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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 97-100-1]

#### Pine Shoot Beetle; 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 to add 78 counties in Illinois, Indiana, Maryland, Michigan, New York, Ohio, Pennsylvania, West Virginia, and Wisconsin to the list of quarantined areas. This action is necessary to prevent the spread of the pine shoot beetle, a pest of pine products, into noninfested areas of the United States.

**DATES:** Interim rule effective December 3, 1997. Consideration will be given only to comments received on or before February 9, 1998.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 97-100-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 97-100-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine K. Markham, Regional Program Manager, PPQ, APHIS, 505 South Lenola Road, Suite 201, Moorestown, NJ, 08057-1549, (609)

753-5073; or Ms. Coanne O'Hern, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8717, E-mail: cohern@aphis.usda.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 7 CFR 301.50 (referred to below as the regulations) impose restrictions on the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of the pine shoot beetle (PSB) into noninfested areas of the United States.

PSB is a pest of pine trees. PSB can cause damage in weak and dying trees, where reproduction and immature stages of PSB occur, and in the new growth of healthy trees. During "maturation 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. Adults can fly at least one kilometer, and infested trees and pine products are often transported long distances; these factors may result in the establishment of PSB populations far from the location of the original host tree. 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.), spruce (*Larix* spp.), and larch (*Picea* spp.) are not hosts of PSB.

Surveys recently conducted by State and Federal inspectors revealed additional areas infested with PSB in eight States that were previously known to contain infested areas (Illinois, Indiana, Maryland, Michigan, New York, Ohio, Pennsylvania, and West Virginia) and one area infested with PSB in a State that was not previously known to contain infested areas (Wisconsin). Copies of the surveys may be obtained by writing to either of the individuals 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.

In accordance with these criteria, we are designating Boone, Bureau, De Kalb, La Salle, Lee, McLean, Ogle, Piatt, Putnam, and Stephenson Counties, IL; Carroll, Fountain, Madison, Randolph, Warren, and Wayne Counties, IN; Garrett and Washington Counties, MD; Alcona, Alpena, Antrim, Benzie, Charlevoix, Crawford, Emmet, Gladwin, Grand Traverse, Kalkaska, Lake, Luce, Mackinac, Manistee, Mason, Mecosta, Missaukee, Montmorency, Muskegon, Newaygo, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, and Wexford Counties, MI; Cayuga, Schuyler, Seneca, Tompkins, Wayne, and Yates Counties, NY; Allen, Auglaize, Defiance, Hancock, Hardin, Harrison, Henry, Hocking, Jefferson, Licking, Logan, Marion, Mercer, Morrow, Perry, Putnam, Union, and Van Wert Counties, OH; Cambria, Indiana, Potter, Somerset, and Washington Counties, PA; Brooke and Ohio Counties, WV; and Grant County, WI, as quarantined areas, and we are adding them to the list of quarantined areas provided in § 301.50-3(c).

##### Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that a situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent PSB from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive

and any amendments we are making to the rule as a result of the comments.

#### **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 process required by Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this interim rule on small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this interim rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this interim rule.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167), the Secretary of Agriculture is authorized to regulate the interstate movement of articles to prevent the spread of injurious plant pests in the United States.

The PSB regulations impose restrictions on the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of PSB into noninfested areas of the United States. This rule amends these regulations by adding 78 counties in 9 States to the list of quarantined areas. This action is necessary to prevent the spread of PSB, a pest of pine products, into noninfested areas of the United States.

Currently, there are approximately 1,046 nursery operations in the 78 newly regulated counties. Of those, approximately 717 are considered small entities. We have not determined the size of the remaining 329 nursery operations in the following 6 counties: Boone County, IL; Muskegon and Ottawa Counties, MI; Wayne County, NY; Allen County, OH; and Indiana County, PA. Small nurseries are defined as those entities with annual sales of less than \$150,000. Most of these nurseries, both large and small, specialize in production of deciduous landscape products, but some also produce rooted pine Christmas trees and some pine nursery stock. Most of the nurseries that produce rooted pine Christmas trees and pine nursery stock will not be notably affected by this rule, either because these commodities comprise a very minor share of their

products or because they serve largely local populations.

Other Christmas tree producers and logging operations in the 78 newly regulated counties may also be affected by this rule. However, at this time, we are unable to determine the number of these types of small entities in the newly regulated counties. We invite comments to help us determine the number of these types of small entities that may incur benefits or costs from the implementation of this rule.

Affected businesses can maintain markets outside the regulated areas by arranging for inspections and the issuance of certificates or limited permits, or by fumigating or cold treating the regulated articles. Inspection is provided at no cost during normal business hours. However, there may be imputed costs to the businesses in preparing for the inspections and possible marketing delays. Such costs and inconveniences may be more likely for producers of live pine nursery stock, since inspection is required of each live plant before it may be moved to a nonregulated area. For producers in these counties who already have their trees inspected for other pests, another inspection may be a relatively small burden, especially when compared to the societal benefits of minimizing the human-assisted movement of PSB.

