

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS–2006–0127]

#### Asian Longhorned Beetle; Additions to 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 expanding the boundaries of the quarantined areas in New Jersey and restricting the interstate movement of regulated articles from those areas. The interim rule was necessary to prevent the spread of the Asian longhorned beetle to noninfested areas of the United States.

**DATES:** Effective on November 5, 2007, we are adopting as a final rule the interim rule published at 71 FR 59649–59651 on October 11, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael B. Stefan, ALB National Coordinator, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–7338.

#### SUPPLEMENTARY INFORMATION:

##### Background

The 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 the Asian longhorned beetle (ALB) to noninfested areas of the United States. Quarantined areas are listed in § 301.51–3(c) of the regulations.

In an interim rule<sup>1</sup> effective October 4, 2006, and published in the **Federal Register** on October 11, 2006 (71 FR 59649–59651, Docket No. APHIS–2006–0127), we amended the list of quarantined areas in § 301.51–3(c) to include the City of Linden in Union County, NJ, as well as portions of the Borough of Roselle, the City of Elizabeth, and Clark Township, also in Union County. In addition, we also expanded the quarantined area in the City of Carteret in Middlesex County, NJ.

Comments on the interim rule were required to be received on or before December 11, 2006. We received one comment by that date, from a scientific organization.

Although the commenter acknowledged that the regulations allow us to designate less than an entire State as a quarantined area, the commenter suggested that the spread of ALB within New Jersey was too unpredictable, and the possible damage too substantive, to allow us to quarantine less than the entire State of New Jersey.

We are making no change in response to this comment. Dispersal and flight ability studies for ALB indicate that 99 percent of the beetle's movement occurs within one-half mile of an infested tree. The quarantined area within New Jersey extends approximately 1.5 miles in every direction from each infested tree. In addition, State and Federal plant health authorities have removed high-risk host trees, applied chemical treatments, and conducted extensive ground surveys of the quarantined area, in accordance with guidelines developed by scientists and program managers with experience in pest management and control, and ALB. APHIS believes that these measures effectively preclude the natural spread of ALB from the quarantined area.

In addition, a number of measures have been taken to prevent the artificial spread of ALB from the quarantined area. In the interim rule, we restricted the interstate movement of regulated articles from the area. This measure augmented existing State regulations restricting the intrastate movement of regulated articles from a quarantined area. We have also conducted an

<sup>1</sup>To view the interim rule and the comment we received, go to <http://www.regulations.gov/jdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0127>.

extensive outreach campaign in the region around the quarantined area to educate the public to the dangers posed by the artificial spread of ALB.

We believe these interlocking safeguards are adequate to mitigate the risk of the natural or artificial spread of ALB from the quarantined area.

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 Order 12866 and the Regulatory Flexibility Act, Executive Orders 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.

#### List of Subjects in 7 CFR Part 301

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

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 71 FR 59649–59651 on October 11, 2006.

Done in Washington, DC, this 30th day of October 2007.

**Kevin Shea,**

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

[FR Doc. E7–21684 Filed 11–2–07; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 993

[Docket No. AMS–FV–07–0103; FV07–993–1 FR]

#### Dried Prunes Produced in California; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Prune Marketing Committee (Committee) for the 2007–08 and subsequent crop years from \$0.40 to \$0.60 per ton of salable dried prunes.

The Committee locally administers the marketing order that regulates the handling of dried prunes in California. Assessments upon dried prune handlers are used by the Committee to fund reasonable and necessary expenses of the program. The higher assessment rate is needed to offset an anticipated decrease in dried prune production this year. The crop year began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* November 6, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Terry Vawter, Senior Marketing Specialist, or Kurt Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906; or E-mail: [Terry.Vawter@usda.gov](mailto:Terry.Vawter@usda.gov) or [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

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](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 110 and Marketing Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in California, hereinafter referred to as the "order." The marketing agreement and order are 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, California dried prune 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 dried prunes beginning on August 1, 2007, 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 a hearing on the petition. After the hearing, USDA 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 USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2007-08 and subsequent crop years from \$0.40 to \$0.60 per ton of salable dried prunes handled.

