

complete coverage of this export industry and provide additional high-quality up-to-date information required in making export projections. These projections are used by private industry as well as the government in making economic decisions concerning the orderly flow of U.S. agricultural commodities in the domestic and export markets. On the other hand, the relatively small volume of exports of confectionary sunflowerseeds and

sunflowerseeds for crushing does not justify the burden on the exporters reporting their export sales and related information.

Lists of Subjects in 7 CFR Part 20

Agricultural commodities, Exports, Reporting.

Final Rule

Accordingly, 7 CFR part 20 is amended as follows:

1. The authority citation for part 20 continues to read as follows:

Authority: 7 U.S.C. 5712.

2. Appendix 1 to 7 CFR part 20 is amended by adding the following entry after the entry for "Linseed oil, including raw, boiled" under the indicated column headings:

APPENDIX 1.—COMMODITIES SUBJECT TO REPORTS, UNITS OF MEASURE TO BE USED IN REPORTING, AND BEGINNING AND ENDING DATES OF MARKETING YEARS

| Commodity to be reported   | Unit of measure to be used in reporting | Beginning of marketing year | End of marketing year |
|--|---|-----------------------------|-----------------------|
| * * * * *  | * * * * *                               | * * * * *                   | * * * * *             |
| Sunflowerseed Oil-including: crude (including degummed), once refined, sunflowerseed salad oil (including refined and further processed by bleaching, deodorizing or winterizing), hydrogenated. | .....do .....                           | Oct. 1 .....                | Sept. 30.             |
| * * * * *  | * * * * *                               | * * * * *                   | * * * * *             |

Signed at Washington, D.C. February 24, 1997.  
 August Schumacher, Jr.  
*Administrator, Foreign Agricultural Service.*  
 [FR Doc. 97-5095 Filed 3-6-97; 8:45 am]  
**BILLING CODE 3410-10-M**

**Animal and Plant Health Inspection Service**

**7 CFR Part 301**

[Docket No. 96-102-1]

**Asian Longhorned Beetle; Quarantine Regulations**

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

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

**SUMMARY:** We are 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 restricting the interstate movement of regulated articles from these quarantined areas. These actions are necessary on an emergency basis 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.

**DATES:** Interim rule effective February 28, 1997. Consideration will be given only to comments received on or before May 6, 1997.

**ADDRESSES:** Please send an original and three copies of your comments to

Docket No. 96-102-1, 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. 96-102-1. 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. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-5255.

**SUPPLEMENTARY INFORMATION:**

**Background**

We are amending the "Domestic Quarantine Notices" in 7 CFR part 301 by adding a new subpart 301.51, "Asian Longhorned Beetle" (referred to below as "the regulations"). These regulations quarantine a small area in the Greenpoint section of Brooklyn, NY, and a small area in the vicinity of Amityville, NY, because of Asian longhorned beetle and restrict the interstate movement of regulated articles from the quarantined areas.

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 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.

Officials of the U.S. Department of Agriculture (USDA) and officials of State, county, and city agencies in New York State have begun an intensive survey and eradication program in the infested areas. The State of New York has quarantined the infested areas and is restricting the intrastate movement of certain articles from the quarantined areas to prevent the artificial spread of ALB within the State. However, Federal regulations are necessary to restrict the interstate movement of certain articles from the quarantined areas to prevent the artificial spread of ALB to other States and Canada. This interim rule establishes the Federal quarantine and regulations, which are described below.

#### Definitions

Section 301.51-1 defines the following terms: "Administrator," "Animal and Plant Health Inspection Service (APHIS)," "Asian longhorned beetle," "Certificate," "Compliance agreement," "Infestation," "Inspector," "Interstate," "Limited permit," "Moved (movement, move)," "Person," "Quarantined area," "Regulated article," and "State."

