

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 04-130-1]

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

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

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

**SUMMARY:** We are amending the Asian longhorned beetle regulations by adding portions of Middlesex and Union Counties, NJ, to the list of quarantined areas and restricting the interstate movement of regulated articles from those areas. This action is necessary to prevent the artificial spread of the Asian longhorned beetle into noninfested areas of the United States.

**DATES:** This interim rule was effective January 24, 2005. We will consider all comments that we receive on or before March 29, 2005.

**ADDRESSES:** You may submit comments by any of the following methods:

- **EDOCKET:** Go to <http://www.epa.gov/fedocket> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 04-130-1, 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. 04-130-1.

- **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. 04-130-1" on the subject line.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

**Reading Room:** 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.

**Other Information:** You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael B. Stefan, Director of Emergency Programs, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-7338.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Asian longhorned beetle (ALB, *Anoplophora glabripennis*), an insect native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. It attacks many healthy hardwood trees, including maple, horse chestnut, birch, poplar, willow, and elm. In addition, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and wood debris of half an inch or more in diameter are subject to infestation. The beetle bores into the heartwood of a host tree, eventually killing the tree. 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 interiors of trees. Adult beetles emerge in the spring and summer months from round holes approximately three-eighths of an inch in diameter (about the size of a dime) that they bore through branches and trunks of trees. After emerging, adult beetles feed for 2 to 3 days and then mate. Adult females then lay eggs in oviposition sites that they make on the branches of trees.

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A new generation of ALB is produced each year. If this pest moves into the hardwood forests of the United States, the nursery, maple syrup, and forest product industries could experience severe economic losses. In addition, urban and forest ALB infestations will result in environmental damage, aesthetic deterioration, and a reduction in public enjoyment of recreational spaces.

#### Addition to Quarantined Area

The ALB regulations in 7 CFR 301.51-1 through 301.51-9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of ALB to noninfested areas of the United States. Portions of the State of Illinois, a portion of Hudson County in the State of New Jersey, and portions of New York City and Nassau and Suffolk Counties in the State of New York are already designated as quarantined areas.

On August 4, 2004, an ALB infestation was discovered in the Borough of Carteret in Middlesex County, NJ. Another ALB infestation was discovered in the City of Rahway, in Union County, NJ, on August 17, 2004. An additional ALB infestation was discovered in this area in late November 2004. Officials of the U.S. Department of Agriculture and officials of State, county, and city agencies in New Jersey are conducting intensive survey and eradication programs in the infested area, which includes sections of the City of Rahway and adjacent sections of the City of Linden in Union County and the Township of Woodbridge in Middlesex County. The State of New Jersey has quarantined the infested area and is restricting the intrastate movement of regulated articles from the quarantined area to prevent the further spread of ALB within that State. Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined area to prevent the interstate spread of ALB.

The regulations in § 301.51-3(a) 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, where ALB has been found by an inspector, where the Administrator has reason to believe that ALB is present, or where the Administrator considers regulation necessary because of its inseparability for quarantine purposes from localities where ALB has been found.

Less than an entire State will be quarantined only if (1) the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations 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 spread of ALB.

In accordance with these criteria and the recent ALB findings described above, we are amending the list of quarantined areas in § 301.51–3(c) to include additional areas in Middlesex and Union Counties, NJ. The quarantined area is described in the rule portion of this document.

#### Emergency Action

This rulemaking is necessary on an emergency basis to help prevent the artificial spread of ALB to 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.

#### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the regulations by adding portions of Middlesex and Union Counties, NJ, to the list of areas regulated for ALB and restricting the interstate movement of regulated articles from those areas. This action is necessary to prevent the artificial spread

of ALB into noninfested areas of the United States.

