

# Rules and Regulations

Federal Register

Vol. 75, No. 247

Monday, December 27, 2010

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS–2010–0037]

#### South American Cactus Moth Quarantine; Addition of the State of Louisiana

**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 South American cactus moth regulations by adding the entire State of Louisiana to the list of quarantined areas. The interim rule restricted the interstate movement of regulated articles from areas in the State of Louisiana. This interim rule was necessary to prevent the artificial spread of the South American cactus moth to noninfested areas of the United States.

**DATES:** Effective on December 27, 2010, we are adopting as a final rule the interim rule published at 75 FR 41073–41074 on July 15, 2010.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robyn Rose, South American Cactus Moth National Program Manager, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737–1236; (301) 734–7121.

#### SUPPLEMENTARY INFORMATION:

##### Background

The South American cactus moth (*Cactoblastis cactorum*) is a grayish-brown moth with a wingspan of 22 to 35 millimeters (approximately 0.86 to 1.4 inches) that is indigenous to Argentina, southern Brazil, Paraguay, and Uruguay. It is a serious quarantine

pest of *Opuntia* spp., and an occasional pest of *Nopalea* spp., *Cylindropuntia* spp., and *Consolea* spp., four closely related genera of the family *Cactaceae*. After an incubation period following mating, the female South American cactus moth deposits an egg stick resembling a cactus spine on the host plant. The egg stick, which consists of 70 to 90 eggs, hatches in 25 to 30 days and the larvae bore into the cactus pad to feed, eventually hollowing it out and killing the plant. Within a short period of time, the South American cactus moth can destroy whole stands of cactus.

The South American cactus moth regulations in 7 CFR 301.55 through 301.55–9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of South American cactus moth to noninfested areas of the United States.

In an interim rule<sup>1</sup> effective and published in the **Federal Register** on July 15, 2010 (75 FR 41073–41074, Docket No. APHIS–2010–0037), we amended the regulations by adding the State of Louisiana to the list of quarantined areas.

Comments on the interim rule were required to be received on or before September 13, 2010. 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 without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

#### 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 75 FR 41073–41074 on July 15, 2010.

Done in Washington, DC, this 16th day of December 2010.

**Kevin Shea,**

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

[FR Doc. 2010–32261 Filed 12–23–10; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS–2010–0089]

#### Plum Pox Virus; Update of Quarantined Areas

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

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

**SUMMARY:** We are amending the plum pox virus (PPV) regulations by adding portions of Niagara, Orleans, and Wayne Counties, NY, to the list of quarantined areas and restricting the interstate movement of regulated articles from these quarantined areas. We are also amending the regulations by removing the townships of Latimore and Huntington in Adams County, PA, from the list of quarantined areas. These actions are necessary to prevent the spread of PPV from the quarantined areas of New York to uninfested areas of the United States and to relieve restrictions in Pennsylvania that are no longer necessary.

**DATES:** This interim rule is effective December 27, 2010. We will consider all comments that we receive on or before February 25, 2011.

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

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0089> to submit or view comments and to view supporting and related materials available electronically.

- **Postal Mail/Commercial Delivery:** Please send one copy of your comment to Docket No. APHIS–2010–0089, Regulatory Analysis and Development,

<sup>1</sup>To view the interim rule, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0037>.

PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0089.

**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:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. S. Anwar Rizvi, Senior Plant Pathologist/National Program Manager, Plant Pathogen and Weed Programs, EDP, PPQ, APHIS, 4700 River Road Unit 160, Riverdale, MD 20737; (301) 734-4313.

#### SUPPLEMENTARY INFORMATION:

##### Background

The plum pox virus (PPV) is an extremely serious viral disease of plants that can affect many *Prunus* (stone fruit) species, including plum, peach, apricot, almond, nectarine, and sweet and tart cherry. Infection eventually results in severely reduced fruit production, and the fruit that is produced is often misshapen and blemished. PPV is transmitted under natural conditions by several species of aphids. The long-distance spread of PPV occurs by budding and grafting with infected plant material and through movement of farm tools, equipment, and infected budwood, nursery stock, and other plant parts.

