

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS–2006–0117]

#### 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, Iowa, New Jersey, New York, and Ohio to the list of quarantined areas. In addition, we are designating the States of Massachusetts, Michigan, Minnesota, and Pennsylvania, in their entirety, as quarantined areas based on their decision not to enforce intrastate movement restrictions. Finally, we are adding the States of Connecticut and Rhode Island, in their entirety, to the list of quarantined areas based on projections of the natural spread of pine shoot beetle that make it reasonable to believe that the pest is present in those States. 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 October 3, 2006. We will consider all comments that we receive on or before December 4, 2006.

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

*Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click “Submit.” In the Docket ID column, select APHIS–2006–0117 to submit or view public comments and to view supporting and

related materials available electronically. Information on using [Regulations.gov](http://Regulations.gov), including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link.

*Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0117, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0117.

*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:* Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**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 17 counties in Illinois, Indiana, New Jersey, New York, Iowa, and Ohio 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 Jo Daviess and Stark Counties, IL; Dearborn County, IN; Dubuque and Scott Counties, IA; Bergen, Hunterdon, Passaic, Sussex, and Warren Counties, NJ; Columbia, Orange, and Ulster Counties, NY; and Highland, Jackson, Ross, and Scioto Counties, OH, 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 Michigan and Pennsylvania have contained, respectively, 75 and 39 counties designated as quarantined areas in the regulations. However, those 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. In addition, the States of Massachusetts and Minnesota have recently detected PSB within their borders, and have notified APHIS that they do not wish to enforce an intrastate quarantine. Therefore, we are amending § 301.50–3(c) to designate the States of Massachusetts, Michigan, Minnesota, and Pennsylvania, in their entirety, as quarantined areas.

Although there has been no detection of PSB in Connecticut or Rhode Island, the beetle has been detected in the remainder of New England and in the surrounding States. PSB has been moving by natural spread east and west from the original infested area in Ohio since 1992. It is reasonable to believe that PSB may already be present in Connecticut and Rhode Island, as they both have highly developed urban areas, and low quantities of host material, such that the population level of the beetle would be too low to detect. The States of Connecticut and Rhode Island have requested that APHIS designate both States as quarantined areas. Therefore, we are amending § 301.50–3(c) to designate the States of Connecticut and Rhode Island, 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**

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

This rule amends the PSB regulations by adding counties in Illinois, Indiana, Iowa, New Jersey, New York, and Ohio to the list of quarantined areas, by designating the States of Massachusetts, Michigan, Minnesota, and Pennsylvania, in their entirety, as quarantined areas based on their decision not to enforce intrastate movement restrictions, and by adding the States of Connecticut and Rhode Island, in their entirety, to the list of quarantined areas based on projections of the natural spread of pine shoot beetle that make it reasonable to believe that the pest is present in those States.

Entities affected by this rule may include nurseries, Christmas tree farms, logging operations, moving companies

and others who sell, process, or move regulated articles interstate from these areas. As a result of this 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. This action will help prevent the artificial spread of the pest to new areas, and consequently avoid economic damage to timber, nursery, and Christmas tree producers in areas that could become infested if no action were taken.

Certain pine products will not be allowed to be shipped during certain months of the year or will be required to undergo debarking before transport occurs. Enterprises such as Christmas tree farms, nurseries and greenhouses, sawmill and logging operations, and others in the newly designated PSB quarantined areas wishing to move regulated articles from these areas may be affected by compliance requirements, however, costs associated with issuance of certificates and limited permits are borne by the issuing agency.

APHIS has identified approximately 12,684 entities which sell, process, or move forest products in these 17 counties and 6 States that may be impacted by this rule (table 1). Of these entities, there were approximately 8,800 which were producing nursery and greenhouse crops, and 3,884 Christmas tree farms in 2002. In addition, an unknown number of sawmills and logging operations in the newly quarantined counties process pine tree products. According to information previously collected by APHIS, pine trees and pine tree products such as cut Christmas trees sold in these areas largely remain within the regulated areas. Nurseries and greenhouses specialize in production of deciduous landscape products rather than production of rooted pine Christmas trees and pine nursery stock. The latter products in general constitute a small part of their production, if they are produced at all. Therefore, the rule is not likely to affect most nurseries and greenhouses.

TABLE 1.—2002 VALUE OF SALES AND NUMBER OF ENTITIES SELLING NURSERY CROPS AND CUT CHRISTMAS TREES

Newly quarantined States and counties	Number of nursery and greenhouse farms	2002 market value of products sold (\$1,000)	Number of cut Christmas tree and short rotation woody crops farms	2002 market value of products sold (1,000)	Number of sawmills (NAICS code 321113) <sup>1</sup>
Connecticut .....	685	\$245,773	382	\$3,407	19
2 counties in Illinois .....	14	856	5	22	unknown
1 county in Indiana .....	17	443	2	(D) <sup>2</sup>	unknown
2 counties in Iowa .....	33	2,972	3	16	unknown
Massachusetts .....	902	153,540	306	1,800	37

TABLE 1.—2002 VALUE OF SALES AND NUMBER OF ENTITIES SELLING NURSERY CROPS AND CUT CHRISTMAS TREES—Continued

Newly quarantined States and counties	Number of nursery and greenhouse farms	2002 market value of products sold (\$1,000)	Number of cut Christmas tree and short rotation woody crops farms	2002 market value of products sold (1,000)	Number of sawmills (NAICS code 321113) <sup>1</sup>
Michigan .....	2,185	628,699	1,076	30,411	148
Minnesota .....	983	224,410	327	11,855	69
5 counties in New Jersey .....	403	47,609	345	1,505 + (D) <sup>2</sup>	unknown
3 counties in New York .....	201	26,147	42	118 + (D) <sup>2</sup>	unknown
4 counties in Ohio .....	77	4,220+(D) <sup>2</sup>	10	NA	unknown
Pennsylvania .....	3,075	732,709	1,326	31,193	291
Rhode Island .....	225	37,593	60	658	8
Total .....	8,800	2,104,971+(D) <sup>2</sup>	3,884	80,985	.....

