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TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule LSA Document #05-213

DIGEST

Amends 312 IAC 18-3-12, which governs standards for the control of the larger pine shoot beetle, by adding Dearborn County to the state quarantine area. *NOTE: Under IC 4-22-2-40, LSA Document #05-213, printed at 29 IR 614, was recalled by the Natural Resources Commission and resubmitted for publication.* Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Background:

Pursuant to 7 CFR 301.50-3(a), the Administrator of the U.S. Department of Agriculture (USDA) is authorized to quarantine “each State, or portion of a State, in which the pine shoot beetle has been found...” The USDA, through the Animal and Plant Health Inspection Service (APHIS), issued a memorandum on June 1, 2005, providing notification of the quarantine of Dearborn County. The memorandum further requires that “all intrastate movement of regulated articles from Dearborn County must comply with the PSB (pine shoot beetle) regulatory requirements per 7 CFR 301.50.” Regulated articles include pine products and articles, products and means of conveyance of the pine shoot beetle as specified at 7 CFR 301.50-2, and previously identified in 312 IAC 18-3-12(d).

Less than the entirety of the state will be designated as a quarantined area only if the USDA Administrator determines that “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 7 CFR 301.50. 7 CFR 301.50-3(a) On June 1, 2005, with the USDA’s designation of Dearborn County as a quarantined area, the USDA prohibited, pursuant to 7 CFR 301.50-4, the movement of a regulated article originating in Dearborn County to a nonquarantined area except under a certificate or limited permit. Such certificate or limited permit may only issue after confirmation of treatment or after inspection. 7 CFR 301.50-5.

To avoid imposition of the quarantine upon the entirety of the state, the Natural Resources Commission adopted a temporary rule (LSA Document #05-148(E)), which established requirements for Dearborn County that are equivalent to the USDA requirements associated with regulated articles. This proposal would make permanent that temporary rule. The adoption of this rule imposes no costs or requirements upon small business beyond those imposed by the USDA on June 1, 2005.

Estimated number of small businesses subject to the proposed rule:

There are presently three nurseries that qualify as small businesses pursuant to IC 4-22-2.1-4 affected by the USDA imposed costs and requirements associated with this proposed rule.

Estimated average annual reporting, record keeping and other administrative costs:

The USDA imposed requirements impose no record keeping or other administrative costs to any small business operating in Dearborn County absent exportation of regulated article to a nonquarantined area. Since the imposition of the quarantine by the USDA on June 1, 2005, there has been no request made for certifications or limited permits for the exportation of regulated articles to nonquarantined areas. The majority of pine nursery stock grown by the three Dearborn County nurseries is sold locally. Consequently, the federal regulations have resulted in no reporting, record keeping, or other administrative costs. This proposed rule will impose no additional costs or requirements upon small businesses beyond those imposed by the USDA on June 1, 2005.

Estimated total economic impact of compliance with the proposed rule:

Since June 1, 2005, when the USDA quarantined Dearborn County and imposed the associated costs and requirements, there have been no requests for certifications or limited permits for the exportation of regulated articles to nonquarantined areas. Thus, in the past eighteen (18) months there have been no economic impacts upon small business related to compliance with the federal regulations. This proposed rule will impose no additional costs or requirements upon small businesses beyond those imposed by the USDA on June 1, 2005.

Statement justifying the imposition of the costs and requirements:

There have, to date, been no costs or requirements imposed upon small businesses in Dearborn County associated with compliance with the federal regulations. This proposed rule will impose no additional costs or requirements upon small businesses beyond those imposed by the USDA on June 1, 2005.

However, Indiana’s failure to make permanent the current emergency quarantine of the larger pine shoot beetle in Dearborn County, will subject the entire state of Indiana to the federal quarantine by the USDA. Presently 65 Indiana counties, including

Dearborn County, are subject to federal regulations. (Sixty-four counties are presently subject to this administrative rule and this proposal will add Dearborn County) Failure to adopt this rule will result in the USDA's quarantine of the state's remaining 27 counties.

Within the state's 27 nonquarantined counties, there presently exist 67 nurseries and 12 identified Christmas tree farms. Those 67 nurseries, encompassing 1,110 acres, and Christmas tree farms will be made subject to the costs and requirements associated with 7 CFR 310.50 in the event this proposed rule is not adopted.

