

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 01–092–2]

#### Asian Longhorned Beetle; Addition to Quarantined Areas

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the Asian longhorned beetle regulations to include additional quarantined areas in Illinois and New York. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States.

**EFFECTIVE DATE:** The interim rule became effective on November 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael B. Stefan, Emergency Programs Coordinator, Surveillance and Emergency Programs Planning and Coordination Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–7338.

#### SUPPLEMENTARY INFORMATION:

##### Background

In an interim rule effective November 2, 2001, and published in the **Federal Register** on November 8, 2001 (66 FR 56428–56430, Docket No. 01–092–1), we amended the Asian longhorned beetle regulations in 7 CFR part 301 to include additional areas of Illinois and New York in the list of quarantined areas in § 301.51–3. That action was necessary to prevent the artificial spread of the Asian

longhorned beetle to noninfested areas of the United States.

Comments on the interim rule were required to be received on or before January 7, 2002. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988, the National Environmental Policy Act, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

#### Regulatory Flexibility Act

This rule affirms an interim rule that amended the Asian longhorned beetle regulations by including additional quarantined areas in Illinois and New York. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted.

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

The small businesses potentially affected by the interim rule are nurseries, arborists, tree removal services, and firewood dealers located within the quarantined areas. The actual number of such businesses in the quarantined areas added by the interim rule is unknown. However, we anticipate that the number of such businesses is small since the newly quarantined areas are urban and suburban communities as opposed to rural farm areas.

It is further estimated that the number and value of regulated articles that would, upon inspection, be determined to be infested, and therefore denied a certificate or a limited permit for movement, is small. Current data from the Animal and Plant Health Inspection Service (APHIS) Asian longhorned beetle project being conducted in Amityville, NY, support this conclusion.

Finally, the regulations allow businesses to chemically treat, fumigate, or process by chipping or burning all regulated articles before they are presented for APHIS inspection. It is likely that, given their low value relative to the cost of treatment, most regulated

articles would not undergo such treatment.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

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

#### PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 66 FR 56428–56430 on November 8, 2001.

**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).

Done in Washington, DC, this 22nd day of February 2002.

**W. Ron DeHaven,**

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

[FR Doc. 02–4801 Filed 2–27–02; 8:45 am]

**BILLING CODE 3410–34–U**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 984

[Docket No. FV01–984–1 FIR]

#### Walnuts Grown in California; Decreased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Walnut Marketing Board (Board) for the 2001–02 and subsequent marketing years from \$0.0134 to \$0.0124 per

kernelweight pound of assessable walnuts. The Board locally administers the Federal marketing order which regulates the handling of walnuts grown in California (order). Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year runs from August 1 through July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** April 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Marketing Assistant, or 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, 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](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 984 both as amended (7 CFR part 984), regulating the handling of walnuts grown in 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."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut 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 walnuts beginning on August 1, 2001, and continue 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 USDA 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 USDA 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 USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to decrease the assessment rate established for the Board for the 2001-02 and subsequent marketing years from \$0.0134 to \$0.0124 per kernelweight pound of assessable walnuts.

The California walnut marketing order provides authority for the Board, with the approval of the USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board'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.

For the 2000-01 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of \$0.0134 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on September 7, 2001, and unanimously recommended 2001-02 expenditures of \$3,124,800 and an assessment rate of \$0.0124 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were \$2,937,885. The assessment rate is \$0.0010 lower than the \$0.0134 rate formerly in effect.

The lower assessment rate is necessary because this year's crop is estimated by the California Agricultural Statistics Service (CASS) to be 280,000 tons (252,000,000 kernelweight pounds merchantable), which is about 17 percent more than last year's estimate. Thus, sufficient income should be generated at the lower rate for the Board to meet its anticipated expenses.

Major expenditures in the budget recommended by the Board for the 2001-02 year include \$2,566,569 for marketing and production research projects, \$313,200 for employee expenses such as administrative and office salaries, payroll taxes and benefits, \$130,600 for office expenses, including rent, office supplies, telephone/fax, printing, and furniture/fixtures/automobile, \$76,000 for other operating expenses, including management and field travel, Board meeting expenses, insurance, and audit fees, and \$38,431 as a reserve for contingency. Budgeted expenses for these items in 2000-01 were \$2,450,255 for marketing and production research projects, \$278,630 for employee expenses, \$104,000 for office expenses, \$80,000 for other operating expenses, and \$25,000 as a reserve for contingency, respectively.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 252,000,000 kernelweight pounds which should provide \$3,124,800 in assessment income and allow the Board to cover its expenses. As specified in § 984.69, unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year.

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to

determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2001–02 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by USDA.

### Final Regulatory Flexibility Analysis

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. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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 5,500 producers of walnuts in the production area and about 43 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those having annual receipts of less than \$5,000,000.

Current industry information shows that 14 of the 43 handlers (32.5 percent) shipped over \$5,000,000 of merchantable walnuts and could be considered large handlers by the Small Business Administration. Twenty-nine of the 43 walnut handlers (67.5 percent) shipped under \$5,000,000 of merchantable walnuts and could be considered small handlers. An estimated 5,442 walnut producers, or about 98.9 percent of the 5,500 total producers, would be considered small producers with annual incomes less than \$750,000. Based on the foregoing, it can be concluded that the majority of California walnut handlers and producers may be classified as small entities.

This rule continues to decrease the assessment rate established for the Board and collected from handlers for the 2001–02 and subsequent marketing years from \$0.0134 to \$0.0124 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2001–02 expenditures of \$3,124,800. The recommended \$0.0010 decrease in the assessment rate is necessary because this year's estimate of

assessable walnuts is about 17 percent more than last year's estimate. Thus, sufficient income should be generated at the current rate for the Board to meet its anticipated expenses.

