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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96-102-2]

Asian Longhorned Beetle; Quarantine Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the domestic quarantine regulations by quarantining a small area in the boroughs of Brooklyn and Queens, NY, and a small area in the vicinity of Amityville, NY, because of infestation of the Asian longhorned beetle and by restricting the interstate movement of regulated articles from these quarantined areas. These actions are necessary to prevent the artificial spread of this plant pest from infested areas in the State of New York to noninfested areas of the United States.

EFFECTIVE DATE: December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-5255.

SUPPLEMENTARY INFORMATION:

Background

The Asian longhorned beetle (ALB) (*Anoplophora glabripennis*), native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. It is known to attack healthy trees of maple (including Norway, sugar, silver, red, and others), horse chestnut, poplar, willow, elm, locust, mulberry, chinaberry, apple, cherry, pear, and citrus. It may also attack other species of hardwood trees.

ALB bores into the heartwood of host trees, eventually killing the host trees. 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 interior of the trees. Adult beetles emerge in the spring and summer months from large, round holes approximately $\frac{3}{8}$ -inch in diameter (about the size of a dime) that they bore through the trunks of trees. After emerging, adult beetles fly for 2 to 3 days, when they feed and mate. Adult females then lay eggs in grooves that they make on the branches of trees. A new generation of ALB is produced each year.

First detected in the United States in August 1996, ALB has been found in hardwood trees in an area in the boroughs of Brooklyn and Queens, NY, and in the vicinity of Amityville, NY. In these locations, the beetle appears to prefer maple and horse chestnut trees. However, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and debris of a half an inch or more in diameter are also subject to infestation. Therefore, if this pest moves into the hardwood forests of the northeastern United States, severe economic impact to the nursery and forest products industries in that part of the United States could result.

In an interim rule effective on February 28, 1997, and published in the **Federal Register** on March 7, 1997 (62 FR 10412-10419, Docket No. 96-102-1), we amended the domestic quarantine regulations in 7 CFR part 301 by adding a new subpart 301.51, "Asian Longhorned Beetle." The regulations in the new subpart quarantine a small area in the boroughs of Brooklyn and Queens, NY, and a small area in the vicinity of Amityville, NY, because of infestation of ALB and restrict the interstate movement of regulated articles from these quarantined areas. These actions are necessary to prevent the artificial spread of this plant pest from infested areas in the State of New York to noninfested areas of the United States.

We solicited comments concerning the interim rule for 60 days ending May 6, 1997. We received one comment by that date. It was from a representative of a State government.

The commenter asked that we expand the list of regulated articles to include

all hardwood trees, not just those tree types that have been determined to be susceptible to infestation by ALB based on current infestations in New York State and scientific literature. The commenter also asked that we require burning of infested material because chipping or grinding infested material may not destroy all of the adult beetles, larvae, or eggs in the material. Lastly, the commenter suggested that we establish guidelines for host tree replantings in quarantined areas to limit ALB access to host sources in quarantined areas.

Based on this comment, we are adding birch (*Betula*) and Rose of Sharon (*Hibiscus syriacus* L.) to the list of regulated articles. These two plant types have proven to be likely host material for ALB. At this time, we do not feel that it is necessary to list all hardwood trees as regulated articles because we have not determined that hardwood trees other than those currently listed as regulated articles and those added to the list of regulated articles by this document are likely hosts for ALB. However, we continue to monitor infestations in the quarantined areas, and if necessary, we will add additional plant types to the list of regulated articles in the future.

All infested material is destroyed under a cooperative agreement with the State of New York. The cooperative agreement requires additional mitigating measures (e.g., chipping and burning of infested host material) to prevent the spread of ALB. Therefore, there is no need to require the burning of infested material in the regulations.

In quarantined areas and their environs in New York State, there is an abundance of host trees. Therefore, a prohibition on the planting of host species in quarantined areas would have little or no impact on the spread of ALB. However, when infested trees in the quarantined area are removed for processing, replacement trees are ordinarily non-host species. We are making no changes to the interim rule in response to this portion of the comment.

Therefore, based on the rationale set forth in the interim rule and in this document, we are adopting the provisions of the interim rule as a final rule, with the change discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, and Executive Orders 12372 and 12988.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB). The assigned OMB control number is 0579-0122.

Accordingly, the interim rule amending 7 CFR part 301 that was published at 62 FR 10412-10419 on March 7, 1997, is adopted as a final rule with the following changes:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.51-2, paragraph (a) is revised to read as follows:

§ 301.51-2 Regulated articles.

* * * * *

(a) Firewood (all hardwood species), and green lumber and other material living, dead, cut, or fallen, inclusive of nursery stock, logs, stumps, roots, branches, and debris of half an inch or more in diameter of the following genera: *Acer* (maple), *Aesculus* (horse chestnut), *Betula* (birch), *Hibiscus syriacus* L. (Rose of Sharon), *Malus* (apple), *Melia* (chinaberry), *Morus* (mulberry), *Populus* (poplar), *Prunus* (cherry), *Pyrus* (pear), *Robinia* (locust), *Salix* (willow), *Ulmus* (elm), and *Citrus*.

* * * * *

Done in Washington, DC, this 6th day of November 1997.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-29869 Filed 11-12-97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV97-989-3 IFR]

Raisins Produced From Grapes Grown In California; Modifications to the Raisin Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule modifies the raisin diversion program (RDP) currently authorized under the Federal marketing order for California raisins. The marketing order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). Under the raisin diversion program, producers are issued certificates representing reserve raisins for voluntarily reducing their raisin production in order to bring raisin supplies more closely in line with market needs. Producers may then sell these certificates to handlers, who, in turn, can redeem the certificates for reserve raisins. This rule makes various modifications to the diversion program to improve compliance and bring the program in line with current industry practices. Improving compliance with the RDP will help ensure equity among all producers who participate in the program, and help maintain the integrity of the RDP.

DATES: Effective November 14, 1997; comments received by January 12, 1998 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 205-6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487-5901, Fax: (209) 487-5906; or George

Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989, both as amended (7 CFR part 989), regulating the handling of raisins produced from grapes 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. 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 the Secretary 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. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This rule modifies the raisin diversion program currently authorized under the Federal marketing order for California raisins. Under the RDP, producers are issued certificates representing reserve raisins for voluntarily reducing their raisin production in order to bring raisin supplies more closely in line with