

# Rules and Regulations

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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.

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 00-073-2]

RIN 0579-AB76

#### Pine Shoot Beetle Host Material From Canada

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

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

**SUMMARY:** We are establishing restrictions on the importation of pine shoot beetle host material into the United States from Canada. Under the new regulations, pine nursery stock, as well as pine products that consist of pine bark or have pine bark attached, must meet certain requirements relating to documentation, treatment, handling, and utilization as a condition of importation into the United States from Canada. This action is necessary on an emergency basis to help prevent the introduction and spread of pine shoot beetle, a pest of pine trees, into noninfested areas of the United States.

**DATES:** This interim rule is effective October 20, 2004. We will consider all comments that we receive on or before December 20, 2004.

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

- **EDOCKET:** Go to <http://www.epa.gov/feddocket> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 00-073-2, 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. 00-073-2.

- **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. 00-073-2" on the subject line.

- **Agency Web site:** Go to <http://www.aphis.usda.gov/ppd/rad/cominst.html> 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. Fred Thomas, Import Specialist, PPQ, APHIS, 4700 River Road, Unit 160, Riverdale, MD 20737-1236; (301) 734-8367.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 7 CFR part 319 (foreign quarantine notices) prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests. "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (§§ 319.37 through 319.37-14 and referred to below as the

nursery stock regulations) covers the importation of living plants, plant parts, and seeds for propagation. "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles" (§§ 319.40-1 through 319.40-11 and referred to below as the wood regulations) covers the importation of logs, lumber, and other wood articles that are unprocessed or have received only primary processing. "Subpart—Gypsy Moth Host Material from Canada" (§§ 319.77-1 through 319.77-5 and referred to below as the gypsy moth regulations) covers the importation of gypsy moth host material into the United States from Canada. This material includes certain trees and shrubs, logs and pulpwood with bark attached, and outdoor household articles and mobile homes and their associated equipment.

##### Pine Shoot Beetle

Pine shoot beetle (*Tomicus piniperda*) is a pest of pine trees. It can cause damage in weak and dying trees, where reproductive and immature stages of pine shoot beetle (PSB) occur, and in the new growth of healthy trees. During "maturation feeding," young beetles tunnel into the center of pine shoots (usually in the current year's growth), causing stunted and distorted growth in host trees. PSB also acts as a vector of several diseases of pine trees. Adult PSB can fly at least 1 kilometer. In addition, infested trees and pine products are often transported long distances, which can result in the establishment of PSB populations far from the location of the original host tree. PSB can damage urban ornamental trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

PSB host material encompasses all varieties of *Pinus* species (*Pinus* spp.) and has been detected in the North Central, Northeastern, and Middle Atlantic regions of 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.), spruce (*Picea* spp.), and larch (*Larix* spp.) are not hosts of PSB.

PSB was first detected in Canada approximately 10 years ago. Areas of known infestation are located in the Provinces of Ontario and Quebec, and are contiguous, for the most part, with

areas infested with PSB in the northeastern United States. PSB populations have continued to spread in Ontario and Quebec despite the efforts of Canada's plant protection service, the Canadian Food Inspection Agency (CFIA), in implementing regulatory compliance practices to control the spread of the plant pest.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation and entry into the United States of any plants and plant products, including pine materials and products, to prevent the introduction of plant pests or noxious weeds into the United States.

APHIS already regulates the interstate movement of PSB host material from areas in the United States that are considered to be infested with PSB through its domestic quarantine notices. (See Subpart "Pine Shoot Beetle," 7 CFR 301.50 through 301.50–10 and referred to below as the domestic PSB regulations). A list of quarantined areas in the United States (*i.e.*, counties where PSB has been detected) can be found at § 301.50–3 of the domestic PSB regulations.

In this document, we are establishing specific requirements for the importation of PSB host material into the United States from Canada. To accomplish this, we are amending the nursery stock, wood, and gypsy moth regulations.

The requirements in this interim rule parallel in many respects regulations that the Canadian Government has implemented with respect to the importation of PSB host material into Canada from the United States. The reciprocal regulation of imported PSB host material by Canada and the United States is consistent with North American Plant Protection Organization standards for preventing the introduction and spread of quarantine plant pests and fostering the preservation of plant resources in North America through coordinated joint programs of mutual interest.

#### *Changes to the Nursery Stock Regulations*

The nursery stock regulations provide that any restricted article offered for importation into the United States, other than certain greenhouse-grown plants from Canada, must be accompanied by a phytosanitary certificate of inspection. Restricted articles include any class of nursery stock or other class of plant, root, bulb, seed, or other plant product, for or capable of propagation, excluding prohibited articles listed in § 319.37–2

and other articles subject to specific regulations elsewhere in part 319.

#### **Permits**

Section 319.37–3 of the nursery stock regulations lists certain restricted articles for which a written permit must be issued by APHIS' Plant Protection and Quarantine Programs as a condition of entry into the United States. One of the restricted articles for which a written permit is required is articles (except seeds) of *Pinus* spp. from Canada and destined to California, Idaho, Montana, Oregon, or Utah (see § 319.37–3(a)(15)).

In this interim rule, we are amending § 319.37–3(a)(15) to provide that a written permit must now be obtained for the importation of all restricted articles (except seeds) of pine (*Pinus* spp.) from Canada, regardless of their destination in the United States. We are making this change to better monitor the movement of pine nursery stock from Canada into the United States, and thereby help prevent the introduction and spread of PSB into noninfested areas of the United States.

#### *Special Foreign Inspection and Certification Requirements*

Section 319.37–5 of the nursery stock regulations sets forth additional requirements for foreign inspection and certification of specified restricted articles prior to their importation into the United States. For example, in some cases we require that the phytosanitary certificate of inspection accompanying certain restricted articles provide further information on the article in the form of an additional declaration.

To further mitigate the risk of PSB spreading into noninfested areas of the United States, we are adding a new paragraph to § 319.37–5 that sets out foreign inspection and certification requirements for the importation of restricted articles of pine (*Pinus* spp.) into the United States from Canada. These requirements are based primarily on whether the restricted article originated in an infested or partially infested Province in Canada and whether the restricted article is destined for or will be moved through areas in the United States that are quarantined for PSB. This new paragraph appears at § 319.37–5(s).

#### *From Noninfested Canadian Provinces to All Areas of the United States*

Under new § 319.37–5(s), restricted articles of pine (*Pinus* spp.) from Canada may be imported into any area of the United States as long as the articles originated in and have only been moved through Canadian

Provinces that are not considered by the CFIA to be infested or partially infested with PSB. The phytosanitary certificate of inspection accompanying these restricted articles must specify the Province where the articles originated and, if applicable, the Province or Provinces the restricted articles were moved through, if different from the Province of origin. We need this origin information to ensure that the restricted article was not grown in or moved through a Canadian Province considered to be infested or partially infested with PSB, as determined by the CFIA.

We are relying on the CFIA to identify Provinces and those specific areas (*i.e.*, counties and municipal regional counties) within Provinces considered to be infested with PSB. CFIA considers a Province to be infested if PSB has been detected in all counties or municipal regional counties within that Province. CFIA considers a Province to be partially infested if PSB has been detected in one or more (but not all) counties or municipal regional counties in a Province. At this time, portions of two Provinces, Ontario and Quebec, are infested with PSB.