The California dried prune marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of California dried prunes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2006-07 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 28, 2007, and unanimously recommended an assessment rate of \$0.60 per ton of salable dried prunes and expenditures totaling \$102,523 for the 2007-08 crop year. In comparison, last year's approved expenses as amended in April 2007 were \$77,722. The assessment rate of \$0.60 per ton of salable dried prunes is \$0.20 higher than the rate currently in effect.

The Committee recommended a higher assessment rate based on a production estimate of 95,000 tons of

salable dried prunes for this year, which is substantially less than the 187,737 tons produced last year. At this assessment rate the assessment income for the 2007-08 crop year is \$57,000. The Committee's budget of expenses of \$102,523 includes a slight increase in personnel expenses, and a slight decrease in operating expenses. Combined salaries and expenses are almost two percent higher than last year, or about \$65,580. The Committee also included \$36,943 for contingencies. Most of the Committee's expenses reflect its portion of the joint administrative costs of the Committee and the California Dried Plum Board. Based on the Committee's reduced activities in recent years, it is funding only ten percent of the shared expenses of the two programs. This funding level is similar to that of last year. The Committee believes carryover funds, plus assessment and interest income, is adequate to cover its estimated expenses of \$102,523.

The major expenditures recommended by the Committee for the 2007-08 crop year include \$50,505 for salaries and benefits, \$15,075 for operating expenses, and \$36,943 for contingencies. For the 2006-07 crop year, the Committee's budgeted expenses were \$48,662 for salaries and benefits, \$15,895 for operating expenses, and \$13,165 for contingencies.

The assessment rate recommended by the Committee was derived by dividing the handler assessment revenue needed to meet anticipated expenses by the estimated salable tons of California dried prunes. Dried prune production for the year is estimated to be 95,000 salable tons, which should provide \$57,000 in assessment income at \$0.60 per ton of salable dried prunes. Income derived from handler assessments, plus excess funds from the 2006-07 crop year should be adequate to cover budgeted expenses.

The Committee is authorized under § 993.81(c) of the order to use excess assessment funds from the 2006-07 crop year (currently estimated at \$45,423) for up to 5 months beyond the end of the crop year to meet 2007-08 crop year expenses. At the end of the 5 months, the Committee either refunds or credits excess funds to handlers.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior

to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the Committee's recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committees' 2007–08 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,100 producers of dried prunes in the production area and approximately 22 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those whose annual receipts are less than \$750,000, and small agricultural service firms as those whose annual receipts are less than \$6,500,000.

An estimated 1,068 of the 1,100 producers (97.1 percent) have incomes of less than \$750,000 and are considered small producers. Fourteen of the 22 handlers (63.6 percent) have incomes from handling prunes of less than \$6,500,000 and could be considered small handlers. Therefore, the majority of handlers and producers of California dried prunes may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2007–08 and subsequent crop years from \$0.40 to \$0.60 per ton of salable dried prunes.

The Committee met on June 28, 2007, and unanimously recommended estimated expenses for 2007–08 of

\$102,523 and an increased assessment rate of \$0.60 per ton of salable dried prunes. The Committee's recommended budget was based on a slight increase in personnel expenses and a slight decrease in operating expenses. Combined salaries and expenses are almost two percent higher than last year, or about \$65,580. The Committee also included \$36,943 for contingencies. Most of the Committee's expenses reflect its portion of the joint administrative costs of the Committee and the California Dried Plum Board. Based on the Committee's reduced activities in recent years, it is funding only ten percent of the shared expenses of the two programs. This funding level is similar to that of last year. The Committee believes carryover funds, plus assessment and interest income, are adequate to cover its estimated expenses of \$102,523.

The assessment rate of \$0.60 per ton of salable dried prunes is \$0.20 higher than the rate currently in effect. The quantity of salable dried prunes for the 2007–08 crop year is currently estimated at 95,000 tons of salable dried prunes, compared to 187,737 tons of salable dried prunes for the 2006–07 crop year.

The major expenditures recommended by the Committee for the 2007–08 crop year include \$50,505 for salaries and benefits, \$15,075 for operating expenses, and \$36,943 for contingencies. Budgeted expenses for these items in 2006–07 were \$48,662 for salaries and benefits, \$15,895 for operating expenses, and \$13,165 for contingencies.

The 2007–08 crop year assessment rate was derived after considering the handler assessment rate revenue needed to meet anticipated crop year expenses; estimated production of salable dried prunes; and the estimated income from other sources, such as interest. Therefore, the Committee recommended an assessment rate of \$0.60 per ton of salable dried prunes.

