# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

**[Docket No. 03–102–2]**

## Pine Shoot Beetle; Additions to Quarantined Areas

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the pine shoot beetle regulations by adding 37 counties in Illinois, Indiana, Maryland, New York, Ohio, Pennsylvania, Vermont, and Virginia to the list of quarantined areas. As a result of that action, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the spread of pine shoot beetle, a pest of pine products, into noninfested areas of the United States.

**DATES:** *Effective Date:* The interim rule became effective on January 5, 2004.

**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

In an interim rule effective and published in the **Federal Register** on January 5, 2004 (69 FR 243–245, Docket No. 03–102–1), we amended the pine shoot beetle (PSB) regulations contained in 7 CFR 301.50 through 301.50–10 by adding 37 counties in Illinois, Indiana, Maryland, New York, Ohio, Pennsylvania, Vermont, and Virginia to the list of quarantined areas in § 301.50–3. That action was necessary to prevent the spread of PSB into noninfested areas of the United States.

Comments on the interim rule were required to be received on or before March 5, 2004. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988 and the Paperwork Reduction Act. Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

### Regulatory Flexibility Act

This action affirms an interim rule that amended the PSB regulations by adding 37 counties in Illinois, Indiana, Maryland, New York, Ohio, Pennsylvania, Vermont, and Virginia to the list of quarantined areas. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of PSB to noninfested areas of the United States.

The following analysis addresses the economic effects of the interim rule on small entities, as required by the Regulatory Flexibility Act.

The interim rule affects entities engaged in the interstate movement of regulated articles from and through the 37 counties in Illinois, Indiana, Maryland, New York, Ohio, Pennsylvania, Vermont, and Virginia that were added to the list of quarantined areas by the interim rule. Affected entities may include nursery stock growers, Christmas tree farms, logging operations, and others who sell, process, or move regulated articles. As a result of the interim rule, entities moving regulated articles interstate from one of those 37 counties must first inspect and/or treat the regulated articles in order to obtain a certificate or limited permit authorizing the movement.

We have determined that there are 1,062 nurseries and 394 Christmas tree farms that sell, process, or move regulated articles in the 37 counties added to the list of quarantined areas by the interim rule; the number of logging operations affected by the interim rule is not known. Table 1 lists the number of affected nurseries and Christmas tree farms by State and county.

TABLE 1.—AFFECTED NURSERIES AND CHRISTMAS TREE FARMS BY STATE AND COUNTY

| | Nurseries | Christmas tree farms | | Nurseries | Christmas tree farms |
|---|---|---|---|---|---|
| *Illinois:* | | | New York (continued):. | | |
| Carroll | 10 | 6 | Hamilton | 9 | 4 |
| Clark | 6 | 5 | Herkimer | 32 | 9 |
| Coles | 19 | 13 | Montgomery | 28 | 7 |
| Ford | 4 | 0 | Saratoga | 84 | 18 |
| Henry | 20 | 13 | Schenectady | 27 | 4 |
| Mason | 12 | 0 | Schoharie | 33 | 7 |
| Moultrie | 9 | 4 | Sullivan | 35 | 16 |
| Peoria | 25 | 13 | *Ohio:* | 85 | 33 |
| Shelby | 19 | 10 | Athens | 31 | 10 |
| *Indiana:* | | | Gallia | 14 | 5 |
| Bartholomew | 14 | 5 | Pike | 12 | 9 |
| Franklin | 15 | 3 | Washington | 28 | 9 |
| Monroe | 20 | 6 | *Pennsylvania:*. | | |
| Morgan | 12 | 8 | Centre | 63 | 20 |
| Putnam | 8 | 5 | Fulton | 20 | 12 |
| Union | 0 | 0 | Lycoming | 77 | 44 |
| *Maryland:* | | | Susquehanna | 44 | 26 |
| Montgomery | 95 | 23 | Wyoming | 25 | 16 |
| *New York:* | | | *Vermont:*. | | |
| Albany | 89 | 22 | Washington | 53 | 15 |
| Fulton | 26 | 12 | *Virginia:*. | | |
| Greene | 30 | 7 | Clarke | 14 | 8 |

*Illinois.* There are 124 nurseries and 64 cut Christmas tree farms that operate in the 9 counties in Illinois that were added to the list of quarantined areas by the interim rule. According to local Christmas tree growers and State agricultural extension representatives, more than 50 percent of the cut Christmas tree farms in those counties are ''cut-your-own-tree'' farms that sell to customers in the regulated area. Most nurseries in Illinois affected by the interim rule specialize in the production of deciduous landscape products and do not focus their production on regulated articles.

