining to the Florida Nursery Strains

This final rule removes all regulations pertaining to what has been called the Florida nursery strain. As a result, all restrictions will be removed on the interstate movement of regulated articles, including plants, fruit, and seed, from all parts of Florida outside the quarantined area (part of Manatee County). Inspections will still be required in an area adjacent to the quarantined area.

We estimate that this action will benefit owners of approximately 1300 commercial groves, 4,000 other groves, 1,000 citrus nurseries (both propagators and non-propagators), and 900 packing houses (about 600 registered packing houses and 300 small gift-fruit packers), the majority of which can be defined as small entities under guidelines established by the Small Business Administration.

Removing restrictions on the interstate movement of regulated fruit produced outside the quarantined area will benefit a number of growers. Under the final rule, some groves now ineligible for moving regulated fruit interstate to commercial citrus-producing areas will be able to do so. These are groves that are located within the current A-strain area but outside the quarantined area described in this final rule. We estimate that about 50 of the approximately 450 commercial groves in this area produce regulated fruit for interstate movement and, therefore, could be affected by this action. Also, personnel, vehicles, and equipment used in these groves also will no longer have to be disinfected, resulting in a savings to grove owners of approximately \$20-\$25 per acre per year.

Removing treatment requirements for regulated fruit produced and packed outside the quarantined area may result in some small economic benefit to some small entities preparing regulated fruit for interstate movement. Regulated fruit moving interstate to commercial citrus-producing areas, and regulated fruit moving interstate from the current A-strain area, must now be treated with a chemical disinfectant. Under this final rule, regulated fruit produced and packed outside the quarantined area will no longer have to be treated.

Removing inspection requirements for groves and nurseries outside the quarantined area and a small adjacent area will result in little, if any, economic benefit for affected small entities, because they are not charged for these inspections. The greatest economic benefit will accrue to State and Federal agencies, which are responsible for

conducting and monitoring these inspections statewide. The cost savings will allow State and Federal agencies to concentrate their efforts in one part of the State to prevent the spread of and eradicate citrus canker associated with the Asiatic strains.

Removing restrictions on the source of nursery plants for groves outside the quarantined area and producing regulated fruit for interstate movement may provide economic benefit to some nurseries where the Florida nursery strain is found. These establishments will no longer be prevented by our regulations from supplying plants to groves producing regulated fruit for interstate movement.

Removing restrictions on the interstate movement of regulated seed and plants from outside the quarantined area is unlikely to have a significant economic impact on small entities. Very little regulated seed is moved interstate, and the out-of-state market for regulated plants is limited. In addition to own-root-only calamondin and kumquat plants, which are currently eligible for interstate movement if produced outside the A-strain area, we are aware of only two types of regulated plants that may be moved interstate under this final rule. These are individually packaged lemon and lime plants, sold before the citrus canker quarantine as souvenirs, and citrus trees in large containers, which are used in atriums or other indoor settings. Only two businesses in Florida have expressed an interest in selling the individually packaged lemon and lime plants. A number of nurseries may be interested in moving the container-grown trees interstate. It was not possible for the Department to determine how much income these small entities may derive from the interstate sale of individually packaged lemon and lime plants or the potted plants; however, these types of plants normally constitute a small part of the inventory of those businesses that handle them.

Removing the requirements for certificates and limited permits will benefit some small entities by removing a paperwork burden. Under this final rule, regulated articles may be moved interstate from outside the quarantined area without a limited permit or certificate.

Interstate Movement of Regulated Articles From and Through the Quarantined Area

A small area of Florida currently under special restriction because of the Asiatic strains will remain under quarantine to prevent the interstate spread of citrus canker. We estimate

that there are 1650 acres of commercial citrus in this area, less than 0.3 percent of the total citrus acreage in the State (697,929 acres in 1988). Within this area, there are approximately 46 commercial grove owners, 5 citrus nursery propagators, 5 citrus nursery stockdealers, 4 roadside fruit stands, and 1 flea market where citrus is sold. Most of these establishments can be classified as small entities under the guidelines established by the Small Business Administration. There are no packing houses or processing plants. A number of private residential properties have groves of 1 to 9 citrus trees, but they do not produce regulated fruit for sale.