Major expenditures in the budget recommended by the Board for the 2001–02 year include \$2,566,569 for marketing and production research projects, \$313,200 for employee expenses such as administrative and office salaries, payroll taxes and benefits, \$130,600 for office expenses, including rent, telephone/fax, postage, printing, furniture, fixtures, and automobile, \$76,000 for other operating expenses, including management and field travel, insurance, and audit fees, and \$38,431 as a reserve for contingency. Budgeted expenses for these items in 2000–01 were \$2,450,255 for marketing and production research projects, \$278,630 for employee expenses, \$104,000 for office expenses, \$80,000 for other operating expenses, and \$25,000 as a reserve for contingency, respectively.

Prior to arriving at this budget, the Board considered information from various sources, such as the Board's Budget and Personnel Committee, Research Committee, and Marketing Development Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the walnut industry. The recommended \$0.0124 per kernelweight pound assessment rate was then determined by dividing the total recommended budget by the 252,000,000 kernelweight pound estimate of assessable walnuts for the year. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year (§ 984.69).

A review of historical information and preliminary information pertaining to the current marketing year indicates that the grower price for 2001–02 could range between \$0.50 and \$0.70 per kernelweight pound of assessable walnuts. Therefore, the estimated assessment revenue for the 2001–02 year as a percentage of total grower revenue could range between 1.7 and 2.5 percent.

This action continues to decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized

throughout the walnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 7, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on November 21, 2001 (66 FR 58362). Copies of that rule were also mailed or sent via facsimile to all walnut handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on January 22, 2002, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

### List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

### PART 984—WALNUTS GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 984 which was published at 66 FR 58362 on November 21, 2001, is adopted as a final rule without change.

Dated: February 22, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02-4707 Filed 2-27-02; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 94

[Docket No. 01-065-2]

#### Change in Disease Status of Greece Because of BSE

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the regulations by adding Greece to the list of regions where bovine spongiform encephalopathy exists because the disease had been detected in a native-born animal in that region. Greece had been listed among the regions that present an undue risk of introducing bovine spongiform encephalopathy into the United States. The effect of the interim rule was a continued restriction on the importation of ruminants that have been in Greece and meat, meat products, and certain other products of ruminants that have been in Greece. The interim rule was necessary in order to update the disease status of Greece regarding bovine spongiform encephalopathy.

**EFFECTIVE DATE:** The interim rule became effective on July 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Dr. Donna Malloy, Senior Staff Veterinarian, National Center for Import and Export, Products Program, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737-1231; (301) 734-3277.

#### SUPPLEMENTARY INFORMATION:

##### Background

In an interim rule effective July 2, 2001, and published in the **Federal Register** on October 30, 2001 (66 FR 54642-54643, Docket No. 01-065-1), we amended the regulations by adding Greece to the list in § 94.18(a)(1) of regions where bovine spongiform encephalopathy (BSE) is known to exist. Greece had previously been listed in § 94.18(a)(2) as a region that presents an undue risk of introducing BSE into the United States. However, due to the

detection of BSE in a native-born animal in that region, the interim rule was necessary to update the disease status of Greece regarding BSE.

Comments on the interim rule were required to be received on or before December 31, 2001. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

#### List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

#### PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, ANDBOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 94 and that was published at 66 FR 54642-54643 on October 30, 2001.

**Authority:** 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 22nd day of February, 2002.

**W. Ron DeHaven,**

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02-4844 Filed 2-27-02; 8:45 am]

BILLING CODE 3410-34-U

## DEPARTMENT OF THE TREASURY

### Customs Service

#### 19 CFR Parts 162, 171 and 178

[T.D. 02-08]

RIN 1515-AC69

#### Civil Asset Forfeiture

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, with some changes, the interim rule amending the Customs Regulations that was published in the **Federal Register** on December 14, 2000, as T.D. 00-88. The interim rule implemented the provisions of the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), insofar as these provisions were applicable to laws enforced by Customs. The CAFRA created general rules governing civil forfeiture proceedings. However, CAFRA specifically exempted from certain of its requirements forfeitures that were made under a number of statutes, among these being: the Tariff Act of 1930 or any other provision of law codified in title 19, United States Code; the Internal Revenue Code of 1986; the Federal Food, Drug, and Cosmetic Act; the International Emergency Economic Powers Act; and the Trading with the Enemy Act. In addition, this final rule adopts certain minor conforming changes to the Customs Regulations that were made in the interim rule in order to reflect a recodification of existing statutory law.

**EFFECTIVE DATE:** February 28, 2002.

**FOR FURTHER INFORMATION CONTACT:** Jeremy Baskin, Penalties Branch, (202-927-2344).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 2 of the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), Public Law (Pub. L.) 106-185, 114 Stat. 202, enacted on April 25, 2000, and codified at title 18, United States Code, section 983 (18 U.S.C. 983), created general rules for civil forfeiture proceedings. This section of the CAFRA, however, specifically exempts from certain of its requirements forfeitures undertaken pursuant to the following statutes: the Tariff Act of 1930 or any other provision of law codified in title 19, United States Code; the Internal Revenue Code of 1986; the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*); the Trading with the Enemy Act (50 U.S.C. App. 1 *et seq.*); and section 1 of title VI of the Act of June 15, 1917 (40 Stat. 233; 22 U.S.C. 401). In addition, Public Law 107-56, enacted October 26, 2001, the title of which is the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, exempted from the requirements of CAFRA the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 *et seq.*).

Under section 2 of the CAFRA, specified duties and obligations