This interim rule also requires that the U.S. destination (including county and State) of the restricted articles be plainly indicated on the restricted articles or, if applicable, on the outer covering, packaging, or container.

If the restricted articles are to be moved through a U.S. quarantined area for PSB en route to an area or areas in the United States not quarantined for PSB during the period of January through September when the temperature is 10 °C (50 °F) or higher, then the restricted articles must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by PSB. These movement restrictions governing the U.S. movement of PSB host materials from Canada parallel existing restrictions for the interstate movement of PSB host materials under the domestic PSB regulations.

#### *From Infested or Partially Infested Canadian Provinces to U.S. Infested Areas*

Restricted articles of pine (*Pinus* spp.) that originated in or were moved through a Canadian Province that is considered to be infested or partially infested with PSB, as determined by the CFIA, and that are destined for and will be moved only through areas in the United States that are quarantined for PSB under the domestic PSB regulations must meet the following requirements to be imported into the United States:

- The accompanying phytosanitary certificate of inspection must specify the Canadian Province where the restricted articles originated and, if applicable, the Province or Provinces the restricted articles were moved through, if different from the Province of origin; and

- The U.S. destination (including State and county) of the restricted articles must be plainly indicated on the restricted articles or, if applicable, on the outer covering, packaging, or container.

We require this information on the restricted article's origin and destination to verify that it originated from a Province that is considered to be infested or partially infested with PSB, and to confirm that the article is not destined for and will not be moved through a noninfested area in the United States.

#### *From Infested or Partially Infested Canadian Provinces to or Through U.S. Noninfested Areas*

If restricted articles of pine (*Pinus* spp.) originated in a Canadian Province that is considered to be infested or partially infested with PSB, as determined by the CFIA, and are destined for or will be moved through an area in the United States that is not considered to be infested with PSB under the PSB regulations, then the articles must meet the following requirements to be imported into the United States:

- The accompanying phytosanitary certificate of inspection must specify the Canadian Province where the restricted articles originated and, if applicable, the Province or Provinces the restricted articles were moved through, if different from the Province of origin. The treatment section of the phytosanitary certificate of inspection must indicate that the restricted articles have been treated with methyl bromide to kill PSB in accordance with applicable provisions of the Plant Protection and Quarantine Treatment Manual (the Treatment Manual); or alternatively, in lieu of methyl bromide treatment, the phytosanitary certificate of inspection must contain one of the following additional declarations:

- "These restricted articles were grown on a plantation that has a program to control or eradicate pine shoot beetle (*Tomicus piniperda*) and have been inspected and are considered to be free from pine shoot beetle (*Tomicus piniperda*); or

- "These restricted articles originated in an area where pine shoot beetle (*Tomicus piniperda*) is not considered to be present, as determined by the CFIA." Such an area would be a county

or regional municipal county within a partially infested Province of Canada that is not on the CFIA list of areas considered to be infested with PSB; or

- "These restricted articles have been 100 percent inspected and found to be free from pine shoot beetle (*Tomicus piniperda*)." By 100 percent inspection, we mean that each article in the shipment, and not just a representative sample of articles in that shipment, is visually examined. One hundred percent inspection provides a greater degree of assurance that pests are not present and that the shipment is otherwise in compliance with phytosanitary requirements; or

- "Based on inspection, the restricted articles are no greater than 36 inches high with a bole diameter at soil level of 1 inch or less." PSB is not known to infest plants of this size.

We are providing methyl bromide as a treatment option here and elsewhere in this rule primarily because it is provided as a treatment option in Canadian regulations covering the importation of PSB host material from the United States, as well as in our domestic PSB regulations at § 301.50–10.

In addition to the phytosanitary certificate of inspection, we are also requiring that the U.S. destination (including State and county) of the restricted articles be plainly indicated on the restricted articles or, if applicable, on the outer covering, packaging, or container.

If the restricted articles are to be moved through an area of the United States quarantined for PSB under the domestic PSB regulations en route to an area or areas in the United States not quarantined for PSB during the period of January through September when the temperature is 10 °C (50 °F) or higher, then the restricted articles must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by PSB. These movement restrictions within the United States parallel existing PSB movement controls governing the interstate movement of PSB host material under our domestic quarantine notices.

#### *Changes to the Wood Regulations*

The wood regulations prohibit or restrict the importation of logs, lumber, and other wood articles that are unprocessed or have received only primary processing. Regulated articles include PSB host material such as pine logs, lumber with bark attached, cut pine Christmas trees, wood chips, wood mulch, and composted bark.

#### *Definitions*

As is discussed in greater detail below, we are now requiring that the importation of regulated articles of pine (*Pinus* spp.) from Canada that are not completely free of bark must be accompanied by a certificate or a statement of origin and movement. The wood regulations define a certificate as "a certificate of inspection relating to a regulated article, which is issued by an official authorized by the national government of the country in which the regulated article was produced or grown, which contains a description of the regulated article, which certifies that the regulated article has been inspected, is believed to be free of plant pests, and is believed to be eligible for importation pursuant to the laws and regulations of the United States, and which may contain any specific additional declarations required under subpart 319.40." The term "certificate," as used in subpart 319.40, is similar in meaning to the term "phytosanitary certificate of inspection" that appears in the nursery stock regulations.

In this interim rule, we are defining the term "statement of origin and movement" in § 319.40–1 as "a signed, accurate statement certifying the area or areas where the regulated articles originated and, if applicable, the area or areas they were moved through prior to importation. The statement may be printed directly on the documentation accompanying the shipment of regulated articles, or it may be provided on a separate document. The statement does not require the signature of a public officer of a national plant protection organization; exporters may sign the document." The principal distinction between a statement of origin and movement and a certificate is that a statement of origin and movement does not require that the regulated article be inspected for plant pests or signed by an officer of a national plant protection organization.

#### *General Permits*

Generally, the wood regulations require that a specific written permit be issued for the importation of any regulated article. However, under § 319.40–3, APHIS authorizes the importation of certain regulated articles into the United States pursuant to a general permit. If covered by a general permit, the importer does not have to apply for a separate written permit from APHIS. As stated in § 319.40–3, regulated articles imported into the United States under a general permit are subject to inspection at the port of first

arrival and other requirements in § 319.40–9.

Under § 319.40–3(a), APHIS has issued a general permit for the importation into the United States of most regulated articles from Canada and from States in Mexico that are adjacent to the United States border. Regulated articles covered by the general permit must be accompanied by an importer document stating that the articles are derived from trees that were harvested in, and have never been moved outside, areas covered by the general permit (i.e., Canada or States of Mexico adjacent to the United States border). As stated in § 319.40–3(a), the general permit does not apply to regulated articles of the subfamilies Aurantioideae, Rutoideae, and Toddalioidae of the botanical family Rutaceae. Shippers wishing to import these particular articles into the United States must apply for a specific written permit as provided in §§ 319.40–2 and 319.40–4 of the regulations.

In this interim rule, we are amending § 319.40–3(a) to provide that the general permit will also no longer apply to regulated articles of pine (*Pinus* spp.) that are not completely free of bark from Provinces in Canada considered to be infested or partially infested with PSB, as determined by the CFIA. Instead, these particular regulated articles must have a written permit because of the risk of PSB associated with these articles.

