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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 00-073-3]

RIN 0579-AB76

#### Pine Shoot Beetle Host Material From Canada

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting as a final rule, with one change, an interim rule that amended the regulations by restricting the importation of pine shoot beetle host material into the United States from Canada. Under the regulations established by the interim rule, as amended by this document, pine nursery stock, as well as pine products that consist of pine bark or have pine bark attached, must meet certain requirements relating to documentation, treatment, handling, and utilization as a condition of importation into the United States from Canada. The interim rule was necessary to help prevent the introduction and spread of pine shoot beetle, a pest of pine trees, into noninfested areas of the United States.

**EFFECTIVE DATE:** September 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Fred Thomas, Import Specialist, PPQ, APHIS, 4700 River Road, Unit 160, Riverdale, MD 20737-1236; (301) 734-8367.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 7 CFR part 319, "Foreign Quarantine Notices," prohibit or restrict the importation of certain plants and plant products into the United States to prevent the

introduction of plant pests. "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (§§ 319.37 through 319.37-14 and referred to below as the nursery stock regulations) covers the importation of living plants, plant parts, and seeds for propagation. "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles" (§§ 319.40-1 through 319.40-11 and referred to below as the wood regulations) covers the importation of logs, lumber, and other wood articles that are unprocessed or have received only primary processing. "Subpart—Gypsy Moth Host Material from Canada" (§§ 319.77-1 through 319.77-5 and referred to below as the gypsy moth regulations) covers the importation of gypsy moth host material into the United States from Canada. This material includes certain trees and shrubs, logs and pulpwood with bark attached, and outdoor household articles and mobile homes and their associated equipment.

Pine shoot beetle (PSB, *Tomicus piniperda*) is a pest of pine trees. It can cause damage in weak and dying trees, where reproductive 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 in the current year's growth), causing stunted and distorted growth in host trees. PSB also acts as a vector of several diseases of pine trees. Adult PSB can fly at least 1 kilometer. In addition, infested trees and pine products are often transported long distances, which can result in the establishment of PSB populations far from the location of the original host tree. PSB can damage urban ornamental trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

In an interim rule effective and published in the **Federal Register** on October 20, 2004 (69 FR 61577-61589, Docket No. 00-073-2), we amended the nursery stock regulations, the wood regulations, and the gypsy moth regulations to restrict the importation of PSB host material into the United States from Canada. That action was necessary to help prevent the introduction and spread of PSB into noninfested areas of the United States.

We solicited comments concerning the interim rule for 60 days ending December 20, 2004. We received two

comments by that date, from the Canadian Food Inspection Agency (CFIA) and an exporter of Christmas products. These comments are discussed below.

The CFIA stated that the interim rule was ambiguous about whether or not permits were required for pine Christmas trees, wreaths, and bough tips and questioned whether such permits were necessary, since such materials were likely to be destroyed by the end users before the flight season of PSB begins. They also questioned the need for written permits for other nonpropagative products, such as bark nuggets and wood chips, and suggested that there should not be a written permit requirement except in the case of articles consigned to a designated U.S. facility that operates under a compliance agreement.

While we disagree that the interim rule was ambiguous, after reviewing Canada's PSB directive and our current domestic PSB regulations in 7 CFR part 301, we have decided to remove the requirement for an import permit for nonpropagative material except when the nonpropagative material is moving to a U.S. facility operating under a compliance agreement for specified handling or processing. Nonpropagative material moving to such facilities is not required to be accompanied by a certificate or a statement of origin and movement, while one of those documents is required for other regulated nonpropagative material. We will continue to require a certificate or a statement of origin and movement to accompany other shipments of regulated nonpropagative material imported into the United States.

The exporter of Christmas products noted that the interim rule did not contain any restrictions on the movement of PSB host material produced in the United States. This commenter questioned why we were placing additional restrictions on Canadian-origin products when PSB exists in the United States as well.

The United States and Canada both regulate the movement of PSB host material through domestic and import regulations. The intent of the interim rule was to harmonize our import requirements with Canada's import regulations and our own domestic movement regulations. The restrictions imposed by the interim rule, as

amended by this final rule, on the importation of PSB host material from Canada are entirely consistent with the restrictions that apply to the interstate movement of such articles within the United States, and with the restrictions that the Canadian Government has placed on the importation of PSB host material into Canada from the United States.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the change discussed in this document.

#### Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rule adopted as final by this rule was effective on October 20, 2004. This rule revises the import restrictions on PSB host material that were established in the interim rule by removing the import permit requirement for regulated articles that are to be accompanied by a certificate or a certificate of movement and origin. Immediate action is necessary to amend the import restrictions in order to relieve restrictions that are not necessary. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

#### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This final rule follows an interim rule that amended the regulations by restricting the importation of PSB host material into the United States from Canada. Under the regulations established by the interim rule, as amended by this document, pine nursery stock, as well as pine products that consist of pine bark or have pine bark attached, must meet certain requirements relating to documentation, treatment, handling, and utilization as a condition of importation into the United States from Canada. The interim rule was necessary to help prevent the introduction and spread of PSB, a pest of pine trees, into noninfested areas of the United States.