Source: USDA, NASS, 2002 Census of Agriculture (Table 2, Market Value of Agricultural Products sold including Direct and Organic in 2002 by State and County Data and 2002 Economic Census, Geographical Area Series by State (Table 1, Industry Statistics for the State 2002, Manufacturing.)

<sup>1</sup> The number of sawmills is reported by State only and thus there are no numbers by county. The number of sawmills in the newly quarantined areas is bigger than 572 (i.e., the known number of sawmills for the 6 States) and smaller than 1,021 (i.e., the number of sawmills in all 12 States).

<sup>2</sup> (D): Amount has not been reported to avoid disclosure.

The Small Business Administration (SBA) has established size standards to determine when an entity is considered small. Nursery stock growers may be considered small when they have annual sales of \$750,000 or less, and Christmas tree growers may be considered small when they have annual sales of \$5 million or less.

The 2002 Agricultural Census does not report sales by entity size. However, from previously gathered information, APHIS expects that the majority of these entities are small by the SBA size standards.

Regulated articles from quarantined areas may be moved interstate if accompanied by a certificate or limited permit. A certificate for interstate movement of regulated articles from quarantined areas is issued by an inspector after it is determined that the regulated articles are not infested with PSB and do not present a risk of spreading PSB to other areas. A limited permit is issued by an inspector for the interstate movement of regulated articles from quarantined areas when they are to be moved to a specified destination for processing, handling or utilization and the movement will not result in the spread of PSB. Regulated articles must have the name of the consignor and consignee, as well as the certificate or limited permit, attached during all segments of interstate movement.

A request for a certificate or a limited permit must be made at least 48 hours prior to transporting the regulated articles interstate. The cost for this service falls upon the issuing agency, and not the person/business entity requesting the certificate/limited permit.

This rule designates newly quarantined areas for PSB. APHIS has identified approximately 8,800 nursery and greenhouse farms, 3,884 cut Christmas tree farms, and an unknown number of logging operations, in the newly quarantined 17 counties and 6 States. As noted previously, the movement of cut Christmas pine trees and pine tree products by these establishments is generally within the regulated counties and States. Thus, those farms, nurseries, logging operations, and other entities are expected to be little affected by this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12372

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

#### Executive Order 12988

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

#### Paperwork Reduction Act

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

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

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

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

#### PART 301—DOMESTIC QUARANTINE NOTICES

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

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

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

■ 2. In § 301.50–3, paragraph (c) is amended as follows:

■ a. By adding, in alphabetical order, entries for Connecticut, Iowa, Massachusetts, Minnesota, New Jersey, and Rhode Island to read as set forth below.

■ b. By revising the entries for Michigan and Pennsylvania to read as set forth below.

■ c. In the entries for Illinois, Indiana, New York and Ohio, by adding new counties in alphabetical order to read as set forth below.

#### § 301.50–3 Quarantined areas.

\* \* \* \* \*

(c) \* \* \*

## Connecticut

The entire State.

## Illinois

\* \* \* \* \*

*Jo Daviess County.* The entire county.

\* \* \* \* \*

*Stark County.* The entire county.

\* \* \* \* \*

## Indiana

\* \* \* \* \*

*Dearborn County.* The entire county.

\* \* \* \* \*

## Iowa

*Dubuque County.* The entire county.*Scott County.* The entire county.

\* \* \* \* \*

## Massachusetts

The entire State.

## Michigan

The entire State.

## Minnesota

The entire State.

\* \* \* \* \*

## New Jersey

*Bergen County.* The entire county.*Hunterdon County.* The entire county.*Passaic County.* The entire county.*Sussex County.* The entire county.*Warren County.* The entire county.

## New York

\* \* \* \* \*

*Columbia County.* The entire county.

\* \* \* \* \*

*Orange County.* The entire county.

\* \* \* \* \*

*Ulster County.* The entire county.

\* \* \* \* \*

## Ohio

\* \* \* \* \*

*Highland County.* The entire county.

\* \* \* \* \*

*Jackson County.* The entire county.

\* \* \* \* \*

*Ross County.* The entire county.

\* \* \* \* \*

*Scioto County.* The entire county.

\* \* \* \* \*

## Pennsylvania

The entire State.

## Rhode Island

The entire State

\* \* \* \* \*

Done in Washington, DC, this 27th day of September 2006.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6-16278 Filed 10-2-06; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 920

[Docket No. FV06-920-1 IFR]

Kiwifruit Grown in California;  
Relaxation of Container Marking  
Requirements**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule relaxes the container marking requirements for kiwifruit covered under the California kiwifruit marketing order (order). The order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). Currently, kiwifruit that has been inspected, meets applicable grade and size requirements, and is subsequently placed into new containers must, be positive lot identified, which requires reinspection. This rule establishes procedures for handlers to ship such kiwifruit without positive lot identification (PLI), and announces the Agricultural Marketing Service's intention to request emergency approval by the Office of Management and Budget (OMB) of a new information collection. This rule is intended to reduce handler inspection costs and facilitate the marketing of kiwifruit.

**DATES:** Effective October 4, 2006.

Pursuant to the Paperwork Reduction Act, comments on the information collection burden that will result from this rule must be received by December 4, 2006 which will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, E-mail:

[moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov), or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and

will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:**

Shereen Marino, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: [Shereen.Marino@usda.gov](mailto:Shereen.Marino@usda.gov), or [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 920 as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed