

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS-2005-0103]

RIN 0579-AB98

#### Special Need Requests Under the Plant Protection Act

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend our domestic quarantine regulations to establish a process by which a State or political subdivision of a State could request approval to impose prohibitions or restrictions on the movement in interstate commerce of specific articles that are in addition to the prohibitions and restrictions imposed by the Animal and Plant Health Inspection Service. The Plant Protection Act provides that States or political subdivisions of States may make such special need requests, but there are currently no procedures in place for their submission or consideration. This action would establish a process by which States may make a special need request.

**DATES:** We will consider all comments that we receive on or before June 5, 2006.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and, in the lower "Search Regulations and Federal Actions" box, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS-2005-0103 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the "Advanced Search" function in Regulations.gov.

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS-2005-0103, 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-2005-0103.

*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. James Writer, Agriculturist, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737-1231; (301) 734-7121.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) gives authority to the Secretary of Agriculture to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of a plant pest or noxious weed into the United States, or the dissemination of a plant pest or noxious weed within the United States. The Secretary has delegated this authority to the Administrator of the Animal and Plant Health Inspection Service (APHIS).

Under section 436 of the PPA (7 U.S.C. 7756), no State or political subdivision of a State may regulate the movement in interstate commerce of any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in order (1) to control a plant pest or noxious weed; (2) to eradicate a plant pest or

noxious weed; or (3) to prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed if the Secretary has issued a regulation or order to prevent the dissemination of the biological control organism, plant pest, or noxious weed within the United States. The only exceptions to this prohibition are when a State or political subdivision of a State imposes regulations which are consistent with and do not exceed the regulations or orders issued by the Secretary, or when the State or political subdivision of a State demonstrates to the Secretary, and the Secretary finds, that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment.

Although the PPA provides that the Secretary may grant a request from a State or political subdivision of a State for a special need exception, APHIS has not issued criteria regarding the content, submission, and consideration of such requests. Therefore, in this document, we are proposing to amend our domestic quarantine notices in 7 CFR part 301 by adding a new "Subpart—Special Need Requests" (7 CFR 301.1 through 301.1-3) in which we would set out procedures for the submission and handling of special need requests. Proposed § 301.1 would detail the purpose and scope of the new subpart, and proposed § 301.1-1 would provide definitions for certain terms used in the subpart. Proposed § 301.1-2 would spell out the information that a State or a political subdivision of a State applying for a special need exception would have to provide, and proposed § 301.1-3 would explain the actions that APHIS would take following its receipt of a special need request.

##### Purpose and Scope

Section 301.1 of the proposed regulations would explain the purpose of the new subpart and how the subpart may be used in accordance with the PPA and the implementing regulations. Paragraph (a) would describe what a special need request is in the context of the PPA. Paragraph (b) would explain that the subpart contains instructions for the submission and consideration of special need requests under the PPA.

##### Definitions

Section 301.1-1 of the proposed regulations would contain eight

standard definitions that are consistent with those used elsewhere in our regulations. We would define *Administrator* as the Administrator of the Animal and Plant Health Inspection Service or any person authorized to act for the Administrator; *Animal and Plant Health Inspection Service (APHIS)* as the Animal and Plant Health Inspection Service of the United States Department of Agriculture; and *biological control organism* as any enemy, antagonist, or competitor used to control a plant pest or noxious weed. We would also define *interstate commerce* as trade, traffic, or other commerce (A) from one State into or through any other State; or (B) within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States; *move (moved, movement)* as shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved; and *noxious weed* as any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health or the environment. In addition, we would define *plant pest* as any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances which can directly or indirectly injure or cause disease or damage in any plants or parts thereof or any processed, manufactured, or other products of plants; and *State* as the District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

#### *Submission of Requests*

Section 301.1–2 of the proposed regulations would describe the information that would have to be included in any request to the Administrator for a special need exception. As our contacts are at the State level, paragraph (a) would provide that a special need request generated by a political subdivision of a State would have to be submitted to APHIS through the State. Paragraph (a) would also state that all special need requests must be signed by the appropriate executive official or a plant protection official of the State and must contain the following information:

