

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 05-066-1]

#### Asian Longhorned Beetle; Addition and Removal of Quarantined Areas in New Jersey

**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 adding a portion of Middlesex and Union Counties, NJ, to the list of quarantined areas and restricting the interstate movement of regulated articles from those areas. This action is necessary to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States. We are also removing the areas within Hudson County, NJ, from the list of quarantined areas and removing restrictions on the interstate movement of regulated articles from those areas. We have determined that the Asian longhorned beetle no longer presents a risk of spread from those areas and that the quarantine and restrictions are no longer necessary.

**DATES:** This interim rule is effective October 18, 2005. We will consider all comments that we receive on or before December 23, 2005.

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the "Search for Open Regulations" box, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS-2005-0078 to submit or

view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the "Advanced Search" function in Regulations.gov.

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05-066-1, 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. 05-066-1.

**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:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael B. Stefan, National Coordinator, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (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 attacks many healthy hardwood trees, including maple, horse chestnut, birch, poplar, willow, and elm. In addition, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and wood debris of half an inch or more in diameter are subject to infestation. The beetle bores into the heartwood of a host tree, eventually killing the tree. 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 branches and 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 product 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 ALB regulations in 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 Illinois, New Jersey, and New York are designated as quarantined areas.

#### Addition to Quarantined Area

Recent surveys conducted in New Jersey by inspectors of State, county, and city agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that an infestation of ALB has occurred outside the existing quarantined areas in Middlesex and Union Counties, NJ. Officials of the U.S. Department of Agriculture and officials of State, county, and city agencies in New Jersey are conducting intensive survey and eradication programs in the infested area, and the State of New Jersey has quarantined the infested area and is restricting the intrastate movement of regulated articles from the quarantined area to prevent the further spread of ALB within that State. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined area to prevent the spread of ALB to other States and other countries.

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, where ALB has been found by an inspector, where the Administrator has reason to believe that ALB is present, or where the Administrator considers regulation necessary because of its inseparability

for quarantine 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 intrastate movement of regulated articles that are equivalent to those imposed by the regulations 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 the list of quarantined areas in § 301.51–3(c) to include an additional area in Middlesex and Union Counties, NJ. The quarantined area is described in the rule portion of this document.

#### **Removal of Quarantined Areas**

The regulations currently list two quarantined areas in Hudson County, NJ, one in the city of Jersey City, the other in the city of Hoboken. Based on surveys conducted by inspectors of New Jersey State and county agencies and by APHIS inspectors, we are removing those areas in Hudson County from the list of quarantined areas. The last findings of ALB in the regulated areas in Hudson County were in October 2002. Since then, no evidence of ALB infestation has been found in those areas. Based on our experience, we have determined that sufficient time has passed without finding additional beetles or other evidence of infestation to conclude that ALB constitutes a negligible risk to those areas in the Jersey City and Hoboken communities. Therefore, we are removing the entry for Hudson County, NJ, from the list of quarantined areas in § 301.51–3(c).

#### **Immediate Action**

This rulemaking is necessary on an immediate basis to help prevent the artificial spread of ALB to noninfested areas of the United States. This rule will also relieve restrictions on certain areas that are no longer warranted. 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 action 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 ALB regulations by adding a portion of Middlesex and Union Counties, NJ, to the list of quarantined areas and restricting the interstate movement of regulated articles from those areas. This action is necessary to prevent the artificial spread of the ALB to noninfested areas of the United States. We are also removing the areas within Hudson County, NJ, from the list of quarantined areas and removing restrictions on the interstate movement of regulated articles from those areas. We have determined that the ALB no longer presents a risk of spread from those areas and that the quarantine and restrictions are no longer necessary.

The Regulatory Flexibility Act (RFA) requires that agencies consider the economic impact of rules on small entities, i.e., small businesses, organizations, and governmental jurisdictions. The businesses potentially affected by this rule are nurseries, arborists, tree removal services, firewood dealers, garden centers, landscapers, recyclers of waste material, and lumber and building material outlets.

#### *Middlesex and Union Counties*

Within the quarantined area added by this interim rule, there are 103 entities potentially affected, including tree care businesses, plant nurseries and retailers, and firewood dealers. These businesses could be affected by the regulations in two ways. First, if a 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).

#### *Hudson County*

In the area within Hudson County, NJ, deregulated by this interim rule, which is about 3.7 square miles in size and includes Jersey City and Hoboken, there are 31 entities that will be affected by this interim rule. These entities are mainly tree and yard care companies; there are also a few local government agencies that are responsible for tree care. These entities will no longer be subject to the restrictions in the regulations. While the size of these 31 entities is unknown, it is reasonable to assume that most are small entities, based on SBA size standards. Any benefit for these entities is likely to be minimal, given that the costs associated with the restrictions being relieved were themselves minimal.

