

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 98-113-1]

#### Pine Shoot Beetle; Addition 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 to add 19 counties in Indiana, Michigan, New York, Ohio, Pennsylvania, and West Virginia 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 29, 1998. Consideration will be given only to comments received on or before March 8, 1999.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 98-113-1, 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. 98-113-1. 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)

757-5073, E-mail:

christine.markham@usda.gov; or Ms. Coanne O'Hern, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247, E-mail:

coanne.e.o'hern@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 six States that were previously known to contain infested areas (IN, MI, NY, OH, PA, and WV). 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 Hancock, Howard, and Tipton Counties, IN; Chippewa, Delta, Leelanau, Marquette, and Schoolcraft Counties, MI; Cortland, Chemung, and Onondaga Counties, NY; Belmont, Coshocton, Morgan, Noble, and Paulding Counties, OH; Blair and Greene Counties, PA; and Tyler County, WV, as quarantined areas, and we are adding them to the list of quarantined areas provided in § 301.50-3(c).

##### Miscellaneous Change

We are removing paragraph (d) of § 301.50-3 from the regulations. Paragraph (d) contains a map that shows the quarantined counties listed in § 301.50-3(c). The map does not add any information to the regulations; therefore, we have decided not to recreate it each time the counties are changed.

##### 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 this action 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**. The document 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.

We do not have enough data for a comprehensive analysis of the economic impacts of this interim rule on small entities. Therefore, as required by law (5 U.S.C. 603), we performed an Initial Regulatory Flexibility Analysis for this interim rule. We invite comments about this interim rule as it relates to small entities. In particular, we need information on the benefits or costs that small entities may incur from the implementation of this interim rule and the economic impact of those benefits or costs.

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 19 counties in IN, MI, NY, OH, PA, and WV 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 223 entities in the 19 newly regulated counties that may be affected by the quarantine. Of those, 82 are Christmas tree growers, 85 are tree nurseries, and 28 are commercial timber companies or commercial sawmills. Approximately 212 of the 223 entities are considered small. The following table shows these entities by type and state.

DISTRIBUTION OF AFFECTED ENTITIES IN 19 COUNTIES TO BE ADDED TO THE QUARANTINED AREA FOR PINE SHOOT BEETLE

Entities	State						Total
	NY	PA	IN	MI	OH	WV	
Christmas tree farms .....	14	3	3	46	16	0	82
Tree nurseries .....	15	2	1	45	22	0	85
Commercial timber companies or commercial sawmills .....	12	5	0	7	4	0	28
Other types .....	0	23	2	0	0	3	28
Total entities .....	41	33	6	98	42	3	223
Small entities .....	41	25	6	95	42	3	212

The Small Business Administration (SBA) defines tree nurseries with annual sales of less than \$150,000 as small entities. Most tree nurseries specialize in production of deciduous landscape products, but some also produce pine nursery stock and some produce rooted pine Christmas trees. For most of the tree nurseries that produce pine nursery stock and rooted pine Christmas trees, these commodities comprise a minor share of their products or they service largely local populations within the quarantined area. Therefore, we do not expect that they will be notably affected by this rule.

The SBA defines Christmas tree farms with annual sales of less than \$500,000 as small entities. Most of the Christmas tree farms in the newly regulated counties are small entities. Of the 82 Christmas tree farms that are in the newly regulated counties, most sell locally to choose-and-cut markets. Therefore, they would not be affected by this rule. Those Christmas tree farms that ship their Christmas trees and tree products outside of the quarantined area would be most affected by the quarantine. In some newly quarantined areas, up to 5 percent of the Christmas trees are sold through the wholesale market. Christmas tree farms in the newly quarantined areas in Michigan, New York, and Ohio shipped 6 percent, 12 percent, and 10 percent, respectively,

of their Christmas trees and tree products to markets outside the quarantined areas in 1997. In Pennsylvania, Christmas tree farms in the newly quarantined counties shipped all of their Christmas trees and tree products outside the quarantined area in 1997. Therefore, the Christmas tree farms in the newly quarantined counties in Pennsylvania will be most affected by the quarantine.

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 19 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 interim 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 19 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, as amended (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, 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. 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 Indiana, Michigan, New York, Ohio, Pennsylvania, and West Virginia, by

adding new counties in alphabetical order to read as set forth below.

b. By removing paragraph (d).

**§ 301.50–3 Quarantined areas.**

\* \* \* \* \*

(c) \* \* \*

**INDIANA**

\* \* \* \* \*

*Hancock County.* The entire county.

*Howard County.* The entire county.

\* \* \* \* \*

*Tipton County.* The entire county.

\* \* \* \* \*

**MICHIGAN**

\* \* \* \* \*

*Chippewa County.* The entire county.

\* \* \* \* \*

*Delta County.* The entire county.

\* \* \* \* \*

*Leelanau County.* The entire county.

\* \* \* \* \*

*Marquette County.* The entire county.

\* \* \* \* \*

*Schoolcraft County.* The entire county.

\* \* \* \* \*

**NEW YORK**

\* \* \* \* \*

*Chemung County.* The entire county.

*Cortland County.* The entire county.

\* \* \* \* \*

*Onondaga County.* The entire county.

\* \* \* \* \*

**OHIO**

\* \* \* \* \*

*Belmont County.* The entire county.

\* \* \* \* \*

*Coshocton County.* The entire county.

\* \* \* \* \*

*Morgan County.* The entire county.

\* \* \* \* \*

*Noble County.* The entire county.

\* \* \* \* \*

*Paulding County.* The entire county.

\* \* \* \* \*

**PENNSYLVANIA**

\* \* \* \* \*

*Blair County.* The entire county.

\* \* \* \* \*

*Greene County.* The entire county.

\* \* \* \* \*

**WEST VIRGINIA**

\* \* \* \* \*

*Tyler County.* The entire county.

\* \* \* \* \*

Done in Washington, DC, this 29th day of December 1998.

**Craig A. Reed,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 99–112 Filed 1–4–99; 8:45 am]

BILLING CODE 3410–34–P

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 930**

[Docket No. FV98–930–1 FR]

**Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 1998–99 Crop Year for Tart Cherries**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes final free and restricted percentages for the 1998–99 crop year. The percentages are 60 percent free and 40 percent restricted. The percentages establish the proportion of cherries from the 1998 crop which may be handled in normal commercial outlets and are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body which locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

**EFFECTIVE DATE:** January 6, 1999 through June 30, 1999, and applies to all tart cherries handled from the beginning of the 1998–99 crop year.

**FOR FURTHER INFORMATION CONTACT:**

Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 205–6632, or E-mail: Jay\_\_\_N\_\_\_Guerber@usda.gov. You may also view the marketing agreements and orders small business compliance guide at the following website: <http://www.ams.usda.gov/f.v./moab.html>.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under marketing agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of