

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 03–109–1]

#### Imported Fire Ant; Additions to Quarantined Areas

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

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

**SUMMARY:** We are amending the imported fire ant regulations by designating as quarantined areas all or portions of 20 counties in North Carolina. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

**DATES:** This interim rule is effective April 29, 2004. We will consider all comments that we receive on or before June 28, 2004.

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

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 03–109–1, 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. 03–109–1.

- **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. 03–109–1” on the subject line.

- **Agency Web Site:** Go to <http://www.aphis.usda.gov/ppd/rad/>

for a form you can use to submit an e-mail comment through the APHIS Web site.

- **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. Charles L. Brown, Imported Fire Ant Quarantine Program Manager, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

#### SUPPLEMENTARY INFORMATION:

##### Background

The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81–10 and referred to below as the regulations) quarantine infested States or infested areas within States and restrict the interstate movement of regulated articles to prevent the artificial spread of the imported fire ant.

The imported fire ant (*Solenopsis invicta* Buren and *Solenopsis richteri* Forel) is an aggressive, stinging insect that, in large numbers, can seriously injure and even kill livestock, pets, and humans. The imported fire ant, which is not native to the United States, feeds on crops and builds large, hard mounds that damage farm and field machinery. The regulations are intended to prevent the imported fire ant from spreading throughout its ecological range within the country.

The regulations in § 301.81–3 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,

that is infested with the imported fire ant. The Administrator will designate less than an entire State as a quarantined area only under the following conditions: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81–2 that are equivalent to the interstate movement restrictions imposed by the regulations; and (2) designating less than the entire State will prevent the spread of the imported fire ant. The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or its inseparability from an infested locality for quarantine purposes.

In § 301.81–3, paragraph (e) lists quarantined areas. We are amending § 301.81–3(e) by:

- Adding all or parts of Cherokee, Clay, Cleveland, Durham, Orange, Polk, Randolph, and Wilson Counties, NC, to the quarantined area; and
- Expanding the quarantined areas in Cabarrus, Chatham, Edgecombe, Gaston, Harnett, Hertford, Johnston, Martin, Nash, Stanly, Wake, and Wayne Counties, NC.

We are taking these actions because recent surveys conducted by APHIS and State and county agencies revealed that the imported fire ant has spread to these areas. See the rule portion of this document for specific descriptions of the new and revised quarantined areas.

#### Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of imported fire ant into 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 imported fire ant regulations by designating as quarantined areas all or portions of 20 counties in North Carolina. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

In 1996, the market value of agricultural products sold in the 20 counties affected by this action was more than \$1.69 billion.<sup>1</sup> This value represented 22 percent of all agricultural products sold in North Carolina that year. During 1997, the value of nursery and greenhouse crops sold in the 20 counties was valued at a minimum of \$66 million, 21 percent of the value of nursery crops sold in the State of North Carolina.

The entities potentially affected by this action include nurseries, greenhouses, farm equipment dealers, construction companies, and those entities that sell, process, or move regulated articles interstate from and through quarantined areas. In general, the adverse economic effects on the entities that move regulated articles interstate can be minimized by the availability of various treatments. In most cases, these treatments permit the movement of regulated articles with a small additional cost.

According to the standards established by the Small Business Administration (SBA), a small agricultural producer is one having \$750,000 or less in annual sales, and a small equipment dealer or a small agricultural service company is one generating \$5 million or less in annual sales.

In the 20 IFA-infested counties affected by this interim rule, there are at least 453 economic entities that could potentially be affected.<sup>2</sup> All of these were small entities according to SBA standards. According to the 1997 Census of Agriculture, these 20 counties received at least \$658.6 million from selling all their crops; this value includes nursery crop sales.<sup>3</sup>

The economic effects on entities in the 20 counties affected by this interim rule will depend on the proportion of their sales outside the quarantined area. When we compare the cost of an average shipment of nursery plants on a "standard" trailer truck with the value of these nursery plants, the range of the treatment cost is between 0.8 percent and 2 percent of the value of the plants. An average nursery plant costs between \$1 and \$25, and the value of the load of a standard tractor trailer, which can carry up to 10,000 plants, ranges between \$10,000 and \$250,000. However, the cost of treatment for a standard shipment of plants is between \$116 and \$200. The benefits of this action are substantial, both ensuring continued agricultural sales from the affected counties and preventing human-assisted spread of imported fire ant.

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 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 § 301.81–3, paragraph (e), under the heading North Carolina, the entries for Cabarrus, Chatham, Edgecombe, Gaston, Harnett, Hertford, Johnston, Martin, Nash, Stanly, Wake, and Wayne Counties are revised and new entries for Cherokee, Clay, Cleveland, Durham, Orange, Polk, Randolph, and Wilson Counties are added to read as follows.

