

Rules and Regulations

Federal Register

Vol. 72, No. 28

Monday, February 12, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0169]

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 the entire State of Iowa and two counties, Morris and Somerset, in New Jersey to the list of quarantined areas. We are taking this action following the detection of pine shoot beetle in these areas. 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 February 12, 2007. We will consider all comments that we receive on or before April 13, 2007.

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–2006–0169 to submit or view public comments and to view supporting and related materials available electronically. Information on using [Regulations.gov](http://www.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–2006–0169, 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–2006–0169.

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 areas in Iowa and New Jersey 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 the entire State of Iowa and two additional counties, Morris and Somerset, in New Jersey to the list of quarantined areas. Previously, two counties in Iowa (Dubuque and Scott) and five counties in New Jersey (Bergen, Hunterdon, Passaic, Sussex, and Warren) had been quarantined due to PSB. We took this action in an interim rule published in the **Federal Register** and effective on October 3, 2006 (71 FR 58243–58246, Docket No. APHIS–2006–0117). Since then, the Iowa Department of Agriculture has elected not to enforce an intrastate quarantine; it is, therefore, necessary to designate the entire State as a quarantined area. The New Jersey Department of Agriculture has elected to implement an intrastate quarantine; therefore, quarantined areas are listed at

the county level based on reports of the presence of PSB in individual counties.

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 the counties of Morris and Somerset in New Jersey and the entire State of Iowa to the list of quarantined areas.

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 1,077 entities in Iowa and the two New Jersey counties we are designating as quarantined areas that sell, process, or move forest products and thus may be affected by this rule (table 1). Of these entities, there were approximately 747 that produced nursery and greenhouse crops, 303 Christmas tree farms, and at least 27 sawmills 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.—CHRISTMAS TREE FARMS, NURSERIES, SAWMILLS AND THEIR MARKET SALES

Quarantined areas	Number of Christmas tree farms	Market sales of Christmas tree farms (\$1,000)	Nurseries & green-houses	Market sales of nurseries & greenhouses (\$1,000)	Number of sawmills (NAICS code 321113)	Sales revenues ¹ (\$1,000)
Iowa	215	1,424	554	77,610	27	54,229
Morris and Somerset (NJ)	88	323	193	43,957
Total	303	1,747	747	121,567	27	54,229

¹ The number of sawmills is reported by State only and thus there are no numbers by county. In the case of New Jersey, there are no numbers by State, either. Source: 2002 Census Bureau. American FactFinder. Sector 00: All sectors: Geographic Area Series: Economy Wide Key Statistics (<http://factfinder.census.gov>).

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.

In summary, this rule designates newly quarantined areas for PSB. APHIS has identified approximately 747 nursery and greenhouse farms, 303 cut Christmas tree farms, at least 27 sawmills and an unknown number of logging operations, in the newly quarantined two counties in New Jersey and the whole state of Iowa. 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 revising the entry for Iowa to read as set forth below.

■ b. In the entry for New Jersey, by adding new counties in alphabetical order to read as set forth below.

§ 301.50–3 Quarantined areas.

* * * * *

(c) * * *

* * * * *

Iowa

The entire State.

* * * * *

New Jersey

* * * * *

Morris County. The entire county.

* * * * *

Somerset County. The entire county.

* * * * *

Done in Washington, DC, this 6th day of February 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–2325 Filed 2–9–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1416

RIN 0560–AH62

2006 Emergency Agricultural Disaster Assistance Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule sets forth the Commodity Credit Corporation regulations for the 2006 Emergency Agricultural Disaster Assistance. The rule establishes seven disaster programs to provide funds to eligible producers in counties affected by the 2005 hurricanes Katrina, Ophelia, Rita, Wilma, or a related condition. To be eligible, counties must have been designated a major disaster or emergency area by the President or declared a natural disaster by the Secretary of Agriculture. Counties contiguous to such counties will also be eligible.

DATES: This rule is effective February 9, 2007.

FOR FURTHER INFORMATION CONTACT:

Diane Sharp, Director, Production, Emergencies, and Compliance Division; Farm Service Agency; United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517; telephone (202) 720–7641; e-mail Diane.Sharp@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements the Emergency Agricultural Disaster Assistance Act of 2006, Public Law 109–234, Title III (the Act). During calendar years (CY's) 2005 and 2006 the

production of agricultural commodities produced in certain counties in Alabama, Arkansas, Florida, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Texas was hindered by widespread and significant destruction caused by hurricanes Katrina, Ophelia, Rita, Wilma. Counties in these States which the President or the Secretary of Agriculture has designated or declared disaster areas during CY 2005, or during 2006 for a request that was pending as of December 31, 2005, and all counties contiguous to these counties, are eligible for emergency disaster assistance under the Act. The Act provides that the Secretary of Agriculture (Secretary) shall use funds of the Commodity Credit Corporation (CCC) to assist producers of agricultural commodities through programs administered by the Farm Service Agency (FSA). All counties, owners, lessees, livestock, crops, losses, must meet all of the eligibility criteria provided in this rule including being the result of the listed hurricanes as provided. The programs are summarized as follows:

- Livestock Compensation Program (LCP). LCP will provide payments to livestock owners and cash lessees (not both for same livestock) for certain feed losses.
- Livestock Indemnity Program II (LIP II). LIP–II will provide benefits to livestock owners and contract growers (not both for same livestock) for certain livestock deaths. For previous LIP programs see 67 FR 7265, February 19, 2002, and 69 FR 23721, April 30, 2004.
- Citrus Disaster Program (Citrus). The 2005 Citrus Program will provide benefits to citrus producers who suffered citrus crop production losses and associated fruit-bearing tree damage, including related clean-up and rehabilitation costs.
- Fruit and Vegetable Disaster Program (Fruit and Vegetable). The Fruit and Vegetable Program will provide benefits to producers who suffered fruit and vegetable crop production losses, including related clean-up costs.
- Tropical Fruit Disaster Assistance Program (Tropical Fruit). The Tropical Fruit Program will provide benefits to producers of carambola, longan, lychee, and mangos who suffered tropical fruit production losses.
- Nursery Disaster Assistance Program (Nursery). The Nursery Program will provide benefits to commercial ornamental nursery and fernery producers who suffered inventory losses and incurred clean-up costs.
- Tree Assistance Program (TAP). The 2005 Hurricane TAP will provide