#### *Importation and Entry Requirements for Specified Articles*

Section 319.40–5 of the wood regulations contains additional conditions for the importation and entry of specified regulated articles from particular regions or climatic zones around the world. These additional requirements provide, in general, that regulated articles be treated or meet certain other conditions designed to mitigate potential plant pest risks.

We are amending § 319.40–5 to add a new paragraph that contains specific requirements for the importation from Canada of regulated articles of pine (*Pinus* spp.) that are not completely free of bark. These requirements are necessary to prevent the introduction of PSB into noninfested areas of the United States. We are providing one set of requirements for the importation of cut pine Christmas trees and another set of requirements for the importation of other pine articles that consist of pine bark or have pine bark attached.

#### *Pine Christmas Trees (Cut)*

Cut pine Christmas trees from Canada, in addition to meeting other applicable requirements of the wood regulations,

may be imported into the United States only if the following conditions are met.

#### *From Noninfested Canadian Provinces to All Areas of the United States*

Cut pine Christmas trees that originated in and were moved only through Canadian Provinces that are not considered to be infested or partially infested with PSB, as determined by the CFIA, may be imported into any area of the United States only if:

- The cut pine Christmas trees are accompanied by a statement of origin and movement that specifies the Canadian Province where the cut pine Christmas trees originated in and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin, and also states that the cut pine Christmas trees originated in and were moved only through areas of Canada that are not considered to be infested with PSB, as determined by the CFIA.
- The U.S. destination (including county and State) is plainly indicated on the cut pine Christmas trees or on the outer covering or container.
- If the cut pine Christmas trees are to be moved through an area of the United States quarantined for PSB under the domestic PSB regulations en route to an area or areas in the United States not quarantined for PSB during the period of January through September when the temperature is 10 °C (50 °F) or higher, then the cut pine Christmas trees must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by PSB.

#### *From Infested or Partially Infested Canadian Provinces to U.S. Infested Areas*

Cut pine Christmas trees that originated in or were moved through a Canadian Province that is considered to be infested or partially infested with PSB, as determined by the CFIA, and are destined for and will be moved only through areas in the United States quarantined for PSB under the domestic PSB regulations may be imported into the United States only if:

- They are accompanied by a statement of origin and movement that specifies the Canadian Province where the cut pine Christmas trees originated and, if applicable, were moved through, if different from the Province of origin, and also states that the cut pine Christmas trees originated in and were moved through one or more Canadian Provinces considered to be infested or partially infested with PSB; and

- The U.S. destination (including State and county) is plainly indicated on the cut pine Christmas trees or, if applicable, on the outer covering or container.

#### *From Infested or Partially Infested Canadian Provinces to or Through U.S. Noninfested Areas*

Cut pine Christmas trees that originated in or were moved through a Canadian Province that is considered to be infested or partially infested with PSB, as determined by the CFIA, and are destined for or will be moved through any area in the United States that is not quarantined for PSB under the domestic PSB regulations may be imported into the United States if:

- They are accompanied by a certificate that specifies the Province where the cut pine Christmas trees originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin, and indicates in the treatment section of the certificate that the cut pine Christmas trees have been treated with methyl bromide to kill PSB, or, alternatively, in lieu of methyl bromide treatment, the certificate contains one of the following additional declarations:
  - “These regulated articles were grown on a plantation that has a program to control or eradicate pine shoot beetle (*Tomicus piniperda*) and have been inspected and are considered to be free from pine shoot beetle (*Tomicus piniperda*)”; or
  - “These regulated articles were produced in an area where pine shoot beetle (*Tomicus piniperda*) is not considered to be present, as determined by the CFIA”; or
  - “These regulated articles have been 100 percent inspected and found to be free from pine shoot beetle (*Tomicus piniperda*).”
- The U.S. destination (including State and county) is plainly indicated on the cut pine Christmas trees or, if applicable, on the outer covering or container.

If the cut pine Christmas trees are to be moved through an area of the United States quarantined for PSB under the domestic PSB regulations en route to an area or areas in the United States not quarantined for PSB during the period of January through September when the temperature is 10 °C (50 °F) or higher, then the cut pine Christmas trees must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by PSB.

### Other Pine Articles

Regulated articles of pine (*Pinus* spp.) from Canada other than cut pine Christmas trees that consist of pine bark, including, but not limited to, chips, nuggets, mulch, and compost, as well as pine products with pine bark attached, including, but not limited to, logs, lumber, pulpwood, stumps, and raw pine materials for wreaths and garlands (pine articles), in addition to meeting other applicable requirements of the wood regulations, may be imported into the United States only if the following conditions are met.

#### *From Noninfested Canadian Provinces to All Areas of the United States*

Pine articles that originated in and were moved only through Canadian Provinces that are not considered to be infested or partially infested with PSB, as determined by the CFIA, may be imported into any area of the United States only if the articles are accompanied by a statement of origin and movement that specifies the Province where the articles originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin, and also states that the articles originated in and were moved only through Provinces of Canada not considered to be infested or partially infested with PSB. We are requiring the statement of origin and movement as assurance that the pine articles originated in and were moved only through noninfested areas of Canada.

In addition to the statement of origin and movement, the U.S. destination (including county and State) must be plainly indicated on the pine articles or, if applicable, on the outer covering, packaging, or container.

Also, if the pine articles are to be moved through an area of the United States quarantined for PSB under the domestic PSB regulations en route to an area or areas in the United States not quarantined for PSB during the period of January through September when the temperature is 10 °C (50 °F) or higher, then the pine articles also must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by PSB.

#### *From Canadian Infested Provinces or Partially Infested Provinces to U.S. Infested Areas*

Pine articles that originated in or were moved through a Province considered to be infested or partially infested with PSB, as determined by the CFIA, and that are destined for and will be moved

only through areas in the United States that are quarantined for PSB under the domestic PSB regulations may be imported into the United States only if:

- The pine articles are accompanied by a statement of origin and movement that specifies the county or municipal regional county and Province where the articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin, and also states that the pine articles originated from and were moved through one or more Provinces of Canada that are considered to be infested or partially infested with PSB; and
- The U.S. destination (including county and State) is plainly indicated on the pine articles or, if applicable, on the outer covering, packaging, or container.

#### *From Noninfested Areas in Partially Infested Canadian Provinces to or through U.S. Noninfested Areas*

Pine products that originated in a noninfested county or municipal regional county of a partially infested Province, as determined by the CFIA, and were moved through Canadian noninfested areas only, and are destined for or will be moved through any area in the United States that is not quarantined for PSB under the domestic PSB regulations, may be imported into the United States only if one of the following sets of conditions is met:

- The pine products are accompanied by a certificate that specifies the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. The certificate also must contain the following additional declaration: "These regulated articles originated in and were moved only through areas where pine shoot beetle (*Tomicus piniperda*) is not present, as determined by the CFIA." In addition, the U.S. destination (including county and State) must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container; or
- The pine products are consigned to a designated U.S. facility that operates under a compliance agreement with APHIS in accordance with § 319.40–8 for specified handling or processing of the articles. The name and address of the U.S. facility (including county and State) receiving the regulated articles

must be plainly indicated on the articles or, if applicable, on the outer covering, packaging, or container.

If the regulated articles are to be moved through an area of the United States quarantined for PSB under the domestic PSB regulations en route to an area or areas in the United States not quarantined for PSB during the period of January through September when the temperature is higher than 10 °C (50 °F), then the regulated articles also must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle.