The Regulatory Flexibility Act (RFA) requires that agencies consider the economic impact of their rules on small entities, *i.e.*, small businesses, organizations, and governmental jurisdictions. This interim rule modifies the area in New Jersey that is regulated for ALB by adding an area that encompasses parts of Middlesex and Union Counties. The businesses potentially affected by modifications to the ALB quarantined area are nurseries, arborists, tree removal services, firewood dealers, garden centers, landscapers, recyclers of waste material, and lumber and building material outlets.

The newly quarantined area covers 12.1 square miles. Within that 12.1 square mile area, there are 10 firewood dealers, 50 landscapers and tree care companies, 3 private waste management companies, 3 developers/excavators, 1 wood recycler, and 1 garden center. While the size of those businesses is unknown, it is reasonable to assume that most would be classified as small entities, based on the U.S. Small Business Administration's size standards. There are also six governmental entities—two counties and four townships—within the 12.1 square mile area. Under the RFA, the term “small governmental jurisdiction” generally means cities, counties, townships, etc., with a population of less than 50,000. It is possible that some or all of the six governmental entities would qualify as small governmental jurisdictions.

Entities, large or small, could be affected by the regulations in two ways. First, if an entity wishes to move regulated articles interstate from a quarantined area, that entity must either: (1) Enter into a compliance agreement with APHIS for the inspection and certification of regulated articles to be moved interstate from the quarantined area; or (2) present its regulated articles for inspection by an inspector and obtain a certificate or a limited permit, issued by the inspector, for the interstate movement of regulated articles. The inspections may be inconvenient, but they should not be costly in most cases, even for entities operating under a compliance agreement that would perform the inspections themselves. For those entities that elect not to enter into a compliance agreement, APHIS would provide the services of the inspector without cost. There is also no cost for the compliance agreement, certificate, or limited permit for the interstate movement of regulated articles.

Second, there is a possibility that, upon inspection, a regulated article could be determined by the inspector to be potentially infested by ALB and, as a result, the inspector would not be able to issue a certificate. In this case, the entity's ability to move regulated articles interstate would be restricted. However, the affected entity could conceivably obtain a limited permit under the conditions of § 301.51–5(b). Whether an affected entity would be denied certificates as a result of inspections of regulated articles is unknown. However, because the newly regulated area is primarily urban, the entities located in that area are more likely to be receiving regulated articles from outside the quarantined area than they are to be shipping regulated articles interstate to nonquarantined areas. It is unlikely, therefore, that most entities located in the newly regulated area would be moving regulated articles that would require inspection in the first place.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

This 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 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. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

- 2. In § 301.51–3, paragraph (c) is amended by adding, in alphabetical order under the heading New Jersey, an entry for Middlesex and Union Counties to read as follows:

**§ 301.51–3 Quarantined areas.**

\* \* \* \* \*

(c) \* \* \*

**New Jersey**

\* \* \* \* \*

*Middlesex and Union Counties.* That portion of the counties bounded by a line drawn as follows: Beginning at the intersection of St. Georges Avenue and Stiles Street; then east along Stiles Street to Elizabeth Avenue; then north on Elizabeth Avenue to Wood Avenue; then east on Wood Avenue to the east side of the New Jersey Turnpike right-of-way; then south along the east side of the New Jersey Turnpike right-of-way to Marshes Creek; then southeast along Marshes Creek to the Rahway River; then west along the south side of the Rahway River to Cross Creek; then south along Cross Creek through the wetlands to Peter J. Sica Industrial Drive; then east and south on Peter J. Sica Industrial Drive to Roosevelt Avenue (State Route 602); then west on Roosevelt Avenue to Port Reading Avenue (State Route 604); then west southwest on Port Reading Avenue to the Conrail railroad; then north and west along the Conrail railroad right-of-way to the NJ Transit railroad right-of-way; then north and northwest along the NJ Transit railroad right-of-way to the south branch of the Rahway River; then west along the south branch of the Rahway River to St. Georges Avenue; then north on St. Georges Avenue to the point of beginning.

\* \* \* \* \*

Done in Washington, DC, this 24th day of January 2005.

