Done in Washington, DC, this 12th day of November 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

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7 CFR Part 301

[Docket No. 92-139-1]

Pine Shoot Beetle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are quarantining a total of 42 counties in the States of Illinois, Indiana, Michigan, New York, Ohio, and Pennsylvania because of infestations of the pine shoot beetle, and are restricting the interstate movement of regulated articles from the quarantined areas. This action is necessary on an emergency basis to prevent the spread of the pine shoot beetle, a highly destructive pest of pine trees, into noninfested areas of the United States.

DATES: Interim rule effective November 13, 1992. Consideration will be given only to comments received on or before January 19, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-139-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Milton C. Holmes, Senior Operations Officer, PPQ, APHIS, USDA, room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

We are amending the "Domestic Quarantine Notices" in 7 CFR part 301 by adding a new subpart 301.50, "Pine Shoot Beetle" (referred to below as the regulations). These regulations quarantine portions of Illinois, Indiana, Michigan, New York, Ohio, and Pennsylvania, because of the pine shoot beetle. They also restrict the interstate movement of regulated articles from the quarantined areas.

On July 22, 1992, a scolytid beetle, *Tomicus piniperda* (Linnaeus), commonly known as the pine shoot beetle, was identified from a Christmas tree farm in Lorain County, Ohio. Immediately after the identity of that specimen was confirmed, APHIS began working with other plant protection agencies to determine the extent of the infestation. The pine shoot beetle was probably introduced into the United States through ship dunnage. Dunnage is rough-sawn lumber used to brace and stabilize cargo on large ocean vessels.

The pine shoot beetle is a highly destructive pest of pine trees that can also attack felled spruce, larch, and fir. Many species of pine can serve as host for any life stage of this pest, but Scotch pine is preferred. Spruce, larch, and fir sometimes serve as breeding and reproduction sites. The pine shoot beetle breeds in felled logs and in standing trees weakened by fire, disease, or prior attack by defoliating insects. Adults usually overwinter in short tunnels in and under the bark at the base of trees, but may also overwinter in hollowed-out pine shoots. In spring, they emerge from these sites and select sites for breeding and reproduction, causing damage in the dying trees and recently cut logs where reproduction and immature stages occur. Healthy trees are also at risk, when pest population densities are high. After the larval stage, which is spent in feeding galleries under the bark, the new adults emerge from the bark and begin "maturation feeding." Maturation feeding takes the form of boring up the center of pine shoots (usually of the current year's growth), and causes stunted and distorted growth in host trees.

In addition to causing serious damage to the new growth of healthy trees, as well as to weak and dying trees, the pine shoot beetle is also an important vector of several diseases of pine, spruce, larch, and fir trees.

Once established in an area, the pine shoot beetle has a great potential to spread. Adults can fly at least one kilometer, and the wood, nursery stock, and Christmas trees they infest are often transported long distances. The pine shoot beetle is the second most destructive forest pest in Europe and the most destructive pest of pines. It will damage urban trees and cause economic losses to the timber, Christmas tree, and nursery industries. Assuming the pine shoot beetle requires felled, dead, or dying trees in which to bread, the preliminary estimate of the present value of potential losses and increased production costs in the United States over the next 30 years attributable to this pest is $742 million. Should it be able to breed in and kill healthy living pines, as recent observations in China suggest, potential losses would be significantly greater.

Recent visual surveys conducted by inspectors of State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS), a unit within the U.S. Department of Agriculture (USDA), reveal that counties in Illinois, Indiana, Michigan, New York, Ohio, and Pennsylvania are infested with the pine shoot beetle. Therefore, we are placing portions of these six States under quarantine. The pine shoot beetle is not known to occur anywhere else in the United States.

Due to the extended distribution of this new pest, no eradication actions are being planned. Pest control strategies used buy the Christmas tree and nursery industries appear to be keeping the pine shoot beetle below the economic threshold. The same strategies, if properly implemented throughout the currently infested areas, should continue to suppress the population of the pine shoot beetle. To date, the economic damage caused by this pest has been minimal. Damage will continue to be minimal unless the pine shoot beetle becomes established in the millions of acres of commercial pine forests to the north, south, and west of the current infestations. In Europe, from northern Scandinavia to southern Italy, this pest causes severe losses in pine timber production; it also attacks the lodgepole pine, a species native to North America. To date, the pine shoot beetle has been found to attack Scotch pine, Red pine, White pine, Jack pine, Mugo pine, and Austrian pine in the United States. We believe this pest will attack most, if not all, species of pine grown in North America. Scientific research conducted in Europe indicates that, even with adequate controls, annual yields of pulpwood and commercial timber could be reduced by as much as 25 percent. For this reason, Federal and State quarantines are needed on an emergency basis to retard its spread and to protect noninfested areas. Therefore, this interim rule establishes regulations, which are described below by section, to prevent the spread of the pine shoot beetle.

