

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 03–057–2]

#### Japanese Beetle; Domestic Quarantine and Regulations

**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 Japanese beetle quarantine and regulations by adding Colorado and Montana to the list of protected States. The interim rule was necessary to prevent the spread of Japanese beetle into noninfested areas of the United States.

**EFFECTIVE DATE:** The interim rule became effective on July 18, 2003.

**FOR FURTHER INFORMATION CONTACT:** Dr. S. Anwar Rizvi, Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (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 spread of the Japanese beetle to noninfested States where the Japanese beetle could become established. Those noninfested States where the Japanese beetle could become established are referred to as protected States and are listed in § 301.48(b).

In an interim rule effective July 18, 2003, and published in the **Federal Register** on July 24, 2003 (68 FR 43613–43614, Docket No. 03–057–1), we amended the regulations by adding Colorado and Montana to the list of protected States.

Comments on the interim rule were required to be received on or before September 22, 2003. We received one comment by that date. The comment was from a State agricultural agency and supported the interim rule. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 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.

**Regulatory Flexibility Act**

This rule affirms an interim rule that amended the Japanese beetle quarantine and regulations by adding Colorado and Montana to the list of protected States. The interim rule was necessary to prevent the spread of Japanese beetle

into noninfested areas of the United States.

The following analysis addresses the economic effect of this rule on small entities, as required by the Regulatory Flexibility Act.

The Japanese beetle is a highly destructive plant pest of foreign origin. It was first found in the United States in a nursery in southern New Jersey in 1916. In its native Japan, where the beetle's natural enemies keep its population in check, it is not a serious pest. In the United States however, the beetle entered without its natural enemies and found a favorable climate and an abundant food supply. By 1972, beetle infestations had been reported in 22 States east of the Mississippi River and also in Iowa and Missouri. The Japanese beetle has continued to disperse south and west without any natural enemies to slow its spread.

Both the adult and grub Japanese beetles are destructive plant pests. The adult beetles are known to feed on more than 400 species of broad-leaf plants, although only about 50 species are preferred. The grubs will also feed on a wide variety of plant roots, especially turf grass. The Japanese beetle is responsible for several millions of dollars in damages to U.S. agriculture each year.

As a result of the interim rule's addition of Colorado and Montana to the list of protected States, aircraft from regulated airports in any State quarantined because of the Japanese beetle must meet certain requirements before departing for Colorado or Montana to ensure the aircraft is free of Japanese beetle. The interim rule was necessary to reduce the risk of Japanese beetle becoming established in Colorado and Montana.

In 2001, all crop receipts for Colorado were approximately \$1.4 billion. Feed crops comprised approximately 45 percent of all crops followed by vegetables (18 percent), food grains (16 percent), and greenhouse/nursery (15 percent).

TABLE 1.—2001 COLORADO CASH RECEIPTS, ALL CROPS

Crops	Value (1,000 dollars)	Percentage
Food grains .....	210,120	16
Feed .....	606,874	45
Oil .....	17,521	1

TABLE 1.—2001 COLORADO CASH RECEIPTS, ALL CROPS—Continued

Crops	Value (1,000 dollars)	Percentage
Vegetables .....	244,264	18
Fruits, nuts .....	19,242	1
Greenhouse/nursery .....	207,237	15
All other .....	49,207	4
Total .....	1,354,465	100

In 2001, all crop receipts for Montana were approximately \$657 million. Food grains comprised approximately 56 percent of all crops followed by feed crops (26 percent) and all other (8 percent).

TABLE 2.—2001 MONTANA CASH RECEIPTS, ALL CROPS

Crops	Value (1,000 dollars)	Percentage
Food grains .....	366,398	56
Feed .....	175,184	26
Oil .....	9,087	1
Vegetables .....	31,410	5.5
Fruits, nuts .....	1,371	0.5
Greenhouse/nursery .....	16,860	3
All other .....	56,938	8
Total .....	657,248	100

The majority of the producers in Colorado and Montana can be classified as small entities according to the Small Business Administration (SBA) criterion of \$750,000 or less in annual receipts. Agricultural producers play an important role in the States' economies. Thus, the benefits of protecting these States from infestation of Japanese beetle are worth the minor costs of inspection and treatment of air cargo.

The groups affected by this action will be air carriers flying from regulated airports in quarantined States to the protected States of Colorado and Montana. The additional costs incurred by the affected air carriers are expected to be minimal because the protocols and procedures are already established and followed for air cargo destined for any of the seven other protected States.

The majority of air cargo is transported within the United States by nine large businesses (Airborne, Burlington Express, DHL, Dynair, Emery Worldwide, Evergreen, FedEx, and United Parcel Service). According to SBA, an air carrier with more than 1,500 employees is considered large. The exact number or percentage of small air carriers who will be affected is currently unknown; however the economic effects will be limited because many entities already comply with the regulations in order to transport cargo to other 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.

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

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

**PART 301—DOMESTIC QUARANTINE NOTICES**

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 68 FR 43613–43614 on July 24, 2003.

**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).

Done in Washington, DC, this 17th day of March, 2004 .

**Kevin Shea,**

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

[FR Doc. 04–6458 Filed 3–22–04; 8:45 am]

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1220**

[No. LS–03–09]

**Soybean Promotion and Research Program: Procedures To Request a Referendum**

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

**ACTION:** Final rule.

**SUMMARY:** This rule will amend the procedures for soybean producers to request a referendum on the Soybean Promotion and Research Order (Order), as authorized under the Soybean Promotion, Research, and Consumer Information Act (Act). The changes are intended to improve the operation of these procedures.

**EFFECTIVE DATE:** March 24, 2004.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Payne, Chief, Marketing Programs Branch Livestock and Seed Program, Agricultural Marketing Service (AMS), USDA, Room 2638–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; telephone 202/720–1115, fax 202/720–1125, or by e-mail at *Kenneth.Payne@usda.gov* or Phil Brockman, USDA, Farm Service Agency (FSA), DAFO, STOP 0542, 1400 Independence Avenue, SW., Washington, DC 20250–0542; telephone 202/690–8034, fax 202/720–5900, or by e-mail at *Phil.Brockman@usda.gov*.