**Elizabeth E. Gaston,**

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

[FR Doc. 05–1615 Filed 1–27–05; 8:45 am]

BILLING CODE 3410–34–P

**NATIONAL CREDIT UNION ADMINISTRATION****12 CFR Part 708a****Conversion of Insured Credit Unions to Mutual Savings Banks**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** NCUA is updating its rule regarding conversion of insured credit unions to mutual savings banks (MSBs). The amendments require a converting credit union to provide its members with additional disclosures about the conversion before conducting a member vote. The amendments also require the vote to be by secret ballot and conducted by an independent entity. Finally, the amendments require a federally-insured State credit union to provide NCUA with conversion related information about the law of the State where the credit union is chartered.

**DATES:** This final rule is effective January 28, 2005.

**FOR FURTHER INFORMATION CONTACT:** Frank S. Kressman, Staff Attorney, at (703) 518–6540.

**SUPPLEMENTARY INFORMATION:****A. Background**

The Credit Union Membership Access Act (CUMAA) was enacted into law on August 7, 1998. Public Law 105–21. Section 202 of CUMAA amended the provisions of the Federal Credit Union Act concerning conversion of insured credit unions to MSBs. 12 U.S.C. 1785(b). CUMAA required NCUA to promulgate final rules regarding charter conversions that were: (1) Consistent with CUMAA; (2) consistent with the charter conversion rules promulgated by other financial regulators; and (3) no more or less restrictive than rules applicable to charter conversions of other financial institutions. NCUA issued rules in compliance with this mandate. 63 FR 65532 (November 27, 1998); 64 FR 28733 (May 27, 1999).

Since the enactment of CUMAA, NCUA has become concerned that many credit union members do not appreciate the effect a conversion may have on their ownership interests in the credit union and voting power in the MSB. In February 2004, NCUA amended part 708a to require a converting credit union to disclose additional information to its members to better educate them regarding the conversion. 69 FR 8548 (February 25, 2004). NCUA solicited public comment as part of that rulemaking. Some commenters suggested that, among other things,

NCUA should have imposed more disclosures and requirements on converting credit unions. Many offered specific suggestions. NCUA noted at that time that many of those suggestions deserved further consideration but were beyond the scope of that rulemaking and would have to be considered in a future rulemaking. In July 2004, NCUA issued a proposed rule with request for comments to address some of those suggestions and other ongoing concerns NCUA has in connection with protecting members' interests in the conversion process. 69 FR 46111 (August 2, 2004).

**B. Discussion**

CUMAA provides that an insured credit union may convert to an MSB without the prior approval of NCUA, but it also requires NCUA to administer the member vote on conversion and review the methods and procedures by which the vote is taken. This is reflected in NCUA's conversion rule. The rule requires a converting credit union to provide its members with written notice of its intent to convert. 12 CFR 708a.4. It also specifies that the member notice must adequately describe the purpose and subject matter of the vote on conversion. *Id.* In addition, a converting credit union must notify NCUA of its intent to convert. 12 CFR 708a.5. The credit union must provide NCUA a copy of its member notice, ballot, and all other written materials it has provided or intends to provide to its members in connection with the conversion. *Id.*

A converting credit union has the option of submitting these materials to NCUA before it distributes them to its members. *Id.* This enables the credit union to obtain NCUA's preliminary determination on the methods and procedures of the member vote based on NCUA's review of the written materials. NCUA believes its review of these materials is a practical and unintrusive way of fulfilling, at least part of, its congressionally mandated responsibility to review the methods and procedures of the vote.

If NCUA disapproves of the methods and procedures of the member vote after the vote is conducted, then NCUA is authorized to direct a new vote be taken. 12 CFR 708a.7. NCUA interprets its responsibility to review the methods and procedures of the member vote to include determining that the member notice and other materials sent to the members are accurate and not misleading, all required notices are timely, and the membership vote is conducted in a fair and legal manner.

A charter conversion has consequences that may not surface for a