#### Regulated Articles

Certain articles present a significant risk of spreading ALB if the articles are moved from quarantined areas without restriction. We call these articles "regulated articles." Regulated articles may not be moved interstate from quarantined areas except in accordance with the conditions specified in §§ 301.51-4 through 301.51-9 of the regulations. Section 301.51-2 designates as regulated articles the following articles: 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 a half an inch or more in diameter of the following genera: *Acer* (maple), *Aesculus* (horse chestnut), *Malus* (apple), *Melia* (chinaberry), *Morus* (mulberry), *Populus* (poplar), *Prunus* (cherry), *Pyrus* (pear), *Robinia* (locust), *Salix* (willow), *Ulmus* (elm), and *Citrus*. We are requiring that all hardwood species of firewood be regulated because as hardwood is dried and cut into firewood, it is difficult to distinguish between species of hardwood. In addition, this section allows designation of any other article, product, or means of conveyance as a regulated article if an inspector determines that it presents a risk of spreading ALB and if an inspector notifies the person in possession of the article, product, or means of conveyance that it is subject to

the restrictions in the regulations. This last provision for "any other article, product, or means of conveyance" allows an inspector who discovers evidence of ALB in an article, product, or means of conveyance to take immediate action after informing the person in possession of it that it is being regulated.

#### Quarantined Areas

Section 301.51-3(a) provides that the Administrator will quarantine each State or portion of a State in which ALB has been found by an inspector, in which the Administrator has reason to believe that ALB is present, or which the Administrator deems necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where ALB has been found. Less than an entire State will be designated as a quarantined area only under certain conditions. Such a designation may be made if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles listed in § 301.51-2 that are equivalent to the interstate movement restrictions imposed by the regulations in §§ 301.51-1 through 301.51-9; and (2) the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of the ALB.

Section 301.51-3(b) provides that the Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area, without publication in the Federal Register, if there is a basis for listing the area as a quarantined area under § 301.51-3(a), and if the owner or person in possession of the nonquarantined area, or, in the case of publicly owned land, the person responsible for the management of the nonquarantined area, is given written notice of the designation. This is necessary to prevent the spread of ALB before restrictions can be published in the Federal Register concerning the interstate movement of regulated articles from the designated area.

In accordance with these criteria, we are designating two areas in the State of New York, one in the boroughs of Brooklyn and Queens in the city of New York and one in the vicinity of Amityville, NY, as quarantined areas. See § 301.51-3(c) of the rule portion of this document for specific descriptions of the quarantined areas.

Conditions governing the interstate movement of regulated articles from quarantined areas.

Section 301.51-4(a)(1) requires regulated articles moved interstate from

a quarantined area into or through an area that is not quarantined to be accompanied by a certificate or limited permit issued and attached as prescribed by §§ 301.51-5 and 301.51-8.

Section 301.51-4(a)(2) allows a regulated article to be moved interstate without a certificate or limited permit if the regulated article is moved by the United States Department of Agriculture for experimental or scientific purposes or if the regulated article originates outside the quarantined area and is moved interstate through a quarantined area under the following conditions: (1) the points of origin and destination are indicated on a waybill accompanying the regulated article; (2) the regulated article is moved through the quarantined area without stopping, or has been stored, packed, or handled at locations approved by an inspector; and (3) the article has not been combined or commingled with other articles so as to lose its individual identity.

Section 301.51-4(b) references the authority of an inspector who has probable cause to believe a person or means of conveyance is moving regulated articles in interstate commerce to stop the person or means of conveyance to determine whether regulated articles are present and to inspect the regulated articles. Further, § 301.51-4(b) provides that articles found to be infested by an inspector, and articles not in compliance with the regulations, may be seized, quarantined, treated, subjected to other remedial measures, destroyed, or otherwise disposed of.

Issuance and cancellation of certificates and limited permits.

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles upon a finding by an inspector that, because of certain conditions (e.g., the article is free of ALB), there is an absence of a pest or disease risk prior to movement. Regulated articles accompanied by a certificate may be moved interstate without further restrictions being imposed. Limited permits are issued for regulated articles when an inspector has determined that, because of possible pest or disease risk, such articles may be safely moved interstate only subject to further restrictions, such as movement to specified areas and movement for specified purposes. Section 301.51-5 explains the conditions for issuing certificates and limited permits and for

canceling certificates and limited permits.

Section 301.51-5(a) provides that an inspector or a person operating under a compliance agreement (discussed below) will issue a certificate for the interstate movement of a regulated article if he or she determines that the regulated article: (1) Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article; (2) is to be moved in compliance with any additional emergency conditions the Administrator may impose under 7 U.S.C. 150dd to prevent the artificial spread of ALB; and (3) meets one of the following conditions: The article is apparently free of ALB in any stage of development, or the article has been grown, produced, manufactured, stored, or handled in a manner that would prevent infestation or destroy all life stages of ALB.

