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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 03-057-1]

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 Colorado and Montana to the list of protected States. This action is necessary to prevent the spread of Japanese beetle into noninfested areas of the United States. **DATES:** This interim rule is effective July 18, 2003. We will consider all comments that we receive on or before September 22, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03-057-1, 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. 03-057-1. If you use e-mail, address your comment to 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. 03-057-1" on the subject line.

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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available 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 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 (referred to below as protected States) are listed in § 301.48(b).

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 and aircraft destined for

protected States 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 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 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).

As noted previously, paragraph (b) of § 301.48 lists noninfested States that are protected by the regulations. Prior to the effective date of this interim rule, the States listed were Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington. When the list in § 301.48(b) was established in the 1970's, Colorado and Montana opted not to be listed because of the belief that the Japanese beetle could not survive in the States' climates. However, in recent years, State officials in Colorado and Montana have trapped increasing numbers of Japanese beetles in the vicinity of Denver International Airport and Billings Logan International Airport, respectively. In the case of Colorado, Japanese beetles have been found at several nurseries receiving stock from Japanese beetle infested Eastern States. In view of the increase in trap catches and the growing amount of shrub and turf areas under irrigation (especially in urban areas) in those States, Colorado and Montana State officials have informed APHIS that they now wish to be listed as protected States. Therefore, in this interim rule we are amending the regulations in § 301.48(b) by adding Colorado and Montana to the list of protected States.

Emergency Action

This rulemaking is necessary on an emergency basis to provide protection from the Japanese beetle to Colorado and Montana during the 2003 season of Japanese beetle activity, which begins in mid-June in many parts of the country. 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.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

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, 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 (b) is amended by adding the word “Colorado,” after the word “California,” and by adding the word “Montana,” after the word “Idaho.”

Done in Washington, DC, this 18th day of July 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–18851 Filed 7–23–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 993 and 999

[Docket No. FV03–993–3 IFR]

Dried Prunes Produced in California; Temporary Suspension of the Mandatory Outgoing Prune Inspection and Quality Requirements, and Modification of the Undersized Prune Disposition Requirements Under the Marketing Order; and Suspension of the Prune Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends the outgoing prune inspection and quality requirements under the California Dried Prune Marketing Order (Order) and its administrative rules and regulations, and the prune import regulation, for a three-year period, and modifies the Order’s undersized prune disposition requirements. The Order regulates the

handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). Suspension of the outgoing inspection and quality requirements, and import regulation provisions will ensure relief from these regulations. During the three-year suspension period the industry will consider developing and implementing outgoing inspection and finished product grade standards more consistent with current industry needs.

DATES: Effective August 1, 2003 through July 31, 2006, except for the amendments to § 993.150 (g)(2) and (g)(3), which are effective August 1, 2003. Comments received by September 22, 2003 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 Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or E-mail:

moab.docketclerk@usda.gov. 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, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT:

Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993 (7 CFR part 993), both as amended, regulating the handling of dried prunes produced in