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 interim rule contains no 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 and 7781–7786; 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 § 301.51–3, paragraph (c), under the heading New Jersey, the entry for Hudson County is removed and the entry for Middlesex and Union Counties is revised to read as follows:

**§ 301.51–3 Quarantined areas.**

\* \* \* \* \*

(c) \* \* \*

**New Jersey**

*Middlesex and Union Counties.* That portion of the counties bounded by a line drawn as follows: Beginning at the intersection of St. Georges Avenue and Wood Avenue; then east on Wood Avenue to Curtis Street; then north on Curtis Street to East Baltimore Avenue; then east on East Baltimore Avenue to Dill Avenue; then north on Dill Avenue to Grant Street; then southeast on Grant Street to Alberta Avenue; then northeast on Alberta Avenue to County Road 616 (Park Avenue); then southeast on County Road 616 (Park Avenue) to U.S. Route 1; then north on U.S. Route 1 to Allen Street; then southeast on Allen Street to the east side of the New Jersey Turnpike right-of-way; then south along the east side of the New Jersey Turnpike right-of-way to Marshes Creek; then southeast along Marshes Creek to the Rahway River; then west along the south side of the Rahway River to Cross Creek; then south along Cross Creek through the wetlands to Peter J. Sica Industrial Drive; then east and south on Peter J. Sica Industrial Drive to Roosevelt Avenue (State Route 602); then west on Roosevelt Avenue to Port Reading Avenue (State Route 604); then west southwest on Port Reading Avenue to the Conrail railroad; then north and west along the Conrail railroad right-of-way to the NJ Transit railroad right-of-way; then north and northwest along the NJ Transit railroad right-of-way to the south branch of the Rahway River; then

west along the south branch of the Rahway River to St. Georges Avenue; then north on St. Georges Avenue to the point of beginning.

\* \* \* \* \*

Done in Washington, DC, this 18th day of October 2005.

**Elizabeth E. Gaston,**

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

[FR Doc. 05–21169 Filed 10–21–05; 8:45 am]

**BILLING CODE 3410–34–P**

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****7 CFR Part 319**

[Docket No. 03–019–3]

**Certification Program for Imported Articles of *Pelargonium* spp. and *Solanum* spp. To Prevent Introduction of Potato Brown Rot**

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting as a final rule, with changes, an interim rule that amended the regulations by establishing a certification program for articles of *Pelargonium* spp. and *Solanum* spp. imported from countries where the bacterium *Ralstonia solanacearum* race 3 biovar 2 (R3B2) is known to occur. The interim rule prohibited the importation of articles of *Pelargonium* spp. and *Solanum* spp. from countries where *R. solanacearum* R3B2 is known to occur unless the articles are produced in accordance with the certification program. This final rule amends the regulations by modifying some of the requirements of the certification program to make them clearer and more flexible, by providing for the establishment of areas that are free of *R. solanacearum* R3B2 within countries where the bacterium is known to occur, and by exempting imported seeds of *Pelargonium* spp. and *Solanum* spp. from all requirements related to *R. solanacearum* R3B2. The requirements of the certification program are designed to ensure that *R. solanacearum* R3B2 will not be introduced into the United States through the importation of articles of *Pelargonium* spp. and *Solanum* spp. This certification program is necessary to prevent the introduction of this bacterial strain into the United States.

**EFFECTIVE DATE:** October 24, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jeanne Van Dersal, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6653.

**SUPPLEMENTARY INFORMATION:****Background**

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests. The regulations contained in “Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products,” §§ 319.37 through 319.37–14 (referred to below as the regulations), restrict, among other things, the importation of living plants, plant parts, seeds, and plant cuttings for propagation.

In an interim rule effective May 16, 2003, and published in the **Federal Register** on May 23, 2003 (68 FR 28115–28119, Docket No. 03–019–1), we amended the regulations by requiring that the phytosanitary certificates that must accompany all articles of *Pelargonium* spp. and *Solanum* spp. imported into the United States contain an additional declaration. (Articles of *Pelargonium* spp. and *Solanum* spp. imported under the Canadian greenhouse-grown restricted plant program in § 319.37–4(c), which are not required to be accompanied by a phytosanitary certificate when they are offered for importation into the United States, are exempt from this requirement.) The May 2003 interim rule was necessary because introductions of *R. solanacearum* R3B2, the bacterium that causes potato brown rot, had shown that articles of *Pelargonium* spp. and *Solanum* spp. can serve as vectors for its transmission. The additional declaration required by the May 2003 interim rule had to state either that the articles of *Pelargonium* spp. and *Solanum* spp. were produced in a production site that had been tested and found to be free of *R. solanacearum* R3B2 or that *R. solanacearum* R3B2 was not known to occur in the region in which the articles were produced.

We received comments on that interim rule requesting that we establish a certification program for articles of *Pelargonium* spp. and *Solanum* spp. imported from countries where *R. solanacearum* R3B2 is known to occur.

In addition, an introduction of the bacterium into the United States via infected geranium cuttings (*Pelargonium* spp.) was confirmed in February 2003; during the subsequent eradication effort, APHIS found some infected articles of *Pelargonium* spp.