

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 emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

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 rule contains no new 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; 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. In § 301.45–3, paragraph (a), the entries for Ohio and Wisconsin are amended by adding new counties in alphabetical order to read as follows:

§ 301.45–3 Generally infested areas.

(a) * * *

Ohio

* * * * *

Hocking County. The entire county.

* * * * *

Wisconsin

Adams County. The entire county.

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Dane County. The entire county.

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Lincoln County. The entire county.

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Marathon County. The entire county.

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Marquette County. The entire county.

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Oneida County. The entire county.

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Vilas County. The entire county.

* * * * *

Done in Washington, DC, this 1st day of June 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–12757 Filed 6–4–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****7 CFR Part 301**

[Docket No. 04–036–1]

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 Decatur, Jennings, and Ripley Counties, IN, and Franklin County, NY, to the list of quarantined areas. This action is necessary to prevent the spread of pine shoot beetle, a pest of pine products, into noninfested areas of the United States.

DATES: This interim rule is effective June 7, 2004. We will consider all comments that we receive on or before August 6, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 04–036–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–036–1.

- **E-mail:** Address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and “Docket No. 04–036–1” on the subject line.

- **Agency Web Site:** Go to <http://www.aphis.usda.gov/ppd/rad/cominst.html> for a form you can use to submit an e-mail comment through the APHIS Web site.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

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: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

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 (*Larax* spp.), and spruce (*Picea* spp.) are not hosts of PSB.

Surveys conducted by State and Federal inspectors have revealed that Decatur, Jennings, and Ripley Counties, IN, and Franklin County, NY, 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.

In accordance with these criteria, we are designating Decatur, Jennings, and Ripley Counties, IN, and Franklin County, NY, as quarantined areas, and we are adding them to the list of quarantined areas in § 301.50–3(c).

Entities affected by this interim rule may include nursery stock growers, Christmas tree farms, logging operations, and others who sell, process, or move regulated articles. As a result of this 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.

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.

We are amending the PSB regulations by adding Decatur, Jennings, and Ripley Counties, IN, and Franklin County, NY, to the list of quarantined areas. This action is necessary to prevent the spread of PSB into noninfested areas of the United States.

This change will affect entities in the four newly regulated counties in Indiana and New York that are engaged in moving regulated articles interstate from the regulated area. Christmas tree farms, nurseries and greenhouses, logging operations, and other entities engaged in the movement of pine trees or pine products located in the newly designated regulated areas will be required to inspect and/or treat regulated articles in order to obtain a certificate or limited permit before moving them interstate.

APHIS has identified 86 entities that sell, process, or move forest products in the newly regulated area that are likely to be affected by this action. Of these entities, 68 are nurseries and 18 are cut Christmas tree farms. Specifically, in Franklin County, NY, APHIS has identified 24 nurseries and greenhouses and 6 cut Christmas tree farms that sell, process, or move forest products. In the 3 Indiana counties, the rule is likely to impact 44 nurseries and greenhouses and 12 cut Christmas tree farms.

According to the Agricultural Extension Offices in Franklin County, NY, and Decatur, Jennings, and Ripley Counties, IN, all of the cut Christmas tree farms within the newly regulated counties sold cut pine trees and pine tree products that remained solely within the regulated areas. In addition, nurseries in New York and Indiana specialize in the production of deciduous landscape products and not

in the production of rooted pine Christmas trees and pine nursery stock. For these reasons, these entities should not be significantly affected by this rule.

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 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. According to the 1997 Agricultural Census, almost all of the previously mentioned 68 nurseries and greenhouses and the 18 cut Christmas tree farms within the newly regulated areas meet the SBA's criteria and are considered small entities.

As noted previously, those nurseries and greenhouses within the newly regulated 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 remain exclusively within the regulated areas. For these reasons, the impact of this rule on regulated entities as a whole is 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.

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 new 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; 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. In § 301.50–3, paragraph (c), the entries for Indiana and New York are amended by adding new counties in alphabetical order to read as follows:

§ 301.50–3 Quarantined areas.

* * * * *

(c) * * *

Indiana

* * * * *

Decatur County. The entire county.

* * * * *

Jennings County. The entire county.

* * * * *

Ripley County. The entire county.

* * * * *

New York

* * * * *

Franklin County. The entire county.

* * * * *

Done in Washington, DC, this 1st day of June 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–12758 Filed 6–4–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 996

[Docket No. FV03–996–2 FIR]

Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting as a final rule, without change, an interim final rule that changed peanut quality and handling standards for domestic and imported peanuts marketed in the United States. These provisions are intended to maximize handling efficiency and to provide peanut producers, handlers, and importers with flexibility in meeting current and new market demands, while maintaining peanut quality and wholesomeness for consumers.

EFFECTIVE DATE: June 8, 2004.

FOR FURTHER INFORMATION CONTACT: Dawana Clark or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 4700 River Road, Room 2A04, Unit 155, Riverdale, Maryland 20737; telephone (301) 734–5243, Fax: (301) 734–5275 or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax: (202) 720–8938; or E-mail: dawana.clark@usda.gov, kenneth.johnson@usda.gov or george.kelhart@usda.gov.

Small businesses may request information on complying with this rule by contacting Jay Guerber, at the same DC address as above, or E-mail: jay.guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under section 1308 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), 7 U.S.C. 7958, hereinafter referred to as the “Act.”

This rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws,

regulations, or policies, unless they present an irreconcilable conflict with this rule.

There are no administrative procedures, which must be exhausted prior to any judicial challenge to the provisions of this rule.

Background

This rule is based on recommendations of the Peanut Standards Board (Board) and comments received from its members and other industry sources. The standards and the Board were established by the Department of Agriculture (USDA), pursuant to section 1308 of the Farm Security and Rural Investment Act of 2002. This rule continues the following: Screen sizes specified in the outgoing quality standards to allow smaller peanut kernels of all varieties to be used in edible markets; provisions in the text of the standards specifying that financially interested persons may appeal quality inspection results and that “holders of the title” to any lot of peanuts may appeal aflatoxin test results; provisions allowing peanut lots which meet fall through, minimum damage and minor defects standards prior to blanching, but fail for some other reason, to be exempt from fall through, minimum damage and minor defects standards upon re-inspection after blanching; and the increase to 10 percent in the quantity of sound whole kernels that may be contained in a lot of splits for specified peanut varieties.

Section 1308 of the Act requires that USDA take several actions with regard to peanuts marketed in the United States: Ensure mandatory inspection on all peanuts marketed in the United States; establish the Board comprised of industry representatives to advise USDA; and develop peanut quality and handling standards; and to modify those quality and handling standards when needed. An interim final rule was published in the **Federal Register** (67 FR 57129) on September 9, 2002, terminating the previous peanut programs and establishing standards in Part 996 to ensure the continued inspection of 2002 crop year peanuts and subsequent crop year peanuts, 2001 crop year peanuts not yet inspected, and 2001 crop year failing peanuts that had not yet met disposition standards. The initial Board was selected and announced on December 5, 2002. A final rule finalizing the interim final rule was published in the **Federal Register** (68 FR 1145) on January 9, 2003, to continue requiring all domestic and imported peanuts marketed in the United States to be handled consistent with the handling standards and