

referred to in paragraph (c)(1) of this section whose ownership of property required to be divested is attributable to such person by 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or executive order; and

(3) Any trustee holding property in trust required to be divested in which:

(i) An individual referred to in paragraph (c)(1) of this section has a beneficial interest in principal or income; or

(ii) A spouse or any minor or dependent child of an individual referred to in paragraph (c)(2) of this section has a beneficial interest in principal or income which is attributable to a person referred to in paragraph (c)(1) of this section by 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or executive order.

(d) *Special rules in the case of a trustee who is an eligible person.* (1) Notwithstanding any other rule of this subpart, in the case of a trustee who is an eligible person pursuant to paragraph (c)(3) of this section, a Certificate of Divestiture will not be issued unless the parties take those actions which, in the opinion of the Director of the Office of Government Ethics, are appropriate to exclude parties in addition to those referred to in paragraph (c) (1) and (2) of this section from participation in the nonrecognition mechanism. Such measures may include, as permitted by applicable State trust and estate law, division of the trust into separate portfolios, special distributions, dissolution of the trust, or any other method deemed by the Director, in his sole discretion, to be feasible under the facts and circumstances to exclude additional parties from benefiting from the nonrecognition mechanism.

(2) In view of the further analysis which must be undertaken by the Office of Government Ethics in the case of a Certificate of Divestiture request with respect to a trustee, the required submissions in such a case shall include in addition to the materials described in paragraph (b)(1) of this section, a copy of the trust instrument, full details as to its current portfolio, and a memorandum analyzing all beneficial interests in principal and income. To the extent that there may be additional parties with beneficial interests, the staff of the Office of Government Ethics may consult with representatives of the Government official, trustee, and other concerned parties, as appropriate, in order to resolve the issues presented in light of the principles described in paragraph (d)(1) of this section.

(e) *Special rules in the case of employees; unfair and unintended*

*benefits—(1) In general.*

Notwithstanding any other rule of this subpart, a Certificate of Divestiture will not be issued in any case in which, in the opinion of the Director of the Office of Government Ethics, in his sole discretion, an unfair or unintended benefit would be conferred on an eligible person. Paragraphs (e)(2) through (g)(6) of this section give examples of the application of the general rule of this paragraph (e)(1).

(2) *Employee benefit plans.* With respect to interests in pension, profit-sharing, stock bonus and other employee benefit plans, such an unfair or unintended benefit would occur upon certification of property held or received during one step of a sequence in avoidance of transferring an otherwise qualifying rollover distribution to an eligible retirement plan within 60 days. In other words, Certificates of Divestiture may not be used to achieve a tax advantaged removal of employee benefit plan funds from the rules which normally pertain to such plans in cases where no capital gains tax would be imposed if those rules were followed. Accordingly, in the absence of a demonstration that an interest in an employee benefit plan is not eligible for rollover treatment, a certificate will not be issued with respect to such an interest. Such a demonstration must satisfy the Office of Government Ethics that the plan administrator cannot make a qualifying distribution in the case of the eligible person to which the provisions of section 402(f) of the Internal Revenue Code of 1986 would apply and that the particular property interest proposed for certification falls within the statutory scheme.

(3) *Certain property received as compensation for services.* Such an unfair and unintended benefit would occur upon certification of property received as compensation for services, the gain from which would otherwise be treated as earned income. For example, with respect to the contemplated exercise of a stock option granted by an employer, such an unfair and unintended benefit would occur upon certification if such exercise or the sale of the resultant stock would otherwise result in earned income to the employee.

(4) *Nontimely divestitures.* With respect to any contemplated divestiture, such an unfair or unintended benefit would occur upon certification after the three-month period referred to by § 2634.802(b) (or a similarly structured agreement in any case to which paragraph (b)(1)(ii)(B) of this section applies) has lapsed, unless there is an

extension of time in a case of unusual hardship as determined pursuant to such section by the Office of Government Ethics or the designated agency ethics official (with the written concurrence of the Office of Government Ethics). In the case of such an agreement to implement a divestiture required by statute, regulation, rule, or executive order, such three-month period shall be deemed, for purposes of this subpart, to have started no later than 10 days after such requirement had become applicable.