#### *From Canadian Infested Provinces or Infested Areas of Partially Infested Provinces to or Through U.S. Noninfested Areas*

Pine products that originated in or were moved through either a Canadian Province considered to be infested with PSB or an infested area of a partially infested Province, as determined by the CFIA, and are destined for or will be moved through any area in the United States not quarantined for PSB under the domestic PSB regulations, may be imported into the United States only if one of the following sets of conditions is met:

- The pine products are accompanied by a certificate that specifies the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. The treatment section of the certificate must indicate that the regulated articles have been treated with methyl bromide to kill the pine shoot beetle (*Tomicus piniperda*) in accordance with 7 CFR 319.40–7(f). In addition, the U.S. destination (including county and State) of the regulated articles must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container; or

- The regulated articles, consisting of pine bark, are accompanied by a certificate that specifies both the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. The additional declaration section must state, "The pine bark in this shipment has been ground into pieces less than or equal to 1 inch in

diameter.” In addition, the U.S. destination (including county and State) of the regulated articles must be plainly indicated on the regulated articles or, if applicable, in the outer covering, packaging, or container; or

- The pine products are shipped from a CFIA-approved facility that processes only regulated articles that originated in areas in Canada or the United States not considered to be infested with pine shoot beetle. The facility must be inspected by the CFIA at least twice a year to verify its compliance with CFIA handling and processing procedures, and the CFIA must provide APHIS with a current list of approved facilities at least annually. The name and address (including the county or municipal regional county and Province) of the CFIA-approved facility that shipped the articles, as well as the U.S. destination (including county and State) must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container; or

- The pine products are accompanied by a certificate that specifies the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. The treatment section of the certificate must indicate that the regulated articles have been treated in accordance with § 319.40–6, which provides for heat treatment or heat treatment with moisture reduction. In addition, the U.S. destination (including county and State) of the regulated articles must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container; or

- The pine products, consisting of logs with bark attached, are consigned to a U.S. facility that operates under a compliance agreement with APHIS in accordance with § 319.40–8 for specified handling or processing of the regulated articles. The logs must be transported by as direct a route as reasonably possible and not off-loaded en route to the U.S. facility. The logs must be accompanied by a statement of origin and movement that specifies the county or municipal regional county and Province where the logs originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. In addition, the name and address (including county and State) of the U.S. facility receiving the logs must be

plainly indicated on the regulated articles or, if applicable, on the outer covering or container; or

- The pine products, consisting of pine bark, are shipped from a CFIA-approved facility for use as a fuel at a cogeneration facility in the United States approved by APHIS. The pine bark must be transported by as direct a route as reasonably possible and not off-loaded en route to the U.S. cogeneration facility. The Canadian facility from which the pine bark is shipped must be inspected by the CFIA at least twice a year to verify that the facility is following handling and processing procedures that adequately safeguard the pine bark for shipment to the U.S. cogeneration facility. The CFIA must also provide APHIS with a current list of approved facilities at least annually. The name and address (including the county or municipal regional county and Province) of the CFIA-approved facility that shipped the pine bark, as well as the name and address of the U.S. cogeneration facility receiving the shipment (including county and State) must be plainly indicated on the outer covering, packaging, or container of the pine bark.

If the regulated articles are to be moved through an area of the United States quarantined for PSB under the domestic PSB regulations en route to an area or areas in the United States not quarantined for PSB, during the period of January through September when the temperature is higher than 10 °C (50 °F), then the regulated articles also must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle.

#### **Other Changes**

In § 319.37–1, we are amending the definition of restricted article by removing the phrase “excluding any articles subject to any restricted entry orders in 7 CFR part 321 (*i.e.*, potatoes).” Part 321, which contained prohibitions concerning the importation into the United States of potato tubers from Bermuda, parts of Canada, and all other parts of the world, was removed in a rule published in the **Federal Register** on September 25, 1997 (62 FR 50237–50239, Docket No. 97–010–2). The prohibitions concerning potato tubers now appear in the nursery stock regulations. We are also making several other nonsubstantive changes to the definition of restricted article by updating cross references to other sections in part 319.

Section 319.40–2 of the wood regulations contains general

requirements for the importation of regulated articles. Section 319.40–2 also references the gypsy moth regulations, noting that logs and pulpwood with bark attached that are imported from Canada are subject to the inspection and certification requirements in § 319.77–4 of the gypsy moth regulations. We are making a technical change to § 319.40–2(f) to clarify that, in addition to logs and pulpwood, cut trees (*e.g.*, Christmas trees) are also specifically covered by the inspection and certification requirements in § 319.77–4 of the gypsy moth regulations.

Section 319.77–4 of the gypsy moth regulations sets out the conditions for the importation of trees and shrubs, logs and pulpwood with bark attached, and outdoor household articles and mobile homes and their associated equipment into the United States from Canada. A footnote to § 319.77–4(a) notes that trees and shrubs from Canada that are capable of propagation may be subject to additional restrictions under the nursery stock regulations. We are amending this footnote by noting that regulated articles subject to the gypsy moth regulations may also be subject to additional restrictions under the wood regulations.

We are making other nonsubstantive changes to the nursery stock, wood, and gypsy moth regulations to update cross references.

#### **Emergency Action**

This rulemaking is necessary on an emergency basis to help prevent the spread of PSB into noninfested areas of the United States from PSB host material imported from Canada. 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. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Below is a summary of the economic analysis for the interim rule to establish restrictions on the importation of pine shoot beetle host material into the United States from Canada. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**, or on the Internet at <http://www.aphis.usda.gov/ppd/rad/00-073-2PSBeconanal.doc>.

We do not have enough data for a comprehensive analysis of the economic effects of this interim rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis for this interim rule. We are inviting comments about this interim rule as it relates to small entities. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this interim rule.

This rule establishes new regulations for the importation of PSB host material into the United States from Canada as a result of the presence of PSB in certain regions of Canada. Under the new regulations, pine nursery stock, as well as pine products that consist of pine bark or have pine bark attached, must meet certain documentation, treatment, handling, processing, or utilization requirements in order to be imported into the United States from Canada. Pine nursery stock includes any *Pinus* spp. plant or plant product capable of propagation. Pine products include items such as pine logs, lumber, cut trees (e.g., Christmas trees), wood chips, wood mulch, composted bark, and other wood articles that are unprocessed or have received only primary processing. The restrictions affecting the importation of PSB host material from Canada are necessary to prevent the spread of PSB into noninfested areas of the United States. The new regulations parallel in many respects Canadian restrictions on U.S. exports of PSB host material into Canada.

More than 170 billion cubic feet of pine growing stock is present on timberland in noninfested areas of the United States. As hosts for PSB, ponderosa, loblolly, and red pines may be nearly as suitable as Scotch pine, the primary host. All three species are valuable commercial timber species that occur over wide geographical areas in the United States, primarily in non-PSB infested areas.

There were more than 2,200 operations selling pine nursery plants in the United States. These operations had total sales of pine nursery plants of about \$109 million in 1998. About 1500 of these operations, with total sales of more than \$90 million (83 percent of total sales) were located in noninfested areas of the United States. There were about 1,200 operations selling Scotch pine Christmas trees with sales of about \$27 million in 1998. About 36 percent of these operations are in noninfested areas of the United States. There were also more than 2,100 operations with sales of \$48 million in 1998 selling Christmas trees that are not Scotch pine or Douglas, Fraser, or Noble fir, and include an unknown quantity of other types of *Pinus* species. About 64 percent of these operations, accounting for more than half of the sales, were in noninfested areas of the United States.