All nurseries in the quarantined area that contain regulated plants will have to be inspected for citrus canker at intervals of no more than 45 days. The regulations currently allow certain nurseries to be exempted from these inspection requirements. However, all nurseries in the quarantined area are being inspected in accordance with the current regulations. As already noted, there is no charge for these inspections.

All regulated trees and plants (except indoor houseplants) in the quarantined area, other than those at nurseries, will have to be inspected annually for citrus canker. Most groves and other properties in the quarantined area are already being inspected at least annually, as a result of our current regulations or as the result of surveys conducted by the State. There is no cost to the owner of any grove or other property for these inspections.

All infected plants and trees will have to be destroyed. At present, there are no known infected plants or trees in the quarantined area. If any become infected, destruction could cost up to \$250 for a mature grove tree and \$6 to \$8 for a citrus seedling. However, there is no proven alternative to the destruction of infected material for achieving eradication of citrus canker. Although the costs of destruction may appear to be high initially for an owner whose trees and plants are found to be infected with citrus canker, alternative measures are unlikely to result in any economic savings. Less severe action on infected material, such as repeated defoliation of infected trees, increases the risk that the disease will manifest itself again and spread to other plants and trees. In addition, the use of alternative control measures, such as defoliation, will result in expenses for the owner. Citrus canker left unchecked will not only cause serious damage to the trees, plants, and fruit initially infected, but would result in widespread losses in larger areas.

Therefore, we believe that the detection and eradication measures in this final rule will minimize the likelihood of citrus canker infestations, whose numbers have declined steadily since 1986, and the potential economic losses caused by this disease.

All vehicles, equipment, and other articles used in providing inspection, maintenance, harvesting, or related services in any grove in the quarantined area that contains regulated plants or trees, or in providing landscaping or lawn care services on any premises in the quarantined area that contain regulated plants or trees, will have to be treated upon leaving the grove or premises. All personnel who enter the grove or other premises to provide these services also must be treated upon leaving the grove or premises.

Treatment of personnel, vehicles, and equipment is already required under the current regulations in groves of 10 or more trees producing regulated fruit for interstate movement. This action would affect all other grove owners in the quarantined area, as well as operators of landscaping and lawn care services. The costs to grove owners, estimated at about \$20-25 per acre per year, would be a very small percentage of overall production expenses. The cost to owners of landscaping and lawn services also would be low, an estimated \$1-2 per day for materials and hand-held sprayers. As noted earlier in this document, in response to commenters' concerns that costs would be higher, APHIS plans to hold workshops and demonstrations to show owners and operators how APHIS wants equipment cleaned and disinfected.

Increasing the length of time a grove must be free of infected plants before fruit from the grove is eligible for interstate movement (from 1 year to 2 years) will affect only those groves that produce regulated fruit for the fresh fruit market in other States and that have had infected plants during the 2 years prior to the interstate movement. At present, this restriction affects only 1 commercial grove owner in Manatee County. Fruit from groves where an infestation has occurred within the past 2 years will remain eligible for processing, but grove owners may receive less money for the fruit than if they were able to market it as fresh fruit. The difference in price between fruit sold for processing and fruit sold for the fresh fruit market fluctuated during 1987 and 1988 between 4 and 22 percent for oranges and between 30 and 50 percent for grapefruit.

Allowing the interstate movement of regulated fruit produced in groves located within 1/2 mile of a property where an infestation has been found during the 2 years prior to the movement will benefit 4 growers. Previously, this fruit was not eligible for interstate movement.

Requiring all groves in the quarantined area that contain regulated trees to obtain nursery plants from nurseries inspected and found free of citrus canker, or from nurseries outside the quarantined area, will have little, if any, impact. All nurseries in the quarantined area are inspected for citrus canker in accordance with the current regulations, and all have been free of infestations caused by the Asiatic strain.

Intrastate Movement of Regulated Articles from the Quarantined Area

As a condition for designating less than the entire State of Florida as a quarantined area, this final rule requires the State to enforce certain restrictions on the intrastate movement of regulated articles from the quarantined area.