(5) *Similar or related interests.* With respect to any contemplated divestiture, such an unfair or unintended benefit would occur unless all similar or related interests in property were also subject to a divestiture commitment.

(6) *Property acquired under improper circumstances.* With respect to any contemplated divestiture, such an unfair advantage or unintended benefit would occur if the property was acquired at a time when the holding of such property was prohibited by any law or regulation or under circumstances which otherwise would create the appearance of a conflict with the conscientious performance of governmental responsibilities.

[FR Doc. 96-15970 Filed 6-24-96; 8:45 am]

BILLING CODE 6345-01-P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 95-087-1]

### Japanese Beetle; Domestic Quarantine and Regulations

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

**ACTION:** Interim rule.

**SUMMARY:** We are amending the Japanese beetle quarantine and regulations to add Minnesota and Wisconsin to the list of quarantined States and to provide greater specificity about what actions must be taken to prevent the spread of Japanese beetle by aircraft from regulated airports. The actions specified by these amendments are necessary to prevent the spread of Japanese beetle into noninfested areas of the United States. We are also amending the regulations to allow carriers at regulated airports the option of performing some activities under a compliance agreement with the Animal and Plant Health Inspection Service,

rather than in the presence of an inspector.

**DATES:** Interim rule effective June 20, 1996. Consideration will be given only to comments received on or before August 26, 1996.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 95-087-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 95-087-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mario A. Rodriguez, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Japanese beetle feeds on fruits, vegetables, and ornamental plants and is capable of causing damage to over 300 potential hosts. The Japanese beetle quarantine and regulations, contained in 7 CFR 301.48 through 301.48-7 (referred to below as the regulations), quarantine the States of Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and the District of Columbia and restrict the interstate movement of aircraft from regulated airports in these States in order to prevent the spread of the Japanese beetle.

The Japanese beetle is active during daylight hours only. Under § 301.48-2 of the regulations, an inspector of the Animal and Plant Health Inspection Service (APHIS) may designate any airport within a quarantined State as a regulated airport if he or she determines that adult populations of Japanese beetle exist during daylight hours at the airport to the degree that aircraft using the airport constitute a threat to spread the Japanese beetle to the seven States listed in § 301.48(b) (Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington). An inspector may terminate an airport's designation as

regulated when he or she determines that adult populations of Japanese beetle no longer exist at the airport to the degree that aircraft using the airport pose a threat to spread this pest.

Also, under § 301.48-4 of the regulations, a regulated article may move interstate from a regulated airport to the protected States only if: (1) The regulated article has been treated in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated into the regulations by reference at 7 CFR 300.1; or (2) the inspector, upon visual inspection, determines that the regulated article does not present a threat to spread the Japanese beetle because adult beetle populations are not present with regard to the particular regulated article; or (3) the regulated article arrives and leaves the regulated airport during the same nondaylight period.

APHIS and State plant health officials constantly monitor the Japanese beetle population in the United States. Recent trapping surveys indicate that the States of Minnesota and Wisconsin are now infested with Japanese beetle. Therefore, we are amending the regulations in § 301.48(a) to add Minnesota and Wisconsin to the list of States quarantined for Japanese beetle. We are also amending the regulations to provide greater specificity about what actions must be taken to ensure aircraft do not spread Japanese beetle from regulated airports. The actions specified by these amendments are necessary to prevent the spread of Japanese beetle to noninfested areas of the United States. We are also amending the regulations to allow carriers the option of performing some activities under a compliance agreement with APHIS, rather than in the presence of an inspector.

