

# Rules and Regulations

Federal Register

Vol. 78, No. 92

Monday, May 13, 2013

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–2013–0004]

#### Asian Longhorned Beetle; Quarantined Areas in Ohio

**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 a portion of Clermont County, OH, to the list of quarantined areas and restricting the interstate movement of regulated articles from that area. This action is necessary to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States.

**DATES:** This interim rule is effective May 13, 2013. We will consider all comments that we receive on or before July 12, 2013.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0004-0001>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0004, 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-2013-0004> 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, Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 851–2352.

#### 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. 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.

Surveys conducted in Ohio have revealed that infestations of ALB have occurred in the Townships of Batavia and Stonelick in Clermont County, OH. The State of Ohio has quarantined the infested areas to prevent the further spread of ALB within the State. On August 30, 2012, APHIS issued a Federal Order establishing a quarantine area in the Townships of Batavia and Stonelick in Clermont County, OH, to prevent the spread of ALB.

The regulations in § 301.51–3(a) provide that APHIS will list as a quarantined area each State, or each portion of a State in which 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 enforcement 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 land parcels in Batavia and Stonelick Townships in Clermont County, OH. The quarantined areas are described in detail in the regulatory text of this document.

#### Emergency Action

This rulemaking is necessary on an emergency basis to 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 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 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. 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**.

ALB is an invasive forest pest that was introduced into the United States in 1996. ALB attacks hardwood trees and can cause extensive economic and environmental damage. There are currently ALB infestations being eradicated in Ohio. This interim rule expands the quarantine in Clermont County.

In Ohio, entities likely to be affected by this rule include landscape companies, tree service companies, and

waste haulers. Other types of businesses that may be impacted could include firewood dealers, trucking companies, construction companies, excavators, or property management companies. Additional costs of operating such businesses under ALB quarantine are small, and principally derive from self-inspection and certification of regulated material under compliance agreements. Most if not all of the businesses that will be affected by this rule in Ohio are small entities. We welcome public comment on the extent to which small entities in the areas regulated or deregulated may be specifically affected.

#### 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 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), under the heading “Ohio,” the entry for *Clermont County* is revised to read as follows:

#### § 301.51–3 Quarantined areas.

\* \* \* \* \*

(c) \* \* \*

Ohio  
*Clermont County.* (1) The portion of Clermont County, including all of the municipalities of Tate and East Fork State Park, and the portions of the Township of Monroe that include the following land parcels: 232609C094, 232609C113, 232609C215, 232609C085, 232609C128, 232609B224, 232609B188, 232609E223, 232609B215, 32609B193, 232609E075, 232609B161, 232609E156, 232609E245, 232609E037, 232609E074, 232609E230, 232609E031, 232609E220, 232609E232, 232609E240, 232609E239, 232609E241, 232609E175, 232609E228, 232609E250, 232609E235, 232609E238, 232609E227, 232609E242, 32609E226, 232609E249, 232609E236, 232609E234, 232609C217, 232609C040, 234715.008, 232609C227, 232609C222, 232609C092, 232609C093, 232609C129, 232609C098, 232609C195, 232609C100, 232609C169, 232609C136, 232609C097, 232609C139, 232609C148, 232609C042, 232609C150, 232609C182, 234715.009, 234715.005, 234715.006, 234715.001, 232609E246, 232609E247, 234715.004, 234715.003, 232609E222, 232609C228, 234425.001, 232609E233, 232609C170, 232609C216, 232609C196, 232609C105, 232609E237, 232609C225, 232609C091, 232609C197, 232609C218, 232609C198, 232609C041, 232609C212, 232609C194, 232609C214, 232609E224, 232609E231, 232609E248, 234715.007, 234715.002, 232609C120, 232609C226, 232609C229, 232609C043; and