The regulations in Subpart—Plum Pox (7 CFR 301.74 through 301.74-5), referred to below as the regulations, quarantine areas of the United States where PPV has been detected and restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of PPV into uninfected areas of the United States.

Surveys funded by the Animal and Plant Health Inspection Service (APHIS) and conducted by inspectors of the New York State Department of Agriculture and Markets have resulted in the detection of PPV in the State of New York. Officials in New York have quarantined the infected areas to prevent the spread of PPV to uninfected areas. By establishing these quarantined areas, the State of New York has

restricted the intrastate movement of regulated articles from the quarantined areas. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined areas within New York to prevent the spread of PPV to other States.

The regulations in § 301.74-3(a) provide that the Administrator of APHIS will list as a quarantined area any State, or any portion of a State, where PPV has been detected through inspection and laboratory testing, where the Administrator has reason to believe that PPV is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities where PPV has been detected.

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 that are substantially the same as 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 prevent the interstate spread of PPV.

In accordance with these criteria and the recent PPV findings described above, we are amending § 301.74-3(c) to add portions of Niagara, Orleans, and Wayne Counties, NY, to the list of quarantined areas. Descriptions of these quarantined areas are set forth in the regulatory text below.

Additionally, we are removing the townships of Latimore and Huntington in Adams County, PA, from the list of quarantined areas in § 301.74-3(c). The townships were removed from quarantine on October 29, 2009, based on 3 years of negative survey results and the subsequent determination by the Administrator that PPV no longer exists in Pennsylvania.

##### Emergency Action

This rulemaking is necessary on an emergency basis to help prevent the spread of PPV to uninfected 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 interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. The full analysis may be viewed on the Regulations.gov Web site (*see ADDRESSES* above for instructions for accessing Regulations.gov) or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

For producers in New York, the intent of the quarantine is to prevent the spread of PPV and to protect the rest of the stone fruit industry. The benefits of the quarantine, derived from preventing the spread of plum pox to other stone fruit producing regions, are expected to outweigh the costs. Producers in the quarantined area will bear the cost of having a limited marketing area for host material. Since the fruit itself is not a vector of the disease, the quarantine imposes no restrictions on the movement of fruit out of the quarantined area. Therefore, the growers in the quarantined area are able to sell and move their fruit production without restriction. The quarantine does restrict the movement of budwood and root stock. However, stone fruit growers move trivial quantities of plant material for commercial purposes. Because by far the vast majority of income of growers in this area is from fruit production, the restrictions placed on growers in the quarantined area should have little impact.

Producers in Adams County, PA, where the quarantine is being lifted, will benefit from the ability to move host material to areas outside the quarantined area. This action will impose no costs on producers in Pennsylvania while providing benefits in the form of increased ability to market goods that were previously restricted.

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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This interim rule contains no 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 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

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

■ 2. In § 301.74–3, paragraph (c) is revised to read as follows:

**§ 301.74–3 Quarantined areas.**

\* \* \* \* \*

(c) The areas described below are designated as quarantined areas:

**New York**

*Niagara County.* (1) That area of Niagara County in the Towns of Burt, Newfane, and Wilson bordered on the north by Lake Ontario; bordered on the west by Maple Road; then south on Maple Road to Wilson-Burt Road; then east on Wilson-Burt Road to Beebe Road; then south on Beebe Road to Ide Road; then east on Ide Road to Route 78 (Lockport-Olcott Road); then north on Route 78 (Lockport-Olcott Road) to the Lake Ontario shoreline.