#### § 301.81–3 Quarantined areas.

\* \* \* \* \*

(e) \* \* \*

#### North Carolina

\* \* \* \* \*

*Cabarrus County.* The entire county.

\* \* \* \* \*

*Chatham County.* The entire county.

*Cherokee County.* That portion of the county lying south and west of a line beginning at the intersection of the Cherokee/Clay County line and the North Carolina/Georgia State line; then north to U.S. Highway 64; then northwest along the southern shoreline of Hiwassee Lake to the Tennessee State line.

\* \* \* \* \*

*Clay County.* That portion of the county lying southwest of State Highway 69 and the North Carolina/Georgia State line; then north along Interstate 70 to its intersection with U.S. Highway 64; then west along U.S. Highway 64 to the Clay/Cherokee County boundary.

*Cleveland County.* The entire county.

\* \* \* \* \*

*Durham County.* That portion of the county lying south of Interstate 85.

*Edgecombe County.* That portion of the county lying south of a line beginning at the intersection of State Highway 111 and the Martin/Edgecombe County line; then southwest on State Highway 111 to U.S. Highway 64 Alternate; then west on U.S. Highway 64 Alternate to County Route 1252; then west of this northerly line to County Route 1408; then west on County Route 1408 to County Route 1407; then south on County Route 1407 to the Edgecombe/Nash County line.

*Gaston County.* The entire county.

\* \* \* \* \*

<sup>1</sup> 1997 Census of Agriculture, AC97–A–42, North Carolina: State and County Level Data, Volume 1, Geographic Area Series: Part 42, pages 166–178, table 1. County Summary Highlights. <http://www.nass.usda.gov/census/census97/volume1>.

<sup>2</sup> See footnote 1.

<sup>3</sup> See footnote 1.

*Harnett County.* The entire county.

*Hertford County.* That portion of the county lying south and east of a line beginning at the intersection of State Highway 11 and the Bertie/Hertford county line; then northeast on State Highway 11 to the U.S. Highway 13 Bypass; then northeast on U.S. Highway 13 to the Hertford/Gates County line.

\* \* \* \* \*

*Johnston County.* The entire county.

\* \* \* \* \*

*Martin County.* That portion of the county lying south of a line beginning at the intersection of State Highway 111 and the Edgecombe/Martin County line; then north and east on State Highway 111 to State Highway 11/42; then northeast along State Highway 11/42 to the Martin/Bertie County line.

\* \* \* \* \*

*Nash County.* That portion of the county lying south and east of the line beginning at the intersection of U.S. Highway 64 and the Franklin/Nash County line; then northeast on U.S. Highway 64 to Interstate 95; then north on Interstate 95 to State Highway 4; then east on State Highway 4 to U.S. Highway 301; then east along a straight line from the intersection of State Highway 64 and U.S. Highway 301 to the Nash/Edgecombe County line.

\* \* \* \* \*

*Orange County.* The portion of the county that lies south of Interstate 85.

\* \* \* \* \*

*Polk County.* The entire county.

*Randolph County.* That portion of the county lying south of the line beginning at the intersection of State Highway 49 and the Davidson/Randolph County line; then east on State Highway 49 to U.S. Highway 64; then east on U.S. Highway 64 to its intersection with the Randolph/Chatham County line.

\* \* \* \* \*

*Stanly County.* The entire county.

\* \* \* \* \*

*Wake County.* The entire county.

\* \* \* \* \*

*Wayne County.* The entire county.

*Wilson County.* The entire county.

\* \* \* \* \*

Done in Washington, DC, this 23rd day of April, 2004.

**William R. DeHaven,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04-9712 Filed 4-28-04; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

RIN 0563-AB87 and RIN 0563-AB89

### Common Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes the interim Common Crop Insurance Regulations, Sunflower Seed Crop Insurance Provisions, Coarse Grains Crop Insurance Provisions, Safflower Crop Insurance Provisions, Dry Pea Crop Insurance Provisions, Rice Crop Insurance Provisions, Dry Bean Crop Insurance Provisions, and Canola and Rapeseed Crop Insurance Provisions to implement the quality loss adjustment procedures contained in section 10003 of the Farm Security and Rural Investment Act of 2002.

**EFFECTIVE DATE:** June 1, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Louise Narber, Insurance Management Specialist, Product Development Division, Federal Crop Insurance Corporation, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133-4676, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

### Executive Order 12866

This rule has been determined to be not-significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

### Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563-0053 through February 28, 2005.

### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

### Executive Order 13132

The rule will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

### Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees, and compute premium amounts, or a notice of loss and production information to determine an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

### Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the