Regulatory flexibility analysis of less intrusive, less costly or alternative methods:

The requirements of 7 CFR 310.50 require the implementation of the proposed rule adding Dearborn County as a quarantined area in order to avoid imposition by the USDA of quarantined status upon the entirety of the state of Indiana. No opportunity for regulatory flexibility exists within 7 CFR 310.50, which requires the state's adoption and enforcement of the quarantine in a manner equivalent to federal requirements.

312 IAC 18-3-12

SECTION 1. 312 IAC 18-3-12, AS AMENDED AT 28 IR 2951, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 18-3-12 Control of larger pine shoot beetles

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 12. (a) The larger pine shoot beetle (*Tomicus piniperda*) is a pest or pathogen. This section governs standards for the control of the larger pine shoot beetle in Indiana.

(b) Except as provided in subsection (c), the division has determined Indiana is an infested area where the larger pine shoot beetle is present.

(c) Exempted from subsection (b) are the following counties:

- (1) Clark.
- (2) Clay.
- (3) Crawford.
- (4) Daviess.
- ~~(5) Dearborn.~~
- ~~(6)~~ (5) Dubois.
- ~~(7)~~ (6) Floyd.
- ~~(8)~~ (7) Gibson.
- ~~(9)~~ (8) Greene.
- ~~(10)~~ (9) Harrison.
- ~~(11)~~ (10) Jackson.
- ~~(12)~~ (11) Jefferson.
- ~~(13)~~ (12) Knox.
- ~~(14)~~ (13) Lawrence.
- ~~(15)~~ (14) Martin.
- ~~(16)~~ (15) Ohio.
- ~~(17)~~ (16) Orange.
- ~~(18)~~ (17) Perry.
- ~~(19)~~ (18) Pike.
- ~~(20)~~ (19) Posey.
- ~~(21)~~ (20) Scott.
- ~~(22)~~ (21) Spencer.
- ~~(23)~~ (22) Sullivan.
- ~~(24)~~ (23) Switzerland.
- ~~(25)~~ (24) Vanderburgh.
- ~~(26)~~ (25) Warrick.
- ~~(27)~~ (26) Washington.

(d) The following items are regulated articles:

(1) The larger pine shoot beetle in any life stage.

(2) Entire plants or parts of the genus pine (*Pinus* spp.). Exempted from this subdivision are plants that conform to each of the following:

(A) Are less than thirty-six (36) inches high.

(B) Are one (1) inch in basal diameter or less.

(3) Logs and lumber of pine with bark attached. Exempted from this subdivision are logs of pine and pine lumber with bark attached if:

(A) the source tree was felled during the period of July through October; and

(B) the logs and lumber are shipped from the quarantined area during the period of July through October.

(4) Any other article, product, or means of conveyance if determined by the division director to present the risk of spread of the larger pine shoot beetle.

(e) The following actions are ordered within the infested area:

(1) The movement by a person of a regulated article to a destination outside the infested area is prohibited, except under the following conditions:

(A) A thorough examination of all nursery stock takes place on a piece by piece basis.

(B) A statistically based examination of Christmas trees is made according to the following schedules:

TABLE 1. PAINTED (COLOR-ENHANCED)
PINE CHRISTMAS TREES¹

No. of Trees in Shipment	No. of Trees to Sample	No. of Trees in Shipment	No. of Trees to Sample
1 – 72	All	700 – 800	120
73 – 100	73	801 – 900	121
101 – 200	96	901 – 1,000	122
201 – 300	106	1,001 – 2,000	126
301 – 400	111	2,001 – 3,000	127
401 – 500	115	3,001 – 5,000	128
501 – 600	117	5,001 – 10,000	129
601 – 700	119	10,001 or more	130

¹If a pine shoot beetle is detected in any one (1) of the trees being sampled, the entire shipment must be rejected. If no pine shoot beetle is detected in any of the trees sampled, the shipment will be allowed to move with a limited permit. The limited permit must state, “All trees that remain unsold as of December 25 must be destroyed by burning or chipping or must be fumigated prior to January 1.”.

