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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2009-0014]

Asian Longhorned Beetle; Addition to Quarantined Areas in Massachusetts and New York

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 Worcester County, MA, to the list of quarantined areas and updating the description of the quarantined area in the Borough of Staten Island in the City of New York, NY. This action will restrict the interstate movement of regulated articles from these areas. This interim rule is necessary to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States.

DATES: This interim rule is effective November 5, 2009. We will consider all comments that we receive on or before January 4, 2010.

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

- *Federal eRulemaking Portal:* Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0014*) to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comments to Docket No. APHIS-2009-0014, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2009-0014.

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: Ms. Julie Twardowski, ALB National Coordinator, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1231; (301) 734-5332.

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 regulations in 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. Surveys conducted in Massachusetts and New York by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that infestations of ALB have occurred in Worcester County, MA, in the city of Worcester, and the Borough of Staten Island in the City of New York, NY. Officials of the U.S. Department of Agriculture and officials of State, county, and city agencies in Massachusetts and New York are conducting intensive survey and eradication programs in the infested area. The States of Massachusetts and New York have quarantined the infested areas and are restricting the intrastate movement of regulated articles from the quarantined areas to prevent the further spread of ALB within these States. 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, in which 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 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 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 add a new

quarantined area in Worcester County, MA, and to update the previously quarantined area in the Borough of Staten Island in the City of New York, NY. The new quarantined areas are described in the regulatory text at the end of this document.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the artificial spread of ALB to 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 interim 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.

This interim rule amends the ALB regulations by adding a new quarantined area in Worcester County, MA, and updating the quarantined area in the Borough of Staten Island in the City of New York, NY. This restricts the interstate movement of regulated articles from these areas. This action is necessary to prevent the artificial spread of the ALB to noninfested areas of the United States.

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small entities, such as small businesses, organizations, and governmental jurisdictions. The businesses potentially affected by this rule are nurseries, tree care services, firewood retailers, lawn maintenance and landscaping companies, general contractors, garden centers, recyclers of waste material, and lumber and building material outlets. 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).

Additionally, entities may incur additional costs in disposing of regulated articles such as wood debris from tree pruning and removal.

Within the quarantined area added by this interim rule, in Worcester County, MA, there are approximately 247 entities potentially affected, including 175 tree service and landscaping companies, 15 firewood dealers, 8 land clearing companies, 5 nurseries, 6 utility companies, 12 municipal departments, 2 railroad companies, 6 yard waste drop off centers, 2 commercial recycling centers, 10 construction/developer companies, 2 golf courses, and 4 property maintenance companies.

Within the new quarantined area of Staten Island, NY, there are 4 registered nurseries and greenhouses.[1] Staten Island is the smallest borough of the five boroughs that is New York City, NY. However, the amount of annual sale receipts that these nurseries receive remains undisclosed according to the Agricultural Economic Census of 2007.[2]

While the size of these entities is unknown, it is reasonable to assume that most would be classified as small entities, based on the U.S. Small Business Administration's size standards.

Because the newly regulated area is primarily urban and suburban, the entities located in that area are more likely to be receiving regulated articles from outside the quarantined area than they are to be shipping regulated articles interstate to nonquarantined areas. It is unlikely, therefore, that most entities located in the newly regulated area would be moving regulated articles that would require inspection in the first place.

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

■ 2. In § 301.51-3, paragraph (c) is amended as follows:

[1] http://www.agcencus.usda.gov/publications/2007 — 2007 Census of Agriculture- County Data, USDA, NASS, NY Page 276. Table 2. Market Value of Agricultural Products Sold Including Direct Sales: 2007.

[2] http://www.agcensus.usda.gov/Publications/2007

■ a. By adding, in alphabetical order, a new entry for Massachusetts to read as set forth below.
■ b. Under the entry for New York for *New York City*, by revising paragraph (2) to read as set forth below.

§ 301.51-3 Quarantined areas.

* * * * *

(c) * * *

Massachusetts

Worcester County. That area in Worcester County, including the municipalities of Worcester, Holden, West Boylston, Boylston, and Shrewsbury, that is bounded by a line starting at the intersection of Route 140 (Grafton Circle) and Route 9 (Belmont Street) in Shrewsbury; then north and northwest on Route 140 through Boylston into West Boylston until it intersects Muddy Brook (body of water); then east along Muddy Brook to the Wachusett Reservoir; then along the shoreline of Wachusett Reservoir in a northwest direction until it intersects Worcester Street; then southwest on Worcester Street to Goodale Street; then southwest and west on Goodale Street, which becomes Malden Street at the Holden town line; then west and southwest on Malden Street to Main Street (Route 122A) in Holden; then west on Main Street to Salisbury Street; then south on Salisbury Street to Fisher Road; then southwest on Fisher Road to Stonehouse Hill Road; then south on Stonehouse Hill Road to Reservoir Street; then southeast on Reservoir Street until it intersects the Worcester City boundary; then along the Worcester City boundary until it intersects Route 20 (Hartford Turnpike); then east on Route 20 to Lake Street; then north and northeast on Lake Street to Route 9 (Belmont Street); then east on Route 9 to the point of beginning.

* * * * *

New York

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(2) That area in the Borough of Staten Island in the City of New York bounded by a line beginning at a point along the State of New York and the State of New Jersey border due north of the intersection of Richmond Terrace and Morningstar Road; then south to the intersection of Morningstar Road and Richmond Terrace; then southwest along Morningstar Road to Forest Avenue; then east along Forest Avenue to Willow Road East; then south and then southeast along Willow Road East to Victory Boulevard; then west along Victory Boulevard to Arlene Street; then south along Arlene Street until it becomes Park Drive North; then south on Park Drive North to Rivington Avenue; then east along Rivington Avenue to Mulberry Avenue; then south on Mulberry Avenue to Travis Avenue; then northwest on Travis Avenue until it crosses Main Creek; then along the west shoreline of Main Creek to Fresh Kills Creek; then along the north shoreline of Fresh Kills Creek to Little Fresh Kills Creek; then along the north shoreline of Little Fresh Kills Creek to the Arthur Kill; then west to the border of the State of New York and the State of New Jersey in the Arthur Kill; then north along the borderline of the State of New York and the State of New Jersey; then east along the borderline of the State of New York and the State of New Jersey excluding Shooters Island to the point of beginning.

* * * * *

Done in Washington, DC, this 30th day of October 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–26679 Filed 11–4–09: 3:06 pm]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. APHIS-2009-0040]

Brucellosis in Cattle; State and Area Classifications; Montana

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 brucellosis regulations concerning the interstate movement of cattle by changing the classification of Montana from Class A to Class Free. We determined that Montana met the standards for Class Free status. The interim rule relieved certain restrictions on the interstate movement of cattle from Montana.

DATES: Effective on November 5, 2009, we are adopting as a final rule the interim rule published at 74 FR 33139-33140 on July 10, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Debbi A. Donch, National Brucellosis Epidemiologist and Program Manager, Ruminant Health Programs Staff, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1231; (301) 734-5952.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

In an interim rule[1] effective and published in the **Federal Register** on July 10, 2009 (74 FR 33139-33140, Docket No. APHIS-2009-0040), we amended the regulations by changing the classification of the State of Montana from Class A to Class Free. That action relieved certain restrictions on the interstate movement of cattle from Montana.

Comments on the interim rule were required to be received on or before September 8, 2009. We received one comment by that date, from a private citizen. This commenter did not, however, address the action taken in the interim rule (i.e., the change in Montana's brucellosis classification). Therefore, for the reasons given in the interim rule, 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 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 78 and

[1] To view the interim rule and the comment we received, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0040*).