

# Rules and Regulations

Federal Register

Vol. 70, No. 151

Monday, August 8, 2005

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.

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 05-030-1]

#### Imported Fire Ant; Additions to Quarantined Areas in Arkansas and Tennessee

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

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the imported fire ant regulations by designating as quarantined areas all of 1 county in Arkansas and all or portions of 18 counties in Tennessee. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of imported fire ant to noninfested areas of the United States.

**DATES:** This interim rule is effective August 8, 2005. We will consider all comments that we receive on or before October 7, 2005.

**ADDRESSES:** You may submit comments by any of the following methods:

- **EDOCKET:** Go to <http://www.epa.gov/feddoCKET> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 05-030-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 05-030-1.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

**Reading Room:** 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.

**Other Information:** You may view APHIS documents published in the **Federal Register** and related information on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles L. Brown, Imported Fire Ant Quarantine Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-4838.

#### SUPPLEMENTARY INFORMATION:

##### Background

The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81-10 and referred to below as the regulations) quarantine infested States or infested areas within States and restrict the interstate movement of regulated articles to prevent the artificial spread of the imported fire ant.

The imported fire ant (*Solenopsis invicta* Buren and *Solenopsis richteri* Forel) is an aggressive, stinging insect that, in large numbers, can seriously injure and even kill livestock, pets, and humans. The imported fire ant, which is not native to the United States, feeds on crops and builds large, hard mounds that damage farm and field machinery. The regulations are intended to prevent the imported fire ant from spreading throughout its ecological range within the country.

The regulations in § 301.81-3 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, that is infested with the imported fire ant. The Administrator will designate

less than an entire State as a quarantined area only under the following conditions: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81-2 that are equivalent to the interstate movement restrictions imposed by the regulations; and (2) designating less than the entire State will prevent the spread of the imported fire ant. The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or its inseparability from an infested locality for quarantine purposes.

In § 301.81-3, paragraph (e) lists quarantined areas. We are amending § 301.81-3(e) by:

- Adding all of Montgomery County, AR, to the quarantined area;
- Adding parts of Benton, Bledsoe, Carroll, Cumberland, Hickman, Humphreys, and Roane Counties, TN, to the quarantined area; and
- Expanding the quarantined areas in Bedford, Blount, Coffee, Giles, Grundy, Haywood, Marshall, Maury, Moore, Perry, and Sequatchie Counties, TN.

We are taking these actions because recent surveys conducted by APHIS and State and county agencies revealed that the imported fire ant has spread to these areas. See the rule portion of this document for specific descriptions of the new and revised quarantined areas.

#### Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of imported fire ant into noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). 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.

### 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 under Executive Order 12866.

We are amending the imported fire ant regulations by designating as quarantined areas all of 1 county in Arkansas and all or portions of 18 counties in Tennessee. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of imported fire ant to noninfested areas of the United States.

The following analysis addresses the economic effects of this rule and the impact on small entities as required by the Regulatory Flexibility Act.

The market value of the agricultural products sold in the 19 counties affected by this rule was about \$473.11 million, according to the 2002 Agricultural Census.

Potential damage by imported fire ant presents a risk to the agricultural economies in these 19 counties. The entities most likely to be affected by this interim rule are nurseries and greenhouses. According to the 2002 Census of Agriculture, there were at least 355 nurseries and greenhouses in the 18 affected counties in Tennessee, and no nurseries listed for Montgomery County, AR. Other entities potentially affected by this action include farm equipment dealers, construction companies, and those entities that sell, process, or move regulated articles interstate from and through quarantined areas. These economic entities are now required to treat and certify their regulated articles before moving them interstate.

According to the Small Business Administration (SBA) definition, a small agricultural producer is one having less than \$750,000 in annual sales, and a small equipment dealer or a small agricultural service company is one generating less than \$6 million in annual sales.

According to this definition, all of the estimated 355 potentially affected entities in the counties affected by this rule are considered small by SBA standards. However, both the number of affected entities and the scope of the economic effects resulting from this action are dependent on any given entity's proportion of sales outside the quarantined area.

The adverse economic effect on these entities can be substantially minimized by the availability of various treatment

options that will allow for the movement of regulated articles from the quarantined area with only a small additional cost. The treatment cost for a standard shipment of nursery plants is estimated to be about \$200, which represents, at most, 2 percent of the value of a standard tractor-trailer load of nursery plants (\$10,000 to \$250,000). The benefits of this action are substantial, both ensuring continued agricultural sales from the affected counties and preventing human-assisted spread of imported fire ant.