*Indiana.* There are 69 nurseries and 27 cut Christmas tree farms that operate in the 6 counties in Indiana that were added to the list of quarantined areas by the interim rule. According to local Christmas tree growers, more than 50 percent of the cut pine trees and pine tree products that are sold by those growers remain in the regulated area. Most nurseries in Indiana affected by the interim rule specialize in the production of deciduous landscape products; production of pine trees and pine products are not their primary focus of production.

*Maryland.* There are 95 nurseries and 23 cut Christmas tree farms that operate in Montgomery County, Maryland, which was the county that State added to the list of quarantined areas by the interim rule. According to local Christmas tree growers, more than half of the pine trees and pine products produced in that county were sold to customers outside of the regulated area.

*New York.* There are 393 nurseries and 106 cut Christmas tree farms that operate in the 10 counties in New York that were added to the list of quarantined areas by the interim rule. Albany and Saratoga counties contained the highest number of nurseries and Christmas tree farms in that State. According to local Christmas tree growers, more than 50 percent of pine trees produced in the affected counties were sold in wholesale markets and purchased by customers outside the regulated area. Most nurseries in New York that were affected by the interim rule do not focus their production on pine trees and pine products.

*Ohio.* There are 85 nurseries and 33 cut Christmas tree farms that operate in the 4 counties in Ohio that were added to the list of quarantined areas by the interim rule. According to local Christmas tree growers, less than 10 percent of pine trees were sold in those counties were purchased by customers outside the regulated area.

*Pennsylvania.* There are 229 nurseries and 118 cut Christmas tree farms that operate in the 5 counties in Pennsylvania that were added to the list of quarantined areas by the interim rule. According to the 2001 Agricultural Statistics, $12.4 million worth of live Christmas trees were sold in Pennsylvania in 2000, making it the State with the second highest number of cut Christmas tree farms, and the third highest value of sales in the Nation. According to local Christmas tree growers, 90 percent of their sales took place through wholesaling and at least 50 percent of their pine trees were purchased by customers outside of the regulated area.

*Vermont.* There are 53 nurseries and 15 cut Christmas tree farms that operate in the county in Vermont that was added to the list of quarantined areas by the interim rule. According to the Vermont Christmas Tree Association, Christmas tree growers sold more than half of their pine trees and pine products to customers outside the regulated area.

*Virginia.* There are 14 nurseries and 8 cut Christmas tree farms that operate in the county in Virginia that was added to the list of quarantined areas by the interim rule. Christmas tree growers in that county sell more than half of their pine trees and pine products to customers outside the regulated area.

**Small Entity Impact**

The Small Business Administration (SBA) has established size standards to determine whether an entity would be considered small. According to the SBA standards, nursery stock growers are considered small if their annual sales total $750,000 or less. Similarly, Christmas tree growers are considered small if their annual sales are $5 million or less. According to the 1997 Agricultural Census, the vast majority of the affected nurseries and Christmas tree farms may be considered small.

We have determined that the nurseries and Christmas tree growers in most of the 37 counties that are now listed as quarantined areas will not be significantly affected by the interim

rule, either because pine species comprise a very minor share of their products or because their shipments do not leave the quarantined areas.