For this final rule, we have prepared an economic analysis, which is summarized below. The economic

analysis provides a cost-benefit analysis as required by Executive Order 12866 and a regulatory flexibility analysis regarding the potential economic effects on small entities in accordance with sec. 604 of the Regulatory Flexibility Act. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** and may be viewed on the Regulations.gov Web site.<sup>1</sup>

In the interim rule, we stated that we did not have enough data for a comprehensive analysis of the economic effects of the interim rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we performed an initial regulatory flexibility analysis for the interim rule. We invited comments about the interim rule as it related to small entities and stated that we were interested in determining the number and kind of small entities that may incur benefits or costs from implementation of the interim rule. We did not receive any comments that were responsive to our request for additional economic information.

The interim rule established regulations for the importation of PSB host material into the United States from Canada. The regulations cover pine nursery stock, cut pine Christmas trees, and other pine products that consist of pine bark or have pine bark attached. These products must meet certain documentation, treatment, handling, processing, or utilization requirements. The restrictions affecting the importation of PSB host material from Canada are necessary to prevent the spread of PSB into noninfested areas of the United States. The new regulations parallel in many respects Canadian restrictions on U.S. exports of PSB host material into Canada, and are equivalent to the restrictions placed on domestic movement from infested areas within the United States.

More than 170 billion cubic feet of pine growing stock is present on timberland in noninfested areas of the United States. As hosts for PSB, ponderosa, loblolly, and red pines may be nearly as suitable as Scotch pine, the primary host.<sup>2</sup> All three species are valuable commercial timber species that occur over wide geographical areas in

the United States, primarily in non-PSB infested areas.

At the time of the last Census of Horticulture Specialties in 1998, there were more than 2,200 operations selling pine nursery plants in the United States. These operations had total sales of pine nursery plants of about \$109 million in 1998. About 1,500 of these operations, with total sales of more than \$90 million (83 percent of total sales) were located in noninfested areas of the United States. There were about 1,200 operations selling Scotch pine Christmas trees with sales of about \$27 million in 1998. About 36 percent of these operations are in noninfested areas of the United States. There were also more than 2,100 operations with sales of \$48 million in 1998 selling Christmas trees that are not Scotch pine or Douglas, Fraser, or Noble fir, and include an unknown quantity of other types of *Pinus* species. About 64 percent of these operations, accounting for more than half of the sales, were in noninfested areas of the United States.

In 2004, U.S. exports of these products were valued at approximately \$435 million. About 48 percent of these exports went to countries that currently list PSB as a quarantine pest or have specific treatment requirements for dealing with PSB.

Given the vast forest resources of the United States and the high value of U.S. exports, in conjunction with the destructive potential of the PSB, it is likely that the further spread of that pest in the United States as a result of the unrestricted movement of PSB host material from infested areas of Canada would have a negative impact on the noninfested areas of the United States, and particularly on businesses and industry that rely on pine nursery stock or pine forest materials produced or grown in those areas.

Should PSB spread into previously noninfested areas, it would likely result in control efforts by pine resource owners to mitigate damage to forest resources. Actions by State, local and Federal governments to prevent the further spread of infestation are also likely. In addition, because many U.S. exports of pine products go to countries that currently list PSB as a quarantine pest or have specific treatment requirements for dealing with PSB, maintaining these export markets after further spread would likely involve costs to growers.

#### Pine Nursery Stock

The interim rule placed new restrictions on the importation of pine nursery stock from Canada into the United States. All pine nursery stock

<sup>1</sup> To view the full economic analysis, go to <http://www.regulations.gov>, click on the "Advanced Search" tab and select "Docket Search." In the Docket ID field, enter APHIS-2004-0015, click on "Submit," then click on the Docket ID link in the search results page. The economic analysis will appear in the resulting list of documents.

<sup>2</sup> Pasek, J.E. "Pine Shoot Beetle (*Tomicus piniperda* (L.)): Pest-Initiated Pest Risk Assessment for Likelihood and Consequences of Spread within the Continental United States." March 24, 2000 (Revised). USDA/APHIS.

from Canada must now be issued a written permit as a condition of importation into the United States. In addition, the phytosanitary certificate (PC) accompanying pine nursery stock will have to include specific information regarding the article's origin and destination, as well as provide additional declarations in certain situations.