Section 301.51-5(b) provides for the issuance of a limited permit (in lieu of a certificate), by an inspector or person operating under a compliance agreement, for movement of a regulated article if he or she determines that the regulated article: (1) Is to be moved interstate to a specified destination for specific processing, handling, or utilization (the destination and other conditions to be listed in the limited permit and/or compliance agreement), and this interstate movement will not result in the artificial spread of ALB because ALB will be destroyed or the risk mitigated by the specific processing, handling, or utilization; (2) is to be moved interstate in compliance with any additional emergency conditions the Administrator may impose under 7 U.S.C. 150dd to prevent the artificial spread of ALB; and (3) is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

Section 301.51-5(c) provides that an inspector will issue blank certificates and limited permits to a person operating under a compliance agreement or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates or limited permits may then be completed and used, as needed, for the interstate movement of regulated articles that have met all of the requirements of § 301.51-5(a) or § 301.51-5(b), respectively.

Section 301.51-5(d) explains that a certificate or limited permit may be cancelled by an inspector, orally or in writing, whenever the inspector

determines that the holder of the certificate or limited permit has not complied with the regulations. If the cancellation is oral, the cancellation will become effective upon notification by the inspector. The cancellation and the reasons for the cancellation will then be confirmed in writing as soon as circumstances allow after oral notification of the cancellation. Any person whose certificate or limited permit has been canceled may appeal the decision, in writing, within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

#### Compliance Agreements and Cancellation

Section 301.51-6 provides for the use and cancellation of compliance agreements. Under § 301.51-6(a), compliance agreements may be entered into by any person engaged in the growing, handling, or movement of regulated articles interstate if such persons review with an inspector each stipulation of the compliance agreement. Any person who enters into a compliance agreement with APHIS must agree to comply with the regulations.

Section 301.51-6(b) explains that a compliance agreement may be cancelled by an inspector, orally or in writing, whenever the inspector determines that the person who entered into the compliance agreement has not complied with the regulations. If the cancellation is oral, the cancellation will become effective upon oral notification by the inspector. The cancellation and the reasons for the cancellation will then be confirmed in writing as soon as circumstances allow after oral notification of the cancellation. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the

appeal, in writing, stating the reasons for the decision.

#### Assembly and Inspection of Regulated Articles

Section 301.51-7(a) provides that any person who requires certification or other services from an inspector must request the services at least 48 hours before they are needed. Section 301.51-7(b) provides that regulated articles must be assembled at the place and in the manner an inspector designates as necessary to comply with the regulations. Attachment and disposition of certificates and limited permits

Section 301.51-8(a) requires that regulated article intended for interstate movement be plainly marked with the name and address of the consignor and the name and address of the consignee and that the certificate or limited permit issued for the interstate movement of regulated articles must be attached to either: (1) the regulated article, or (2) the container carrying the regulated article, or (3) the accompanying waybill during interstate movement. This section also provides that the certificate or limited permit may be attached to the consignee's copy of the waybill only if the certificate and limited permit, and the waybill, contain a sufficient description of the regulated article to identify the regulated article. This provision is necessary for enforcement purposes.

Section 301.89-9(b) requires the carrier of the article to furnish the certificate or limited permit to the consignee at the shipper's destination.

#### Costs and Charges

Section 301.51-9 explains the APHIS policy that inspector's services are provided without cost during normal business hours to persons requiring those services to comply with the regulations. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

#### Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the spread of ALB into noninfested areas of the United States.

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 it effective upon signature. 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.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this interim rule on small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this interim rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this interim rule.

The Plant Quarantine Act (7 U.S.C. 151-165 and 167) and the Federal Plant Pest Act (7 U.S.C. 105aa-150jj) authorize the Secretary of Agriculture to take measures necessary to prevent the spread of plant pests new to, or not widely prevalent or distributed within and throughout, the United States.