However, some nurseries and Christmas tree growers affected by the interim rule have markets that are out-of-county and/or out-of-State. These affected entities can maintain their markets outside the quarantined areas by arranging for the issuance of certificates or limited permits based on inspection or treatment of the regulated articles. Inspections, in some cases, are already occurring for other purposes; therefore, inspecting for PSB will add minimal cost. Also, any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement with the Animal and Plant Health Inspection Service whereby that person, rather than an inspector, may issue a certificate or limited permit for the interstate movement of eligible regulated articles. Costs and potential inconvenience are most likely for producers of live pine nursery stock, since inspection is required for each live plant before it may be moved interstate from a quarantined area. However, many producers must already have their products inspected for other pests, and adding another inspection will likely be a relatively small burden.

In contrast to the losses associated with the damage caused by PSB, the potential costs and inconvenience associated with inspections and treatment are minimal. The effect on those few small entities that do move regulated articles out-of-county and/or interstate is minimized by the availability of treatments and compliance agreements that, in most cases, allow these small entities to move regulated articles with very little additional cost.

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.

### List of Subjects in 7 CFR Part 301

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

## PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 69 FR 243–245 on January 5, 2004.

**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).

Done in Washington, DC, this 30th day of April 2004.

**Peter Fernandez,**

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

[FR Doc. 04–10310 Filed 5–5–04; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 9 CFR Part 130

**[Docket No. 00–024–2]**

**RIN 0579–AB22**

## Veterinary Diagnostic Services User Fees

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations to increase the user fees for veterinary diagnostic services to reflect changes in our operating costs and changes in calculating our costs. We are also setting rates for multiple fiscal years. These actions are necessary to ensure that we recover the actual costs of providing these services. We are also providing for a reasonable balance, or reserve, in the veterinary diagnostics user fee account. The Food, Agriculture, Conservation, and Trade Act of 1990, as amended, authorizes us to set and collect these user fees.

**DATES:** *Effective Date:* June 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** For information concerning program operations, contact Dr. Randall Levings, Director, National Veterinary Services Laboratories, 1800 Dayton Road, PO Box 844, Ames, IA 50010; (515) 663–7357.

For information concerning user fee rate development, contact Mrs. Kris Caraher, User Fees Section Head, Financial Systems and Services Branch, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232; (301) 734–5901.

**SUPPLEMENTARY INFORMATION:**

### Background

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import- and export-related services for live animals and birds and animal products are contained in 9 CFR part 130 (referred to below as the regulations). These user fees are authorized by § 2509(c) of the Food, Agriculture, Conservation and Trade Act of 1990, as amended (21 U.S.C. 136a), which provides that the Secretary of Agriculture may, among other things, prescribe regulations and collect fees to recover the costs of veterinary diagnostics relating to the control and eradication of communicable diseases of livestock or poultry within the United States.

On July 24, 2003, we published in the **Federal Register** (68 FR 43661–43673, Docket No. 00–024–1) a proposed rule to increase the user fees for veterinary diagnostic services to reflect changes in our operating costs and changes in calculating our costs, and to establish rates for multiple fiscal years. Operating costs have increased since these user fees were established in a final rule published in the **Federal Register** on October 7, 1998 (63 FR 53783–53798, Docket No. 94–115–2). Therefore, the user fees need to be updated to reflect those increases. However, the main reason for the increase in the fees is cost data gathered through new cost-finding techniques employed by APHIS. The Statement of Federal Financial Accounting Standards (SFFAS) No. 4, ''Managerial Cost Accounting Standards and Concepts,'' issued by the Office of Management and Budget, mandated that APHIS capture cost accounting data in its program costs. We were required to accumulate and report the costs of veterinary diagnostic activities on a regular basis through the use of cost accounting systems and cost finding techniques. In order to comply with SFFAS No. 4, APHIS conducted an Activity Based Costing (ABC) project at the National Veterinary Services Laboratories in Ames, IA, which identified the sources of all costs for veterinary diagnostic services. As a result of that project, we determined that costs for user fee-related services were not adequately being recovered through user fee collections. Based on this determination, we proposed new fees to recover these newly identified costs. Each of the updated user fees contains a proportionate share of the costs identified in the ABC study.

We solicited comments concerning our proposal for 60 days ending September 22, 2003. We received two comments by that date, from a livestock exporting company and a State laboratory.

One commenter, the livestock exporter, stated that the proposed fee