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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 319

[Docket No. APHIS-2016-0065]

RIN 0579-AE41

Deregulation of Pine Shoot Beetle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend our regulations to remove the domestic pine shoot beetle (PSB) quarantine and to eliminate the restrictions that apply to the importation of PSB host material from Canada. We have prepared an analysis of regulatory options, which we are making available for public review and comment, that evaluates the effectiveness of the regulatory program in slowing the spread of the pest and reducing damages. This action would provide flexibility to the States as they manage PSB, would allow Federal resources spent on this program to be allocated elsewhere, and would remove PSB-related interstate movement and importation restrictions on PSB regulated articles.

DATES: We will consider all comments that we receive on or before [INSERT DATE 60

DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

- Federal eRulemaking Portal: Go to

<http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0065>.

- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2016-0065, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0065> or in our reading room, which 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) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, M.S., Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, Imports, Regulations, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 851-2352.

SUPPLEMENTARY INFORMATION:

Background

Pine shoot beetle (PSB, *Tomicus piniperda*) is a pest of pines in Africa, Asia, and Europe. Biologically, this species of bark beetle is considered to be a secondary pest of pine and not able to successfully attack healthy trees. PSB colonize fresh timber and dying pine trees in early spring. Larvae feed within the galleries under the bark and emerge as adults from shoots after a hard frost and move to the base of the tree to reproduce.

PSB was first detected in the United States in a Christmas tree farm in Ohio in 1992. Based on an initial finding of potentially high economic losses in 1992, the Animal and Plant Health Inspection Service (APHIS) implemented a regulatory program to regulate at-risk pine

commodities, including logs with bark, Christmas trees, and nursery stock in known infested areas.

The regulations in “Subpart G—Pine Shoot Beetle” (7 CFR 301.50 through 301.50-10, referred to below as the regulations) restrict the interstate movement of certain regulated articles (generally wood and wood products) from quarantined areas in order to prevent the spread of PSB into noninfested areas of the United States. Since the PSB program was initiated in 1992, PSB has advanced at a slow rate and the damage to native pines, plantations, and the nursery trade has been minimal. In 2015, APHIS met with the National Plant Board to reassess the relevance and need for the PSB regulatory program given the slow advancement and minimal damage of PSB and the limited resources allotted to the PSB program.

We have prepared an analysis¹ of regulatory options entitled “Pine Shoot Beetle, *Tomicus piniperda* (Linnaeus): Analysis of Regulatory Options” (February 2015) to evaluate the PSB program in terms of its effectiveness and efficiency in slowing the spread and reducing losses. The analysis looked at timber losses and estimated compliance costs incurred by Christmas tree growers in quarantined areas. Given the little damage observed as a result of PSB and the amount of resources allocated to manage the minimal risks associated with PSB, we have determined it is appropriate to deregulate PSB. While the possibility exists that PSB may spread at a faster rate and enter Southern States sooner under this proposal, we anticipate that PSB will be controlled within managed timber stands in the South.

Accordingly, we are proposing to remove, in their entirety, the regulations in “Subpart G – Pine Shoot Beetle” in 7 CFR part 301. If adopted, references to the regulations in 7 CFR

¹ The analysis may be viewed on the Regulations.gov website (see ADDRESSES above for instructions for accessing Regulations.gov) or obtained from the person listed under FOR FURTHER INFORMATION CONTACT.

part 319 of “Subpart G– Logs, Lumber, and Other Wood Articles” would be obsolete.

Therefore, we are proposing to remove the PSB-based restrictions on pine articles from Canada that are found in §§ 319.40-3 and 319.40-5.

Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. Further, this rule is a deregulatory action under Executive Order 13771.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov website (see ADDRESSES above for instructions for accessing Regulations.gov).

APHIS is proposing to amend its regulations to remove the domestic PSB quarantine and to eliminate the restrictions that apply to the importation of PSB host material from Canada. Although PSB is now found throughout the northeast and north central United States, damage to native pines and pine plantations and costs to the nursery trade have been minimal. It is now considered a minor pest that can be readily controlled locally.

Establishments that may be affected are ones that grow, handle, or move regulated pine (*Pinus* spp.) products: Bark products, Christmas trees, logs and firewood with bark attached, lumber with bark attached, nursery stock, raw pine materials for pine wreaths and garlands, and stumps. Potentially affected establishments include timber tract operations, forest product operations, logging companies, forest tree nurseries, and Christmas tree operations. The majority of these establishments are small entities.

Regulated articles from PSB quarantined areas may be moved interstate if accompanied by a certificate or limited permit. Under the proposed rule, affected establishments in the Federal PSB quarantined area would no longer incur costs of complying with certification or permitting requirements. Businesses that operate under Federal PSB compliance agreements, of which there are about 100, are the establishments most likely to be shipping regulated articles interstate. With the proposed rule, they would forgo the paperwork and recordkeeping costs of compliance. For affected entities that do not operate under compliance agreement, the costs of inspection are incurred by APHIS, unless they occur outside of normal working hours.

We estimate that an establishment with an active PSB compliance agreement spends 4 to 8 hours annually collecting data and ensuring adherence to the agreement. Based on this estimate, total annual cost savings from PSB deregulation for establishments with active compliance agreements could be between \$12,480 and \$59,600. In accordance with guidance on complying with Executive Order 13771, the single primary estimate of the cost savings of this proposed rule is about \$36,000, the mid-point estimate annualized in perpetuity using a 7 percent discount rate.

Besides yielding cost savings for entities with compliance agreements, sales volumes for at least some businesses could increase if their sales are currently constrained because of the Federal quarantine. Restrictions ultimately borne would depend on whether States decide to enforce their own PSB quarantine programs.

Internationally, the proposed deregulation is unlikely to affect exports of pine products. In 2016, the United States exported about \$243 million of pine logs and timber, of which \$74 million were Christmas trees and other plants used for ornamental purposes. However, these exports are required to be treated otherwise for pine wood nematode under a systems approach

and accompanied by a phytosanitary certificate as proof that the trees meet the import countries' requirements, as documented in ISPM 12.

Longer term, any delay in PSB spread attributable to the quarantine regulations would end with finalization of this proposed rule. It is possible that without the PSB program, human-assisted dispersal of PSB would have occurred more rapidly and extended to areas that are not yet infested; the impact of the proposed rule on pine populations in natural and urban environments within and outside currently quarantined areas—and on businesses that grow, use, or process pine products—is indeterminate. Still, PSB has caused negligible direct damage despite having spread widely, and compliance costs that would no longer be incurred under the proposed rule are minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would 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 2 CFR chapter IV.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) State and local laws and regulations will not be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no reporting, recordkeeping, or third party disclosure requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

List of Subjects

7 CFR Part 301

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

7 CFR Part 319

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

Accordingly, we propose to amend 7 CFR parts 301 and 319 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).

Subpart G—Pine Shoot Beetle [Removed and Reserved]

2. Subpart G—Pine Shoot Beetle, consisting of §§ 301.50 through 301.50-10, is removed and reserved.

PART 319—FOREIGN QUARANTINE NOTICES

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

Authority: 7 U.S.C. 1633, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.40-3 [Amended]

4. Section 319.40-3 is amended by removing paragraph (a)(1)(i)(B) and redesignating paragraph (a)(1)(i)(C) as (a)(1)(i)(B).

§ 319.40-5 [Amended]

5. Section 319.40-5 is amended by removing and reserving paragraph (m).

Done in Washington, DC, this 16th day of September 2019.

Kevin Shea

Administrator, Animal and Plant Health Inspection Service.

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