TABLE 2. NATURAL (UNPAINTED)
CHRISTMAS TREES¹

No. of Trees in Shipment	No. of Trees to Sample	No. of Trees in Shipment	No. of Trees to Sample
1 – 57	All	501 – 600	80
58 – 100	58	601 – 700	81
101 – 200	69	701 – 1,000	82
201 – 300	75	1,001 – 3,000	84
301 – 400	77	3,001 – 10,000	85
401 – 500	79	10,001 or more	86

¹If a pine shoot beetle is detected in any one (1) of the trees being sampled, the entire shipment must be rejected. If no pine shoot beetle is detected in any of the trees sampled, the shipment will be allowed to move with a limited permit. The limited permit must state, “All trees that remain unsold as of December 25 must be destroyed by burning or chipping or must be fumigated prior to January 1.”.

(C) Following the examination, a determination is made that no life stages of the larger pine shoot beetle are present. The determination must be accompanied by either of the following:

(i) A certificate of inspection approved by the division.

(ii) A certificate or similar authorization issued by the U.S. Department of Agriculture under a parallel federal quarantine.

(D) The certificate for the absence of the larger pine shoot beetle must be attached to and remain on the regulated articles until the articles reach their destinations. This requirement is, however, satisfied if the certificate is attached to the shipping document

and the regulated article is adequately described on the shipping document of the certificate.

(2) A regulated article originating outside the infested area may move through the infested area without a certificate of inspection if the point of origin of the regulated article is indicated on the waybill or shipping documents and transportation conforms with this subdivision. Passage through the infested area must be made without stopping, except for refueling or traffic conditions, and shall be conducted within either of the following conditions:

(A) The ambient temperature is below fifty (50) degrees Fahrenheit.

(B) The regulated article is carried in an enclosed vehicle with an adequate covering to prevent access by the larger pine shoot beetle. Examples of an adequate covering include canvas, plastic, or loosely woven cloth.

(3) A regulated article originating outside the infested area that is moved into the infested area and exposed to potential infestation by the larger pine shoot beetle is considered to have originated from the infested area. Any regulated article under this subdivision is controlled by subdivision (1).

(4) The movement of a regulated article from an infested area through any noninfested area to another infested area is prohibited without a certificate for the absence of the larger pine shoot beetle except where both of the following conditions are met:

(A) Passage through a noninfested area is made without stopping, except for refueling or traffic conditions, if the ambient temperature is below fifty (50) degrees Fahrenheit or if in an enclosed vehicle with an adequate covering to prevent access by the larger pine shoot beetle.

(B) The waybill or shipping documents accompanying any shipment of regulated articles within or through Indiana indicate the county and state of origin of the regulated articles.

(5) Any regulated article imported or moved within Indiana in violation of this section shall be immediately removed from any noninfested area or destroyed. The expense of compliance with this subdivision is the joint and several responsibility of any person possessing or owning the regulated article. Compliance with this subsection shall be performed under the direction of the division director.

(6) In addition to the penalty set forth in subdivision (5), a person who violates this section is subject to any administrative, civil, or criminal sanction set forth in IC 14-24 and this article.

(7) This section does not preclude the division director from issuing any permit under section 3 of this rule.

(Natural Resources Commission; 312 IAC 18-3-12; filed Nov 22, 1996, 3:00 p.m.: 20 IR 950; filed Dec 3, 1997, 3:30 p.m.: 21 IR 1273; filed Feb 9, 1999, 4:16 p.m.: 22 IR 1945; filed Apr 4, 2001, 3:02 p.m.: 24 IR 2404; filed May 16, 2002, 12:28 p.m.: 25 IR 3049; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 19, 2003, 8:50 a.m.: 26 IR 3313; filed May 25, 2005, 10:30 a.m.: 28 IR 2951)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on April 22, 2006 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on a proposed amendment to 312 IAC 18-3-12, which governs standards for the control of the larger pine shoot beetle, by adding Dearborn County to the state quarantine area.

IC 4-22-2-24(d)(3) Statement Justifying Requirements and Costs: The quarantine of Dearborn County by the USDA resulted in the imposition by the USDA upon all regulated entities the same costs and requirements as those imposed upon entities qualifying as small businesses. This rule imposes no costs or requirements upon any regulated entity beyond those imposed on June 1, 2005, by the USDA. However, failure to adopt this rule will result in the imposition of the same costs and requirements upon all regulated entities located within the twenty-seven (27) Indiana counties that are not presently designated as quarantine areas.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Rick Cockrum
Chairman
Natural Resources Commission