- Data drawn from a scientifically sound detection survey, showing that the biological control organism, noxious weed, or plant pest of concern does not exist in the State or political subdivision or, if already present in the State or political subdivision, the distribution of the biological control organism, noxious weed, or plant pest of concern;
- If the biological control organism, noxious weed, or plant pest is not present in the State or political subdivision, a risk analysis or other scientific data showing that the biological control organism, noxious weed, or plant pest could enter the State or political subdivision and become established;
- Specific information showing that, if introduced into or allowed to spread within the State or political subdivision, the biological control organism, noxious weed, or plant pest would harm or injure the environment, and/or cause economic harm to industries in the State or political subdivision, including direct information about what harm or injury would result from establishment of the biological control organism, noxious weed, or plant pest in the State or political subdivision;
- Specific information showing that the State or political subdivision has characteristics that make it particularly vulnerable to the biological control organism, noxious weed, or plant pest, such as unique plants, diversity of flora, historical concerns, or any other special basis for the request for additional restrictions or prohibitions; and
- Information detailing the proposed additional prohibitions or restrictions, and scientific data demonstrating that the proposed additional prohibitions or restrictions would be necessary and adequate, and that there is no less drastic action that is feasible and that would be adequate, to prevent the introduction and spread of the biological control organism, noxious weed, or plant pest in the State or political subdivision.

We believe that this specific information, which would be considered along with more general information available to APHIS, would be necessary for the Administrator to be able to determine whether to grant or deny a request for a special need exception. Paragraph (b) would provide an address for the submission of requests.

#### *Action on Special Need Requests*

Section 301.1–3 of the proposed regulations would explain the process APHIS would use following the receipt of a special need request. Paragraph (a) would provide that, upon receipt of a

complete special need request submitted in accordance with § 301.1–2, we would publish a notice in the **Federal Register** announcing the availability of the special need request. This notice would provide a location where the public could view the request along with all materials submitted in support of the request.

Paragraph (b) would state that, following the close of the comment period, we would publish another notice to advise the public of the Administrator's decision to either grant or deny the special need request. The Administrator's determination would be based upon his or her review and evaluation of the information submitted by the State or political subdivision in support of its request and would take into account any comments received.

The Administrator's finding that the State or political subdivision has demonstrated, based on sound scientific data or a thorough risk assessment, that there is a special need for additional prohibitions or restrictions would mean that the State or political subdivision would be authorized to impose specific prohibitions or restrictions that go beyond those identified in the regulations or orders issued by APHIS. APHIS would work with the State to ensure that the additional prohibitions or restrictions are within the scope of the special need exception granted by the Administrator. If the Administrator denied a special need request, the reasons for the denial would be communicated to the State or political subdivision and reported in a follow-up **Federal Register** notice. A State or political subdivision that has had its request denied would be given the opportunity to submit additional supporting information in order to request a reconsideration of its request. If the Administrator withdraws approval of a special need exception, the reasons for the withdrawal would be communicated to the State or political subdivision and reported in the **Federal Register**. Reasons for withdrawal of approval of a special need exception may include the availability of new scientific data or changes in APHIS regulations.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. This 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.

For this rule, we have prepared an economic analysis. The economic analysis provides a cost-benefit analysis

as required by Executive Order 12866, as well as an analysis of the potential economic effects of this proposed rule on small entities, as required under 5 U.S.C. 603. The economic analysis is set forth below.

#### Introduction

Under the Plant Protection Act, section 436 (7 U.S.C. 7756(b)(2)), States and political subdivisions of States may request restrictions and prohibitions that are in addition to restrictions and prohibitions imposed by our Federal regulations if there is a special need for a higher level of protection for that State or political subdivision. APHIS proposes to require that States and political subdivisions of States that wish to request additional restrictions or prohibitions on the interstate movement of articles into their jurisdictions provide the following information, and APHIS would evaluate the information to determine whether States or political subdivisions have adequately demonstrated a special need under the Plant Protection Act:

- A State or political subdivision of a State that requests additional restrictions or prohibitions based on a special need must show that the pest of concern does not exist in the State. Therefore a request should include current data showing that a scientifically sound detection survey was performed in the State, and the pest was not found.
- The pest should be a true concern for the State or political subdivision of a State, which would be documented with a pest risk assessment or other scientific data showing that the pest could enter the State and become established.
- The pest should be of significant concern for the State or political subdivision of a State, in that it would harm or injure the environment, and/or cause economic harm to industries in the State. The request should contain direct information about what harm or injury would result from establishment of the pest in the State.
- The State or political subdivision of a State should list characteristics that make it particularly vulnerable to the pest, such as unique plants, diversity of flora, historical concerns, or any other special basis for the request for additional restrictions or prohibitions.

#### Expected Benefits

The principal benefit for entities in a special need area would be the pest risk reduction attributable to the action. The risk of entry and establishment of a pest of concern both prior to and after the granting of a special need request would

need to be estimated before the benefit of the reduced risk could be determined. It is unlikely that these risk levels would be measurable.