With certain exceptions, the intrastate movement of regulated plants and fruit from the quarantined area is prohibited. A few growers who produce specialty fruit for sale as fresh fruit within the State may be negatively affected by the loss of markets outside the proposed quarantined areas. We do not have any figures to indicate the extent of the economic effect on these small entities. Some citrus nurseries, both propagators and nonpropagators, in the proposed quarantined area may lose customers that are outside this area. It was not possible for the Department to determine the extent or magnitude of these business transactions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Citrus canker, Plants (Agriculture), Plant diseases, Plant pests, Quarantine, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

Subpart—Citrus Canker

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

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167, 7 CFR 2.17, 2.51, and 371.2(c).

§§ 301.75, 301.75-6, 301.75-7, 301.75-9, 301.75-10, 301.75-13, 301.75-14, 301.75-15, and 301.75-16 [Removed]

2. Sections 301.75, 301.75-6, 301.75-7, 301.75-9, 301.75-10, 301.75-13, 301.75-14, 301.75-15, and 301.75-16 are removed.

§§ 301.75-2, 301.75-3, 301.75-4, 301.75-5, 301.75-8, 301.75-11, and 301.75-12 [Redesignated as §§ 301.75-3, 301.75-4, 301.75-5, 301.75-9, 301.75-13, 301.75-14, and 301.75-11, respectively]

3. Sections 301.75-2, 301.75-3, 301.75-4, 301.75-5, 301.75-8, 301.75-11, and 301.75-12 are redesignated as §§ 301.75-3, 301.75-4, 301.75-5, 301.75-9, 301.75-13, 301.75-14, and 301.75-11, respectively.

4. Section 301.75-1 is revised to read as follows:

§ 301.75-1 Definitions.

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

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

Certificate. An official document of the United States Department of Agriculture authorizing the interstate movement of a regulated article from a quarantined area into any area of the United States.

Citrus canker. A plant disease caused by strains of the bacterium *Xanthomonas campestris* pv. *citri*.

Commercial citrus-producing area. Any area designated as a commercial citrus-producing area in accordance with § 301.75-5 of this subpart.

Compliance agreement. A written agreement between the Animal and Plant Health Inspection Service and a person engaged in the business of growing or handling regulated articles for interstate movement, in which the person pledges to comply with this subpart.

Departmental permit. An official document of the United States Department of Agriculture authorizing the movement of a regulated article from a quarantined area.

Departmental tag or label. An official tag or label of the United States Department of Agriculture, which, attached to a regulated article or its container, indicates that the regulated article is eligible for interstate movement with a Departmental permit.

Exposed. Determined by an inspector to be at risk for developing citrus canker because of proximity during the past 2 years to infected plants, or to personnel, vehicles, equipment, or other articles that may have been contaminated with bacteria that cause citrus canker.

Grove. Any tree or stand of trees maintained to produce fruit and separated from other trees by a boundary, such as a fence, stream, road, canal, irrigation ditch, hedgerow, open space, or sign or marker denoting change of fruit variety.

Infected. Containing bacteria that cause citrus canker.

Infestation. The presence of a plant or plants infected with citrus canker at a particular location, except when the plant or plants contracted the infection at a previous location and the infection has not spread to any other plant at the present location.

Inspector. An individual authorized by the Administrator to perform the specified duties.

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

Limited permit. An official document of the United States Department of Agriculture authorizing the interstate movement of a regulated article from a quarantined area, but restricting the areas of the United States into which the regulated article may be moved.

Move. Ship, carry, transport, offer for shipment, receive for shipment, or allow to be transported by any means.

Movement. The act of shipping, carrying, transporting, offering for shipment, receiving for shipment, or allowing to be transported by any means.

Nursery. Any premises, including greenhouses but excluding any grove, at which plants are grown or maintained for propagation or replanting.

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

Quarantined area. Any area designated as a quarantined area in accordance with § 301.75-4 of this subpart.

Regulated article. Any article listed in § 301.75-3 (a) or (b) of this subpart or designated as a regulated article in accordance with § 301.75-3(c) of this subpart.

