

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS–2006–0039]

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

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the pine shoot beetle regulations by designating the State of Wisconsin, in its entirety, as a quarantined area based on the detection of new pine shoot beetle infested areas in the State, as well as its decision to no longer enforce intrastate movement restrictions. The interim rule was necessary to prevent the spread of pine shoot beetle, a pest of pine trees, into noninfested areas of the United States.

**DATES:** Effective on September 8, 2006, we are adopting as a final rule the interim rule that became effective on May 24, 2006.

**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

Pine shoot beetle (PSB) is a pest of pine trees that can cause damage in weak and dying trees, where reproduction and immature stages of PSB occur. The regulations in 7 CFR 301.50 through 301.50–10 (referred to below as the regulations) restrict the interstate movement of regulated

articles from quarantined areas to prevent the artificial spread of the PSB into noninfested areas of the United States.

In an interim rule<sup>1</sup> effective and published in the **Federal Register** on May 24, 2006, (71 FR 29761–29762, Docket No. APHIS–2006–0039), we amended § 301.50–3(c) of the regulations by designating the State of Wisconsin, in its entirety, as a quarantined area based on the detection of new PSB infested areas in the State, as well as its decision to no longer enforce intrastate movement restrictions.

Comments on the interim rule were required to be received on or before July 24, 2006. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988 and the Paperwork Reduction Act.

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

#### Regulatory Flexibility Act

This rule affirms an interim rule that amended the regulations by designating the State of Wisconsin, in its entirety, as a quarantined area for PSB. As a result of that action, there are additional restrictions on the interstate movement of regulated articles from the State.

The following analysis addresses the economic effect of the interim rule on small entities, as required by the Regulatory Flexibility Act.

The interim rule affected those entities in the State of Wisconsin that are engaged in moving regulated articles interstate from areas that had not been previously designated as quarantined areas (*i.e.*, 63 of Wisconsin's 72 counties).

Entities affected by this rule may include nurserymen, Christmas tree growers, logging operations, moving companies, and others who sell, process, or move regulated articles interstate from Wisconsin. As a result of

the 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. Cut Christmas tree farms, nurseries and greenhouses, sawmills, logging operations, and others in the 63 newly quarantined counties will be required to inspect and/or treat infested pine products before moving them interstate. Certain pine products may not be shipped during certain months of the year or will be required to undergo debarking before transport occurs.

The Animal and Plant Health Inspection Service (APHIS) has identified approximately 1,996 entities that sell, process, or move forest products in the 63 newly regulated counties that might be impacted by the rule. Of these entities, there were approximately 1,223 that were producing nursery and greenhouse crops (2002 market value of products sold: \$144.7 million), and 773 cut Christmas-tree farms (2002 market value of products sold: \$22 million).<sup>2</sup> In addition, an unknown number of sawmills and logging operations in the newly operated 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 Wisconsin generally 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 interim rule is not likely to have an effect on most nurseries and greenhouses.

#### Impact on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small entities and to use flexibility to provide regulatory relief when regulations create economic disparities between different sized entities. According to the Small Business Administration's (SBA's) Office of Advocacy, regulations create disparities based on size when they

<sup>1</sup>To view the interim rule, go to <http://www.regulations.gov>, click on the "Advanced Search" tab, and select "Docket Search." In the Docket ID field, enter APHIS–2006–0039, then click on "Submit." Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

<sup>2</sup>Source: USDA, NASS, 2002 Census of Agriculture, Wisconsin County level data, Table 2, pp. 216–236.

have a significant economic impact on a substantial number of small entities.

According to SBA size standards, nursery stock growers are considered small entities when they have annual sales of \$750,000 or less, and Christmas tree growers are considered small entities when they have annual sales of \$5 million or less. The majority of these types of entities within the newly quarantined area are small by the SBA size standards.

As noted previously, those nurseries and greenhouses within the newly quarantined area specialize in production of deciduous landscape products, not the production of regulated articles such as rooted pine trees and pine nursery stock. Further, the Christmas trees and pine products from cut Christmas tree farms generally remain within the regulated area. For these reasons, the economic effects of the interim rule on regulated entities as a whole are not expected to be significant.

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.

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

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

#### PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 71 FR 29761–29762 on May 24, 2006.

Done in Washington, DC, this 31st day of August 2006.

**Kevin Shea,**

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

[FR Doc. E6–14859 Filed 9–7–06; 8:45 am]

**BILLING CODE 3410–34–P**

#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 05–066–2]

#### Asian Longhorned Beetle; Addition and Removal of Quarantined Areas in New Jersey

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the regulations by adding a portion of Middlesex and Union Counties, NJ, to the list of quarantined areas and restricting the interstate movement of regulated articles from those areas. The interim rule also removed the areas within Hudson County, NJ, from the list of quarantined areas and removed restrictions on the interstate movement of regulated articles from those areas. These actions were necessary, respectively, to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States and to remove quarantine restrictions that were no longer necessary.

**DATES:** Effective on September 8, 2006, we are adopting as a final rule the interim rule that became effective on October 18, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael B. Stefan, National Coordinator, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–7338.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Asian longhorned beetle (ALB) regulations in 7 CFR 301.51–1 through 301.51–9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of ALB to noninfested areas of the United States. Portions of New Jersey and New York are designated as quarantined areas. Quarantined areas are listed in § 301.51–3 of the regulations.

In an interim rule<sup>1</sup> effective October 18, 2005, and published in the **Federal**

<sup>1</sup> To view the interim rule and the comment we received, go to <http://www.regulations.gov>, click on the “Advanced Search” tab, and select “Docket Search.” In the Docket ID field, enter APHIS–2005–0078, then click on “Submit.” Clicking on the

**Register** on October 24, 2005 (70 FR 61349–61351, Docket No. 05–066–1), we amended the ALB regulations by adding a portion of Middlesex and Union Counties, NJ, to the list of quarantined areas in § 301.51–3 and restricting the interstate movement of regulated articles from those areas. The interim rule also removed the areas within Hudson County, NJ, from the list of quarantined areas in § 301.51–3, which relieved restrictions that were no longer necessary on the interstate movement of regulated articles from this area.

Comments on the interim rule were required to be received on or before December 23, 2005. We received one comment by that date, from a private citizen.

In general, the commenter supported the rule. However, the commenter suggested that inspections be carried out in the areas removed from quarantine in 2 years and again in 5 years to ensure that the beetle has not returned. Although we do not believe further regulation of these areas is necessary, we will continue to survey them to ensure that ALB does not reappear.

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

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

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

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

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

#### PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 70 FR 61349–61351 on October 24, 2005.

Done in Washington, DC, this 30th day of August 2006.

**Kevin Shea,**

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

[FR Doc. E6–14860 Filed 9–7–06; 8:45 am]

**BILLING CODE 3410–34–P**

Docket ID link in the search results page will produce a list of all documents in the docket.