This interim rule quarantines two areas in the State of New York because of ALB, a pest of hardwood trees from Asia that was first detected in the United States in 1996, and restricts the interstate movement of regulated articles from these quarantined areas. The quarantined areas are a small section of New York City, NY, where the pest was first detected in the United States in August 1996, and a small area in the vicinity of Amityville, NY. These regulations are necessary on an emergency basis 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.

Within the areas quarantined for ALB, it is estimated that there are fewer than 100 small businesses, including nurseries, arborists, tree removal services, and firewood dealers, that could be affected by this interim rule. They could be affected in two ways. First, if a business wishes to move regulated articles from a quarantined area to an area outside of New York State, that business must either: (1) enter into a compliance agreement with

APHIS for the inspection and certification of regulated articles for interstate movement from a quarantined area; or (2) present its regulated articles for inspection by an APHIS inspector and obtain a certificate or a limited permit, issued by the APHIS inspector, for the interstate movement of regulated articles. In either case, the inspections of regulated articles may be inconvenient, but these inspections do not result in any additional direct costs for businesses because APHIS provides the services of the inspector without cost, as long as those services are administered during normal working hours. There is also no cost for the compliance agreement, certificate, or limited permit for interstate movement of regulated articles.

However, some regulated articles, because of ALB infestation, may not qualify for interstate movement under a certificate or limited permit. In this case, a business wishing to move such regulated articles interstate from the quarantined area would be deprived of the opportunity to benefit from the sale of the affected regulated articles in another State. However, we do not have data to estimate either the potential loss of income or the economic impact of any potential loss of income on small businesses.

If this rule is not implemented, there is potential for serious economic impact to many businesses, both large and small, in the United States. Particularly in the eastern United States, due to proximity to the areas where ALB has been detected, businesses involved in the manufacture of non-nursery forest products have the potential for serious economic losses if ALB is allowed to spread. In 1986, the forest products industry in the northeast consisted of 307,900 employees generating \$6.6 billion. In 1992, in seven northeastern States, hardwood accounted for 52 percent of the net volume of growing stock on timberland. The forest industry owned 20 percent of that hardwood timber. Therefore, if ALB were to spread through the 279 million acres of hardwood forests in the eastern United States, the forest products industry in the eastern United States would have the potential for serious economic losses.

Nurseries and greenhouses that rely on healthy hardwood trees also have the potential for economic losses if ALB is allowed to spread. In 1993, sales of plants (trees and shrubs) by nurseries and greenhouses in the United States totaled an estimated \$3.1 billion, of which \$212 million was derived from sales in seven northeastern states. During the fiscal year ending September

30, 1993, 103.9 million landscape trees were sold in the United States, including 5.7 million in seven northeastern states. Approximately one-half of all landscape trees sold in the United States are hardwood trees.

In addition, the tourism industry in New England has the potential for economic losses if ALB reaches the hardwood forests of the northeastern United States. New England's tourism industry is tied heavily to autumn's leaf color changes, and the maple tree, a preferred host for ALB, is noted for producing some of the most vivid colors. Between mid-September and late October, the hardwood forests of New England draw 1 million tourists and generate \$1 billion in revenue. It is estimated that up to one fourth of the tourism revenue generated annually in New England is due to the fall's foliage displays.

Lastly, the maple syrup industry has the potential for economic losses if ALB reaches the forests of New England because the maple syrup industry relies on healthy maple trees, especially the sugar maple, for maple syrup production. In four New England States alone (Maine, Massachusetts, New Hampshire, and Vermont), maple syrup producers tapped 604,000 gallons of maple syrup in 1991, with a value of \$17.5 million.

The alternative to this interim rule was to take no action. We rejected this alternative because failure to quarantine two portions of New York State and restrict interstate movement of regulated articles from those quarantined areas could result in economic losses for the forest products, nursery, tourist, and maple syrup industries in the eastern United States.

#### 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.

#### 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 a Federal quarantine for ALB will not present a risk of introducing or disseminating plant pests and would 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**, by calling the Plant Protection and Quarantine Fax Service at 301–734–3560, or by visiting the following Internet site: <http://www.aphis.usda.gov/ppd/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 or recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0122 to the information collection and recordkeeping requirements. 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. 96–102–1. Please send a copy of your comments to: (1) Docket No. 96–102–1, 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. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this interim rule.