The overall effect of these requirements should be limited. There is no charge to obtain a written permit from APHIS, and the information required is not extensive. Because a PC is already required for nursery stock, the need for one under this rule should add no additional cost. The specific origin and destination information called for in this rule should be readily available. Despite potentially attractive treatment costs, the use of methyl bromide may be limited due to the potential damage it may cause to certain live plants and to the limited number of facilities where treatments could be performed.<sup>3</sup> The inspection charge by the Canadian Government should range from less than 0.3 percent of the value of the shipment to not more than 3.1 percent.<sup>4</sup> In addition, any movement of pine nursery stock from PSB infested areas within Canada is already regulated by the Government of Canada. Canadian pine nursery stock producers already meeting these standards will incur no additional burden in providing the additional declarations for the PC. Therefore, the rule should have little effect on imports of pine nursery stock from Canada, and thus on U.S. marketers and consumers.

#### Cut Pine Christmas Trees

Depending on the origin, destination, and timing of the shipment, the interim rule required some or all of the following for imports of cut pine Christmas trees from Canada: That the shipment be accompanied by a statement of origin and movement, a specific (written) permit from APHIS, a certificate issued by the National Government of Canada that indicates in the treatment section that the trees have been treated with methyl bromide to kill PSB, or were produced in a plantation that has a program to control or eradicate PSB, or were produced in an area where PSB is not considered to be present, or were 100 percent inspected and found to be free from PSB; and that

the shipment be covered en route. The U.S. destination must also be clearly indicated on the shipment.

The economic effects of these requirements should also be relatively small. A permit is only required for shipments moving to a U.S. facility operating under a compliance agreement. Few shipments of cut pine Christmas trees move to such facilities, but are rather imported for retail sale. There is no charge to obtain a permit from APHIS, and the information required for a written permit is not extensive. There is no cost to obtain the statement of origin and movement, and this document does not have to be signed by a public official. Covering shipments of cut pine Christmas trees that move between January and September should cause little burden. Very few shipments occur during this time frame, and the covering material can be a simple plastic canvas.

We expect the impact of satisfying the certificate, treatment, and additional declaration requirements to be small. First, the cost of obtaining a certificate, treatment, or inspection should be low. The cost of a certificate for cut pine Christmas trees should be similar to the cost of a PC, due to the similarities in the information required and the source of the documents. The cost of the certificate should be less than 1 percent of the shipment value.<sup>5</sup> The inspection fee should range from less than 0.3 percent to not more than 3.1 percent of the shipment value. As was previously discussed, the use of methyl bromide should be limited. In addition, movement of cut pine Christmas trees from PSB infested areas within Canada is already regulated by the Government of Canada. Finally, only those pine Christmas tree shipments from infested areas of Canada to noninfested areas of the United States will need a certificate, and Canadian exports of Christmas trees represent a small portion of the total U.S. supply (less than 2 percent). Therefore, any change in imports of cut pine Christmas trees from Canada should be small and have little effect on U.S. marketers and consumers.

#### Other Pine Products

Depending on the origin, destination, and timing of the shipment, the interim rule required some or all of the following for imports of other pine products from Canada: The shipment be

accompanied by a statement of origin and movement or a certificate issued by the National Government of Canada; be treated for PSB, or consigned under import permit to a designated U.S. facility that operates under a compliance agreement for specified handling or processing of the regulated articles or shipped from a Canadian facility operating under a compliance agreement with CFIA; and that the shipment be covered en route. The U.S. destination must also be clearly indicated on the shipment.

The overall effect of these requirements should be limited for several reasons. First, the majority of U.S. imports of other pine forest products from Canada originate in noninfested Provinces. Therefore, in most cases, the only additional requirement in this rule is the requirement for a statement of origin and movement. A permit is only required for shipments moving to a U.S. facility operating under a compliance agreement. The statement of origin and movement is a document that shippers will generate themselves. There is no cost to obtain the document and it does not have to be signed by a public official.

Second, the presence of alternative shipping arrangements should serve to limit the number of shippers required to obtain a certificate and have articles treated or pine bark ground. There may be some expense incurred by shippers in arranging for these alternatives. However, pine forest products with bark attached (e.g., saw logs, pulp wood, branches) and pine bark are regulated for PSB in Canada. Movement of those products from PSB infested areas within Canada is already regulated by the Government of Canada. Canadian pine forest product and pine bark producers already meeting these standards will incur no additional burden in providing the additional declarations for the certificate. Covering shipments of other pine products that move between January and September should cause little burden. The covering material can be as simple as a plastic canvas.

Finally, even for imports from PSB-infested Canadian provinces, only those shipments destined for or moving through noninfested areas of the United States need to be accompanied by a certificate. While the precise portion of pine forest products and pine bark imported from the infested areas of Canada to noninfested areas of the United States is not known, pine imports from Canada represent a small portion of the overall U.S. supply. Therefore, any change in imports is

<sup>3</sup> An Environmental Protection Agency estimate places the treatment of timber with methyl bromide at \$1–3 per 1,000 board feet.

