

# Rules and Regulations

Federal Register

Vol. 71, No. 53

Monday, March 20, 2006

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 04–031–2]

#### Pine Shoot Beetle; Interstate Movement of Pine Bark Products From Quarantined Areas

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the pine shoot beetle regulations to allow pine bark products to be moved interstate from quarantined areas during the shoot feeding stage (July 1 through October 31) of the pine shoot beetle's life cycle without treatment. We are making this change because pine shoot beetles are not present in pine bark products during that stage. We are also establishing a management method to allow pine bark products to be moved interstate from quarantined areas during the overwintering stage (November 1 through March 31) and spring flight stage (April 1 through June 30) of the pine shoot beetle's life cycle. This action relieves restrictions on the interstate movement of pine bark products from quarantined areas during 4 months of the year and provides for the use of a management method as an alternative to fumigation with methyl bromide for pine bark products moved interstate from quarantined areas during the rest of the year.

**DATES:** *Effective Date:* April 19, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Weyman Fussell, Program Manager, Invasive Species and Pest Management, 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.

On June 6, 2005, we published in the **Federal Register** (70 FR 32733–32738, Docket No. 04–031–1) a proposed rule to amend the regulations to allow pine bark products to be moved interstate from quarantined areas during the shoot feeding stage (July 1 through October 31) of the PSB's life cycle without treatment. We also proposed to establish a management method to allow pine bark products to be moved interstate from quarantined areas during the overwintering stage (November 1 through March 31) and spring flight stage (April 1 through June 30) of the PSB's life cycle.

We solicited comments concerning our proposal for 60 days ending August 5, 2005. We received one comment by that date, from a private citizen.

The commenter was generally opposed to the proposed rule and pointed to the statement in the proposed rule that no research has yet been conducted regarding the mortality rate for PSB that results from mechanical debarking. In the proposed rule, we noted that research on mortality rates for two beetles that are of a size similar to PSB, *Ips typographicus* and *I. calligraphicus*, indicates that mechanical debarking produces mortality rates of 93 percent and 99 percent, respectively, for those beetles. The commenter expressed concern that the number of beetles surviving the mechanical debarking process would be sufficient to spread PSB to areas that are now free of the pest.

As we explained in the proposed rule, during the winter, 97 percent of the PSB are under the bark in the bottom 4 inches of the tree trunk. As described in the proposed rule and in this final rule, we will require that trees be harvested no less than 4 inches above the ground level in order to leave 97 percent of the beetles behind. The log then must be debarked using either a Rosser head debarker or a ring debarker. Either of these debarkers can be expected to kill 93 percent of any beetles present. Thus, the combination of harvesting trees at

least 4 inches above ground level and debarking the harvested logs can be expected to kill approximately 99.8 percent of the beetles that were present before the log was harvested. This is an extremely low survival rate.

Also, as we explained in the proposed rule, debarking is just one step in the management method. After being removed from the log, the bark must be either ground into pieces of 1 inch in diameter or less, or composted according to the specific procedure described in the proposed rule and this final rule. Research and testing have shown that either grinding or composting is sufficient to mitigate the risk of spreading PSB via the interstate movement of pine bark.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

#### 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.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is set out below, regarding the economic effects of this rule on small entities.

We have used all available data to estimate the potential economic effects of this rule. However, some of the data we believe would be helpful in making this determination have not been available. Specifically, data are not available on the costs of stump cutting, debarking, bark grinding, and composting processes that serve as components of the management plan described in the rule. In our proposed rule, we asked the public to provide such data. In addition, we invited the public to comment on the potential effects of the proposed rule on small entities, in particular the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. However, we did not receive any additional information or data in response to those requests.

This final rule amends the PSB regulations to allow pine bark products to be moved interstate from quarantined areas during the shoot feeding stage (July 1 through October 31) of the PSB's

life cycle without treatment. We are making this change because PSB is not present in pine bark products during this stage. We are also establishing a management method to allow pine bark products to be moved interstate from quarantined areas during the overwintering stage (November 1 through March 31) and the spring flight stage (April 1 through June 30) of the PSB's life cycle.

The regulations have required that pine bark products be fumigated with methyl bromide before a certificate can be issued allowing the interstate movement of pine bark products from a quarantined area into a nonquarantined area. The pine logging and processing industry has not considered fumigation with methyl bromide a viable treatment option due to its costs.