We are also amending the definition of "regulated airport" in § 301.48-1 of the regulations to include portions of airports, as well as entire airports. The current definition pertains only to airports in their entirety. This change will allow APHIS inspectors to quarantine only those portions of an airport that are at significant risk of being infested with Japanese beetles. Generally, these areas are at the periphery of airports, where commercial carriers of goods are frequently located. Passenger airlines generally use the portion of an airport closest to the terminal, where the risk of Japanese beetle infestation is low. This change would remove a burden on carriers that use airport areas at low risk of Japanese beetle infestation because these parts of airports could be excluded from regulation.

We are amending the regulations so that an aircraft may move interstate from a regulated airport to a protected State only if: (1) An inspector, upon visual inspection of the airport and/or aircraft, determines that the aircraft does not present a threat to spread the Japanese beetle because adult beetle populations are not present; or (2) the aircraft is opened and loaded only while it is enclosed in a hangar that APHIS has determined to be free of and safeguarded against Japanese beetle; or (3) the aircraft is loaded during the hours of 8:00 p.m. to 7:00 a.m. (generally nondaylight) only or lands and departs during those hours and, in either situation, is kept completely closed while on the ground during the hours of 7:00 a.m. to 8:00 p.m.; or (4) if opened and loaded during daylight hours, the aircraft is inspected, treated, and safeguarded.

If the fourth alternative is chosen, the inspection, treatment, and safeguarding must be done either under the supervision of an inspector or under compliance agreement with APHIS. The inspection, treatment, and safeguarding shall include some or all of the following eight requirements and any other conditions determined by APHIS to be necessary to prevent the spread of Japanese beetle:

1. All openings of the aircraft must be closed or safeguarded during the hours of 7:00 a.m. to 8:00 p.m. by exclusionary devices or by other means approved by APHIS.

2. All cargo containers that have not been safeguarded in a protected area must be inspected immediately prior to and during the loading process. All personnel must check their clothing immediately prior to entering the aircraft. All Japanese beetles found must be removed and destroyed.

3. All areas around doors and hatches or other openings in the aircraft must be inspected prior to removing the exclusionary devices. All Japanese beetles found must be removed and destroyed. All doors and hatches must be closed immediately after the exclusionary devices are moved away from the aircraft.

4. Aircraft must be treated in accordance with the Treatment Manual no more than 1 hour before loading. The approved pesticide should be held at a 45-degree angle toward the floor of the aircraft to ensure full coverage at the specified rate. Particular attention should be paid to the ball mat area and the holes around the main entrance. The aircraft must then be aerated under safeguard conditions for 15 minutes.

5. Aircraft treatment records must be maintained for 2 years by the applicator

completing or supervising the treatment. These records must be provided upon request for review by an inspector. Treatment records shall include the pesticide used, the date of application, the location where the pesticide was applied (airport and aircraft), the amount of pesticide applied, and the name of the applicator.

6. When "tail swapping" procedures are implemented (replacement of a designated aircraft with an alternate one when mechanical or other problems occur in the designated aircraft before departure), the alternate aircraft must be inspected and all Japanese beetles must be removed. The aircraft must be safeguarded by closing all openings and hatches or by equipping the aircraft with exclusionary devices until the aircraft is ready for use. During loading, all treatment and safeguard requirements applicable to regularly scheduled aircraft must be implemented.

7. Aircraft may be retreated in the noninfested State if Japanese beetles are found.

8. Notification of unscheduled commercial flights and of all military flights must be given at least 1 hour before departure to the appropriate person in the destination airport of any of the States listed in § 301.48(b). Notification of arriving military flights should also be given to base commanders to facilitate the entrance of Federal and/or State inspectors onto the base, if necessary.

Inspectors will determine which of these eight requirements are appropriate for each individual carrier on a case-by-case basis. The requirements could vary not only among carriers at different airports but also among carriers at the same airport based on varying degrees of pest risk. As described previously, the location of a carrier at an airport plays a large part in determining the risk of Japanese beetle infestation.

Any person who enters into a compliance agreement, and employees or agents of that person, must allow inspectors access to all records regarding treatment of aircraft and to all areas where loading, unloading, and treatment of aircraft occurs. Approval for a compliance agreement may be canceled at any time if the Administrator determines that the requirements of the agreement are not being met.

We are also amending the regulations by making some changes that pertain to internal agency management. The regulations indicate that the Deputy Administrator, Plant Protection and Quarantine, APHIS, is the official responsible for various decisions under

the regulations. We are revising the regulations to indicate that the primary responsibility for various decisions under these regulations belongs to the APHIS Administrator. We are replacing all references to "Deputy Administrator" with references to "Administrator" and are replacing all references to "Plant Protection and Quarantine" with references to "Animal and Plant Health Inspection Service." Similar changes have been made to other APHIS regulations.

#### Nonsubstantive Changes

We are making one nonsubstantive change to correct an error in a previous rulemaking that pertained to the Japanese beetle regulations. On January 12, 1987, we published in the Federal Register (52 FR 1179-1180, Docket No. 86-351) a final rule that, among other things, amended 7 CFR 300, "Incorporation by Reference," to remove the Japanese Beetle Program Manual from the list of materials incorporated into the regulations by reference. However, this change was not reflected in the Japanese beetle regulations. We are therefore removing the reference to the "Japanese Beetle Program Manual" in the definition of "Treatment manual" at § 301.48-1 of the regulations to reflect the change that became effective upon publication of the final rule of January 12, 1987.

We are making several editorial changes to improve the regulations.

#### Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to implement improved procedures for preventing the spread of Japanese beetle to noninfested areas of the United States prior to the beginning of the 1996 season of Japanese beetle activity (mid-June in many parts of the country).

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this rule effective upon publication in the Federal Register. We will consider comments that are received within 60 days of publication of this rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

#### 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 process required by Executive Order 12866.

The Japanese beetle regulations are being amended to add Minnesota and Wisconsin to the list of States regulated for Japanese beetle and to state in more detail the requirements for the interstate movement of aircraft from regulated airports. Thus, the rule clarifies Japanese beetle domestic quarantine regulations, but actual practices at the regulated airports will not be significantly altered.

While the status of certain airports under regulation has changed from year to year, the total number of regulated airports has averaged about eight for several years and is not expected to change in the foreseeable future. Nearly all regulated flights are loaded in accordance with inspection, treatment, and safeguarding procedures under APHIS supervision. The costs incurred by the affected air carriers for complying with the inspection, treatment, and safeguarding requirements of the regulations are not expected to change.

The only significant change in actual program operations is that inspection, treatment, and safeguarding requirements for aircraft may be done under a compliance agreement with APHIS, without the direct supervision of an inspector. The possibility of compliance agreements may create time-saving opportunities for the affected air carriers due to increased flexibility in timing and flight schedules. These time-saving opportunities may translate into lower costs for the affected air carriers.

According to the Small Business Administration, an air carrier with 1,500 employees or less is considered small. The exact number or percentage of small air carriers is not known. Even though most of the affected flights from regulated airports are those of large air carriers, other, smaller companies may benefit indirectly from the more timely and perhaps more frequent departures that may result from the compliance agreements.

Regulated airports and affected air carriers consider it important to minimize the risk of transporting the Japanese beetle. Some of them volunteer turf treatments in areas surrounding the airports. In addition, APHIS encourages the planting of nonhost plants near the regulated airports. According to airport authorities and air carriers, such activities entail costs that are worthwhile when compared to the potential costs of disrupted business

that would result if the Japanese beetle were transported.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would 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 12778

This rule has been reviewed under Executive Order 12778, 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.

#### National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the amendments to the Japanese beetle regulations will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In

addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.** The environmental assessment and finding of no significant impact are also posted on the Worldwide Web. The URL is <http://www.aphis.usda.gov/bbep/ead/ppqdocs.html>.

#### Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). This interim rule amends the existing information collections approved by OMB under control number 0579–0088, and OMB has granted emergency approval under this control number. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 95–087–1. Please send a copy of your comments to: (1) Docket No. 95–087–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

#### Abstract

We are publishing an interim rule (95–087–1) to add two new States (Minnesota and Wisconsin) to the list of States quarantined because of the Japanese beetle and to provide greater specificity concerning what actions need to be taken to ensure that aircraft do not spread Japanese beetles from regulated airports.

Aircraft that depart from regulated airports in quarantined States are subject to regulations designed to prevent the spread of the Japanese beetle to other States.

Our interim rule also provides carriers engaged in the transportation of goods from regulated airports with the option of performing some activities (such as treating and safeguarding the aircraft) under a compliance agreement with us,

rather than in the presence of an inspector.

This regulatory action is designed to prevent the spread of the Japanese beetle within the United States. Its implementation will require us to engage in certain information collection activities that will necessitate the use of several forms, including aircraft treatment records, notifications of arrival, and compliance agreements.

We are seeking OMB approval to use these forms.

*Aircraft treatment records:* An aircraft that is preparing to depart from a regulated airport must be treated with an approved pesticide no more than 1 hour before it is loaded. The individual completing or supervising this treatment must maintain these treatment records for 2 years. The records must be made available to an inspector upon request. The records must include the pesticide used, the date of application, the location where the pesticide was applied (airport and aircraft), the amount of pesticide applied, and the name of the individual who performed the treatment.

*Notification of arrival:* Appropriate personnel at the destination airport must be notified of an incoming, unscheduled commercial flight (and all military flights) at least 1 hour before the aircraft departs from a regulated airport. This notification is always accomplished via a telephone call. Inspectors in the destination area need this information to schedule their work, thus minimizing delays in accomplishing inspections and necessary treatments of regulated articles upon their arrival.

*Compliance agreement and cancellation:* Certain precautions must be taken before an aircraft departs from a regulated airport. The aircraft may depart if an inspector determines that adult Japanese beetles are not present at the airport; or the aircraft may depart if it has been opened and loaded only in a hangar that we have determined is free of Japanese beetles; or it may depart if it has been loaded only during nondaylight hours (since Japanese beetles are active during daylight hours only); or the aircraft may depart if it is opened and loaded during the day but is subsequently inspected, treated, and safeguarded.

Our interim rule provides the carrier with the option of having the inspection, treatment, and safeguarding performed under the direct supervision of an inspector or under a compliance agreement with APHIS. The compliance agreement would specify what procedures and precautions the carrier must undertake to prevent the aircraft

from spreading the Japanese beetle to noninfested areas of the United States.

Approval of a compliance agreement can be withdrawn if we determine that the requirements in the agreement are not being met.

If a compliance agreement has been canceled or denied, the applicant may appeal in writing within 10 days after receiving written notification.

The information collection activities described above are a crucial component of our program to prevent the spread of the Japanese beetle.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection activity. We need this outside input to help us:

Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

**Estimate of burden:** Public reporting burden for this collection of information is estimated to average 2 hours and 51 minutes per response.

**Respondents:** Importers, airport personnel, carriers.

**Estimated number of respondents:** 29.

**Estimated number of responses per respondent:** 1.41.

**Estimated total annual burden on respondent:** 117 hours.

Copies of this information collection can be obtained from the Department of Agriculture, Clearance Officer, OIRM, Ag. Box 7630, Washington, DC 20250.

List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is amended as follows:

## **PART 301—DOMESTIC QUARANTINE NOTICES**

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

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

### **§ 301.48 [Amended]**

2. In § 301.48, paragraph (a) is amended by adding the word “Minnesota,” after the word “Michigan,” and by adding the word “Wisconsin,” after the words “West Virginia.”

3. Section 301.48–1 is amended as follows:

a. By removing the definitions for *Deputy Administrator* and *Plant Protection and Quarantine Programs*.

b. By adding definitions in alphabetical order for *Administrator*, *Animal and Plant Health Inspection Service (APHIS)*, and *Compliance agreement* to read as set forth below.

c. By revising the definitions of *Inspector*, *Regulated airport*, and *Treatment manual* to read as set forth below.

