

# Rules and Regulations

Federal Register

Vol. 69, No. 2

Monday, January 5, 2004

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. 03–102–1]

#### Pine Shoot Beetle; Additions to Quarantined Areas

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

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

**SUMMARY:** We are amending the pine shoot beetle regulations by adding 37 counties in Illinois, Indiana, Maryland, New York, Ohio, Pennsylvania, Vermont, and Virginia to the list of quarantined areas. This action is necessary to prevent the spread of pine shoot beetle, a pest of pine products, into noninfested areas of the United States.

**DATES:** This interim rule is effective January 5, 2004. We will consider all comments that we receive on or before March 5, 2004.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–102–1, 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. 03–102–1. If you use 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. 03–102–1” on the subject line.

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.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Weyman Fussell, Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–5705.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 7 CFR 301.50 through 301.50–10 (referred to below as the regulations) restrict the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of pine shoot beetle (PSB) into noninfested areas of the United States.

PSB is a pest of pine trees that can cause damage in weak and dying trees, where reproduction and immature stages of PSB occur. During “maturation feeding,” young beetles tunnel into the center of pine shoots (usually of the current year’s growth), causing stunted and distorted growth in host trees. PSB is also a vector of several diseases of pine trees. Factors that may result in the establishment of PSB populations far from the location of the original host tree include: (1) Adults can fly at least 1 kilometer, and (2) infested trees and pine products are often transported long distances. This pest damages urban ornamental trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

PSB hosts include all pine species. The beetle has been found in a variety of pine species (*Pinus* spp.) in the United States. Scotch pine (*P. sylvestris*) is the preferred host of PSB. The Animal and Plant Health Inspection Service (APHIS) has determined, based on scientific data from European countries, that fir (*Abies* spp.) larch (*Larix* spp.)

and spruce (*Picea* spp.) are not hosts of PSB.

Surveys conducted by State and Federal inspectors revealed areas within 37 additional counties infested with PSB in 8 States (Illinois, Indiana, Maryland, New York, Ohio, Pennsylvania, Vermont, and Virginia). Copies of the surveys may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The regulations in § 301.50–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which PSB has been found by an inspector, in which the Administrator has reason to believe PSB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which PSB has been found.

In accordance with these criteria, we are designating Carroll, Clark, Coles, Ford, Henry, Mason, Moultrie, Peoria, and Shelby Counties, IL; Bartholomew, Franklin, Monroe, Morgan, Putnam, and Union Counties, IN; Montgomery County, MD; Albany, Fulton, Greene, Hamilton, Herkimer, Montgomery, Saratoga, Schoenectady, Schoharie, and Sullivan Counties, NY; Athens, Gallia, Pike, and Washington Counties, OH; Centre, Fulton, Lycoming, Susquehanna, and Wyoming Counties, PA; Washington County, VT; and Clarke County, VA, as quarantined areas, and we are adding them to the list of quarantined areas in § 301.50–3(c).

Entities affected by this interim rule may include nursery stock growers, Christmas tree farms, logging operations, and others who sell, process, or move regulated articles. As a result of this interim rule, any regulated articles to be moved interstate from a quarantined area must first be inspected and/or treated in order to qualify for a certificate or limited permit authorizing the movement.

#### Miscellaneous Change

We are removing paragraph (d) of § 301.50–3 from the regulations. Paragraph (d) contains a map that shows the quarantined counties listed in § 301.50–3(c). The map does not add any information to the regulations; therefore, we have decided not to recreate it each time the list of quarantined areas is changed.

**Emergency Action**

This rulemaking is necessary on an emergency basis to prevent PSB from spreading 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.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

**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; 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. Section 301.50–3 is amended as follows:

a. In paragraph (c), under Illinois, by adding new counties in alphabetical order.

b. In paragraph (c), under Indiana, by adding new counties in alphabetical order.

c. In paragraph (c), under Maryland, by adding a new county in alphabetical order.

d. In paragraph (c), under New York, by adding new counties in alphabetical order.

e. In paragraph (c), under Ohio, by adding new counties in alphabetical order.

f. In paragraph (c), under Pennsylvania, by adding new counties in alphabetical order.

g. In paragraph (c), under Vermont, by adding a new county in alphabetical order.

h. In paragraph (c), by adding an entry for Virginia.

i. By removing paragraph (d).

**§ 301.50–3 Quarantined areas.**

\* \* \* \* \*  
(c) \* \* \*

**ILLINOIS**

\* \* \* \* \*  
*Carroll County.* The entire county.

\* \* \* \* \*  
*Clark County.* The entire county.  
*Coles County.* The entire county.

\* \* \* \* \*  
*Ford County.* The entire county.

\* \* \* \* \*  
*Henry County.* The entire county.

\* \* \* \* \*  
*Mason County.* The entire county.

\* \* \* \* \*  
*Moultrie County.* The entire county.

\* \* \* \* \*  
*Peoria County.* The entire county.

\* \* \* \* \*

*Shelby County.* The entire county.

\* \* \* \* \*

**INDIANA**

\* \* \* \* \*

*Bartholomew County.* The entire county.

\* \* \* \* \*

*Franklin County.* The entire county.

\* \* \* \* \*

*Monroe County.* The entire county.

\* \* \* \* \*

*Morgan County.* The entire county.

\* \* \* \* \*

*Putnam County.* The entire county.

\* \* \* \* \*

*Union County.* The entire county.

\* \* \* \* \*

**MARYLAND**

\* \* \* \* \*

*Montgomery County.* The entire county.

\* \* \* \* \*

**NEW YORK**

*Albany County.* The entire county.

\* \* \* \* \*

*Fulton County.* The entire county.

\* \* \* \* \*

*Greene County.* The entire county.

*Hamilton County.* The entire county.

*Herkimer County.* The entire county.

\* \* \* \* \*

*Montgomery County.* The entire county.

\* \* \* \* \*

*Saratoga County.* The entire county.

*Schenectady County.* The entire county.

*Schoharie County.* The entire county.

\* \* \* \* \*

*Sullivan County.* The entire county.

\* \* \* \* \*

**OHIO**

\* \* \* \* \*

*Athens County.* The entire county.

\* \* \* \* \*

*Gallia County.* The entire county.

\* \* \* \* \*

*Pike County.* The entire county.

\* \* \* \* \*

*Washington County.* The entire county.

\* \* \* \* \*

**PENNSYLVANIA**

\* \* \* \* \*

*Centre County.* The entire county.

\* \* \* \* \*

*Fulton County.* The entire county.

\* \* \* \* \*

*Lycoming County.* The entire county.

\* \* \* \* \*

*Susquehanna County.* The entire county.

\* \* \* \* \*

*Wyoming County.* The entire county.

\* \* \* \* \*

**VERMONT**

\* \* \* \* \*

*Washington County.* The entire county.

\* \* \* \* \*

## VIRGINIA

Clarke County. The entire county.

\* \* \* \* \*

Done in Washington, DC, this 29th day of December, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04-80 Filed 1-2-04; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 7 CFR Part 301

[Docket No. 03-047-1]

## Karnal Bunt; Regulated Areas

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

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

**SUMMARY:** We are amending the Karnal bunt regulations to make changes to the list of areas or fields regulated because of Karnal bunt, a fungal disease of wheat. We are adding certain areas in Arizona to the list of regulated areas either because they were found during surveys to contain a bunted wheat kernel, or because they are within the 3-mile-wide buffer zone around fields or areas affected with Karnal bunt. We are also removing certain areas from the list of regulated areas in Riverside County, CA, because recently completed detection and delineating surveys show them to be free of Karnal bunt. These actions are necessary to prevent the spread of Karnal bunt into noninfected areas of the United States and to relieve restrictions that are no longer warranted.

**DATES:** This interim rule is effective January 5, 2004. We will consider all comments that we receive on or before March 5, 2004.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03-047-1, 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. 03-047-1. If you use 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. 03-047-1" on the subject line.

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.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Spaide, Senior Program Advisor, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737-1236; (301) 734-4387.

## SUPPLEMENTARY INFORMATION:

## Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum X Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread primarily through the movement of infected seed. Some countries in the international wheat market regulate Karnal bunt as a fungal disease requiring quarantine; therefore, without measures taken by the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture, to prevent its spread, the presence of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets.

Upon detection of Karnal bunt in Arizona in March of 1996, Federal quarantine and emergency actions were imposed to prevent the interstate spread of the disease to other wheat producing areas in the United States. The quarantine continues in effect, although it has since been modified, both in terms of its physical boundaries and in terms of its restrictions on the production and movement of regulated articles from regulated areas. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89-1 through 301.89-16 (referred to below as the regulations).

## Regulated Areas

The regulations in § 301.89-3(e) provide that we will classify a field or area as a regulated area when it is:

- A field planted with seed from a lot found to contain a bunted wheat kernel;
- A distinct definable area that contains at least one field that was found during a survey to contain a bunted wheat kernel. The distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to a field found during survey to contain a bunted wheat kernel; or
- A distinct definable area that contains at least one field that was found during survey to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted wheat kernel. The distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of that area's proximity to a field that has been associated with grain at a handling facility containing a bunted wheat kernel.

The boundaries of distinct definable areas are determined using the criteria in paragraphs (b) through (d) of § 301.89-3, which provide for the regulation of less than an entire State, the inclusion of noninfected acreage in a regulated area, and the temporary designation of nonregulated areas as regulated areas. Paragraph (c) of § 301.89-3 states that the Administrator may include noninfected acreage within a regulated area due to its proximity to an infestation or inseparability from the infected locality for regulatory purposes, as determined by:

- Projections of the spread of Karnal bunt along the periphery of the infestation;
- The availability of natural habitats and host materials within the noninfected acreage that are suitable for establishment and survival of Karnal bunt; and
- The necessity of including noninfected acreage within the regulated area in order to establish readily identifiable boundaries.

When we include noninfected acreage in a regulated area for one or more of the reasons previously listed, the noninfected acreage, along with the rest of the acreage in the regulated area, is intensively surveyed. Negative results from surveys of the noninfected acreage provide assurance that all infected acreage is within the regulated area. In effect, the noninfected acreage serves as