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.

### 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.

### Paperwork Reduction Act

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

### List of Subjects in 7 CFR Part 301

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

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

### PART 301—DOMESTIC QUARANTINE NOTICES

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

**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).

■ 2. In § 301.81–3, paragraph (e) is amended as follows:

■ a. Under the heading Arkansas, by adding, in alphabetical order, an entry for Montgomery County to read as set forth below.

■ b. Under the heading Tennessee, by adding, in alphabetical order, new entries for Benton, Bledsoe, Carroll, Cumberland, Hickman, Humphreys, and Roane Counties and by revising the entries for Bedford, Blount, Coffee, Giles, Grundy, Haywood, Marshall, Maury, Moore, Perry, and Sequatchie Counties to read as set forth below.

#### § 301.81–3 Quarantined areas.

\* \* \* \* \*  
(e) \* \* \*

Arkansas

\* \* \* \* \*

*Montgomery County.* The entire county.

\* \* \* \* \*

Tennessee

*Bedford County.* That portion of the county lying south of a line beginning at the intersection of the Marshall/Bedford County line and Tennessee Highway 270; then southeast on Tennessee Highway 270 to Halls Mill Road; then south on Halls Mill Road to Wheel Road; then southwest on Wheel Road to Lower Halls Mill Road; then southeast on Lower Halls Mill Road to Pass Road; then south on Pass Road to Simms Road; then east on Simms Road to Henslee Road; then south on Henslee Road to Tennessee Highway 64; then east on Tennessee Highway 64 to Knob Creek Road; then southeast on Knob Creek Road to Tennessee Highway 269; then south on Tennessee Highway 269 to Red Hill Road; then east on Red Hill Road to C.K. Troxler Road; then northeast on C.K. Troxler Road to the Bedford/Coffee County line; also, the entire city limits of Shelbyville, TN.

*Benton County.* That portion of the county lying south of a line beginning at the intersection of the Carroll/Benton County line and Smothers-Buena Vista Road; then east on Smothers-Buena Vista Road to Pleasant Hill Church Road; then northwest on Pleasant Hill Church Road to Norwood Road; then northeast on Norwood Road to Divider and Natchez Trace Road; then northeast on Divider and Natchez Trace Road to Hargrove Road; then southeast on Hargrove Road to James Walker Road; then northeast on James Walker Road to Dodd Road; then north on Dodd Road to Divider and Natchez Trace Road; then north on Divider and Natchez Trace Road to Airport Road; then east on Airport Road to U.S. Highway 641; then

south on U.S. Highway 641 to Shiloh Church Road; then northeast on Shiloh Church Road to Tennessee Highway 191; then northwest on Tennessee Highway 191 to the line of latitude 36° N.; then east along the line of latitude 36° N. to the Benton/Humphreys County line.

*Bledsoe County.* That portion of the county lying south of a line beginning at the intersection of the Van Buren/Bledsoe County line and Tennessee Highway 285; then southeast on Tennessee Highway 285 to Bellview Road; then northeast on Bellview Road to Big Spring Gap Road; then southeast on Big Spring Gap Road to Old State Highway 28; then northeast on Old State Highway 28 to the Bledsoe/Cumberland County line.

*Blount County.* That portion of the county lying south of a line beginning at the intersection of the Knox/Blount County line and Interstate 140; then southeast on Interstate 140 to U.S. Highway 129; then south on U.S. Highway 129 to U.S. Highway 321; then east on U.S. Highway 321 to Montvale Road; then south on Montvale Road to Happy Valley Road; then southeast on Happy Valley Road to Foothills Parkway; then southwest on Foothills Parkway to U.S. Highway 129; then southeast on U.S. Highway 129 to the Tennessee/North Carolina State line.

\* \* \* \* \*

*Carroll County.* That portion of the county lying southeast of a line beginning at the intersection of the Henderson/Carroll County line and New Bethel Road; then northwest on New Bethel Road to U.S. Highway 70; then northeast on U.S. Highway 70 to Purdy Road; then south on Purdy Road to Dollar Hill Road; then east on Dollar Hill Road to Tennessee Highway 22; then south on Tennessee Highway 22 to Clarksburg Road; then northeast on Clarksburg Road to Westport Road; then east on Westport Road to Tennessee Highway 114; then north on Tennessee Highway 114 to McKee Levee Road; then east on McKee Levee Road to Pond Branch Road; then north on Pond Branch Road to New Friendship Road; then east on New Friendship Road to Roland Mill Road; then southeast on Roland Mill Road to the Carroll/Benton County line.

