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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 04-032-1]

#### Japanese Beetle; Domestic Quarantine and Regulations

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

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the Japanese beetle quarantine and regulations to add the State of Arkansas to the list of quarantined States. This action is necessary to prevent the artificial spread of Japanese beetle into noninfested areas of the United States.

**DATES:** This interim rule is effective July 6, 2004. We will consider all comments that we receive on or before September 7, 2004.

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

- **EDOCKET:** Go to <http://www.epa.gov/feddocket> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 04-032-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 04-032-1.

- **E-mail:** Address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body

of your message; do not send attached files. Please include your name and address in your message and "Docket No. 04-032-1" on the subject line.

- **Agency Web site:** Go to <http://www.aphis.usda.gov/ppd/rad/cominst.html> for a form you can use to submit an e-mail comment through the APHIS Web site.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

**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:** You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. S. Anwar Rizvi, Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-4313.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Japanese beetle (*Popillia japonica*) 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 301.48-8 (referred to below as the regulations), quarantine the States of Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia and restrict the interstate movement of aircraft from regulated airports in these States in

order to prevent the artificial spread of the Japanese beetle to noninfested States where the Japanese beetle could become established (referred to below as protected States). The list of quarantined States, as well as the list of protected States, can be found in § 301.48.

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 of artificially spreading the Japanese beetle and aircraft destined for any of the nine protected States (Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, and Washington) may be leaving the airport.

Also, under § 301.48-4 of the regulations, aircraft from regulated airports may move interstate to a protected State only if: (1) An inspector, upon visual inspection of the airport and/or the aircraft, determines that the aircraft does not present a threat of artificially spreading 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 p.m. to 7 a.m. (generally non-daylight hours) 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 a.m. to 8 p.m.; or (4) if opened and loaded during daylight hours, the aircraft is inspected, treated, and safeguarded in accordance with the requirements described in § 301.48-4(d).

APHIS and State plant health officials constantly monitor the Japanese beetle population in the United States. Trapping surveys indicate that the State of Arkansas is now infested with the Japanese beetle. In addition, two new commercial air carriers have recently begun service from Little Rock, AR, to some of those protected Western States listed in § 301.48(b). In view of these developments, we have determined that the State of Arkansas should be listed as

a quarantined State prior to the start of the 2004 season of Japanese beetle activity, which begins in mid-June in many parts of the country. Therefore, in this interim rule we are amending the regulations in § 301.48(a) by adding Arkansas to the list of quarantined States.

#### Emergency Action

This rulemaking is necessary on an emergency basis to prevent the artificial spread of Japanese beetle 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 rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the Japanese beetle quarantine and regulations to add the State of Arkansas to the list of quarantined States. This action is necessary to prevent the artificial spread of Japanese beetle into noninfested areas of the United States.

In 2002, agricultural crop receipts for the nine Japanese beetle protected States (Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, and Washington) totaled \$32 billion. A majority of the agricultural producers in those States can be classified as small entities under the guidelines set by the Small Business Administration (SBA) of \$750,000 or less in annual receipts. Agricultural production is an important part of these nine protected States' economies. The benefits of protecting these States from Japanese beetle are worth the slight costs associated with inspections and/or occasional treatments within quarantined States as required by the regulations.

The groups affected by this action will be air carriers flying from regulated airports in Arkansas to protected States. The cost incurred by these entities is not expected to significantly change due to

the few flights that will ultimately require treatment. While it is impossible to know exactly how many flights will require inspection and/or treatment for Japanese beetle, the number is expected to be small.

The majority of air cargo is transported by large businesses. According to SBA size standards, an air carrier with more than 1,500 employees is considered to be large. The exact number or percentage of small air carriers who may be affected is not currently known, however the economic impacts will be limited since many entities are already required to treat cargo transported to those States currently listed as protected States.

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, 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. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat.

1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

#### § 301.48 [Amended]

■ 2. In § 301.48, paragraph (a) is amended by adding the word “Arkansas,” after the word “Alabama,”.

Done in Washington, DC, this 30th day of June, 2004.

**Kevin Shea,**

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

[FR Doc. 04–15214 Filed 7–2–04; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 981

[Docket No. FV04–981–4 IFR]

#### Almonds Grown in California; Revision of Quality Control Provisions

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule revises the quality control provisions under the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). Under the order, handlers receiving almonds from growers must have them inspected to determine the percentage of inedible almonds in each lot. Based on these inspections, handlers incur an inedible disposition obligation. This obligation is calculated by the Board for each variety of almonds, and handlers must satisfy the obligation by disposing of inedible almonds or almond material in outlets such as oil and animal feed. This rule changes the varietal classifications of almonds for which inedible obligations are calculated. This will allow the Board to determine handlers' inedible disposition obligations by varietal classifications consistent with handler reporting requirements and current industry harvesting and marketing practices.

**DATES:** Effective August 1, 2004; comments received by September 7, 2004 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 to the Docket Clerk, Marketing