#### **§ 301.48–1 Definitions.**

\* \* \* \* \*

**Administrator.** The Administrator of the Animal and Plant Health Inspection Service or any person authorized to act for the Administrator.

**Animal and Plant Health Inspection Service (APHIS).** The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

**Compliance agreement.** A written agreement between the Animal and Plant Health Inspection Service and a person engaged in the business of moving regulated articles interstate, in which the person agrees to comply with the provisions of this subpart.

**Inspector.** Any employee of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Administrator to enforce the provisions of the quarantine and regulations in this subpart.

\* \* \* \* \*

**Regulated airport.** Any airport or portions of an airport in a quarantined State declared regulated in accordance with provisions in § 301.48–2 of this subpart.

\* \* \* \* \*

**Treatment Manual.** The Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

\* \* \* \* \*

### **§ 301.48–2 [Amended]**

4. Section 301.48–2 is amended by adding the words “or she” after the word “he” where it appears in paragraphs (a) and (b).

### **§ 301.48–3 [Amended]**

5. Section 301.48–3 is amended by removing the word “Deputy”.

6. Section 301.48–4 is revised to read as follows:

### **§ 301.48–4 Conditions governing the interstate movement of regulated articles from quarantined States.**

A regulated article may be moved interstate from a regulated airport to any State<sup>1</sup> designated in § 301.48(b) only if:

(a) An inspector, upon visual inspection of the airport and/or the aircraft, determines that the regulated article does not present a threat to spread the Japanese beetle because adult beetle populations are not present; or

(b) The aircraft is opened and loaded only while it is enclosed inside a hangar that an inspector has determined to be free of and safeguarded against Japanese beetle; or

(c) The aircraft is loaded during the hours of 8:00 p.m. to 7:00 a.m. only or lands and departs during those hours and, in either situation, is kept completely closed while on the ground during the hours of 7:00 a.m. to 8:00 p.m.; or

(d) If opened and loaded between the hours of 7:00 a.m. to 8:00 p.m., the aircraft is inspected, treated, and safeguarded. Inspection, treatment, and safeguarding must be done either under a compliance agreement in accordance with § 301.48–8 or under the direct supervision of an inspector. On a case-by-case basis, inspectors will determine which of the following conditions, and any supplemental conditions deemed necessary by the Administrator to prevent the spread of Japanese beetle, are required:

(1) All openings of the aircraft must be closed or safeguarded during the hours of 7:00 a.m. to 8:00 p.m. by exclusionary devices or by other means approved by the Administrator.

(2) All cargo containers that have not been safeguarded in a protected area must be inspected immediately prior to and during the loading process. All personnel must check their clothing immediately prior to entering the aircraft. All Japanese beetles found must be removed and destroyed.

(3) All areas around doors and hatches or other openings in the aircraft must be inspected prior to removing the exclusionary devices. All Japanese beetles found must be removed and destroyed. All doors and hatches must be closed immediately after the exclusionary devices are moved away from the aircraft.

<sup>1</sup> Requirements under all other applicable Federal domestic plant quarantines must be met.

(4) Aircraft must be treated in accordance with the Treatment Manual no more than 1 hour before loading. The approved pesticide should be held at a 45-degree angle toward the floor of the aircraft to ensure full coverage at the specified rate. Particular attention should be paid to the ball mat area and the holes around the main entrance. The aircraft must then be aerated under safeguard conditions for 15 minutes.

(5) Aircraft treatment records must be maintained by the applicator completing or supervising the treatment for a period of 2 years. These records must be provided upon request for review by an inspector. Treatment records shall include the pesticide used, the date of application, the location where the pesticide was applied (airport and aircraft), the amount of pesticide applied, and the name of the applicator.