The paperwork associated with the Asian longhorned beetle program will include the completion of compliance agreements, certificates, and limited permits. There will also be requests for inspections. We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. We need this outside input to help us:

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

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

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

(4) 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 .42 hours per response.

*Respondents:* Growers, handlers, shippers, State plant protection authorities.

*Estimated number of respondents:* 155.

*Estimated number of responses per respondent:* 1.

*Estimated total annual burden on respondents:* 132 hours.

Copies of this information collection can be obtained from: Clearance Officer, OIRM, USDA, Room 404–W, 14th Street and Independence Ave., SW, 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 is revised 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. Part 301 is amended by adding a new "Subpart—Asian Longhorned Beetle", §§ 301.51–1 through 301.51–9, to read as follows:

##### **Subpart—Asian Longhorned Beetle**

Sec.

301.51–1 Definitions.

301.51–2 Regulated articles.

301.51–3 Quarantined areas.

301.51–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

301.51–5 Issuance and cancellation of certificates and limited permits.

301.51–6 Compliance agreements and cancellation.

301.51–7 Assembly and inspection of regulated articles.

301.51–8 Attachment and disposition of certificates and limited permits.

301.51–9 Costs and charges.

##### **Subpart—Asian Longhorned Beetle**

###### **§ 301.51–1 Definitions.**

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

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

*Asian longhorned beetle.* The insect known as Asian longhorned beetle (*Anoplophora glabripennis*) in any stage of development.

*Certificate.* A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such article is eligible for interstate movement in accordance with § 301.51–5(a).

*Compliance agreement.* A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles that are moved interstate, in which the person agrees to comply with the provisions of this subpart and any conditions imposed under this subpart.

*Infestation.* The presence of the Asian longhorned beetle in any life stage.

**Inspector.** Any employee of the Animal and Plant Health Inspection Service, or other individual authorized by the Administrator to enforce the provisions of this subpart.

**Interstate.** From any State into or through any other State.

**Limited permit.** A document in which an inspector affirms that the regulated article not eligible for a certificate is eligible for interstate movement only to a specified destination and in accordance with conditions specified on the permit.

**Moved (movement, move).** Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

**Person.** Any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

**Quarantined area.** Any State, or any portion of a State, listed in § 301.51-3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.51-3(b) of this subpart.

**Regulated article.** Any article listed in § 301.51-2(a) of this subpart or otherwise designated as a regulated article in accordance with § 301.51-2(b) of this subpart.

**State.** The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

#### § 301.51-2 Regulated articles.

The following are 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 a half an inch or more in diameter of the following genera: *Acer* (maple), *Aesculus* (horse chestnut), *Malus* (apple), *Melia* (chinaberry), *Morus* (mulberry), *Populus* (poplar), *Prunus* (cherry), *Pyrus* (pear), *Robinia* (locust), *Salix* (willow), *Ulmus* (elm), and *Citrus*.

(b) Any other article, product, or means of conveyance not covered by paragraph (a) of this section if an inspector determines that it presents a risk of spreading Asian longhorned beetle and notifies the person in possession of the article, product, or means of conveyance that it is subject to the restrictions of this subpart.

#### § 301.51-3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section, each State or each portion of a State in which the Asian longhorned beetle has

been found by an inspector, in which the Administrator has reason to believe that the Asian longhorned beetle is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where Asian longhorned beetle has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than an entire State as a quarantined area will be adequate to prevent the artificial interstate spread of the Asian longhorned beetle.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area in accordance with the criteria specified in paragraph (a) of this section. The Administrator will give written notice of this designation to the owner or person in possession of the nonquarantined area, or, in the case of publicly owned land, to the person responsible for the management of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area either will be added to the list of designated quarantined areas in paragraph (c) of this section, or the Administrator will terminate the designation. The owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation is terminated will be given written notice of the termination as soon as practicable.

(c) The following areas are designated as quarantined areas:

New York

**New York City.** That area in the boroughs of Brooklyn and Queens in the city of New York that is bounded as follows: Beginning at the point where the Manhattan Bridge intersects the shoreline of the East River; then south from the Manhattan Bridge along Flatbush Avenue to Lafayette Avenue; then east along Lafayette Avenue to Himrod Street continuing northeast along Himrod Street to Myrtle Avenue; then east along Myrtle Avenue to Fresh Pond Road; then north along Fresh Pond Road to Flushing Avenue; then northeast along Flushing Avenue to Grand Avenue; then along Grand Avenue to 69th Street; then north along 69th Street to Queens Boulevard; then west along Queens Boulevard to the Queensbrough Bridge and

the East River; then south and west along the shoreline of the East River to the point of beginning.

**Nassau and Suffolk Counties.** That area in the villages of Amityville, West Amityville, North Amityville, Copiague, Massapequa, Massapequa Park, and East Massapequa; in the towns of Oyster Bay and Babylon; and in the counties of Nassau and Suffolk that is bounded as follows: Beginning at a point where Riviera Drive West intersects with the shoreline of the Great South Bay; then north along Riviera Drive West to Strong Avenue; then north along Strong Avenue to Marconi Boulevard; then west along Marconi Boulevard to Great Neck Road; then north and northwest along Great Neck Road to Southern State Parkway; then west along Southern State Parkway to Broadway; then south along Broadway to Hicksville Road; then south along Hicksville Road to Division Avenue; then south along Division Avenue to the Great South Bay; then east along the shoreline of the Great South Bay to the point of beginning.

#### § 301.51-4 Conditions governing the interstate movement of regulated articles from quarantined areas.

(a) Any regulated article may be moved interstate from a quarantined area only if moved under the following conditions:

(1) With a certificate or limited permit issued and attached in accordance with §§ 301.51-5 and 301.51-8;

(2) Without a certificate or limited permit if:

(i) The regulated article is moved by the United States Department of Agriculture for experimental or scientific purposes; or

(ii) The regulated article originates outside the quarantined area and is moved interstate through the quarantined area under the following conditions:

(A) The points of origin and destination are indicated on a waybill accompanying the regulated article; and

(B) The regulated article is moved through the quarantined area without stopping, or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by Asian longhorned beetle; and

(C) The article has not been combined or commingled with other articles so as to lose its individual identity.

(b) When an inspector has probable cause to believe a person or means of conveyance is moving a regulated article interstate, the inspector is authorized to stop the person or means of conveyance to determine whether a regulated article is present and to inspect the regulated article. Articles found to be infected by an inspector, and articles not in compliance with the regulations in this subpart, may be seized, quarantined, treated, subjected to other remedial

measures, destroyed, or otherwise disposed of.

**§ 301.51-5 Issuance and cancellation of certificates and limited permits.**

(a) An inspector<sup>1</sup> or person operating under a compliance agreement will issue a certificate for the interstate movement of a regulated article if he or she determines that the regulated article:

(1) (i) Is apparently free of Asian longhorned beetle in any stage of development, based on inspection of the regulated article; or

(ii) Has been grown, produced, manufactured, stored, or handled in such a manner that, in the judgment of the inspector, the regulated article does not present a risk of spreading Asian longhorned beetle; and

(2) Is to be moved in compliance with any additional emergency conditions that the Administrator may impose under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd)<sup>2</sup> in order to prevent the artificial spread of Asian longhorned beetle; and

(3) Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated articles.

(b) An inspector or a person operating under a compliance agreement will issue a limited permit for the interstate movement of a regulated article not eligible for a certificate if he or she determines that the regulated article:

(1) Is to be moved interstate to a specific destination for specific processing, handling, or utilization (the destination and other conditions to be listed on the limited permit), and this interstate movement will not result in the spread of Asian longhorned beetle because Asian longhorned beetle will be destroyed by the specific processing, handling, or utilization; and

(2) Is to be moved in compliance with any additional emergency conditions that the Administrator may impose under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) in order to prevent the spread of Asian longhorned beetle; and

(3) Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) An inspector shall issue blank certificates and limited permits to a person operating under a compliance agreement in accordance with § 301.51-6 or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates and limited permits may then be completed and used, as needed, for the interstate movement of regulated articles that have met all of the requirements of paragraph (a) or (b), respectively, of this section.