(2) That area of Niagara County in the Town of Lewiston bordered on the west by Porter Center Road starting at its intersection with Route 104 (Ridge Road); then north-northeast on Porter Center Road to Langdon Road; then east on Langdon Road to Dickersonville Road; then north on Dickersonville Road to Schoolhouse Road; then east on Schoolhouse Road to Ransomville Road; then south on Ransomville Road to Route 104 (Ridge Road); then northeast on Route 104 (Ridge Road) to Simmons Road; then south on Simmons Road to Albright Road; then east on Albright Road to Townline Road; then south on Townline Road to Lower Mountain Road; then west on Lower Mountain Road to Meyers Hill Road; then south on Meyers Hill Road to Upper Mountain Road; then west on Upper Mountain Road to Indian Hill Road; then northeast on Indian Hill Road to Route 104 (Ridge Road); then east on Route 104 (Ridge Road) to Porter Center Road.

(3) That area of Niagara County bordered on the north by Lake Ontario and on the east by Keg Creek; then south on Keg Creek to Route 18 (Lake Road); then east on Route 18 (Lake Road) to Hess Road; then south on Hess Road to Drake Settlement Road; then west on Drake Settlement Road to Transit Road; then north on Transit Road to Route 18 (Lake Road); then west on Route 18 (Lake Road) to Lockport Olcott Road; then north on Lockport Olcott Road to the Lake Ontario shoreline.

*Orleans County.* That area of Orleans County in the Towns of Ridgeway and Gaines bordered on the north by Route 104 (Ridge Road) at its intersection with Eagle Harbor Waterport Road; then south on Eagle Harbor Waterport Road to Eagle Harbor Knowlesville Road; then west on Eagle Harbor Knowlesville Road to Presbyterian Road; then southwest on Presbyterian Road to Longbridge Road; then south on Longbridge Road to State Route 31; then west on State Route 31 to Wood Road; then south on Wood Road to West County House Road; then west on West County House Road to Maple Ridge Road; then west on Maple Ridge Road to Culvert Road; then north on Culvert Road to Telegraph Road; then west on Telegraph Road to Beales Road; then north on Beales Road to Portage Road; then east on Portage Road to Culvert Rd; then north on Culvert Road to Route 104 (Ridge Road).

*Wayne County.* (1) That area of Wayne County in the Town of Sodus bordered on the north by Lake Road at its intersection with Redman Road; then east on Lake Road to Maple Avenue; then south on Maple Avenue to Middle Road; then west on Middle Road to Rotterdam Road; then south on

Rotterdam Road to State Route 104; then west on State Route 104 to Pratt Road; then south on Pratt Road to Ridge Road; then west on Ridge Road to Richardson Road; then south on Richardson Road to Tripp Road; then south on Tripp Road to Podger Road; then west on Podger Road to East Townline Road; then north on East Townline Road to Everdyke Road; then west on Everdyke Road to Russell Road; then south on Russell Road to Pearsall Road; then west on Pearsall Road to State Route 21; then north on State Route 21 to State Route 104; then east on State Route 104 to East Townline Road; then north on East Townline Road to Van Lare Road; then east on Van Lare Road to Redman Road; then north on Redman Road to Lake Road.

(2) That area of Wayne County in the Towns of Ontario and Williamson bordered on the north by Shepard Road at its intersection with Fisher Road; then east on Shepard Road to Salmon Creek Road; then southwest on Salmon Creek Road to Kenyon Road; then west on Kenyon Road to Furnace Road; then north on Furnace Road to Putnam Road; then east on Putnam Road to Fisher Road; then north on Fisher Road to Shepard Road.

(3) That area of Wayne County in the Town of Sodus bordered on the northeast by the Sodus Bay shoreline at Ridge Road; then west on Ridge Road to Boyd Road; then north on Boyd Road to Sergeant Road; then north on Sergeant Road to Morley Road; then east on Morley Road to State Route 14; then south on State Route 14 to Sill Road; then northeast on Sill Road and continuing to the shoreline of Sodus Bay.

Done in Washington, DC, this 16th day of December 2010.

**Kevin Shea,**

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

[FR Doc. 2010–32260 Filed 12–23–10; 8:45 am]

**BILLING CODE 3410–34–P**