(6) When "tail swapping" procedures are implemented (replacement of a designated aircraft with an alternate one when mechanical or other problems occur in the designated aircraft before departure), the alternate aircraft must be inspected and all Japanese beetles must be removed. The aircraft must be safeguarded by closing all openings and hatches or by equipping the aircraft with exclusionary devices until the aircraft is ready for use. During loading, all treatment and safeguard requirements applicable to regularly scheduled aircraft must be implemented.

(7) Aircraft may be retreated in the noninfested State if live Japanese beetles are found.

(8) Notification of unscheduled commercial flights and of all military flights must be given at least 1 hour before departure to the appropriate person in the destination airport of any of the States listed in § 301.48(b). Notification of arriving military flights should also be given to base commanders to facilitate the entrance of Federal and/or State inspectors onto the base if necessary.

#### **§ 301.48-5 [Amended]**

7. Section 301.48-5 is amended by removing the word "Deputy".

#### **§ 301.48-6 [Amended]**

8. Section 301.48-6 is amended by removing the word "Deputy".

9. A new § 301.48-8 is added to read as set forth below.

#### **§ 301.48-8 Compliance agreements and cancellation.**

(a) Any person engaged in the business of moving regulated articles may enter into a compliance agreement to facilitate the movement of such

articles under this subpart. Any person who enters into a compliance agreement, and employees or agents of that person, must allow an inspector access to all records regarding treatment of aircraft and to all areas where loading, unloading, and treatment of aircraft occurs.

(b) A compliance agreement may be canceled by an inspector, orally or in writing, whenever he or she determines that the person who has entered into the compliance agreement has failed to comply with the agreement or this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing within 20 days of oral notification. Any person whose compliance agreement has been canceled may appeal the decision, in writing, to the Administrator within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. A hearing will be held to resolve any conflict as to any material fact. The Administrator shall adopt rules of practice for the hearing. An appeal shall be granted or denied, in writing, as promptly as circumstances allow, and the reasons for the decision shall be stated. The compliance agreement will remain canceled pending the decision on the appeal.

Done in Washington, DC, this 20th day of June 1996.

Donald W. Luchsinger,  
*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 96-16160 Filed 6-24-96; 8:45 am]

BILLING CODE 3410-34-P

### **Farm Service Agency**

#### **7 CFR Part 782**

**RIN 0560-AE37**

#### **End-Use Certificate Program**

**AGENCY:** Farm Service Agency, Agriculture.

**ACTION:** Final Rule.

**SUMMARY:** A proposed rule was published on November 14, 1995, (60 FR 57198) with respect to the End-Use Certificate Program. This final rule adopts, with minor changes, the provisions of the proposed rule. Accordingly, this rule amends reporting requirements, reporting deadlines, and the required notification process in a manner that increases program effectiveness and efficiency for government and affected industries by

requiring all grain handlers to provide immediate notification to the buyer when wheat being purchased or handled is of Canadian origin. The provisions of this regulation also simplify the reporting burden placed on importers, subsequent buyers, end users, and exporters by extending reporting deadlines from 10 workdays to 15 workdays, and by permitting the computer generation and facsimile transmission of required reporting documentation.

**EFFECTIVE DATE:** June 25, 1996.

**FOR FURTHER INFORMATION CONTACT:** Helen Linden, Agricultural Service Agency, P.O. Box 2415, Ag Box 0553, Washington, DC 20013-2415; Telephone (202) 690-4321.

#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Order 12866**

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

##### **Executive Order 12778**

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

##### **Environmental Evaluation**

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Analysis is needed.

##### **Executive Order 12372**

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

##### **Paperwork Reduction Act**

This rule amends the reporting requirements by extending reporting deadlines and incorporating alternative reporting methods. Since the effective date of the End-Use Certificate Program, the Farm Service Agency (FSA) has determined that entities required to file form FSA-750, End-Use Certificate for Wheat, and form FSA-751, Wheat Consumption and Resale Report, have encountered some difficulty in meeting