Other possible benefits of a special need request would be easier to calculate. Reduced pest risk due to additional restrictions or prohibitions may mean that certain mitigation measures in the special need area would no longer be considered necessary. There may be less need for inspections, special permits, certain pesticide applications, special handling or packaging, or other safeguards practiced or required prior to the granting of the special need request. Costs forgone once the request has been granted would represent benefits of the action.

Agricultural and other entities in a special need area may also benefit from the reduced availability of articles restricted or prohibited because of the special need request. Restricted supplies from sources outside the special need area could create increased market opportunities for suppliers within the area. If quantities normally purchased could not be provided by suppliers within the special need area (or from outside sources that do not present a pest risk), then suppliers likely would benefit from an increase in price.

#### Expected Costs

Costs would be incurred both in the special need area and in the area placed under additional restrictions or prohibitions. In each case, the size of the impact would depend upon the volume of supply affected by a special need request. As just described, prices in a special need area may increase if the available quantity of an article is reduced because of restrictions or prohibitions. But gains for suppliers within the special need area from price increases would come at the expense of the area's consumers, and overall there would be a net loss in social welfare. Losses may be incurred not only by end-users, but also by intermediary entities. Stores selling the restricted articles (nurseries, landscaping companies, grocery stores) may face declining demand, depending upon the response of consumers to the price increase, and reduced net revenues.

For the area placed under additional restrictions or prohibitions because of a special need request, sales of affected articles may decline if other replacement markets are not found. Even if shipments to the special need area can be maintained, additional costs may be incurred. For example:

- Growers may be required to have inspections conducted more frequently than APHIS would otherwise require (a

cost that may be borne by the State or political subdivision).

- Growers (or the State or political subdivision) may be required to pay for special phytosanitary certificates or permits.
- Growers may incur costs related to additional risk mitigations, such as particular pesticide applications or treatments, netting, or special greenhouse equipment.
- Additional inspections or restrictions may result in shipping delays.
- Shipping companies may experience reduced business or may face additional costs related to container or sealing requirements of the special need request.

#### Expected Net Effects

The overriding benefit for an area granted a special need request would be the reduced risk of pest entry and establishment. Other, market-related benefits are likely to be outweighed by costs incurred in the special need area and in the area placed under additional restrictions or prohibitions. Costs, including those associated with additional risk mitigation requirements, may be borne by agricultural entities, the public sector, or, most likely, a combination of the two.

#### Initial Regulatory Flexibility Analysis

*Objectives and legal basis.* Section 436(b) of the Plant Protection Act requires that a State demonstrate to the Secretary that it has a special need for additional restrictions or prohibitions, that the Secretary agree that there is a special need, and that the additional restrictions and prohibitions requested by the State be based on sound scientific data or a thorough risk assessment. The proposed rule would establish specific criteria by which a special need request from a State would be evaluated.

*Reason for the action.* The desirability of specific criteria for evaluating special need requests has become apparent from requests received by the Agency from several States for additional restrictions or prohibitions on the interstate movement of articles that would be more restrictive than those imposed by the *Phytophthora ramorum* regulations in 7 CFR 301.92 through 301.92-11.

*Small entities that may be affected.* Agricultural and other entities would not be affected by the proposed rule, per se, but rather by the special need requests that follow. The proposed rule would simply establish a process by which States may make a special need request and provide the Agency with a specific set of evaluation criteria.

U.S. agricultural businesses are predominantly small entities. At all stages of economic activity—production, transportation, processing, and wholesale and retail sales—agricultural industries are generally composed of a large number of small firms and a small number of large firms (with the latter usually generating the major share of industry revenue). Given this prevailing pattern, any impacts that special need requests may have on agricultural businesses can be expected generally to affect a large if not substantial number of small entities. The number of affected small entities would vary by request, and would depend on the particular circumstances in the affected States or political subdivisions.

*Reporting, recordkeeping and other compliance requirements.* This proposed rule contains various recordkeeping and reporting requirements. These requirements are described in this document under the heading “Paperwork Reduction Act.”

We expect that costs related to preparing a special need request would be borne by the public sector, but it is possible that agricultural industries (and therefore small entities) could incur indirect costs depending on arrangements for generating the required information. Also, the Regulatory Flexibility Act’s definition of small entities includes small governmental jurisdictions, that is, “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” Thus, it is possible that special need areas could correspond to or include small governmental jurisdictions.

Of greater impact than costs associated with the preparation of a request will be the costs and benefits of complying with the additional restrictions or prohibitions, once a special need request is granted by the Agency. Types of benefits and costs that may result from a special need request are identified at the beginning of this document.