Regulated fruit, regulated plant, regulated seed, regulated tree. Any fruit,

plant, seed, or tree defined as a regulated article.

State. Each of the 50 States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

United States. All of the States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

5. A new § 301.75-2 is added to read as follows:

§ 301.75-2 General prohibitions.

(a) Regulated articles may not be moved interstate from a quarantined area except in accordance with this subpart.

(b) Regulated articles moved from a quarantined area with a limited permit may not be moved interstate into any commercial citrus-producing area, except as follows: The regulated articles may be moved through a commercial citrus-producing area if they are covered, or enclosed in containers or in a compartment of a vehicle, while in the commercial citrus-producing area, and are not unloaded in the commercial citrus-producing area without the permission of an inspector.

(c) Regulated articles moved interstate with a limited permit to an area of the United States that is not a commercial citrus-producing area.

6. In redesignated § 301.75-3, paragraph (b) is redesignated as paragraph (c) and a new paragraph (b) is added to read as follows:

§ 301.75-3 Regulated articles.

(b) Grass, plant, and tree clippings.

7. Redesignated § 301.75-4 is revised to read as follows:

§ 301.75-4 Quarantined areas.

(a) The following States or portions of States are designated as quarantined areas:

Florida

Manatee County. That portion of Manatee County bounded by the Manatee River, beginning at Interstate 75 and extending west of Gulf and Bay Estates to Terra Ceia Bay, Terra Ceia Bay northeast to the Terra Ceia River, the Terra Ceia River north to Interstate 275, Interstate 275 east to Bishop Harbor Road, Bishop Harbor Road north and east to where it becomes Elletton Gillette and then Moccasin Wallow Road, Moccasin Wallow Road east to Interstate 75, Interstate 75 south to the Manatee River, and the following

portions of Manatee County east of Interstate 75: Township 23, Range 18, Sections 21, 22, 27, 28, 33, and 34, and Township 34, Range 18, Sections 3 and 4 north of 37th Street East and Lake Shore Drive.

(b) The Administrator may designate any non-quarantined area as a quarantined area in accordance with paragraphs (c) and (d) of this section upon giving written notice of this designation to the owner or persons in possession of the non-quarantined area. Thereafter, regulated articles may be moved interstate from that area only in accordance with this subpart. As soon as practicable, this area will be added to the list in paragraph (a) of this section, or the Administrator will terminate the designation. The owner or person in possession of an area for which designation is terminated will be given written notice as soon as practicable.

(c) Any State or portion of a State where an infestation is detected will be designated as a quarantined area and will remain so until the area has been without infestation for 2 years.

(d) Less than an entire State will be designated as a quarantined area only if all of the following conditions are met:

(1) *Survey area.* In the following area, inspections are conducted as required by paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii) of this section:

Florida

Hillsborough County south of State Highway 672 and west of State Highway 39, Sarasota County south of the Manatee County line, west of Interstate 75, and north of State Highway 72, County Road 789, and an imaginary line extending due west to the Gulf of Mexico, and all of Manatee County outside the quarantined area.

(i) Every regulated plant and regulated tree, except indoor houseplants and regulated plants and regulated trees at nurseries, is inspected for citrus canker at least once a year, during May 1 through December 31, by an inspector, on foot.

(ii) Every regulated tree and regulated plant at every nursery containing regulated trees or regulated plants is inspected for citrus canker by an inspector at intervals of no more than 45 days, and

(iii) At every grove producing regulated fruit for interstate movement, an inspector walks through the grove no more than 30 days before harvest begins and inspects every regulated plant and regulated tree.

(2) *Intrastate movement of regulated articles.* The State enforces restrictions on the intrastate movement of regulated articles from the quarantined area that are at least as stringent as those on the interstate movement of regulated

articles from the quarantined area, except as follows:

(i) Regulated fruit may be moved intrastate from a quarantined area for processing into a product other than fresh fruit if all of the following conditions are met:

(A) The regulated fruit is accompanied by a document that states the location of the grove in which the regulated fruit was produced, the variety and quantity of regulated fruit being moved intrastate, the address to which the regulated fruit will be delivered for processing, and the date the intrastate movement began.

(B) The regulated fruit and any leaves and litter are completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement.

(C) The vehicles, covers, and any containers used to carry the regulated fruit intrastate are treated in accordance with § 301.11(d) of this subpart before leaving the premises where the regulated fruit is unloaded for processing, and

(D) All leaves, litter, and culls collected from the shipment of regulated fruit at the processing facility are either incinerated at the processing facility or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs.

(ii) Regulated fruit may be moved intrastate from a quarantined area for packing, either for subsequent interstate movement with a limited permit or for export from the United States, if all of the following conditions are met:

(A) The regulated fruit is accompanied by a document that states the location of the grove in which the regulated fruit was produced, the variety and quantity of regulated fruit being moved intrastate, the address to which the regulated fruit will be delivered for packing, and the date the intrastate movement began.

(B) The regulated fruit and any leaves and litter are completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement.

(C) The vehicles, covers, and any containers used to carry the regulated fruit intrastate are treated in accordance with § 301.75-11(d) of this subpart before leaving the premises where the regulated fruit is unloaded for packing.

(D) At the packing plant, the regulated fruit is stored separately from and has no contact with fruit eligible for interstate movement to commercial citrus-producing areas. Any equipment that comes in contact with the regulated

fruit at the packing plant is treated in accordance with § 301.75-11(d) of this subpart before being used to handle any fruit eligible for interstate movement to commercial citrus-producing areas, and

(E) All leaves and litter collected from the shipment of regulated fruit at the packing plant are either incinerated at the packing plant or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs. All culls collected from the shipment of regulated fruit are either processed into a product other than fresh fruit, incinerated at the packing plant, or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs. Any culls moved intrastate for processing must be completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement, and the vehicles, covers, and any containers used to carry the regulated fruit must be treated in accordance with § 301.75-11(d) of this subpart before leaving the premises where the regulated fruit is unloaded for processing.

(iii) Grass, tree, and plant clippings may be moved intrastate from the quarantined area for disposal in a public landfill or for composting in a recycling facility, if all of the following conditions are met:

(A) The public landfill or recycling facility is located within the survey area described in paragraph (d)(1) of this section.

(B) The grass, tree, or plant clippings are completely covered during the movement from the quarantined area to the public landfill or recycling facility, and

(C) Any public landfill used is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs.

8. A new § 301.75-6 is added to read as follows:

§ 301.75-6 Interstate movement of regulated articles from a quarantined area, general requirements.

No regulated article may be moved interstate from a quarantined area unless all of the following conditions are met:

(a) *Inspections.* (1) In the quarantined area, every regulated plant and regulated tree, except indoor houseplants and regulated plants and regulated trees at nurseries, is inspected for citrus canker at least once a year,

during May 1 through December 31, by an inspector, on foot.

(2) In the quarantined area, every regulated plant and regulated tree at every nursery containing regulated plants or regulated trees is inspected for citrus canker by an inspector at intervals of no more than 45 days.

(b) *Treatment of personnel, vehicles, and equipment.* In the quarantined area, all vehicles, equipment, and other articles used in providing inspection, maintenance, harvesting, or related services in any grove containing regulated plants or regulated trees, or in providing landscaping or lawn care services on any premises containing regulated plants or regulated trees, must be treated in accordance with § 301.75-11(d) of this subpart upon leaving the grove or premises. All personnel who enter the grove or premises to provide these services must be treated in accordance with § 301.75-11(c) of this subpart upon leaving the grove or premises.

(c) *Destruction of infected plants and trees.* No more than 7 days after a State or Federal laboratory confirms that a regulated plant or regulated tree is infected, the State must provide written notice to the owner of the infected plant or infected tree that the infected plant or infected tree must be destroyed. The owner must have the infected plant or infected tree destroyed within 45 days after receiving the written notice.

9. A new § 301.75-7 is added to read as follows:

§ 301.75-7 Interstate movement of regulated fruit from a quarantined area.

(a) *Regulated fruit produced in a quarantined area.* Regulated fruit may be moved interstate from a quarantined area into any area of the United States except commercial citrus-producing areas if all of the following conditions are met:

(1) During the year before the interstate movement, the grove producing the regulated fruit received regulated plants only from the following nurseries:

(i) Nurseries located outside any quarantined areas, or

(ii) Nurseries where an inspector has found every regulated plant free of citrus canker on each of three successive inspections conducted at intervals of no more than 45 days, with the third inspection no more than 45 days before shipment.

(2) During the 2 years before the interstate movement, no plants or plant parts infected with citrus canker were found in the grove producing the regulated fruit and any exposed plants in the grove at high risk for developing

citrus canker have been destroyed. Identification of exposed plants at high risk for developing citrus canker will be based on an evaluation of all of the circumstances related to their exposure, including, but not limited to, the following:

(i) The stage of maturity of the exposed plant at the time of exposure, the size and degree of infestation to which the plants were exposed.

(ii) The proximity of exposed plants to infected plants or contaminated articles at the time of exposure, and

(iii) The length of time the plants were exposed.

(3) No more than 30 days before the beginning of harvest, an inspector walked through the grove, inspected every tree, and found the grove free of citrus canker, and, in groves producing limes, an inspector walked through the grove every 120 days or less thereafter for as long as harvest continued, inspected every lime tree on each walk-through, and continued to find the grove free of citrus canker.

(4) The regulated fruit was treated in accordance with § 301.75-11(a) of this subpart.

(5) The regulated fruit is free of leaves, twigs, and other plant parts, except for stems that are less than one inch long and attached to the fruit.

(6) The regulated fruit is accompanied by a limited permit issued in accordance with § 301.75-12 of this subpart.

(b) *Regulated fruit not produced in a quarantined area.* Regulated fruit not produced in a quarantined area but moved into a quarantined area for packing may be moved interstate from the quarantined area into any area of the United States except commercial citrus-producing areas if all of the following conditions are met:

(1) The regulated fruit was accompanied to the packing plant by a bill of lading stating the location of the grove in which the regulated fruit was produced.

(2) The regulated fruit was treated in accordance with § 301.75-11(a) of this subpart.

(3) The regulated fruit is free of leaves, twigs, and other plant parts, except for stems that are less than one inch long and attached to the regulated fruit.

(4) The regulated fruit is accompanied by a limited permit issued in accordance with § 301.75-12 of this subpart.

10. A new § 301.75-8 is added to read as follows:

§ 301.75-8 Interstate movement of regulated seed from a quarantined area.

Regulated seed may be moved interstate from a quarantined area into

any area of the United States if all of the following conditions are met:

(a) During the 2 years before the interstate movement, no plants or plant parts infected with or exposed to citrus canker were found in the grove or nursery producing the fruit from which the regulated seed was extracted.

(b) The regulated seed was treated in accordance with § 301.75-11(b) of this subpart.

(c) The regulated seed is accompanied by a certificate issued in accordance with § 301.75-12 of this subpart.

§ 301.75-9 Interstate movement of regulated articles from a quarantined area for experimental or scientific purposes.

11. In redesignated § 301.75-9, the heading is revised to read as set forth above.

12. A new § 301.75-10 is added to read as follows:

§ 301.75-10 Interstate movement of regulated articles through a quarantined area.

Any regulated article not produced in a quarantined area may be moved interstate through a quarantined area, without a certificate, limited permit, or Departmental permit, if all of the following conditions are met:

(a) The regulated article is accompanied by either: A receipt showing that the regulated article was purchased outside the quarantined area, or a bill of lading stating the location of the premises where the shipment originated, the type and quantity of regulated articles being moved interstate, and the date the interstate movement began.

(b) The regulated article is moved through the quarantined area without being unloaded, and no regulated article, except regulated fruit that qualifies for interstate movement from the quarantined area in accordance with § 301.75-7 of this subpart, is added to the shipment in the quarantined area.

(c) The regulated article is completely covered, or enclosed in containers or in a compartment of a vehicle, during movement through the quarantined area, except that, covering or enclosure is not required if the regulated article is moved through the quarantined area without stopping, except for refueling or for traffic conditions, such as traffic lights or stop signs.

