

Rules and Regulations

Federal Register

Vol. 69, No. 137

Monday, July 19, 2004

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. 04-002-2]

Asian Longhorned Beetle; Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Asian longhorned beetle regulations by adding a portion of Cook County, IL, to the list of quarantined areas and restricting the interstate movement of regulated articles from those areas. The interim rule also removed other portions of Cook County, IL, and portions of DuPage County, IL, from the list of quarantined areas and removed restrictions on the interstate movement of regulated articles from these areas. These actions were necessary to prevent the spread of the Asian longhorned beetle to noninfested areas of the United States and to relieve restrictions on certain areas that are no longer necessary.

DATES: *Effective Date:* The interim rule became effective on March 3, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Director of Emergency Programs, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-4387.

SUPPLEMENTARY INFORMATION:

Background

The Asian longhorned beetle (ALB) is an insect native to China, Japan, Korea,

and the Isle of Hainan. It is a destructive pest of hardwood trees. In addition, nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of half an inch or more in diameter are also subject to infestation. The ALB regulations (7 CFR 301.51-1 through 301.51-9) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of ALB to noninfested areas of the United States.

The regulations in § 301.51-3(a) provide that the Administrator of the Animal and Plant Health Inspection Service (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 there is reason to believe ALB is present, or because of the area's inseparability for quarantine enforcement purposes from localities where ALB has been found.

In an interim rule effective March 3, 2004, and published in the **Federal Register** on March 8, 2004 (69 FR 10599-10601, Docket No. 04-002-1), we amended the ALB regulations by adding a portion of Cook County, IL, to the list of quarantined areas in § 301.51-3(c) and restricting the interstate movement of regulated articles from the quarantined area. We also removed other portions of Cook County, IL, and portions of DuPage County, IL, from the list of quarantined areas.

We solicited comments concerning the interim rule for 60 days ending May 7, 2004. We received one comment by that date, from a private citizen.

The commenter was in favor of the interim rule's addition of the portion of Cook County, IL, to the list of quarantined areas. However, the commenter requested that we reconsider our decision to remove parts of Cook and DuPage Counties, IL, from the list of quarantined areas in order to decrease the likelihood of future ALB infestation in those areas.

While we realize that there is always the possibility of ALB reinfestation, APHIS does not believe a continuation of the quarantine in the areas removed by the interim rule is necessary or warranted. As stated in § 301.51-3(a) of the regulations, an area may be listed as a quarantined area if ALB have been found by an inspector, if there is reason to believe ALB are present, or if the area is inseparable from other quarantined

areas for purposes of enforcement. The last evidence of ALB found in these areas was on December 2, 2000, near Addison in DuPage County, IL, and on August 18, 1999, in that portion of the Village of Summit, IL. Those areas have also been determined to be sufficiently far from other quarantined areas for the removal of the quarantine to be considered safe. Though we do not believe further regulation of these areas is necessary, we will continue to survey them to ensure that ALB does not reappear.

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

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the ALB regulations by adding a portion of Cook County, IL, to the list of quarantined areas and by removing other portions of Cook County, IL, and DuPage County, IL, from the list of quarantined areas. In the interim rule, we stated that we were taking those actions on an immediate basis to prevent the spread of ALB to noninfested areas of the United States and to remove restrictions on areas in which the ALB is no longer present.

The following analysis addresses the economic effects of the interim rule on small entities, as required by the Regulatory Flexibility Act. The small businesses potentially affected by the interim rule are nurseries, arborists, tree removal services, and firewood dealers located within the areas added to and removed from the list of quarantined areas.

Within the quarantined area added by the interim rule there is only one business potentially affected, a firewood dealer. This business could be affected by the regulations in two ways. First, if the business wishes to move regulated articles interstate from a quarantined area, that business must either: (1) Enter into a compliance agreement with APHIS for the inspection and certification of regulated articles to be moved interstate from the quarantined

area; or (2) present its regulated articles for inspection by an inspector and obtain a certificate or a limited permit, issued by the inspector, for the interstate movement of regulated articles. The inspections may be inconvenient, but not costly; businesses operating under a compliance agreement would perform the inspections themselves and for those businesses that elect not to enter into a compliance agreement, APHIS would provide the services of an inspector without cost. There is also no cost for the compliance agreement, certificate, or limited permit for the interstate movement of regulated articles.

Second, there is a possibility that, upon inspection, a regulated article could be determined by the inspector to be potentially infested with the ALB and, as a result, the inspector would not issue a certificate. In this case, the entity's ability to move regulated articles interstate would be restricted. However, the affected entity could conceivably obtain a limited permit under the conditions of § 301.51–5(b). Whether or not the affected entity would be denied certificates as a result of inspections of regulated articles is unknown. However, because it is located in a densely populated urban area, the firewood dealer is more likely to be receiving regulated articles from outside the quarantined area than it is to be shipping regulated articles interstate to nonquarantined areas. It is unlikely, therefore, that the firewood dealer would be moving regulated articles that would require inspection in the first place.

The interim rule removed two areas from the list of quarantined areas. One area, the Village of Summit in Cook County, IL, encompasses 0.92 square mile. Within that area, there are no known potentially affected business entities. The other area removed, Addison in DuPage County, IL, encompasses 0.81 square mile. Within that 0.81 square mile area, there are six potentially affected business entities, four tree companies and two landscape companies. These six entities stand to benefit from the interim rule, since they are no longer subject to the restrictions in the regulations. However, any benefit for these six entities is likely to be minimal. While the size of the six entities is unknown, it is reasonable to assume that they would be classified as small entities, based on the U.S. Small Business Administration's size standards.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not

have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 69 FR 10599–10601 on March 8, 2004.

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

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

Done in Washington, DC, this 13th day of July, 2004.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–16280 Filed 7–16–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

[Docket No. FV04–958–02 FR]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Idaho-Eastern Oregon Onion Committee (Committee) for the 2004–2005 and subsequent fiscal periods from \$0.095 to \$0.105 per hundredweight of onions handled. The Committee locally administers the marketing order that regulates the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon. Authorization to assess onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: July 20, 2004.

FOR FURTHER INFORMATION CONTACT:

Barry Broadbent, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Ave, Suite 385, Portland, OR 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938; or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in certain designated counties in Idaho, and Malheur County, Oregon, 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.”

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Idaho-Eastern Oregon onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning July 1, 2004, and continue until amended, suspended, or terminated. This 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 USDA 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. Such handler is afforded the opportunity for