*Duplicating, overlapping, or conflicting Federal rules.* APHIS has not identified any duplication, overlap, or conflict of the proposed rule with other Federal rules.

*Alternatives that would accomplish the stated objectives and minimize any significant economic impact on small entities.* The proposed rule would establish a set of criteria for APHIS to use in evaluating special need requests submitted by special need areas. Alternatives to the proposed rule would be to either leave the regulations

unchanged, or to require a different set of criteria than is proposed. Leaving the regulations unchanged would be unsatisfactory for the public and for APHIS. Granting of special need requests is currently not efficient due to the lack of an explicit set of criteria that States and political subdivisions know will be used to evaluate special need requests. Information contained in a special need request therefore may be either inadequate or superfluous. The proposed set of criteria would provide an unambiguous basis for the equitable evaluation of special need requests.

APHIS considers the proposed set of criteria to be fully sufficient for evaluation purposes. We invite the public to comment on the proposed criteria; suggested changes should be supported by an explanation of why the changes should be considered. We would also appreciate any comments on expected impacts of special need requests for small entities, and on how the proposed rule could be modified to reduce expected costs or burdens for small entities consistent with its objectives. We reiterate that the proposed rule, in itself, would not affect small entities, but rather would influence future actions—granting of special need requests—that would affect 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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### **Paperwork Reduction Act**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments

refer to Docket No. APHIS–2005–0103. Please send a copy of your comments to: (1) Docket No. APHIS–2005–0103, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

In this document, we are proposing to amend the domestic quarantine notices in 7 CFR part 301 by adding a new “Subpart-Special Need Requests” (7 CFR 301.1 through 301.1–3) in which we would set out procedures for the submission and handling of special need requests. The request would have to contain specific information substantiating the request, including data showing the absence or distribution of the biological control organism, noxious weed, or plant pest; a risk analysis or other scientific data showing that it could enter the State or political subdivision and become established; a description of its potential to cause environmental or economic harm and any factors that make the area particularly vulnerable to such harm; and information detailing the proposed additional prohibitions or restrictions. We are asking OMB to approve the use of these information collection activities in connection with our efforts to establish a process for special need requests.

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

(1) Evaluate whether the proposed 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 proposed 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 160 hours per response.

*Respondents:* State Governments.

*Estimated annual number of respondents:* 10.

*Estimated annual number of responses per respondent:* 1.

*Estimated annual number of responses:* 10.

*Estimated total annual burden on respondents:* 1,600 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 proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

### List of Subjects in 7 CFR 301

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

Accordingly, we propose to amend 7 CFR part 301 as follows:

### PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue 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. Part 301 would be amended by adding a new "Subpart—Special Need Requests," §§ 301.1 through 301.1-3, to read as follows:

#### Subpart—Special Need Requests

Sec.

301.1 Purpose and scope.

301.1-1 Definitions.

301.1-2 Criteria for special need requests.

301.1-3 Action on special need requests.

#### Subpart—Special Need Requests

##### § 301.1 Purpose and scope.

(a) Under section 436 of the Plant Protection Act (7 U.S.C. 7756), a State or political subdivision of a State may not impose prohibitions or restrictions upon the movement in interstate commerce of articles, means of conveyance, plants, plant products, biological control organisms, plant pests, or noxious weeds if the Secretary has issued a regulation or order to prevent the dissemination of the biological control organism, plant pest, or noxious weed within the United States. The only exceptions to this are:

(1) If the prohibitions or restrictions issued by the State or political subdivision of a State are consistent with and do not exceed the regulations or orders issued by the Secretary, or

(2) If the State or political subdivision of a State demonstrates to the Secretary and the Secretary finds that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment.

(b) The regulations in this subpart provide for the submission and consideration of special need requests when a State or a political subdivision of a State seeks to impose prohibitions or restrictions on the movement in interstate commerce of articles, means of conveyance, plants, plant products, biological control organisms, plant pests, or noxious weeds that are in addition to the prohibitions or restrictions imposed by this part or by a Federal Order.

##### § 301.1-1 Definitions.

The following definitions apply in this subpart:

*Administrator.* The Administrator, Animal and Plant Health Inspection Service (APHIS), or any person authorized to act for the Administrator.

*Animal and Plant Health Inspection Service (APHIS).* The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

*Biological control organism.* Any enemy, antagonist, or competitor used to control a plant pest or noxious weed.

*Interstate commerce.* Trade, traffic, or other commerce:

(1) From one State into or through any other State; or

(2) Within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

*Move (moved, movement).* Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved or allowed to be moved.

*Noxious weed.* Any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health or the environment.

