

Rules and Regulations

Federal Register

Vol. 65, No. 177

Tuesday, September 12, 2000

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 00-077-1]

Asian Longhorned Beetle Regulations; Addition to Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Asian Longhorned Beetle regulations by expanding the quarantined area in the city of New York and in Nassau and Suffolk Counties, NY. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary on an emergency basis to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States.

DATES: This interim rule was effective September 6, 2000. We invite you to comment on this docket. We will consider all comments that we receive by November 13, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 00-077-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 00-077-1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Staff Officer, Invasive Species and Pest Management Staff, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737-1231; (301) 734-7338.

SUPPLEMENTARY INFORMATION:

Background

The Asian longhorned beetle (ALB) (*Anoplophora glabripennis*), an insect native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. It is known to attack healthy maple, horse chestnut, birch, poplar, willow, elm, and locust trees. It may also attack other species of hardwood trees. In addition, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and debris of a half an inch or more in diameter are subject to infestation. The beetle bores into the heartwood of a host tree, eventually killing it. Immature beetles bore into tree trunks and branches causing heavy sap flow from wounds and sawdust accumulation at tree bases. They feed on, and over-winter in, the interiors of trees. Adult beetles emerge in the spring and summer months from round holes approximately three-eighths of an inch in diameter (about the size of a dime) that they bore through the trunks of trees. After emerging, adult beetles feed for 2 to 3 days and then mate. Adult females then lay eggs in oviposition sites that they make on the branches of trees. A new generation of ALB is produced each year. If this pest moves into the hardwood forests of the United States, the nursery, maple syrup, and forest products industries could experience severe economic losses. In addition, urban and forest ALB infestations will result in environmental damage, aesthetic deterioration, and a reduction in public enjoyment of recreational spaces.

The Asian longhorned beetle regulations (7 CFR 301.51-1 through 301.51-9, referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the

artificial spread of ALB to noninfested areas of the United States. Portions of New York City and Nassau and Suffolk Counties in the State of New York and portions of the State of Illinois are already designated as quarantined areas.

Recent surveys conducted by inspectors of State, county, and city agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that infestations of ALB have occurred outside the quarantined areas in New York City and in Nassau and Suffolk Counties, NY. Officials of the U.S. Department of Agriculture and officials of State, county, and city agencies in New York are conducting an intensive survey and eradication program in the infested areas. The State of New York has quarantined the infested areas and is restricting the intrastate movement of regulated articles from the quarantined area to prevent the artificial spread of ALB within the State. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined area to prevent the artificial spread of ALB to other States and Canada.

The regulations in § 301.51-3(a) provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which ALB has been found by an inspector, in which the Administrator has reason to believe that ALB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where ALB has been found.

Less than an entire State will be quarantined only if (1) the Administrator determines that the State has adopted and is enforcing restrictions on the interstate movement of regulated articles; and (2) the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of ALB.

In accordance with these criteria and the recent ALB findings described above, we are amending § 301.51-3(c) by expanding the quarantined areas in the city of New York and in Nassau and Suffolk Counties, NY. The expanded and new quarantined areas are described in the rule portion of this document.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the ALB from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required under Executive Order 12866.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

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.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this on-going program. The environmental assessment concludes that expanding the Federal quarantine for ALB will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**, by calling the Plant Protection and Quarantine fax service at (301) 734–3560 and requesting document number 0023, or by visiting the following Internet site: <http://www.aphis.usda.gov/ppd/ead/ppqdocs.html>.

Paperwork Reduction Act

This interim rule contains no collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

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

Accordingly, we are amending 7 CFR part 301 as follows:

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

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

2. In § 301.51–3, paragraph (c), the entry for the State of New York is revised to read as follows:

§ 301.51–3 Quarantined areas.

* * * * *

(c) * * *

New York

New York City. That area in the boroughs of Manhattan, Brooklyn, and Queens in the City of New York that is bounded as follows: Beginning at a point where the Brooklyn Battery Tunnel intersects the Manhattan shoreline of the East River; then north along the shoreline of the East River to Whitehall Street; then north along Whitehall Street to Broadway; then north along Broadway to west 58th Street; then west along west 58th Street to the shoreline of the Hudson River; then north along the shoreline of the Hudson River to Martin Luther King, Jr., Boulevard; then east along Martin Luther King, Jr., Boulevard and across the Triborough Bridge to the west shoreline of Randall's and Ward's Island; then east and south along the shoreline of Randall's and Ward's Island to the Triborough Bridge; then east along the Triborough Bridge to the Queens shoreline; then north and east along the Queens shoreline to the western boundary of LaGuardia Airport; then south and east along the LaGuardia Airport boundary to 94th Street; then south along 94th Street to Junction Boulevard; then south along Junction Boulevard to Queens Boulevard; then east along Queens Boulevard to Yellowstone Boulevard; then south along Yellowstone Boulevard to Woodhaven Boulevard; then south along Woodhaven Boulevard to Atlantic Avenue; then west along Atlantic Avenue to the Eastern Parkway Extension; then south and west along the Eastern Parkway Extension and Eastern Parkway to Grand Army Plaza; then west along the south side of Grand Army Plaza to Union Street; then west along Union Street to Van Brunt Street; then south along Van Brunt Street to Hamilton Avenue and the Brooklyn Battery Tunnel; then north along Hamilton Avenue and the Brooklyn Battery Tunnel to the East River; then north along the Brooklyn Battery Tunnel across the East River to the point of beginning.

That area in the borough of Queens in the City of New York that is bounded as follows: Beginning at a point where the Grand Central Parkway intersects the City of New York and Nassau County line; then west along the Grand Central Parkway to 188th Street; then north along 188th Street to the northern

boundary of the Kissena Corridor; then west along the northern boundary of the Kissena Corridor, Kissena Park, and Kissena Corridor Park to Van Wyck Expressway; then north along the Van Wyck Expressway to the east shoreline of the Flushing River; then west, north, and east along the Queens shoreline to the City of New York and Nassau County line; then southeast along the City of New York and Nassau County line to the point of beginning.

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

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

Done in Washington, DC, this 6th day of September 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection, Service.

[FR Doc. 00-23368 Filed 9-11-00; 8:45 am]

BILLING CODE 3410-34-U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 920 and 944

[Docket No. FV00-920-2 FR]

Kiwifruit Grown in California and Imported Kiwifruit; Relaxation of the Minimum Maturity Requirement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule relaxes the current minimum maturity requirements for fresh shipments of kiwifruit grown in California and for kiwifruit imported into the United States. The Kiwifruit Administrative Committee (Committee) which locally administers the marketing order for California kiwifruit unanimously recommended the change for California kiwifruit. The change in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. This action allows handlers and importers to ship kiwifruit which meets the minimum maturity requirement of 6.2 percent soluble solids. This change is expected to reduce handler inspection costs, increase grower returns, and enable handlers and importers to compete more effectively in the marketplace.

EFFECTIVE DATE: September 13, 2000.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202)

720-5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This final rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including kiwifruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Under the terms of the order, fresh market shipments of California kiwifruit are required to be inspected and are subject to grade, size, maturity, pack