<sup>4</sup> Canadian Food Inspection Agency. Inspection of a load of pine nursery stock should cost no more than C\$50. If the customs value of a shipment is less than C\$1,600, the inspection charge is C\$5. C\$1,600 = \$1,047.60; C\$5 = \$3.27, C\$50 = \$32.74.

<sup>5</sup> Canadian Food Inspection Agency. Inspection of a load of cut Christmas trees should cost no more than C\$50. Currently, the Canadian charge for a PC is C\$7, where the customs transaction value of that shipment is not more than C\$1,600, and C\$17, where that value is more than C\$1,600. C\$7 = \$4.58; C\$17 = U.S. \$11.13; C\$1,600 = \$1,047.60.

expected to have little effect on U.S. marketers and consumers.

#### Alternatives Considered

This rule has been prompted by the need to restrict the importation of PSB host material into the United States from Canada in order to help prevent the introduction of PSB into noninfested areas of the United States. In assessing the need for this rule, we considered several alternatives to the chosen course of action. These alternatives are discussed in the "Regulatory Flexibility" section of the full economic analysis.

In conclusion, we anticipate limited costs associated with this rule, which is parallel to Canadian restrictions imposed on U.S. exports of PSB host material. Some shippers and other importers will be subject to certain costs and other inconveniences in securing the proper documentation for importation of affected products. However, these costs and inconveniences should be limited where they are incurred. There is no charge to obtain a written permit from APHIS, and the information required is not extensive. Obtaining a PC or certificate should cost less than 1 percent of the shipment value. Inspection costs should range from under 0.3 percent to 3.1 percent of shipment value. Because the movement of pine nursery stock, cut pine Christmas trees, pine forest products with bark attached, and pine bark from PSB-infested areas within Canada is already regulated by the Government of Canada, Canadian producers already meeting these standards will incur no additional burden in providing the additional declarations for the PC or certificate. Hence, we expect little reduction in U.S. imports of Canadian products, with small effects on U.S. marketers and consumers. U.S. producers of nursery stock, Christmas trees, and pine products who are located in the United States may benefit slightly to the extent they can market their products at lower costs than Canadian imported products subject to PSB restrictions.

We expect that gains from reducing the risk of further spread of PSB to outweigh the costs of this action. Implementation of this rule will enable APHIS to better prevent the movement of infested PSB host material from Canada into noninfested areas of the United States. This action is equivalent to what is being done domestically. Keeping areas in the United States free from PSB will result in avoided damages to forest resources. Growers will not have to expend funds to control PSB damage or to maintain PSB free

status in relation to exports. Federal, State, and local governments will not have to expend funds to control the further spread of the pest. Entities located in noninfested areas and engaged in the movement of PSB host material will not have to deal with domestic movement controls, export restrictions, or inspection and/or treatment of the regulated articles before they can be moved as is the case in U.S. quarantined areas.

#### Executive Order 12988

This final 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 final rule contains information collection requirements that differ from those in our October 2004 interim rule. Specifically, there has been a reduction of 24 hours in the burden associated with import permits for nonpropagative material that is moving to a destination other than a U.S. facility operating under a compliance agreement for specified handling or processing. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this information collection requirement has been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0257.

#### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

#### List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, the interim rule amending 7 CFR part 319 that was published at 69 FR 61577-61589 on October 20, 2004, is adopted as a final rule with the following changes:

#### PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 319.40-3, paragraph (a)(1)(i) is revised to read as follows:

**§ 319.40-3 General permits; articles that may be imported without a specific permit; articles that may be imported without either a general permit or an importer document.**

(a) \* \* \*

(1) \* \* \*

(i) From Canada: Regulated articles, other than the following:

(A) Regulated articles of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae, and;

(B) Regulated articles of pine (*Pinus* spp.) that are not completely free of bark from Provinces in Canada that are considered to be infested or partially infested with pine shoot beetle (*Tomicus pinniperda*), as determined by the Canadian Food Inspection Agency, and that are moving to a United States facility operating under a compliance agreement for specified handling or processing under the provisions of § 319.40-8.

\* \* \* \* \*

Done in Washington, DC, this 25th day of September 2006.

**Bruce Knight,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. E6-16079 Filed 9-28-06; 8:45 am]

BILLING CODE 3410-34-P

#### DEPARTMENT OF ENERGY

#### 10 CFR Parts 709 and 710

[Docket No. CN-03-RM-01]

RIN 1992-AA33

#### Counterintelligence Evaluation Regulations

**AGENCY:** Office of Intelligence and Counterintelligence, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE or Department) today is publishing a final rule to establish new counterintelligence evaluation regulations to minimize the potential for disclosure of classified information, data, and materials. The rule published today, which replaces the current DOE polygraph regulations contained at 10