*Plant pest.* Any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances which can directly or indirectly injure or cause disease or damage in any plants or parts thereof or any processed, manufactured, or other products of plants.

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

##### § 301.1-2 Criteria for special need requests.

(a) A special need request, as described in § 301.1, may be generated by a State or a political subdivision of a State. If the request is generated by a political subdivision of a State, the request must be submitted to APHIS through the State. All special need requests must be signed by the executive official or a plant protection official of the State and must contain the following:

(1) Data drawn from a scientifically sound detection survey, showing that the biological control organism, noxious weed, or plant pest of concern does not exist in the State or political subdivision or, if already present in the State or political subdivision, the distribution of the biological control organism, noxious weed, or plant pest of concern;

(2) If the biological control organism, noxious weed, or plant pest is not present in the State or political subdivision, a risk analysis or other scientific data showing that the biological control organism, noxious weed, or plant pest could enter the State or political subdivision and become established;

(3) Specific information showing that, if introduced into or allowed to spread within the State or political subdivision, the biological control organism, noxious weed, or plant pest would harm or injure the environment and/or cause economic harm to industries in the State or political subdivision. The request should contain detailed information about what harm or injury would result from the introduction or dissemination of the biological control organism,

noxious weed, or plant pest in the State or political subdivision;

(4) Specific information showing that the State or political subdivision has characteristics that make it particularly vulnerable to the biological control organism, noxious weed, or plant pest, such as unique plants, diversity of flora, historical concerns, or any other special basis for the request for additional restrictions or prohibitions; and

(5) Information detailing the proposed additional prohibitions or restrictions and scientific data demonstrating that the proposed additional prohibitions or restrictions are necessary and adequate, and that there is no less drastic action that is feasible and that would be adequate, to prevent the introduction or spread of the biological control organism, noxious weed, or plant pest in the State or political subdivision.

(b) All special need requests must be submitted to [Address to be added in final rule].

#### § 301.1-3 Action on special need requests.

(a) Upon receipt of a complete special need request submitted in accordance with § 301.1-2, APHIS will publish a notice in the **Federal Register** to inform the public of the special need request and to make the request and its supporting information available for review and comment for at least 60 days.

(b) Following the close of the comment period, APHIS will publish another notice announcing the Administrator's decision to either grant or deny the special need request. The Administrator's determination will be based upon the evaluation of the information submitted by the State or political subdivision of a State in support of its request and would take into account any comments received.

(1) If the Administrator grants the special need request, the State or political subdivision of a State will be authorized to impose only the specific prohibitions or restrictions identified in the request and approved by APHIS. APHIS will coordinate with the State, or with the State on behalf of the political subdivision of the State, to ensure that the additional prohibitions or restrictions are in accord with the special need exception granted by the Administrator.

(2) If the Administrator denies the special need request, the State or political subdivision of a State will be notified in writing of the reason for the denial and may submit any additional information the State or political subdivision of a State may have in order to request a reconsideration.

(c) If the Administrator determines that there is a need for the withdrawal of a special need exception, the reasons for the withdrawal would be communicated to the State or to the political subdivision of the State and APHIS will publish a notice in the **Federal Register** to inform the public of the withdrawal of the special need exception and to make the information supporting the withdrawal available for review and comment for at least 60 days. Reasons for withdrawal of approval of a special need exception may include, but are not limited to, the availability of new scientific data or changes in APHIS regulations. Following the close of the comment period, APHIS will publish another notice announcing the Administrator's decision to either withdraw or uphold the special need exception. The Administrator's determination will be based upon the evaluation of the information submitted in support of the withdrawal and would take into account any comments received.

Done in Washington, DC, this 29th day of March 2006.

**Jeremy Stump,**

*Acting Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. E6-4840 Filed 4-3-06; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2006-24289; Directorate Identifier 2005-NM-186-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Airbus Model A300 B2 and A300 B4 Series Airplanes; Model A300 B4-600, B4-600R, and F4-600R Series Airplanes, and Model A300 C4-605R Variant F Airplanes (Collectively Called A300-600 Series Airplanes); and A310-200 and -300 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus airplanes identified above. This proposed AD would require improving the routing of certain electrical wire bundles in certain airplane zones, as applicable to the airplane model. This proposed AD results from fuel system

reviews conducted by the manufacturer. We are proposing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

**DATES:** We must receive comments on this proposed AD by May 4, 2006.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL-401, Washington, DC 20590.

- Fax: (202) 493-2251.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this proposed AD.

#### **FOR FURTHER INFORMATION CONTACT:**

Thomas Stafford, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1622; fax (425) 227-1149.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2006-24289; Directorate Identifier 2005-NM-186-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the