This rule establishes a pine bark product management method under which a certificate would be issued for the interstate movement of pine bark products from a quarantined area without the use of methyl bromide. Only mechanical procedures or composting will be required, and at some times pine bark products will be allowed to move without treatment. This rule has the strong backing of the pine bark industry as well as the National Plant Board. APHIS, along with the National Plant Board, has found that the mechanical methods, composting, and specific handling procedures described in this rule will provide the necessary protection against the artificial spread of PSB into noninfested areas.

The groups affected by this action would be any logging, sawmill, paper mill, wood chip-energy, and wood chip-mulch operations in the 444 counties currently quarantined because of PSB.<sup>1</sup> This rule will benefit all of these operations, allowing them to move pine bark products out of a quarantined area without the economic burden of first fumigating the bark products with methyl bromide.

States in the northeast region, specifically Maine, New Hampshire, New York, and Vermont, will benefit from this regulation due to the significant contribution the forest industry makes to their economies. According to a study published by the North East State Foresters Association in March 2001, forest-based manufacturing in this 4-State region provides employment for almost 97,000

people and generates \$15.7 billion annually in receipts.<sup>2</sup>

The forest industry relies heavily on the wood chip processors to remove waste bark. The waste pine chips are used for landscaping material, burned to produce energy, or used to produce paper. Not only do the sawmill and logging operations benefit from this waste removal, but the wood chip industry is able to package and sell the bark to consumers for landscaping needs. Turning this waste into mulch or other products is financially and environmentally beneficial to the forest industry and consumers.

#### Treatment Costs

Putting aside the environmental impact of using methyl bromide and the consumer's possible reluctance to purchase mulch treated with methyl bromide, the treatment costs alone of fumigation with methyl bromide are prohibitive. The average cost of fumigating a 48-foot tractor-trailer loaded with mulch with methyl bromide according to the treatment schedule in § 301.50-10(a) is estimated to be \$1,435.<sup>3</sup> Considering that a 48-foot tractor trailer holds between 82 and 96 yards of mulch, the cost of fumigation with methyl bromide is approximately \$14.95 to \$17.50 per yard.

The treatment costs are so high that the wood chip industry is unable to absorb these costs, as pine mulch retails for \$16 a yard. The wood chip industry would have to pass these treatment costs on to consumers, approximately doubling the retail price of mulch to \$32 per yard. Wood chip processors in areas quarantined for PSB are unable to compete with wood chip processors in nonquarantined areas due to the treatment costs. Sawmill and logging operations are forced to dispose of the wood chips themselves.

Precise cost estimates for the management plan for pine bark products could not be obtained. However, for 4 months of the year, pine bark products will be able to be moved without restrictions. With regard to the other mitigations that would be required in the pine bark products management plan, most loggers already cut pine trees more than 4 inches above the stump, and most pine logs are already debarked using a mechanical debarker, meaning

that the costs associated with these procedures should be low, if they impose any new burden at all. Pine bark mulch is typically made either by bark grinding or composting; without data on bark processors' current bark grinding and composting procedures, it is difficult to estimate what, if any, costs would be associated with implementing the management method for pine bark processors. However, we believe that any additional costs would still be far lower than the cost of fumigation with methyl bromide.

#### Impact on Small Entities

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact of their regulations on small entities. The Small Business Administration (SBA) has established size criteria using the North American Industry Classification System (NAICS) to determine which economic entities meet the definition of a small firm.

Most businesses that will be affected by this rule belong to one of two NAICS categories: (1) Logging firms, which fall within NAICS category 113310, "Logging," and (2) sawmills and other wood processing firms, which would fall within NAICS category 113310, "Sawmills." Firms in both of these categories are considered by the SBA to be small entities if they employ fewer than 500 people. Using the data provided by the National Agriculture Statistics Service's 2002 Census of Agriculture, we can assume that most firms in these categories would be considered small entities. We do not have any specific data regarding how many firms that will be affected by this rule are considered to be small entities; we invited public comment on this issue in the proposed rule and did not receive any new information.

We believe that this rule will have a positive impact on all affected entities, because we believe the management method described in the rule would dramatically lower treatment costs for pine bark products derived from trees during 8 months of the year and eliminate such costs entirely for pine bark products derived from trees felled during 4 months of the year.

This final rule contains no new information collection or recordkeeping requirements (see "Paperwork Reduction Act" below).

#### 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

<sup>1</sup> Under § 301.50-3, part or all of 13 States are quarantined for PSB: Illinois, Indiana, Maine, Maryland, Michigan, New Hampshire, New York, Ohio, Pennsylvania, Vermont, Virginia, West Virginia, and Wisconsin.

<sup>2</sup> The Economic Importance of the Northeast's Forests, North East State Foresters Association (NESFA), March 2001.