In 2001, U.S. exports of these products were valued at approximately \$366 million. About 48 percent of these exports went to countries that currently list PSB as a quarantine pest or have specific treatment requirements for dealing with PSB. Given the vast forest resources of the United States and the high value of U.S. exports, in conjunction with the destructive potential of the PSB, it is likely that the further spread of that pest in the United States as a result of the unrestricted movement of PSB host material from infested areas of Canada would have a negative impact on the noninfested areas of the United States, and particularly businesses and industry that rely on pine nursery stock or pine forest materials produced or grown in those areas.

Should PSB spread into previously noninfested areas, it would likely result in control efforts by pine resource owners to mitigate damage to forest resources. Actions by State, Local and Federal governments to prevent the further spread of infestation are also likely. In addition, because many U.S. exports of pine products go to countries that currently list PSB as a quarantine pest or have specific treatment requirements for dealing with PSB, maintaining these export markets after further spread would likely involve costs to growers.

#### Pine Nursery Stock

This rule will place new restrictions on the importation of pine nursery stock from Canada into the United States. All pine nursery stock from Canada must now be issued a written permit as a condition of importation into the United States. In addition, the PC accompanying pine nursery stock will

have to include specific information regarding the article's origin and destination. If the nursery stock is moved from an infested Province in Canada into or through an area of the United States that is not quarantined for PSB, the PC must also state that the articles have been treated with methyl bromide or that the articles meet specified growing and/or inspection requirements to ensure their freedom from PSB.

The overall effect of these requirements should be limited. There is no charge to obtain a written permit from APHIS, and the information required is not extensive. Because a PC is already required for nursery stock, the need for one under this rule should result in no additional cost. The specific origin and destination information called for in this rule should be readily available. Despite potentially attractive treatment costs, the use of methyl bromide may be limited due to the potential damage it may cause to certain live plants and to the limited number of facilities where treatments could be performed.<sup>1</sup> The inspection charge by the Canadian Government should range from less than 0.3 percent of the value of the shipment to not more than 3.1 percent.<sup>2</sup> In addition, any movement of pine nursery stock from PSB infested areas within Canada is already regulated by the Government of Canada. Canadian pine nursery stock producers already meeting these standards will incur no additional burden in providing the additional declarations of the PC. Therefore, the rule should have little effect on imports of pine nursery stock from Canada, and thus on U.S. marketers and consumers.

#### Cut Pine Christmas Trees

Depending on whether the province of origin is infested or not, the rule requires that cut pine Christmas trees be accompanied by a written permit and either (1) a statement of origin and movement or (2) a certificate issued by the National Government of Canada. Certificates must indicate in the treatment section that the trees have been treated with methyl bromide to kill PSB, or:

- Produced in a plantation that has a program to control or eradicate PSB, or

<sup>1</sup> An Environmental Protection Agency estimate places the treatment of timber with methyl bromide at \$1–3 per 1000 board feet.

<sup>2</sup> Canadian Food Inspection Agency. Inspection of a load of cut Christmas trees should cost no more than \$50C. If the customs value of a shipment is less than \$1600C, the inspection charge is \$5C. Shown in Canadian dollars. \$C1600 = U.S. \$1047.60; \$5C = \$3.27, \$50C = \$32.74.



- Produced in an area where PSB is not considered to be present, or
- 100 percent inspected and found to be free from PSB.

The U.S. destination must also be clearly indicated on the shipment.

The effect of these requirements should also be relatively small. There is no charge to obtain a written permit from APHIS, and the information required for a written permit is not extensive. There is no cost to obtain a statement of origin and movement, and this document does not have to be signed by a public official. We expect the impact of satisfying the certificate and treatment or additional declaration requirements to be small. First, the cost of obtaining a certificate, treatment, or inspection should be low. The cost of a certificate for cut pine Christmas trees should be similar to the cost of a PC, due to the similarities in the information required and the source of the documents. The cost of the certificate should be less than 1 percent of the shipment value.<sup>3</sup> The inspection fee should range from less than 0.3 percent to not more than 3.1 percent of the shipment value. As was previously discussed, the use of methyl bromide should be limited. Second, movement of cut pine Christmas trees from PSB infested areas within Canada is already regulated by the Government of Canada. Finally, only those pine Christmas tree shipments from infested areas of Canada to noninfested areas of the United States will need a certificate, and Canadian imports of Christmas trees represent a small portion of the total U.S. supply (less than 2 percent). Therefore, any change in imports of cut pine Christmas trees should be small and have little effect on U.S. marketers and consumers.

#### Other Pine Products

Depending on the origin and destination of the shipment, this rule requires other pine products from Canada to be accompanied by a written permit and (1) be accompanied by a statement of origin and movement; or (2) be accompanied by a certificate issued by the National Government of Canada that contains an additional declaration that the regulated articles originated in and were moved only through areas where PSB does not exist; or (3) be consigned to a designated U.S. facility that operates under a compliance agreement with APHIS for specified handling or processing of the

articles; or (4) be accompanied by a certificate issued by the National Government of Canada that states that the articles have been treated with methyl bromide to kill the PSB; or (5) be accompanied by a certificate issued by the National Government of Canada that states that the articles are pine bark that has been ground into pieces less than or equal to 1 inch in diameter; or (6) be shipped from a CFIA-approved facility that is inspected by CFIA at least twice a year to verify its compliance with CFIA handling and processing procedures; or (7) be heat treated or heat treated with moisture reduction in accordance with § 319.40–6; or (8) if logs with bark attached, be consigned to a U.S. facility that operates under a compliance agreement with APHIS for specified handling or processing of the articles; or (9) if pine bark, be shipped from a CFIA-approved facility for use as fuel at a cogeneration facility in the United States approved by APHIS.

The overall effect of these requirements should be limited for several reasons. First, the majority of U.S. imports of other pine forest products from Canada originate in noninfested Provinces. Therefore, in most cases, the only additional requirement in this rule is the requirement for a statement of origin and movement. The statement of origin and movement is a document that shippers will generate themselves. There is no cost to obtain the document and it does not have to be signed by a public official.

Second, the option of alternative shipping arrangements should serve to limit the number of shippers required to obtain a certificate and, in some cases, have articles treated or pine bark ground. There may be some expense incurred by shippers in arranging for these alternatives. However, pine forest products with bark attached (e.g., saw logs, pulp wood, branches) and pine bark are regulated for PSB in Canada. Movement of those products from PSB infested areas within Canada is already regulated by the Government of Canada. Canadian pine forest product and pine bark producers already meeting these standards will incur no additional burden in providing the additional declarations of the certificate.

Finally, even for imports from PSB regulated Canadian provinces, only those shipments destined for or through noninfested areas of the United States need to be accompanied by a certificate. While the precise portion of pine forest products and pine bark imported from the infested areas of Canada to noninfested areas of the United States is not known, pine imports from Canada

represent a small portion of the overall U.S. supply. Therefore, any change in imports is expected to have little effect on U.S. marketers and consumers.

In conclusion, we anticipate limited costs associated with this rule, which is parallel to Canadian restrictions imposed on exports of U.S. PSB host material. Some shippers and other importers will be subject to certain costs and other inconveniences in securing the proper documentation for importation of affected products. However, these costs and inconveniences should be limited when they are incurred. There is no charge to obtain a written permit from APHIS, and the information required for a written permit is not extensive. Obtaining a PC or certificate should cost less than 1 percent of the shipment value. Inspection costs should range from under 0.3 percent to 3.1 percent of shipment value. Because the movement of pine nursery stock, cut pine Christmas trees, pine forest products with bark attached and pine bark from PSB infested areas within Canada is already regulated by the Government of Canada, Canadian producers already meeting these standards will incur no additional burden in providing the additional declarations of the PC or certificate. Hence, we expect little reduction in U.S. imports of Canadian products, with small effects on U.S. marketers and consumers. U.S. producers of nursery stock, Christmas trees, and pine products may benefit slightly to the extent they can market their products at lower costs than Canadian imported products subject to PSB restrictions.

We expect that gains from reducing the risk of further spread of PSB to outweigh the costs of this action. Implementation of this rule will enable APHIS to better prevent the movement of infested PSB host material from Canada into noninfested areas of the United States. This action is equivalent to what is being done domestically. Keeping areas in the United States free from PSB will result in avoided damages to forest resources. Growers will not have to expend funds to control PSB damage or to maintain PSB free status in relation to exports. Federal, State, and local governments will not have to expend funds to control the further spread of the pest. Entities located in noninfested areas and engaged in the movement of PSB host material will not have to deal with domestic movement controls, export restrictions, or inspection and/or treatment of the regulated articles before they can be moved as is the case in U.S. quarantined areas.

<sup>3</sup> Canadian Food Inspection Agency. Currently, the Canadian charge for a PC is \$7 (US\$4.58) when the customs transaction value of the shipment is not more than \$1,600 (US\$1,047.60) and \$17 (US\$11.13) when that value is more than \$1,600.



**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.

**Use of Methyl Bromide**

The United States is fully committed to the objectives of the Montreal Protocol, including the reduction and ultimately the elimination of reliance on methyl bromide for quarantine and pre-shipment uses in a manner that is consistent with the safeguarding of U.S. agriculture and ecosystems. APHIS reviews its methyl bromide policies and their effect on the environment in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and Decision XI/13 (paragraph 5) of the 11th Meeting of the Parties to the Montreal Protocol, which calls on the Parties to review their "national plant, animal, environmental, health, and stored product regulations with a view to removing the requirement for the use of methyl bromide for quarantine and pre-shipment where technically and economically feasible alternatives exist."

The United States Government encourages methods that do not use methyl bromide to meet phytosanitary standards where alternatives are deemed to be technically and economically feasible. In some circumstances, however, methyl bromide continues to be the only technically and economically feasible treatment against specific quarantine pests. In addition, in accordance with Montreal Protocol Decision XI/13 (paragraph 7), APHIS is committed to promoting and employing gas recapture technology and other methods whenever possible to minimize harm to the environment caused by methyl bromide emissions. In connection with this rulemaking, we welcome comments, especially data or other information, regarding other treatments that may be efficacious and technically and economically feasible that we may consider as alternatives to methyl bromide.

**National Environmental Policy**

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The assessment provides a basis for the conclusion that the importation of PSB

host material from Canada under the conditions specified in this interim rule will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**. The environmental assessment is also available on the Internet at [http://www.aphis.usda.gov/ppq/enviro\\_docs/psb.html](http://www.aphis.usda.gov/ppq/enviro_docs/psb.html).

**Paperwork Reduction Act**

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the office of Management and Budget (OMB). OMB has assigned control number 0579–0257 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk officer for APHIS, Washington, DC 20503; and (2) Docket No. 00–073–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 00–073–2 and send

your comments within 60 days of publication of this rule.

This rule establishes restrictions on the importation of pine nursery stock and various pine products from Canada in order to prevent the spread of pine shoot beetle into noninfested areas of the United States. The rule contains several information collection requirements, including requirements for permits, additional declarations on certificates and phytosanitary certificates, statements of origin and movement, compliance agreements, and information on destination of products.

We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.0359818 hours per response.

*Respondents:* Growers and Shippers of pine trees and pine tree products.

*Estimated annual number of respondents:* 2,200.

*Estimated annual number of responses per respondent:* 1.1113636.

*Estimated annual number of responses:* 2,445.

*Estimated total annual burden on respondents:* 88 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**Government Paperwork Elimination Act Compliance**

The Animal and Plant Health Inspection Service is committed to compliance with the Government

Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

#### List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

#### PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450 and 7701-7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

#### Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products

■ 2. Section 319.37-1 is amended by revising the definition of "restricted article" to read as follows:

##### § 319.37-1 Definitions.

\* \* \* \*

*Restricted article.* Any class of nursery stock or other class of plant, root, bulb, seed, or other plant product, for or capable of propagation, excluding any prohibited articles listed in § 319.37-2(a) or (b) of this subpart, and excluding any articles regulated in 7 CFR 319.8 through 319.24-5 or 319.41 through 319.74-4.

\* \* \* \*

■ 3. In § 319.37-3, paragraph (a)(15) is revised to read as follows:

##### § 319.37-3 Permits.

\* \* \* \*

(15) Articles (except seeds) of *Pinus* spp. (pine) from Canada;

\* \* \* \*

■ 4. Section 319.37-5 is amended by adding a new paragraph (s) and by revising the OMB citation at the end of the section to read as follows:

##### § 319.37-5 Special foreign inspection and certification requirements.

\* \* \* \*

(s) Any restricted article (except seeds) of *Pinus* spp. from Canada may be imported into the United States only

if it meets the following requirements, as well as all other applicable requirements of this subpart, to prevent the introduction of pine shoot beetle (*Tomicus piniperda*):

(1) *From noninfested Canadian Provinces to all areas of the United States.* Restricted articles that originated in and were moved only through Canadian Provinces that are not considered to be infested or partially infested with pine shoot beetle (*Tomicus piniperda*), as determined by the Canadian Food Inspection Agency (CFIA), may be imported into any area of the United States only if:

(i) The accompanying phytosanitary certificate of inspection specifies the Canadian Province where the restricted articles originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin;

(ii) The U.S. destination (including county and State) of the restricted articles is plainly indicated on the restricted articles or, if applicable, on the outer covering, packaging, or container; and

(iii) If the restricted articles are to be moved through an area of the United States quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is 10 °C (50 °F) or higher, the restricted articles are shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by the pine shoot beetle.

(2) *From infested or partially infested Canadian Provinces to U.S. infested areas.* Restricted articles that originated in or were moved through a Canadian Province that is considered to be infested or partially infested with pine shoot beetle (*Tomicus piniperda*), as determined by the CFIA, and are destined for and will be moved only through areas in the United States quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter, may be imported into the United States only if:

(i) The accompanying phytosanitary certificate of inspection specifies the Canadian Province where the articles originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin; and

(ii) The U.S. destination (including county and State) of the restricted articles is plainly indicated on the restricted articles or, if applicable, on

the outer covering, packaging, or container.

