

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 01-081-1]

#### Imported Fire Ant; Addition to Quarantined Areas

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

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

**SUMMARY:** We are amending the imported fire ant regulations by designating as quarantined areas all or portions of five counties in Arkansas, three counties in Georgia, eight counties in North Carolina, and four counties in Tennessee. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

**DATES:** This interim rule was effective January 2, 2002. We invite you to comment on this docket. We will consider all comments we receive that are postmarked, delivered, or e-mailed by March 11, 2002.

**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. 01-081-1, 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. 01-081-1. If you use 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. 01-081-1" 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:** Mr. Charles L. Brown, Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-4838.

#### SUPPLEMENTARY INFORMATION:

##### Background

The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81-10 and referred to below as the regulations) quarantine infested States or infested areas within States and restrict the interstate movement of regulated articles to prevent the artificial spread of the imported fire ant.

The imported fire ant, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, is an aggressive, stinging insect that, in large numbers, can seriously injure and even kill livestock, pets, and humans. The imported fire ant, which is not native to the United States, feeds on crops and builds large, hard mounds that damage farm and field machinery. The regulations are intended to prevent the imported fire ant from spreading throughout its ecological range within the country.

The regulations in § 301.81-3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, that is infested with the imported fire ant. The Administrator will designate less than an entire State as a quarantined area only under the following conditions: (1) The State has adopted and is enforcing restrictions on

the intrastate movement of the regulated articles listed in § 301.81-2 that are equivalent to the interstate movement restrictions imposed by the regulations; and (2) designating less than the entire State will prevent the spread of the imported fire ant. The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or its inseparability from an infested locality for quarantine purposes.

In § 301.81-3, paragraph (e) lists quarantined areas. We are amending § 301.81-3(e) by:

- Adding portions of Faulkner and Polk Counties, AR, to the list of quarantined areas and changing the status of Grant, Hempstead, and Nevada Counties, AR, from partially to completely infested;
- Adding Rabun, Towns, and Union Counties, GA, to the list of quarantined areas (these three counties were the last remaining uninfested counties in Georgia, thus the entire State is now designated as a quarantined area);
- Adding portions of Harnett, Hertford, Johnston and Nash Counties, NC, and all of Lee County, NC, to the list of quarantined areas, changing the status of Moore and Sampson Counties, NC, from partially to completely infested, and revising the quarantine boundaries in Wake County, NC, to incorporate additional infested areas; and
- Changing the status of Henderson County, TN, from partially to completely infested and revising the quarantine boundaries in Franklin, Maury, and Moore Counties, TN, to incorporate additional infested areas.

We are taking these actions because recent surveys conducted by APHIS and State and county agencies revealed that the imported fire ant has spread to these areas. See the rule portion of this document for specific descriptions of the new and revised quarantined areas.

In addition to the changes to the quarantined areas described above, we are correcting the listing for Hot Spring County, AR, in § 301.81-3(e). That county is currently listed incorrectly as Hot Springs County.

#### Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of imported fire ant into 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 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.

This interim rule is necessary because infestations of imported fire ant have been discovered in additional areas of Arkansas, Georgia, North Carolina, and Tennessee. This action will establish quarantined areas in 10 new counties and revise the boundaries of the quarantined areas in 10 other counties in those States. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary to prevent the artificial spread of the imported fire ant into noninfested areas of the United States.

The following analysis addresses the economic effects of this rule and the impact on small entities as required by the Regulatory Flexibility Act.

According to the 1997 Census of Agriculture, the market value of agricultural products sold in the 20 counties that are subject of this rule was more than \$2.171 billion. During 1997, the value of sales from nursery and greenhouse crops in these 20 counties was at least \$36.5 million. The five counties in Arkansas had \$300.35 million in agricultural product sales, the three counties in Georgia had \$30.96 million in agricultural product sales, the eight counties in North Carolina had \$1.44 billion in agricultural product sales, and the four counties in Tennessee had \$117.45 million in agricultural product sales. In 1997, the eight counties in North Carolina had 51 percent of the value of their agricultural sales attributed to crops (including nursery and greenhouse crops), with the remaining 49 percent attributed to livestock. The four counties in Tennessee had 28 percent of the value of their agricultural sales attributed to

crops (including nursery and greenhouse crops), with the remaining 72 percent attributed to livestock. In two of the three Georgia counties, 17 percent of the value of agricultural sales was attributed to crops (including nursery and greenhouse crops), with the remaining 83 percent of that value attributed to livestock. (The relative contributions of crops and livestock to the value of agricultural sales in the third Georgia county could not be determined, as those figures were withheld from the 1997 Census of Agriculture to avoid disclosing data for individual farms.) The five counties in Arkansas had only 5 percent of the value of their agricultural sales attributed to crops, with the remaining 95 percent of the value attributed to livestock. These data indicate that there is a large agricultural economy at risk due to the potential for the imported fire ant to damage crops and injure or kill livestock.

