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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2015-0016]

Amendment of Asian Longhorned Beetle Quarantine Areas in Massachusetts and New York

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Asian longhorned beetle (ALB) regulations by removing the boroughs of Manhattan and Staten Island in New York City, as well as the counties of Suffolk and Norfolk in Massachusetts, from the list of quarantined areas for ALB. These actions are necessary to relieve restrictions on the movement of regulated articles from areas no longer under ALB quarantine while preventing the artificial spread of ALB from infested areas to noninfested areas of the United States.

DATES: This interim rule is effective [Insert date of publication in the Federal Register]. We will consider all comments that we receive on or before [Insert date 30 days after date of publication in the Federal Register].

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0016>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2015-0016, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0016> or in our reading room, which 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) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, Regulations, Permits and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 851-2352; [Claudia.Ferguson@aphis.usda.gov](mailto:Claudia.Ferguson@aphis.usda.gov).

#### 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 wood-boring pest of hardwood trees. The ALB regulations (contained in 7 CFR 301.51-1 through 301.51-9 and 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.

In accordance with § 301.51-3(a) of the regulations, quarantined areas are, with certain exceptions, those States or portions of States in which ALB has been found by an inspector, in which the Administrator has reason to believe that ALB is present, or that the Administrator considers 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 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 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 ALB.

On May 14, 2013, the Animal and Plant Health Inspection Service (APHIS) issued a Federal Order<sup>1</sup> to immediately remove the boroughs of Manhattan and Staten Island in New York City from the list of areas quarantined for ALB. On May 12, 2014, APHIS also issued a Federal Order<sup>2</sup> to immediately remove Suffolk and Norfolk Counties, MA, from the list of areas quarantined for ALB. The removal of quarantined areas in both States was determined after completion of control and regulatory activities and based on the results of at least 3 years of negative surveys<sup>3</sup> of all regulated host plants within those areas. As a result, restrictions on the movement of regulated articles from those areas were removed.

Therefore, in this interim rule, we are amending the regulations in § 301.51-3(c) by removing the boroughs of Manhattan and Staten Island in New York City and the counties of

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<sup>1</sup> DA-2013-17: [http://www.aphis.usda.gov/plant\\_health/plant\\_pest\\_info/asian\\_lhb/downloads/DA-2013-17.pdf](http://www.aphis.usda.gov/plant_health/plant_pest_info/asian_lhb/downloads/DA-2013-17.pdf).

<sup>2</sup> DA-2014-21: [http://www.aphis.usda.gov/plant\\_health/plant\\_pest\\_info/asian\\_lhb/downloads/DA-2014-21.pdf](http://www.aphis.usda.gov/plant_health/plant_pest_info/asian_lhb/downloads/DA-2014-21.pdf).

<sup>3</sup>The APHIS ALB Survey Protocol is accessible on the APHIS Plant Health Web site by visiting [http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/planthealth/sa\\_domestic\\_pests\\_and\\_diseases/](http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/planthealth/sa_domestic_pests_and_diseases/) and selecting these links: Pest and Disease Programs>Asian Longhorned Beetle>Survey Components.

Suffolk and Norfolk in Massachusetts from the list of areas quarantined for ALB. This action will relieve restrictions on the movement of regulated articles from areas no longer under ALB quarantine.

#### Immediate Action

Immediate action is warranted to relieve restrictions on the movement of regulated articles for ALB in the boroughs of Manhattan and Staten Island in New York City and the counties of Suffolk and Norfolk in Massachusetts. 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.

APHIS is amending the ALB regulations by removing the boroughs of Manhattan and Staten Island in New York City and Suffolk and Norfolk Counties, MA, from the list of areas quarantined for ALB.

For more than 400 establishments located in the boroughs of Manhattan and Staten Island in New York City, as well as nearly 250 establishments in the counties of Norfolk and Suffolk in Massachusetts, the interim rule will have a positive impact by allowing all entities that previously had compliance agreements with APHIS to again offer services and move regulated articles without APHIS inspections or other time constraints resulting from the quarantine. The majority of these entities are nursery dealers.

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 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 interim 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. 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 § 301.51-3, paragraph (c) is amended as follows:

a. Under the heading for Massachusetts, by removing the entry for Suffolk and Norfolk Counties; and

b. Under the heading for New York, by revising the entry for New York City.

The revision reads as follows:

§ 301.51-3 Quarantined areas.

\* \* \* \* \*

(c) \* \* \*

New York

New York City. That area in the boroughs of Brooklyn and Queens in the City of New York that is bounded by a line beginning at the point where the Brooklyn Battery Tunnel

intersects the Brooklyn shoreline of the East River; then east and north along the shoreline of the East River to its intersection with the City of New York/Nassau County line; then southeast along the City of New York/Nassau County line to its intersection with the Grand Central Parkway; then west on the Grand Central Parkway to the Jackie Robinson Parkway; then west on the Jackie Robinson Parkway to Park Lane; then south on Park Lane to Park Lane South; then south and west on Park Lane South to 112th Street; then south on 112th Street to Atlantic Avenue; then west on Atlantic Avenue to 106th Street; then south on 106th Street to Liberty Avenue; then west on Liberty Avenue to Euclid Avenue; then south on Euclid Avenue to Linden Boulevard; then west on Linden Boulevard to Canton Avenue; then west on Canton Avenue to the Prospect Expressway; then north and west on the Prospect Expressway to the Gowanus Expressway; then north and west on the Gowanus Expressway; then north on Hamilton Avenue to the point of beginning.

\* \* \* \* \*

Done in Washington, DC, this 5<sup>th</sup> day of August 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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