(3) *From infested or partially infested Canadian Provinces to or through U.S. noninfested areas.* Restricted articles that originated in or were moved through a Canadian Province that is considered to be infested or partially infested with pine shoot beetle (*Tomicus piniperda*), as determined by the CFIA, and are destined for or will be moved through an area in the United States that is not quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter, may be imported into the United States only if:

(i) The accompanying phytosanitary certificate of inspection specifies the Canadian Province where the restricted articles originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin. The treatment section of the phytosanitary certificate of inspection must indicate that the restricted articles have been treated with methyl bromide to kill the pine shoot beetle (*Tomicus piniperda*) in accordance with the applicable provisions of the Plant Protection and Quarantine Treatment Manual; or alternatively, in lieu of methyl bromide treatment, the phytosanitary certificate of inspection must contain one of the following additional declarations:

(A) "These restricted articles were grown on a plantation that has a program to control or eradicate pine shoot beetle (*Tomicus piniperda*) and have been inspected and are considered to be free from pine shoot beetle (*Tomicus piniperda*);" or

(B) "These restricted articles originated in an area where pine shoot beetle (*Tomicus piniperda*) is not considered to be present, as determined by the CFIA"; or

(C) "These restricted articles have been 100 percent inspected and found to be free from pine shoot beetle (*Tomicus piniperda*);" or

(D) "Based on inspection, the restricted articles are no greater than 36 inches high with a bole diameter at soil level of 1 inch or less."

(ii) The U.S. destination (including county and State) of the restricted articles is plainly indicated on the articles or, if applicable, on the outer covering, packaging, or container.

(iii) If the restricted articles are to be moved through an area of the United States quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is 10 °C (50 °F) or higher,

the restricted articles must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle. (Approved by the Office of Management and Budget under control numbers 0579-0049, 0579-0176, 0579-0221, 0579-0246, and 0579-0257)

#### Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles

■ 5. In § 319.40-1, a new definition is added, in alphabetical order, to read as follows:

##### § 319.40-1. Definitions.

\* \* \* \* \*

*Statement of origin and movement.* A signed, accurate statement certifying the area or areas where the regulated articles originated and, if applicable, the area or areas they were moved through prior to importation. The statement may be printed directly on the documentation accompanying the shipment of regulated articles, or it may be provided on a separate document. The statement does not require the signature of a public officer of a national plant protection organization; exporters may sign the document.

\* \* \* \* \*

##### § 319.40-2 [Amended]

■ 6. In § 319.40-2, paragraph (f) is amended by adding the words “, as well as cut trees (e.g., Christmas trees),” immediately before the words “imported from Canada”.

■ 7. In § 319.40-3, paragraph (a)(1)(i) and the OMB citation at the end of the section are revised to read as follows:

**§ 319.40-3 General permits; articles that may be imported without a specific permit; articles that may be imported without either a specific permit or an importer document.**

(a) \* \* \*

(1) \* \* \*

(i) From Canada: Regulated articles, other than regulated articles of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae and regulated articles of pine (*Pinus spp.*) that are not completely free of bark from Provinces in Canada that are considered to be infested or partially infested with pine shoot beetle (*Tomicus piniperda*), as determined by the Canadian Food Inspection Agency.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control numbers 0579-0049 and 0579-0257)

■ 8. Section 319.40-5 is amended by adding a new paragraph (m) and by

revising the OMB citation at the end of the section to read as follows:

##### § 319.40-5 Importation and entry requirements for specified articles.

\* \* \* \* \*

(m) *Regulated articles of pine (*Pinus spp.*) that are not completely free of bark from Canada.*

(1) *Cut pine Christmas trees.* Cut pine Christmas trees from Canada may be imported into the United States only if they meet the following requirements, as well as all other applicable requirements of this subpart:

(i) *From noninfested Canadian Provinces to all areas of the United States.* Cut pine Christmas trees that originated in and were moved only through Canadian Provinces that are not considered to be infested or partially infested with pine shoot beetle (*Tomicus piniperda*), as determined by the Canadian Food Inspection Agency (CFIA), may be imported into any area of the United States only if:

(A) They are accompanied by a statement of origin and movement that specifies the Canadian Province where the cut pine Christmas trees originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin, and also states that the cut pine Christmas trees originated in and were moved only through areas of Canada not considered to be infested with pine shoot beetle, as determined by the CFIA;

(B) The U.S. destination (including county and State) is plainly indicated on the cut pine Christmas trees or on the outer covering or container; and

(C) If the cut pine Christmas trees are to be moved through an area of the United States quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is 10 °C (50 °F) or higher, then the cut pine Christmas trees are shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle.

(ii) *From infested or partially infested Canadian Provinces to U.S. infested areas.* Cut pine Christmas trees that originated in or were moved through a Canadian Province that is considered to be infested or partially infested with pine shoot beetle (*Tomicus piniperda*), as determined by the CFIA, and are destined for and will be moved only through areas in the United States that are quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter,

may be imported into the United States only if:

(A) They are accompanied by a statement of origin and movement that specifies the Canadian Province where the cut pine Christmas trees originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin, and also states that the cut pine Christmas trees originated in and were moved through one or more Canadian Provinces considered to be infested or partially infested with pine shoot beetle, as determined by the CFIA; and

(B) The U.S. destination (including county and State) is plainly indicated on the cut pine Christmas trees or on the outer covering or container.

(iii) *From infested or partially infested Canadian Provinces to or through U.S. noninfested areas.* Cut pine Christmas trees that originated in or were moved through a Canadian Province that is considered to be infested or partially infested with pine shoot beetle, as determined by the CFIA, and are destined for or will be moved through an area in the United States that is not quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter, may be imported into the United States only if:

(A) They are accompanied by a certificate that specifies the Canadian Province where the Christmas trees originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin, and indicates in the treatment section of the certificate that the Christmas trees have been treated with methyl bromide to kill the pine shoot beetle; or, alternatively, in lieu of methyl bromide treatment, the certificate contains one of the following additional declarations:

(1) “These regulated articles were grown on a plantation that has a program to control or eradicate pine shoot beetle (*Tomicus piniperda*) and have been inspected and are considered to be free from pine shoot beetle (*Tomicus piniperda*)”; or

(2) “These regulated articles originated in an area where pine shoot beetle (*Tomicus piniperda*) is not considered to be present, as determined by the CFIA”; or

(3) “These regulated articles have been 100 percent inspected and found to be free from pine shoot beetle (*Tomicus piniperda*)”; and

(B) The U.S. destination (including county and State) is plainly indicated on the Christmas trees or on the outer covering or container; and

(C) If the Christmas trees are to be moved through an area of the United

States that is quarantined for pine shoot beetle, as provided in § 301.50–3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is higher than 10 °C (50 °F), the Christmas trees are shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle.

(2) *Other pine articles.* Regulated articles from Canada (other than cut pine Christmas trees) that consist of pine bark, including, but not limited to, chips, nuggets, mulch, and compost, as well as pine products with pine bark attached, including, but not limited to, logs, lumber, pulpwood, stumps, and raw pine materials for wreaths and garlands, may be imported into the United States only if they meet one of the following requirements, as well as all other applicable requirements of this subpart:

(i) *From Canadian noninfested Provinces to all areas of the United States.* Regulated articles that originated in and were moved only through Canadian Provinces that are not considered to be infested or partially infested with pine shoot beetle, as determined by the CFIA, may be imported into any area of the United States only if:

(A) They are accompanied by a statement of origin and movement that specifies the Province where the regulated articles originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin, and also states that the regulated articles originated in and were only moved through Provinces of Canada not considered to be infested or partially infested with pine shoot beetle, as determined by the CFIA;

(B) The U.S. destination (including county and State) is plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container; and

(C) If the regulated articles are to be moved through an area of the United States that is quarantined for pine shoot beetle, as provided in § 301.50–3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is higher than 10 °C (50 °F), the regulated articles are shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle.