<sup>3</sup> Based on information provided by the Michigan State University, Agricultural Extension Service. Cost includes labor and materials; sealing of 48-ft. trailer; monitoring of fumigant (4-5 lbs. per 1,000 cubic ft.); aeration of trailer; and loading and unloading of pine mulch and nuggets.

State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12988

This final 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 final 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 30—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 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 § 301.50–1, a new definition of *pine bark products* is added in alphabetical order to read as follows:

##### § 301.50–1 Definitions.

\* \* \* \* \*

*Pine bark products.* Pieces of pine bark including bark chips, bark nuggets, bark mulch and bark compost.

\* \* \* \* \*

##### § 301.50–2 [Amended]

■ 3. In § 301.50–2, paragraph (a) is amended by removing the words “Bark nuggets (including bark chips)” and adding the words “Bark products” in their place.

■ 4. Section 301.50–5 is amended as follows:

■ a. In paragraph (a)(1)(i), by adding the words “, or, if pine bark products, produced according to the requirements of the management method in § 301.50–10(d) of this subpart” after the word “subpart”.

■ b. In paragraph (a)(1)(v), by removing the words “July through October” and adding the words “July 1 through

October 31” in their place; and by adding the words “or if the regulated article is pine bark products produced from a tree felled and debarked during the period of July 1 through October 31” before the word “; and”.

■ c. By revising paragraph (a)(2)(iii) to read as set forth below.

##### § 301.50–5 Issuance and cancellation of certificates and limited permits.

(a) \* \* \*

(2) \* \* \*

(iii) The pine log with pine bark attached, pine lumber with bark attached, or pine stump from a tree felled during the period of July 1 through October 31, or the pine bark products produced from a tree felled and debarked during the period of July 1 through October 31, will be shipped interstate from the quarantined area during the period of July 1 through October 31 of the same year in which the source tree was felled; and

\* \* \* \* \*

■ 5. Section 301.50–10 is amended as follows:

■ a. By revising the section heading to read as set forth below.

■ b. In paragraph (a), by removing the words “pine bark nuggets (including bark chips)” and adding the words “pine bark products” in their place.

■ c. By adding a new paragraph (d) to read as set forth below.

##### § 301.50–10 Treatments and management method.

\* \* \* \* \*

(d) *Management method for pine bark products.* The following procedures are authorized for use with pine bark products derived from white pine (*Pinus strobus*), Scotch pine (*P. sylvestris*), red pine (*P. resinosa*), and jack pine (*P. banksiana*) trees. Pine bark products will only be considered to have been produced in accordance with this management method if the following procedures are followed:

(1) For pine bark products produced from trees felled during the period November 1 through March 31:

(i) The trees must be harvested at a height of 4 inches or more above the duff line; and

(ii) The trees must have been mechanically debarked with a ring debarker or a Rosser head debarker; and

(iii) For Scotch pine, red pine, and jack pine, the bark must either be ground into pieces of 1 inch or less in diameter or composted in accordance with the procedure in paragraph (d)(3) of this section.

(2) For pine bark products produced from trees felled during the period April 1 through June 30:

(i) The trees must have been mechanically debarked with a ring debarker or a Rosser head debarker; and

(ii) The bark must either be ground into pieces of 1 inch or less in size or composted in accordance with the procedure in paragraph (d)(3) of this section.

(3) Composting for pine bark products for the management method in this paragraph (d) must be performed as follows:

(i) The pile of pine bark to be composted must be at least 200 cubic yards in size; and

(ii) The compost pile must remain undisturbed until the interior temperature of the pile reaches 120 °F (49 °C) and remains at or over that temperature for 4 consecutive days; and

(iii) After the 4-day period is completed, the outer layer of the compost pile must be removed to a depth of 3 feet; and

(iv) A second compost pile must be started using the cover material previously removed as a core. Core material must be removed from the first pile and used to cover the second compost pile to a depth of 3 feet; and

(v) The second compost pile must remain undisturbed until the interior temperature of the pile reaches 120 °F (49 °C) and remains at or over that temperature for 4 consecutive days. After this 4-day period, the composting procedure is complete.

(vi) Previously composted material generated using this procedure may be used as cover material for subsequent compost piles. A compost pile that uses previously composted material must remain undisturbed until the interior temperature of the pile reaches 120 °F (49 °C) and remains at or over that temperature for 4 consecutive days. After this 4-day period, the composting procedure is complete.

Done in Washington, DC, this 14th day of March 2006.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 06–2626 Filed 3–17–06; 8:45 am]

BILLING CODE 3410–34–P