Small entities potentially affected by this rule include nurseries, greenhouses, farm equipment dealers, construction companies, and companies that sell, process, or move regulated articles interstate from and through the quarantined areas. According to the Small Business Administration (SBA), Office of Advocacy, regulations create economic disparities when they have a significant economic impact on a substantial number of small entities. The SBA defines a small agricultural producer as one that generates less than \$750,000 of annual sales; to be considered small by the SBA definition, an equipment dealer or agricultural service company must generate less than \$5 million of annual sales.

In the four Tennessee counties, there were at least 94 entities that could be potentially affected by the changes in regulations. In 1997, these four counties received \$32.5 million from crop sales, including greenhouse and nursery sales. In the three Georgia counties, there were at least 27 entities that could be potentially affected by the changes in regulations. In 1997, these three counties received at least \$2.5 million from crop sales, including greenhouse and nursery sales. In the five Arkansas counties, there were at least 22 entities that could be potentially affected by the changes in regulations. In 1997, these five counties received \$8.2 million from crop sales, including greenhouse and nursery sales. In the eight North Carolina counties, there were at least 265 entities that could be potentially affected by the changes in regulations. In 1997, these eight counties received \$446.5 million from crop sales, including greenhouse and nursery sales.

In summary, there are at least 408 small entities potentially affected by the imported fire ant quarantine in the 20 counties. However, the number of these small entities that will be affected by this rule and the extent to which they are affected depend on the proportion of their sales outside the imported fire ant quarantined areas.

The adverse economic effects on these entities can be substantially minimized by the availability of various treatments that will permit the movement of regulated articles with only a small additional cost. The estimated annual cost of imposing a quarantine on these counties is very small in comparison to the benefit gained through agricultural sales. For example, the value of a "standard" sized tractor-trailer load of nursery plants ranges from \$10,000 to \$250,000. The treatment cost for this "standard" shipment of plants is only around \$200. An average treatment cost, then, is between 2 percent and 0.8 percent per standard plant shipment. In contrast to the potential losses associated with an imported fire ant infestation, these treatment costs are not significant.

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 interim 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 program. The assessment provides a basis for the conclusion that the methods employed to prevent the spread of the imported fire ant will 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), as amended (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.**

**Paperwork Reduction Act**

This final 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, we are amending 7 CFR part 301 as follows:

**PART 301—DOMESTIC QUARANTINE NOTICES**

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

**Authority:** 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 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).

2. In § 301.81–3, paragraph (e) is amended as follows:

a. Under the heading Arkansas, by adding, in alphabetical order, new entries for Faulkner and Polk Counties; by revising the entries for Grant, Hempstead, and Nevada Counties; and, in the entry for Hot Springs County, by

removing the word “Springs” and adding the word “Spring” in its place.

b. Under the heading Georgia, by removing the individual county entries and adding a single entry for the entire State.

c. Under the heading North Carolina, by adding, in alphabetical order, new entries for Harnett, Hertford, Johnston, Lee, and Nash Counties and by revising the entries for Moore, Sampson, and Wake Counties.

d. Under the heading Tennessee, by revising the entries for Franklin, Henderson, Maury, and Moore Counties.

**§ 301.81–3 Quarantined areas.**

\* \* \* \* \*

(e) \* \* \*

**Arkansas**

\* \* \* \* \*

*Faulkner County.* That portion of the county lying south of a line beginning at the intersection of Interstate 40 and the Faulkner/Conway County line; then southeast on Interstate 40 to U.S. Highway 64; then east on U.S. Highway 64 to the Faulkner/White County line.

\* \* \* \* \*

*Grant County.* The entire county.

*Hempstead County.* The entire county.

\* \* \* \* \*

*Nevada County.* The entire county.

\* \* \* \* \*

*Polk County.* That portion of the county lying south of a line beginning at the intersection of State Highway 4 and the Oklahoma/Arkansas border; then east on State Highway 4 to U.S. Highway 71; then south on U.S. Highway 71 to State Highway 246; then east on State Highway 246 to the Polk/Howard County line.

\* \* \* \* \*

**Georgia**

The entire State.

\* \* \* \* \*

**North Carolina**

\* \* \* \* \*

*Harnett County.* That portion of the county lying south of a line beginning at the intersection of U.S. Highway 421 and the Harnett/Lee County line; then east and southeast on U.S. Highway 421 to Interstate 95; then northeast on Interstate 95 to the Harnett/Johnston County line.

*Hertford County.* That portion of the county lying east of a line beginning at the intersection of U.S. Highway 13 and the Hertford/Bertie County line; then north on U.S. Highway 13 to County Route 1419 (Newsome Grove Road); then north on County Route 1419 to

County Route 1415 (Catherine Creek Road); then northeast on County Route 1415 to County Route 1409 (Hall Siding Road); then northwest on County Route 1409 to County Route 1403 (Ahoskie-Cofield Road); then northeast on County Route 1403 to County Route 1400 (River Road); then northwest on County Route 1400 to County Route 1402 (Tunis Road); then northeast on County Route 1402 to the Chowan River and the Hertford/Gates County line.

\* \* \* \* \*

*Johnston County.* That portion of the county lying south and east of Interstate 95.

\* \* \* \* \*

*Lee County.* The entire county.

\* \* \* \* \*

*Moore County.* The entire county.

*Nash County.* That portion of the county bounded by Interstate 95 on the west, the old Seaboard Railroad tracks on the south, the Nash/Edgecombe County line on the east, and on the north by State Highway 4 to its junction with U.S. Highway 301, then following a straight line east to the Nash/Edgecombe County line.

\* \* \* \* \*

*Sampson County.* The entire county.

\* \* \* \* \*

*Wake County.* That portion of the county lying south of a line beginning at the intersection of U.S. Highway 70 and the Wake/Durham County line; then south and east on U.S. Highway 70 to Interstate Highway 440; then east on Interstate 440 to Wake Forest Road; then north on Wake Forest Road to Spring Forest Road; then east on Spring Forest Road to State Highway 401; then north on State Highway 401 to the Neuse River; and then south along the Neuse River to the Wake/Johnston County line.

\* \* \* \* \*

**Tennessee**

\* \* \* \* \*

*Franklin County.* That portion of the county lying south a line beginning at the intersection of State Highway 50 and the Moore/Franklin County line; then east on State Highway 50 to U.S. Highway 64; then east on U.S. Highway 64 to U.S. Highway Alt 41; then east on U.S. Highway Alt 41 to the Grundy/Marion County line; also the entire city limits of Winchester, Decherd, and Estill Springs.

\* \* \* \* \*

*Henderson County.* The entire county.

\* \* \* \* \*

*Maury County.* That portion of the county lying south and west of a line beginning at the intersection of U.S. Highway 412 and the Maury/Lewis

County line; then east on U.S. Highway 412 to State Highway 166; then southeast on State Highway 166 to Dry Creek Road; then south on Dry Creek Road to the Maury/Lawrence County line.

\* \* \* \* \*

*Moore County.* That portion of the county lying south of a line beginning at the intersection of State Highway 82 and the Moore/Bedford County line; then southeast on State Highway 82 to State Highway 55; then northeast on State Highway 55 to Cobb Hollow Road; then east on Cobb Hollow Road to the Moore/Coffee County line.

\* \* \* \* \*

Done in Washington, DC, this 2nd day of January 2002.

**W. Ron DeHaven,**

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

[FR Doc. 02-455 Filed 1-8-02; 8:45 am]

BILLING CODE 3410-34-U

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 354

[Docket No. 01-111-1]

#### Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine by revising commuted traveltime allowances for travel between various locations in the State of Washington. Commuted traveltime allowances are the periods of time required for Plant Protection and Quarantine employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Plant Protection and Quarantine employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime for these locations.

**EFFECTIVE DATE:** January 9, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger F. West, Senior Staff Officer, Port Operations, PPQ, APHIS, 4700 River

Road Unit 60, Riverdale, MD 20737-1236; (301) 734-8891.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal products, or other commodities intended for importation into or exportation from the United States.

When an employee of the Animal and Plant Health Inspection Service's Plant Protection and Quarantine (PPQ) program must provide these services on a Sunday, holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services according to 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duties.

We are amending § 354.2 of the regulations by revising the commuted traveltime allowances for travel between various locations in the State of Washington. The revised allowances are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

##### Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry and the features of the reimbursement plan for recovering the cost of furnishing port of entry services depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedures with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

#### Executive Order 12866 and Regulatory Flexibility Act

This final 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.

The number of requests for overtime services of a PPQ employee at the locations affected by this rule represents an insignificant portion of the total number of requests for these services in the United 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 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform.

This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

#### Paperwork Reduction Act

This rule contains no new 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 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, we are amending 7 CFR part 354 as follows:

#### PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 continues to read as follows:

**Authority:** 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.22, 2.80, and 371.3.

2. In § 354.2, the table is amended by revising the entry for the State of Washington to read as follows:

##### § 354.2 Administrative instructions prescribing commuted traveltime.

\* \* \* \* \*