13. In redesignated § 301.75-11, paragraphs (a) and (b), the introductory text of paragraphs (c) and (d) are revised to read as follows:

§ 301.75-11 Treatments.

(a) *Regulated fruit.* Regulated fruit for which treatment is required by this subpart must be treated in one of the following ways in the presence of an inspector, or at a facility whose owner operates under a compliance agreement:

(1) The regulated fruit must be thoroughly wetted for at least 2 minutes with a solution containing 200 parts per million sodium hypochlorite, with the solution maintained at a pH of 6.0 to 7.5, or

(2) The regulated fruit must be thoroughly wetted with a solution containing sodium o-phenyl phenate (SOPP) at a concentration of 1.86 to 2.0 percent of the total solution, for 45 seconds if the solution has sufficient soap or detergent to cause a visible foaming action or for 1 minute if the solution does not contain sufficient soap to cause a visible foaming action.

(3) Sodium hypochlorite and SOPP must be applied in accordance with label directions.

(b) *Regulated seed.* Regulated seed for which treatment is required by this subpart must be extracted from fruit that has been treated in accordance with paragraph (a) of this section. The regulated seed must then be cleaned free of pulp, immersed for 10 minutes in water heated to 125° F. (51.6° C.) or higher, then immersed for at least 2 minutes in a solution containing 200 parts per million sodium hypochlorite, with the solution maintained at a pH of 6.0 to 7.5.

(c) *Personnel.* All personnel for which treatment is required by this subpart must clean their hands using one of the following disinfectants:

* * *

(d) *Vehicles, equipment, and other articles.* All vehicles, equipment, and other articles for which treatment is required by this subpart must be cleaned and disinfected by removing all plants, leaves, twigs, fruit, and other plant parts from all areas of the equipment or vehicles, including in cracks, under chrome strips, and on the undercarriage of vehicles, and by wetting all surfaces (including the inside of boxes and trailers), to the point of runoff, with one of the following disinfectants:

* * *

14. A new § 301.75-12 is added to read as follows:

§ 301.75-12 Certificates and limited permits.

(a) *Issuance and withdrawal.* (1) Certificates and limited permits may be issued for the interstate movement of regulated articles only by an inspector or by persons operating under a compliance agreement.

(2) A certificate or limited permit may be withdrawn by an inspector if the inspector determines that any of the applicable requirements of this subpart have not been met. The decision of the inspector and the reason for the withdrawal must be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit is withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. The Administrator must grant or deny the appeal in writing, stating the reasons for the decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

(b) *Attachment and disposition.* (1) Certificates and limited permits accompanying regulated articles interstate must be attached during the interstate movement to one of the following:

(i) The outside of the regulated article, if the regulated article is not packed in a container, or

(ii) The outside of the container in which the regulated article is packed, or

(iii) The consignee's copy of the accompanying waybill, but only if the regulated article is described on the certificate, limited permit, or waybill in a way that allows the regulated article to be identified.

(2) Certificates and limited permits accompanying regulated articles interstate must be given to the consignee at the point of destination.

15. Redesignated § 301.75-13 is revised to read as follows:

§ 301.75-13 Compliance agreements.

(a) *Eligibility.* Any person engaged in the business of growing or handling regulated articles for interstate movement may enter into a compliance agreement with the Animal and Plant Health Inspection Service to facilitate the interstate movement of regulated articles in accordance with this subpart. Compliance agreements may be arranged by contacting a local office of Plant Protection and Quarantine, Animal and Plant Health Inspection Service (listed in local telephone directories), or by contacting the Administrator, c/o the Operational Support Staff, PPQ, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

(b) *Cancellation.* Any compliance agreement may be cancelled orally or in writing by an inspector if the inspector finds that the person who entered into the compliance agreement has failed to comply with this subpart. If the person is given notice of cancellation orally, written confirmation of the decision and the reasons for it must be provided as promptly as circumstances allow. Any person whose compliance agreement is cancelled may appeal the decision in writing to the Administrator within 10 days after receiving the written notification. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Administrator must grant or deny the appeal, in writing, stating the reasons for the decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

Done in Washington, DC, this 6th day of September 1990.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

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