

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 05–027–1]

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

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

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

**SUMMARY:** We are amending the pine shoot beetle regulations by adding counties in Illinois, Indiana, New York, Ohio, Pennsylvania and Wisconsin. In addition, we are designating the States of New Hampshire and Vermont, in their entirety, as quarantined areas based on their decision to no longer enforce intrastate movement restrictions. This action is necessary to prevent the spread of pine shoot beetle, a pest of pine trees, into noninfested areas of the United States.

**DATES:** This interim rule is effective May 26, 2005. We will consider all comments that we receive on or before July 25, 2005.

**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. 05–027–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road

Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–027–1.

- **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 on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

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

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

PSB hosts include all pine species. The beetle has been found in a variety of pine species (*Pinus* spp.) in the United States. Scotch pine (*P. sylvestris*) is the preferred host of PSB. The Animal and Plant Health Inspection Service (APHIS) has determined, based on scientific data from European countries, that fir (*Abies* spp.) larch (*Larix* spp.) and spruce (*Picea* spp.) are not hosts of PSB.

Surveys conducted by State and Federal inspectors have revealed that 20 counties in Illinois, Indiana, New York, Ohio, Pennsylvania, and Wisconsin are infested with PSB. Copies of the surveys may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The regulations in § 301.50–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which PSB has been found by an inspector, in which the Administrator has reason to believe PSB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which PSB has been found. The regulations further provide that less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing a quarantine and regulations that impose restrictions on the intrastate movement of regulated articles that are equivalent to those imposed on the interstate movement of those articles and (2) the designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of PSB.

In accordance with these criteria, we are designating Christian, Douglas, and Edgar Counties, IL; Vigo County, IN; Clinton, Essex, Rensselaer, Warren, and Washington Counties, NY; Lawrence and Meigs Counties, OH; Snyder, Sullivan, Union, and Wayne Counties, PA; and Dane, Jackson, Lafayette, Sauk, and Walworth Counties, WI, as quarantined areas, and we are adding them to the list of quarantined areas in § 301.50–3(c).

As noted previously, the regulations provide that, for less than an entire State to be designated as a quarantined area, the State must have adopted and be enforcing a quarantine and regulations that impose restrictions on the intrastate

movement of regulated articles that are equivalent to those imposed on the interstate movement of those articles. The States of New Hampshire and Vermont have contained, respectively, one and four counties designated as quarantined areas in the regulations. However, those two States have notified APHIS that they no longer wish to enforce a quarantine and regulations on the intrastate movement of regulated articles within their borders. Therefore, we are also amending § 301.50-3(c) to designate the States of New Hampshire and Vermont, in their entirety, as quarantined areas.

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

**Emergency Action**

This rulemaking is necessary on an emergency basis to prevent PSB from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

**Executive Order 12866 and Regulatory Flexibility Act**

For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

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

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This interim rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

**PART 301—DOMESTIC QUARANTINE NOTICES**

■ 1. The authority citation for part 301 continues to read as follows:

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

Section 301.75-15 also issued under Sec. 204, Title II, Pub. L. 106-113, 113 Stat. 1501A-293; sections 301.75-15 and 301.75-16 also issued under Sec. 203, Title II, Pub. L. 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.50-3, paragraph (c), the entries for New Hampshire and Vermont are revised and the entries for Illinois, Indiana, New York, Ohio, Pennsylvania, and Wisconsin are amended by adding new counties in alphabetical order to read as follows:

**§ 301.50-3 Quarantined areas.**

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

**Illinois**

\* \* \* \* \*  
*Christian County.* The entire county.  
\* \* \* \* \*  
*Douglas County.* The entire county.  
\* \* \* \* \*  
*Edgar County.* The entire county.  
\* \* \* \* \*

**Indiana**

\* \* \* \* \*  
*Vigo County.* The entire county.  
\* \* \* \* \*

**New Hampshire**

The entire State.

**New York**

\* \* \* \* \*  
*Clinton County.* The entire county.  
\* \* \* \* \*  
*Essex County.* The entire county.  
\* \* \* \* \*  
*Rensselaer County.* The entire county.  
\* \* \* \* \*  
*Warren County.* The entire county.  
*Washington County.* The entire county.  
\* \* \* \* \*

**Ohio**

\* \* \* \* \*  
*Lawrence County.* The entire county.  
\* \* \* \* \*  
*Meigs County.* The entire county.  
\* \* \* \* \*

**Pennsylvania**

\* \* \* \* \*  
*Snyder County.* The entire county.  
\* \* \* \* \*  
*Sullivan County.* The entire county.  
\* \* \* \* \*  
*Union County.* The entire county.  
\* \* \* \* \*  
*Wayne County.* The entire county.  
\* \* \* \* \*

**Vermont**

The entire State.  
\* \* \* \* \*

**Wisconsin**

*Dane County.* The entire county.  
\* \* \* \* \*  
*Jackson County.* The entire county.  
\* \* \* \* \*  
*Lafayette County.* The entire county.  
\* \* \* \* \*  
*Sauk County.* The entire county.  
*Walworth County.* The entire county.

Done in Washington, DC, this 20th day of May 2005.

**Elizabeth E. Gaston,**  
*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 05-10551 Filed 5-25-05; 8:45 am]