(2) The portions of the Townships of Batavia and Stonelick that include the following land parcels: 302909I048, 304436.008, 302909H084, 302909K030, 022003B040, 012003H093, 025503D053, 022003B024, 302909G132, 304436A017, 304436.004, 302909F109, 012003E028, 012003C087, 012003H097, 022003C080, 302909G120, 302909K046, 302909H083, 302909F116, 012003E031, 012003C085, 022003B039, 302909G128, 302909F120, 302909H095, 302909F104, 012003E029, 012003C086, 022003F033, 302912E118, 302909G119, 302909G115, 302909H082, 302909F115, 012003E027, 302909G010, 022003F015, 302909B081, 302909G114, 302909H094, 302909I097, 012003E022, 022004H018, 022004H061, 302909E112, 302909B065, 302909G130, 302909H096, 302909F107, 025503B015, 012003H078, 022004H019, 302909E113, 302909G129, 304436A018, 302909F118, 302909I098, 012003E043, 302909G117, 304436A012, 302909E120, 302909B069, 304436.007, 304436.003, 302909K109, 012003E032, 302909G131, 302909F110, 302909E116, 302909J087, 302909H089, 302909F123, 302912E029, 012003E037, 302909F101, 022003A077, 302909E073, 302909J089, 302909H086, 304436.002, 302909F021, 015503I058, 302909F063, 022003A022, 302909E110, 304436A013, 304436A019, 304436.001, 302909F102, 012003E041, 302909G133, 302909F130, 302909E102, 302909E097, 302909H029, 302909F117, 012005H008, 012003E039, 302909D109, 302909F129, 302909K084, 302909J091, 302909H087, 302909F124, 302909I099, 012003E026, 302909E043, 302909I095, 302909K055, 302909K051, 304436.006, 302909B093, 302909K028P, 012003E040, 302909D049, 022003A023, 302909K107, 302909J086, 304436A020, 302909F128, 302909K110, 025503B013, 302909E090, 302909E114, 302909K054, 304436A014, 302909H090, 302909K047, 302909I025, 012003E034, 302909K044, 304436.010, 302909H093, 302909B040, 012005I010, 025503B012, 302912E135, 302909F132, 302909K032, 304436A015, 302909H085, 302909F112, 022003A078, 012003H102, 022003E020, 302909F131, 302909K059, 302909B015, 302909F119, 302909F125, 302909I096, 012003E023, 022003B038, 302909F022, 302909K108, 302909J041, 302909H088, 302909F113, 302909I024, 012003E033, 012003E035, 302909B083, 302909K031, 304436.009, 304436.005, 302909F114, 012003H101, 012003H100, 012003E011, 302909B070, 302909K099, 302909B103, 302909F122, 302909F127, 022003F034, 012003E024, 025503I058, 302909B076, 302909K028, 304436A016, 302909B064, 302909F111, 022003F018, 012003H104, 022003G023, 304436.011, 302909K042, 302909A039, 302909H091, 302909H097, 302909I023, 012003E036, 022003G022, 302909B038, 302909K052, 302909F121, 302909K071, 022003A076, 012003C027, 025503B016, 022003B043, 302909K094, 302909G116, 302909H081, 302909F126, 012005I005, 012003H094, 025503B017, 022003B044, 302909K092, 302909K106, 302909E106, 302909K053, 022003G014, 012003I072, 060224.026, 302909G110, 302909D107, 302909K061, 302909E115, 302909K058, 022003F019, 022003C062, 060224.009, 302909G109, 302909H018, 302909E016, 302909K057, 012003E038, 012003E030, 012003D009, 302909G121, 302909G127, 302909H017, 302909E014, 302912B150, 012003C061, 012003E047, 012003C078, 302909G108, 302909E013, 302909H080, 302909K027, 302909K066, 012003C028, 012003E046, 302909H099, 022003B042, 302909H020, 022005G014, 302909K068, 012003C088, 022003B025, 302909G011, 302909H098, 302909H092, 012003E042, 012003E021, 012003E045, 012005I007, 302909J067, 302909K105, 302909G122, 302909G123, 302909G124, 302909G125, 302909G126.

Done in Washington, DC, this May 8, 2013.

