

# Rules and Regulations

Federal Register

Vol. 72, No. 119

Thursday, June 21, 2007

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS–2007–0067]

#### Pine Shoot Beetle; Addition of Cumberland County, NJ, to the List of 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 Cumberland County in New Jersey to the list of quarantined areas. We are taking this action because the pine shoot beetle has been detected in the county. This action is necessary to prevent the spread of the pine shoot beetle, a pest of pine trees, into noninfested areas of the United States.

**DATES:** This interim rule is effective June 21, 2007. We will consider all comments that we receive on or before August 20, 2007.

**ADDRESSES:** You may submit comments by either of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click “Submit.” In the Docket ID column, select APHIS–2007–0067 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link.

- **Postal Mail/Commercial Delivery:** Please send four copies of your

comment (an original and three copies) to Docket No. APHIS–2007–0067, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0067.

**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:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

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

Surveys conducted by State and Federal inspectors have revealed that Cumberland County, NJ, is 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 that 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. The regulations further provide that less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing a quarantine and regulations that impose restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by the regulations on the interstate movement of those articles; and (2) the designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of PSB.

In accordance with these criteria, we are designating Cumberland County in New Jersey as a quarantined area and are adding it to the list of quarantined areas in § 301.50–3.

#### 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.

This rule amends the PSB regulations by adding Cumberland County, NJ, to the list of quarantined areas in § 301.50–3.

Entities affected by this rule may include nurseries, cut Christmas tree farms, logging operations, moving companies, and others who sell, process, or move regulated articles interstate from Cumberland County, NJ. As a result of this rule, any regulated articles to be moved interstate from

Cumberland County must first be inspected and/or treated in order to qualify for a certificate or limited permit authorizing such movement. This action will mitigate the spread of the pest to new areas, and consequently avoid economic damage to timber, nursery, and Christmas tree producers in areas that could become infested if no action were taken.

Certain pine products will not be allowed to be shipped interstate during certain months of the year or will be required to undergo debarking before transport occurs. Enterprises such as Christmas tree farms, nurseries and greenhouses, and others in Cumberland County that wish to move regulated articles from the county may be affected by compliance requirements; however, costs associated with the issuance of certificates and limited permits are borne by the issuing agency.

Using 2002 statistics provided by the National Agricultural Statistics Service, we have identified approximately 194

entities that sell, process, or move forest products in Cumberland County, NJ, and thus may be affected by this rule (table 1). Approximately 175 of these entities produce nursery or greenhouse crops. Christmas tree farms account for the remaining 19. There may be sawmills and logging operations that process pine tree products in the quarantined area, but we do not possess information about them.

According to information we have previously collected, pine trees and pine tree products sold in areas such as Cumberland County largely remain within the regulated areas. In addition, nurseries and greenhouses tend to specialize in the production of deciduous landscape products rather than the production of rooted pine Christmas trees and pine nursery stock. The latter products in general constitute a small part of their production, if they are produced at all. Therefore, the rule is not likely to affect most nurseries and greenhouses.

TABLE 1.—CHRISTMAS TREE FARMS AND NURSERIES AND THEIR MARKET SALES IN CUMBERLAND COUNTY, NJ

Number of Christmas tree farms	Market sales of Christmas tree farms (\$1,000)	Nurseries & greenhouses	Market sales of nurseries & greenhouses (\$1,000)
19	58	175	\$67,853

Source: USDA, NASS, 2002 Census of Agriculture, New Jersey State and County Level Data. Table 2, Market Value of Agricultural Products Sold Including Direct and Organic in 2002.

The Small Business Administration (SBA) has established size standards to determine when an entity is considered small. Nursery stock growers, including Christmas tree growers, may be considered small when they have annual sales of \$750,000 or less.

The 2002 Agricultural Census does not report sales by entity size. However, from previously gathered information, we expect that the majority of these entities are small by the SBA size standards.

Regulated articles from quarantined areas may be moved interstate if accompanied by a certificate or limited permit. A certificate for interstate movement of regulated articles from quarantined areas is issued by an inspector after it is determined that the regulated articles are not infested with PSB, and do not present a risk of spreading PSB to other areas. A limited permit is issued by an inspector for the interstate movement of regulated articles from quarantined areas when the articles are to be moved to a specified destination for processing, handling, or utilization and the movement will not result in the spread of PSB. Regulated articles must have the

name of the consignor and consignee, as well as the certificate or limited permit, attached during all segments of interstate movement.