\* \* \* \* \*

*Coffee County.* That portion of the county lying south of a line beginning at the intersection of the Bedford/Coffee County line and Sixteenth Model Road; then east on Sixteenth Model Road to U.S. Highway 41; then northwest on U.S. Highway 41 to Interstate 24; then southeast on Interstate 24 to Tennessee

Highway 55; then northeast on Tennessee Highway 55 to Ragsdale Road; then south on Ragsdale Road to New Bushy Branch Road; then southeast on New Bushy Branch Road to Cornelison Road; then east on Cornelison Road to Clifton Scott Road; then south on Clifton Scott Road to Asbury Road; then east on Asbury Road to Benson Road; then southeast on Benson Road to Buck Jones Road; then south on Buck Jones Road to Old Airport Road; then southwest on Old Airport Road to U.S. Highway 41; then southeast on U.S. Highway 41 to Bailey Road; then east on Bailey Road to Lusk Cove Road; then northeast on Lusk Cove Road to the line of latitude 35°25' N.; then east along the line of latitude 35°25' N. to the Coffee/Grundy County line.

*Cumberland County.* That portion of the county lying southeast of a line beginning at the intersection of the Rhea/Cumberland County line and the line of longitude 84°50' W.; then north along the line of longitude 84°50' W. to Interstate 40; then east on Interstate 40 to the Cumberland/Roane County line.

\* \* \* \* \*

*Giles County.* The entire county.  
*Grundy County.* That portion of the county lying south of a line beginning at the intersection of the Coffee/Grundy County line and the line of latitude 35°20' N.; then east along the line of latitude 35°20' N. to Homer White Road; then north on Homer White Road to Tennessee Highway 50; then northeast on Tennessee Highway 50 to Tennessee Highway 56; then south on Tennessee Highway 56 to Colony Road; then east on Colony Road to Gruetli Road; then north on Gruetli Road to the line of latitude 35°25' N.; then east along the line of latitude 35°25' N. to Tennessee Highway 399; then northeast on Tennessee Highway 399 to the Grundy/Sequatchie County line.

\* \* \* \* \*

*Haywood County.* That portion of the county lying south of a line beginning at the intersection of the Tipton/Haywood County line and U.S. Highway 70/79; then northeast on U.S. Highway 70/79 to the Hatchie River; then east along the Hatchie River to Interstate 40; then northeast on Interstate 40 to the Haywood/Madison County line.

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*Hickman County.* That portion of the county lying south of a line beginning at the intersection of the Perry/Hickman County line and the Duck River; then east along the Duck River to Tennessee Highway 50; then northwest on Tennessee Highway 50 to Coble to Only Road; then southeast on Coble to Only

Road to Lowes Bend Road; then northeast on Lowes Bend Road to Capshaw Hollow Road; then east on Capshaw Hollow Road to Taylor's Creek Road; then northeast on Taylor's Creek Road to Dodd Hollow Road; then southeast on Dodd Hollow Road to Elkins Switch Road; then southeast on Elkins Switch Road to Grinders Switch Road; then south on Grinders Switch Road to Tennessee Highway 50; then southeast on Tennessee Highway 50 to the Hickman/Maury County line.

*Humphreys County.* That portion of the county lying south of Interstate 40.

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*Marshall County.* That portion of the county lying south of a line beginning at the intersection of the Maury/Marshall County line and Moses Road; then northeast on Moses Road to Wilson School Road; then southeast on Wilson School Road to Lunns Store Road; then south on Lunns Store Road to Tennessee Highway 99; then east on Tennessee Highway 99 to U.S. Highway 31A; then south on U.S. Highway 31A to James Shaw Road; then south on James Shaw Road to Clay Hill Road; then east on Clay Hill Road to Warner Road; then south on Warner Road to Batten Road; then southeast on Batten Road to the Marshall/Bedford County line.

*Maury County.* That portion of the county lying south of Tennessee Highway 50.

\* \* \* \* \*

*Moore County.* The entire county.

*Perry County.* The entire county.

\* \* \* \* \*

*Roane County.* That portion of the county lying south of Interstate 40.

*Sequatchie County.* That portion of the county lying south of the line of latitude 35°30' N.

\* \* \* \* \*

Done in Washington, DC, this 2nd day of August 2005.

**Elizabeth E. Gaston,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 05-15623 Filed 8-5-05; 8:45 am]

**BILLING CODE 3410-34-P**