**Kevin Shea,**

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013-11312 Filed 5-10-13; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS-2012-0108]

#### Black Stem Rust; Additions of Rust-Resistant Species and Varieties

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

**ACTION:** Direct final rule.

**SUMMARY:** We are amending the black stem rust quarantine and regulations by adding two varieties to the list of rust-resistant *Berberis* species and varieties and one variety to the list of rust-resistant *Mahonia* species and varieties. This action will allow for the interstate movement of these newly developed varieties without unnecessary restrictions.

**DATES:** This rule will be effective on July 12, 2013, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before June 12, 2013. If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date.

**ADDRESSES:** You may submit comments or written notice of intent to submit adverse comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0108-0001>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2012-0108, 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-2012-0108> 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:** Mr. Prakash K. Hebbar, National Program Manager, Black Stem/Barberry Rust Program, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737-1231; (301) 851-2228.

#### SUPPLEMENTARY INFORMATION:

##### Background

Black stem rust is one of the most destructive plant diseases of small grains that is known to exist in the United States. The disease is caused by a fungus (*Puccinia graminis*) that reduces the quality and yield of infected wheat, oat, barley, and rye crops. In addition to infecting small grains, the fungus lives on a variety of alternate host plants that are species of the genera *Berberis*, *Mahoberberis*, and *Mahonia*. The fungus is spread from host to host by windborne spores.

The black stem rust quarantine and regulations, which are contained in 7 CFR 301.38 through 301.38-8 (referred to below as the regulations), quarantine the conterminous 48 States and the District of Columbia and govern the interstate movement of certain plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, known as barberry plants. The species of these plants are categorized as either rust-resistant or rust-susceptible. Rust-resistant plants do not pose a risk of spreading black stem rust or of contributing to the development of new races of the rust; rust-susceptible plants do pose such risks. Section 301.38-2 of the regulations includes a listing of regulated articles and indicates those species and varieties of the genera *Berberis*, *Mahoberberis*, and *Mahonia* that are known to be rust-resistant. Although rust-resistant species are included as regulated articles, they may be moved into or through protected areas if accompanied by a certificate. In accordance with the procedures described below under "Dates," this direct final rule will add *B. thunbergii* varieties 'Della' and 'O' Byrne' to the list of rust-resistant *Berberis* species in § 301.38-2(a)(1). Similarly, this rule will add the *Mahonia x media* variety 'Lionel Fortescue' to the list of rust-resistant *Mahonia* species in § 301.38-2(a)(2)(ii).

The addition of these species is based on recent testing to determine rust resistance conducted by the Agricultural Research Service of the United States Department of Agriculture (USDA) at its Cereal Disease Laboratory in St. Paul, MN. The testing is performed in the following manner: In a greenhouse, the

suspect plant or test subject is placed under a screen with a control plant—a known rust-susceptible species of *Berberis*, *Mahoberberis*, or *Mahonia*. Infected wheat stems, a primary host of black stem rust, are placed on top of the screen. The plants are moistened and maintained in 100 percent humidity. This causes the spores to swell and fall on the plants lying under the screen. The plants are then observed for 7 days at 20–80 percent relative humidity. If the rust-susceptible plant shows signs of infection after 7 days and the test plants do not, the test results indicate that the test plants are rust-resistant. This test must be performed 12 times, and all 12 tests must yield the same result before USDA can make a determination as to whether the test plants are rust-resistant. The test may be conducted on 12 individual plants, or it may be performed multiple times on fewer plants (e.g., six plants tested twice or three plants tested four times). The tests must be performed on new growth, just as the leaves are unfolding. Therefore, the tests are usually conducted in the spring or fall, during the growing season. All 12 tests generally cannot be conducted on the same day because of the plants' different growth stages. Based on over 30 years of experience with this test, we believe that 12 is the reliable test sample size on which USDA can make its determination. We do not know of any plant that was subsequently discovered to be rust-susceptible after undergoing the test procedure 12 times and being determined by USDA to be rust-resistant.

##### Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, on July 12, 2013, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before June 12, 2013.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment.

As discussed above, if we receive no written adverse comments or written notice of intent to submit adverse comments within 30 days of publication