A request for a certificate or a limited permit must be made at least 48 hours prior to transporting the regulated articles interstate. The cost for this service falls upon the issuing agency, and not the person/business entity requesting the certificate/limited permit.

In summary, this rule adds Cumberland County, NJ, to the list of areas quarantined for PSB. We have identified approximately 175 nurseries and greenhouses and 19 cut Christmas tree farms in this county. In addition, there may be an unknown number of sawmills and logging operations in the county. As noted previously, the movement of cut Christmas pine trees and pine tree products by these establishments is generally local, rather than interstate. Thus, those farms, nurseries, and other entities are expected to be little affected by this rule.

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 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 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.50–3, paragraph (c), the entry for New Jersey is amended by adding, in alphabetical order, an entry for Cumberland County to read as follows:

**§ 301.50–3 Quarantined areas.**

\* \* \* \* \*

(c) \* \* \*

New Jersey.

\* \* \* \* \*

Cumberland County. The entire county.

\* \* \* \* \*

Done in Washington, DC, this 15th day of June 2007.

**W. Ron DeHaven,**

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–12025 Filed 6–20–07; 8:45 am]

**BILLING CODE 3410–34–P**

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****7 CFR Parts 305 and 319**

[Docket No. APHIS–2006–0040]

**RIN 0579–AC10**

**Importation of Fruit From Thailand**

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the fruits and vegetables regulations to allow the importation into the United States of litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand. As a condition of entry, these fruits must be grown in production areas that are registered with and monitored by the national plant protection organization of Thailand,

treated with irradiation in Thailand, and subject to inspection. The fruits must also be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been treated with irradiation in Thailand. In the case of litchi, the additional declaration must also state that the fruit had been inspected and found to be free of *Peronophythora litchii*, a fungal pest of litchi.

Additionally, under this final rule, litchi and longan imported from Thailand may not be imported into or distributed to the State of Florida, due to the presence of litchi rust mite in Thailand. This action allows the importation of litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand into the United States while continuing to provide protection against the introduction of quarantine pests into the United States.

**EFFECTIVE DATE:** July 23, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alex Belano, Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231; (301) 734–8758.

**SUPPLEMENTARY INFORMATION:****Background**

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

On July 26, 2006, we published in the **Federal Register** (71 FR 42319–42326, Docket No. APHIS–2006–0040) a proposal<sup>1</sup> to amend the regulations to allow the importation into the United States of litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand. As a condition of entry, we proposed to require that these fruits be grown in production areas that are registered with and monitored by the national plant protection organization (NPPO) of Thailand and treated with irradiation in Thailand at a dose of 400 gray. The 400 gray dose is approved to treat all plant pests of the class Insecta except pupae and adults of the order Lepidoptera; we proposed to inspect for

the Lepidopteran pests for which the irradiation treatment is not approved. We also proposed to require that the fruits be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been treated with irradiation in Thailand. In the case of litchi, the additional declaration would also have had to state that the fruit had been inspected and found to be free of *Peronophythora litchii*, a fungal pest of litchi.

We solicited comments concerning our proposal for 60 days ending September 25, 2006. We received 43 comments by that date, from producers, exporters, researchers, members of Congress, and representatives of State governments. They are discussed below by topic.

Based on the comments we received, we are making one change to the regulations as they were proposed. In addition to the treatments and safeguards included in the proposed rule, this final rule prohibits the importation and distribution of litchi and longan from Thailand into the State of Florida. We are making this change based on comments regarding the risk associated with the litchi rust mite, *Aceria litchi*, which is present in Thailand and is a pest of litchi and longan. The comments on this topic are discussed in more detail below under the heading “Pests Named by Commenters That Were Not Addressed in the Risk Management Document.”

**General Comments**

Several commenters expressed general concern about the risk that importing litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand could introduce plant pests into the United States. One commenter was concerned that the importation of these fruits from Thailand could introduce harmful plant pests into Florida. Two other commenters were concerned that the same thing could happen in Hawaii, which already struggles to control invasive species. One commenter suggested that the entire State of Hawaii be designated as a natural resource preserve.

We believe that the mitigations included in this final rule are sufficient to mitigate the risk associated with the importation of these fruits, and thus will prevent the introduction of invasive species into the United States. In the case of litchi and longan, this final rule adds a safeguard to the proposed rule to ensure that litchi rust mite is not introduced to Florida.

<sup>1</sup> To view the proposed rule and the comments we received, go to <http://www.regulations.gov>, click on the “Advanced Search” tab, and select “Docket Search.” In the Docket ID field, enter APHIS–2006–0040, then click “Submit.” Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.