(d) Any certificate or limited permit may be canceled orally or in writing by an inspector whenever the inspector determines that the holder of the certificate or limited permit has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose certificate or limited permit has been cancelled may appeal the decision in writing to the Administrator within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

**§ 301.51-6 Compliance agreements and cancellation.**

(a) Persons engaged in growing, handling, or moving regulated articles interstate may enter into a compliance agreement<sup>3</sup> if such persons review with an inspector each stipulation of the compliance agreement. Any person who enters into a compliance agreement with APHIS must agree to comply with the

provisions of this subpart and any conditions imposed under this subpart.

(b) Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector determines that the person who has entered into the compliance agreement has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose compliance agreement has been cancelled may appeal the decision in writing to the Administrator within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

**§ 301.51-7 Assembly and inspection of regulated articles.**

(a) Persons requiring certification or other services must request the services from an inspector<sup>4</sup> at least 48 hours before the services are needed.

(b) The regulated articles must be assembled at the place and in the manner that the inspector designates as necessary to comply with this subpart.

**§ 301.51-8 Attachment and disposition of certificates and limited permits.**

(a) A regulated article must be plainly marked with the name and address of the consignor and the name and address of the consignee and must have the certificate or limited permit issued for the interstate movement of a regulated article securely attached at all times during interstate movement to:

(1) The outside of the container encasing the regulated article;

(2) The article itself, if it is not in a container; or

(3) The consignee's copy of the accompanying waybill; Provided, that the description of the regulated article on the certificate or limited permit, and on the waybill, are sufficient to identify the regulated article; and

(b) The carrier must furnish the certificate or limited permit authorizing interstate movement of a regulated article to the consignee at the destination of the shipment.

<sup>1</sup> Inspectors are assigned to local offices of APHIS, which are listed in local telephone directories. Information concerning such local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

<sup>2</sup> Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides that the Secretary of Agriculture may—under certain conditions—seize, quarantine, treat, destroy, or apply other remedial measures to articles that the Administrator has reason to believe are infested by, infected by, or contain plant pests.

<sup>3</sup> Compliance agreements may be initiated by contacting a local office of APHIS. The addresses and telephone numbers of local offices are listed in local telephone directories and may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

<sup>4</sup> See footnote 1 to § 301.51-5.

**§ 301.51-9 Costs and charges.**

The services of the inspector during normal business hours will be furnished without cost to persons requiring the services. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

Done in Washington, DC, this 28th day of February 1997.

Terry L. Medley,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 97-5518 Filed 3-6-97; 8:45 am]

BILLING CODE 3410-34-P

**Agricultural Marketing Service****7 CFR Part 925**

[Docket No. FV96-925-1 FIR]

**Grapes Grown in a Designated Area of Southeastern California; Assessment Rate**

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule establishing an assessment rate for the California Desert Grape Administrative Committee (Committee) under Marketing Order No. 925 for the 1997 and subsequent fiscal years. The Committee is responsible for local administration of the marketing order which regulates the handling of table grapes grown in a designated area of southeastern California. Authorization to assess grape handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

**EFFECTIVE DATE:** January 1, 1997.

**FOR FURTHER INFORMATION CONTACT:**

Tershirra T. Yeager, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone (202) 720-5127, FAX (202) 720-5698 or Rose Aguayo, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487-5901, FAX (209) 487-5906. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room

2525-S, Washington, DC 20090-6456, telephone (202) 720-2491, FAX (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 925 (7 CFR part 925) regulating the handling of table grapes grown in a designated area of southeastern 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. Under the order now in effect, California table grape handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable grapes beginning January 1, 1997, and continuing until amended, suspended, or terminated. 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. Such 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 the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 80 producers of table grapes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of table grape producers and handlers are not classified as small entities.

The table grape marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California desert grapes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on December 3, 1996, and unanimously recommended 1997 expenditures of \$156,865 and an assessment rate of \$0.01 per lug of table grapes. In comparison, last year's budgeted expenditures were \$114,827. The Committee recommended not to have an assessment rate for the 1996 fiscal year because there was adequate money in the reserve to cover estimated expenses. Major expenditures recommended by the Committee for the 1997 year include \$100,000 for research, \$25,000 for compliance purposes, and \$8,675 for the manager's salary. Budgeted expenses for these items in 1996 were \$60,000 for research, \$25,000 for the sheriff's patrol and \$7,887 for the manager's salary.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of California table grapes. Table grape shipments for the year are estimated at 8,000,000 lugs which should provide \$80,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to