Prior to arriving at its budget of \$102,523, the Committee considered information from various sources, including the Committee's Executive Subcommittee. Alternative assessment rates, including the rate currently in effect, and different expenditure levels were discussed by the subcommittee and the Committee. An alternative to this action is to continue with the \$0.40 per ton assessment rate. However, an assessment rate of \$0.60 per ton of salable dried prunes, along with excess funds from the 2006–07 crop year, is needed to provide enough income to fund the Committee's operations.

Therefore, the Committee agreed that \$0.60 per ton of salable dried prunes is an acceptable assessment rate. Section 993.81(c) of the order provides the Committee the authority to use excess assessment funds from the 2006–07 crop year (currently estimated at \$45,423) for up to 5 months beyond the end of the crop year to meet 2007–08 crop year expenses. At the end of the 5 months, the Committee either refunds or credits excess funds to handlers.

A review of historical information and preliminary data pertaining to the upcoming crop year indicates that the producer price for the 2007–08 crop year is expected to average between \$1,500 and \$1,600 per ton of salable dried prunes. Based on an estimated 95,000 salable tons of dried prunes, assessment revenue as a percentage of producer prices during the 2006–07 crop year is expected to be between .038 and .040 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California dried prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 28, 2007, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on September 7, 2007 (72 FR 51381). Copies of the proposed rule were also mailed or sent via facsimile to

all prune handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 20-day comment period ending September 27, 2007, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab/html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2007–08 crop year began on August 1, 2007, and the marketing order requires that the rate of assessment for each year apply to all assessable prunes handled during the year; and handlers are already receiving 2007–08 crop prunes from growers. The Committee needs to have sufficient funds to meet its expenses which are incurred on a continuous basis. Further, handlers are aware of this rule which was which was unanimously recommended at a public meeting. Also, a 20-day comment period was provided for in the proposed rule and no comments were received.

**List of Subjects in 7 CFR Part 993**

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

**PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA**

■ 1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 993.347 is revised to read as follows:

**§ 993.347 Assessment rate.**

On and after August 1, 2007, an assessment rate of \$0.60 per ton of salable dried prunes is established for California dried prunes.

Dated: October 31, 2007.

**Lloyd C. Day,**  
Administrator, Agricultural Marketing Service.

[FR Doc. 07–5503 Filed 11–1–07; 8:57 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Docket No. FAA–2007–28771; Airspace Docket No. 07–ACE–8]

**Modification of Class E Airspace; Fort Scott, KS**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date and correction.

**SUMMARY:** This document confirms the effective date of the direct final rule which revises Class E airspace at Fort Scott, KS and corrects the coordinates of the Fort Scott Nondirectional Beacon (NDB).

**DATES:** *Effective Date:* 0901 UTC, December 20, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on Friday, August 10, 2007 (72 FR 44954). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent of submit such an adverse comment, were received within the comment period, the regulation would become effective on December 20, 2007. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9R,

Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**Correction to Final Rule**

In the description of the airspace contained in the direct final rule, the coordinates of the Fort Scott NDB were incorrectly published. This action makes this editorial correction, which does not change the airspace configuration. The FAA is republishing the entire airspace description.

■ Accordingly, pursuant to the authority delegated to me, the airspace published in the **Federal Register**, Friday, August 10, 2007 (72 FR 44954), Airspace Docket No. 07–ACE–8, page 44955 is corrected as follows:

**§ 71.1 [Amended]**

\* \* \* \* \*

**ACE KS E5 Fort Scott, KS [Corrected]**

Fort Scott Municipal Airport, KS  
(Lat. 37°47'54" N., long. 94°46'10" W.)  
Fort Scott NDB  
(Lat. 37°47'49" N., long. 94°45'56" W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Fort Scott Municipal Airport and within 2.6 miles each side of the 350° bearing from Fort Scott NDB extending from the 7.0-mile radius of the airport to 7 miles north of the NDB.

\* \* \* \* \*

Issued in Fort Worth, Texas on October 24, 2007.

**Richard H. Farrell, III,**  
Acting Manager, System Support Group, ATO Central Service Center.

[FR Doc. 07–5454 Filed 11–2–07; 8:45 am]

**BILLING CODE 4910–13–M**

**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS STERETT