(ii) *From Canadian infested Provinces or partially infested Provinces to U.S. infested areas.* Regulated articles that originated in or were moved through a Canadian infested or partially infested Province, as determined by the CFIA, and are destined for and will be moved only through areas in the United States that are quarantined for pine shoot beetle, as provided in § 301.50–3 of this chapter, may be imported into the United States only if:

(A) They are accompanied by a statement of origin and movement that specifies the county or municipal regional county and Province where the articles originated, and if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin, and also states that the regulated articles originated in and were moved through one or more Provinces of Canada considered to be infested or partially infested with pine shoot beetle, as determined by the CFIA; and

(B) The U.S. destination (including county and State) is plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container.

(iii) *From noninfested areas in partially infested Canadian Provinces to or through U.S. noninfested areas.*

Regulated articles that originated in a noninfested area county or municipal regional county of a partially infested Canadian Province, as determined by the CFIA, and were moved through Canadian noninfested areas only, and are destined for or will be moved through any area in the United States that is not quarantined for pine shoot beetle, as provided in § 301.50–3 of this chapter, may only be imported into the United States if one of the following sets of conditions is met:

(A) The regulated articles are accompanied by a certificate that specifies the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. The certificate also must contain the following additional declaration: “These regulated articles originated in and were moved only through areas where pine shoot beetle (*Tomicus piniperda*) is not present, as determined by the CFIA.” In addition, the U.S. destination (including county and State) must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container. If the regulated

articles are to be moved through an area of the United States quarantined for pine shoot beetle, as provided in § 301.50–3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is 10 °C (50 °F) or higher, the regulated articles must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle; or

(B) The regulated articles are consigned to a designated U.S. facility that operates under a compliance agreement with APHIS in accordance with § 319.40–8 for specified handling or processing of the articles. The name and address of the U.S. facility (including county and State) receiving the regulated articles must be plainly indicated on the articles or, if applicable, on the outer covering, packaging, or container. If the regulated articles are to be moved through an area of the United States quarantined for pine shoot beetle, as provided in § 301.50–3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is 10 °C (50 °F) or higher, then the regulated articles also must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle.

(iv) *From Canadian infested Provinces or infested areas of partially infested Provinces to or through U.S. noninfested areas.*

(A) Regulated articles that originated in or were moved through either a Canadian Province considered to be infested with pine shoot beetle or an infested area within a partially infested Canadian Province, as determined by the CFIA, and that are destined for or will be moved through any area in the United States not quarantined for pine shoot beetle, as provided in § 301.50–3 of this chapter, may only be imported into the United States if one of the following sets of conditions provided is met:

(1) The regulated articles are accompanied by a certificate that specifies the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. The treatment section of the certificate must indicate that the regulated articles have been

treated with methyl bromide to kill the pine shoot beetle in accordance with 7 CFR 319.40–7(f). In addition, the U.S. destination (including county and State) of the regulated articles must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container.

(2) The regulated articles consist of pine bark and are accompanied by a certificate that specifies both the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. The additional declaration section must state, “The pine bark in this shipment has been ground into pieces less than or equal to 1 inch in diameter.” In addition, the U.S. destination (including county and State) of the regulated articles must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container.

(3) The regulated articles are shipped from a CFIA-approved facility that processes only regulated articles that originated in areas in Canada or the United States not considered to be infested with pine shoot beetle. The facility must be inspected by the CFIA at least twice a year to verify its compliance with CFIA handling and processing procedures, and the CFIA must provide APHIS with a current list of approved facilities at least annually. The name and address (including the county or municipal regional county and Province) of the CFIA-approved facility that shipped the articles, as well as the U.S. destination (including county and State) must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container.

(4) The pine products are accompanied by a certificate that specifies the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. The treatment section of the certificate must indicate that the regulated articles have been treated in accordance with § 319.40–6. In addition, the U.S. destination (including county and State) of the regulated articles must be plainly indicated on the regulated articles or, if applicable, on the outer covering, package, or container.

(5) The regulated articles, consisting of logs with bark attached, are consigned to a U.S. facility that operates under a compliance agreement with APHIS in accordance with § 319.40–8 for specified handling or processing of the regulated articles. The logs must be transported by as direct a route as reasonably possible and not off-loaded en route to the U.S. facility. The logs must be accompanied by a statement of origin and movement that specifies the county or municipal regional county and Province where the logs originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. In addition, the name and address (including county and State) of the U.S. facility receiving the logs must be plainly indicated on the regulated articles or, if applicable, on the outer covering or container.

(6) The regulated articles, consisting of pine bark, are shipped from a CFIA-approved facility for use as a fuel at a cogeneration facility in the United States approved by APHIS. The pine bark must be transported by as direct a route as reasonably possible and not off-loaded en route to the U.S. cogeneration facility. The Canadian facility from which the pine bark is shipped must be inspected by the CFIA at least twice a year to verify that the facility is following handling and processing procedures that adequately safeguard the pine bark for shipment to the U.S. cogeneration facility. CFIA must provide APHIS with a current list of approved facilities at least annually. The name and address (including the county or municipal regional county and Province) of the CFIA-approved facility that shipped the pine bark, as well as the name and address of the U.S. cogeneration facility receiving the shipment (including county and State) must be plainly indicated on the outer covering, packaging, or container of the pine bark.

(B) If the regulated articles in paragraphs (i)(2)(iv)(1) through (5) of this section are to be moved through an area of the United States quarantined for pine shoot beetle, as provided in § 301.50–3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is higher than 10 °C (50 °F), the regulated articles must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle.

(Approved by the Office of Management and Budget under control numbers 0579–0049, 0579–0135, and 0579–0257)

### Subpart—Gypsy Moth Host Material From Canada

■ 9. Section 319.77–4 is amended as follows:

■ a. In paragraph (a), footnote 1 is revised to read as set forth below.

■ b. In paragraph (b), footnote 2 is revised to read as set forth below.

#### § 319.77–4 Conditions for the importation of regulated articles.

\* \* \* \* \*

<sup>1</sup> Trees and shrubs from Canada may be subject to additional restrictions under “Subpart—Nursery Stock, Plants, Roots, Seeds, and Other Plant Products” (§§ 319.37 through 319.37–14 of this part) and “Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles” (§§ 319.40–1 through 319.40–11 of this part).

\* \* \* \* \*

<sup>2</sup> Logs from Canada are also subject to restrictions under “Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles” (§§ 319.40–1 through 319.40–11 of this part).

\* \* \* \* \*

Done in Washington, DC, this 28th day of September 2004.

**Bill Hawks,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 04–22220 Filed 10–19–04; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 930

[Docket No. FV03–930–6 FIR]

#### Tart Cherries Grown in the States of Michigan, et al.; Additional Option for Handler Diversion

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, an interim rule that added another method of handler diversion to the regulations under the Federal tart cherry marketing order (order). Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirement when volume regulation is in effect by diverting cherries or cherry products rather than placing them in an inventory reserve. Under this additional method, handlers will be allowed to