The alternative to this interim rule was to make no changes in the regulations. After consideration, we rejected this alternative because the quarantine of the 78 counties listed in this document is necessary to prevent the artificial spread of PSB.

This interim rule contains no reporting or recordkeeping requirements.

#### **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 proposed rule contains no information collection or recordkeeping

requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### **National Environmental Policy Act**

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the treatment of pine products from these 78 newly regulated counties will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690-2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to either of the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

Accordingly, 7 CFR part 301 is amended as follows:

#### **PART 301—DOMESTIC QUARANTINE NOTICES**

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

**Authority:** 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 301.50-3 is amended as follows:

a. In paragraph (c), under Illinois, Indiana, Maryland, Michigan, New York, Ohio, Pennsylvania, and West Virginia, by adding new counties in alphabetical order to read as set forth below.

b. In paragraph (c), by adding, in alphabetical order, a new entry for Wisconsin to read as set forth below.

c. By revising paragraph (d) to read as set forth below.

**§ 301.50-3 Quarantined areas.**

\* \* \* \* \*

(c) \* \* \*

**ILLINOIS**

*Boone County.* The entire county.  
*Bureau County.* The entire county.  
 \* \* \* \* \*  
*De Kalb County.* The entire county.  
 \* \* \* \* \*  
*La Salle County.* The entire county.  
 \* \* \* \* \*  
*Lee County.* The entire county.  
 \* \* \* \* \*  
*McLean County.* The entire county.  
*Ogle County.* The entire county.  
*Piatt County.* The entire county.  
*Putnam County.* The entire county.  
*Stephenson County.* The entire county.

\* \* \* \* \*

**INDIANA**

\* \* \* \* \*  
*Carroll County.* The entire county.  
 \* \* \* \* \*  
*Fountain County.* The entire county.  
 \* \* \* \* \*  
*Madison County.* The entire county.  
 \* \* \* \* \*  
*Randolph County.* The entire county.  
 \* \* \* \* \*  
*Warren County.* The entire county.  
*Wayne County.* The entire county.

\* \* \* \* \*

**MARYLAND**

\* \* \* \* \*  
*Garrett County.* The entire county.  
*Washington County.* The entire county.

**MICHIGAN**

*Alcona County.* The entire county.  
 \* \* \* \* \*

*Alpena County.* The entire county.  
*Antrim County.* The entire county.  
 \* \* \* \* \*  
*Benzie County.* The entire county.  
 \* \* \* \* \*  
*Charlevoix County.* The entire county.  
 \* \* \* \* \*  
*Crawford County.* The entire county.  
 \* \* \* \* \*  
*Emmet County.* The entire county.  
 \* \* \* \* \*  
*Gladwin County.* The entire county.  
*Grand Traverse County.* The entire county.  
 county.  
 \* \* \* \* \*  
*Kalkaska County.* The entire county.  
 \* \* \* \* \*  
*Lake County.* The entire county.  
 \* \* \* \* \*  
*Luce County.* The entire county.  
*Mackinac County.* The entire county.  
 \* \* \* \* \*  
*Manistee County.* The entire county.  
*Mason County.* The entire county.  
*Mecosta County.* The entire county.  
 \* \* \* \* \*  
*Missaukee County.* The entire county.  
 \* \* \* \* \*  
*Montmorency County.* The entire county.  
 county.  
*Muskegon County.* The entire county.  
*Newaygo County.* The entire county.  
 \* \* \* \* \*  
*Oceana County.* The entire county.  
*Ogemaw County.* The entire county.  
*Osceola County.* The entire county.  
*Oscoda County.* The entire county.  
*Otsego County.* The entire county.  
*Ottawa County.* The entire county.  
*Presque Isle County.* The entire county.  
 county.  
 \* \* \* \* \*  
*Wexford County.* The entire county.

**NEW YORK**

\* \* \* \* \*  
*Cayuga County.* The entire county.  
 \* \* \* \* \*  
*Schuyler County.* The entire county.  
*Seneca County.* The entire county.  
 \* \* \* \* \*  
*Tompkins County.* The entire county.  
*Wayne County.* The entire county.  
 \* \* \* \* \*  
*Yates County.* The entire county.

**OHIO**

*Allen County.* The entire county.  
 \* \* \* \* \*  
*Auglaize County.* The entire county.  
 \* \* \* \* \*  
*Defiance County.* The entire county.  
 \* \* \* \* \*  
*Hancock County.* The entire county.  
*Hardin County.* The entire county.  
*Harrison County.* The entire county.  
*Henry County.* The entire county.  
*Hocking County.* The entire county.  
 \* \* \* \* \*  
*Jefferson County.* The entire county.  
 \* \* \* \* \*  
*Licking County.* The entire county.  
*Logan County.* The entire county.  
 \* \* \* \* \*  
*Marion County.* The entire county.  
 \* \* \* \* \*  
*Mercer County.* The entire county.  
*Morrow County.* The entire county.  
 \* \* \* \* \*  
*Perry County.* The entire county.  
 \* \* \* \* \*  
*Putnam County.* The entire county.  
 \* \* \* \* \*  
*Union County.* The entire county.  
*Van Wert County.* The entire county.

\* \* \* \* \*

**PENNSYLVANIA**

\* \* \* \* \*  
*Cambria County.* The entire county.  
 \* \* \* \* \*  
*Indiana County.* The entire county.  
 \* \* \* \* \*  
*Potter County.* The entire county.  
*Somerset County.* The entire county.  
 \* \* \* \* \*  
*Washington County.* The entire county.

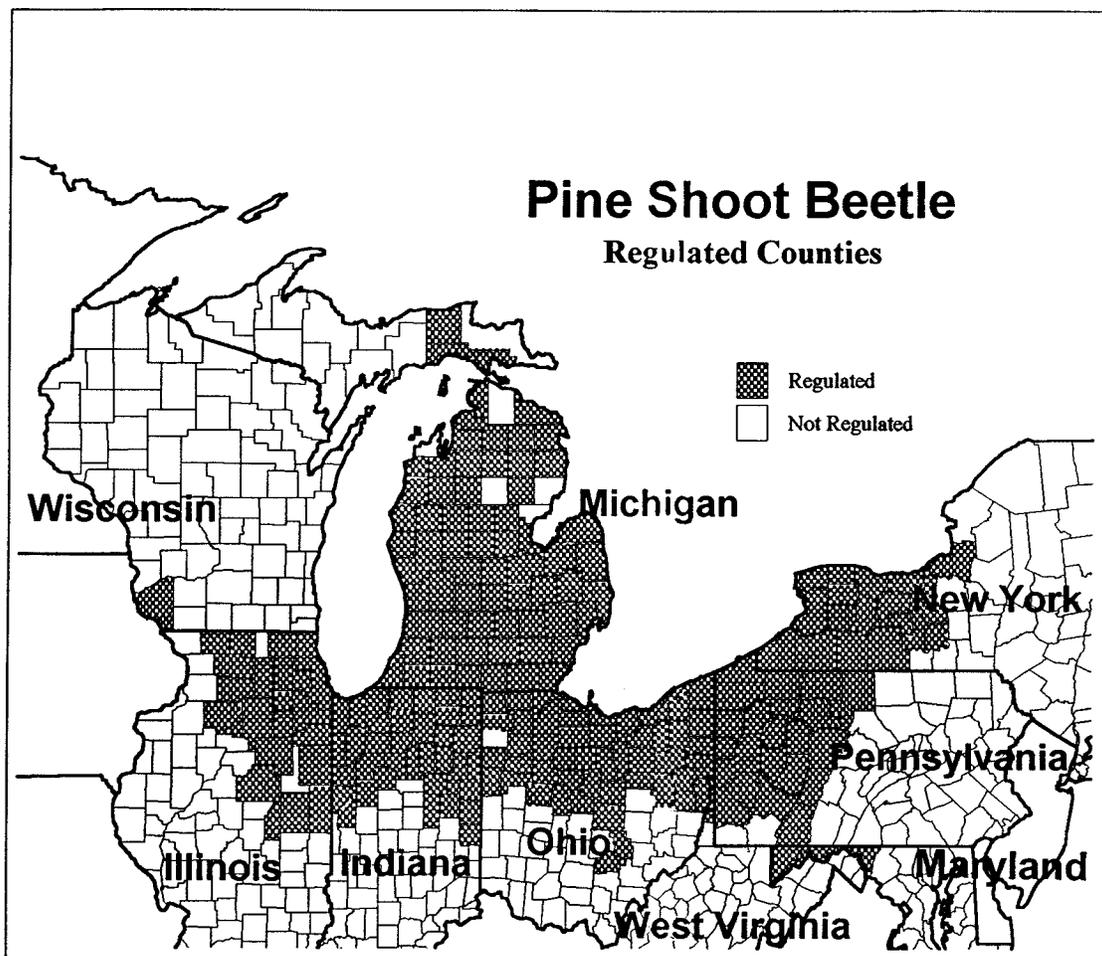
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**WEST VIRGINIA**

*Brooke County.* The entire county.  
 \* \* \* \* \*  
*Ohio County.* The entire county.

**WISCONSIN**

*Grant County.* The entire county.  
 (d) A map of the quarantined areas follows:



BILLING CODE 3410-34-C

Done in Washington, DC, this 3rd day of December 1997.

**Craig A. Reed,**

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

[FR Doc. 97-32194 Filed 12-8-97; 8:45 am]

BILLING CODE 3410-34-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 97-NM-37-AD; Amendment 39-10236; AD 97-25-12]

RIN 2120-AA64

**Airworthiness Directives; Bombardier Model CL-44 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Bombardier Model CL-44 series airplanes, that requires

revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

**DATES:** Effective January 13, 1998.

**ADDRESSES:** This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

**FOR FURTHER INFORMATION CONTACT:**

Peter LeVoci, Flight Test Pilot, Systems and Flight Test Branch, ANE-172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256-7514; fax (516) 568-2716.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Bombardier Model CL-44 series airplanes was published in the **Federal Register** on May 28, 1997 (62 FR 28813). That action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to modify the limitation that prohibits the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due