Restrictions on Interstate Movement of Regulated Articles (Section 301.50)

Section 301.50 prohibits any person from moving any regulated article interstate from any quarantined area except in accordance with conditions prescribed in the regulations. For informational purposes, a footnote (number 1) has been added to reference the authority of an inspector to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply remedial measures to, or otherwise dispose of, regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

Definitions

Section 301.50–1 contains, for informational purposes, definitions of the following terms: "Administrator," "Animal and Plant Health Inspection Service," "Certificate," "Compliance Agreement," "Infestation," "Inspector," "Interstate," "Limited permit," "Pine nursery stock," "Pine shoot beetle," "Moved (Move, Movement)," "Person," "Quarantined area," "Regulated article," and "State."

Regulated Articles

The regulations impose conditions on the interstate movement of those articles that present a significant risk of spreading pine shoot beetle, if moved without restrictions from quarantined areas into or through noninfested areas. These articles, which are designated as regulated articles, may not be moved interstate from quarantined areas except in accordance with conditions specified in §§ 301.50–4 through 301.50–10.

Section 301.50–2(a) designates the following as regulated articles: pine Christmas trees; pine nursery stock; pine, spruce, larch, and fir logs with bark attached; and pine, spruce, larch and fir lumber with bark attached. Based on a review of scientific literature and on research and experience in infested areas in Europe and China, this list includes all articles that are likely to cause the spread of the pine shoot beetle.

Interstate movement of seedlings less than 24 inches tall is allowed, because these seedlings can be certified as pest-free on the basis of a visual inspection. Greenhouse-grown ornamental pines, such as bonsai trees, can be certified for interstate movement, if an inspector finds that the premises are free of the pine shoot beetle and are screened or otherwise protected to prevent entry of the pine shoot beetle.

Further, § 301.50–2(b) allows designation of any other article, product, or means of conveyance as a regulated article if an inspector determines that it presents a risk of spreading the pine shoot beetle, and notifies the person in possession of the article, product, or means of conveyance that is subject to the restrictions in the regulations. This provision for "any other article, product, or means of conveyance" allows an inspector who discovers evidence of the pine shoot beetle in another article (e.g., in tree trimmings from landscape companies and tree surgeons or in a truck's floorboard) to regulate the affected articles immediately by informing the person in possession of the article, product, or means of conveyance, that it is being regulated.

Quarantined Areas

As stated in § 301.50–3(a), it is necessary to quarantine areas in which the pine shoot beetle has been found by an inspector, areas in which the Administrator has reason to believe the pine shoot beetle is present, and areas the Administrator considers necessary to quarantine because of their inseparability for quarantine enforcement purposes from localities where the pine shoot beetle has been found.

Section 301.50–3(a) further provides 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 restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by our regulations with respect to the interstate movement of these articles; and (2) quarantining less than the entire State will prevent the interstate spread of the pine shoot beetle. These determinations would indicate that infestations are confined to the quarantined areas and eliminate the need for designating an entire State as a quarantined area.

In accordance with these criteria, we are designating 1 county in Illinois, 18 counties in Indiana, 4 counties in Michigan, 2 counties in New York, 14 counties in Ohio, and 3 counties in Pennsylvania as quarantined areas. These quarantined areas are listed in § 301.50–3(c).

§ 301.50–3(b) provides that the Administrator or an inspector may designate an area as a quarantined area temporarily, without publication in the **Federal Register**, if there is a basis for listing the area as a quarantined area under § 301.50–3(a) and if the owner or person in possession of the area to be quarantined is given written notice of this action. This is necessary to prevent spread of the pine shoot beetle before restrictions can be published in the **Federal Register** concerning the interstate movement of regulated articles from the designated area.

Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas

Section 301.50–4(a) requires regulated articles moved interstate from quarantined areas to be accompanied by a certificate or limited permit issued and attached as prescribed by §§ 301.50–5 and 301.50–8, unless they are moved as prescribed in § 301.50–4(b) or (c)

Section 301.50–4(b) allows a regulated article that originates outside a quarantined area to be moved interstate from a quarantined area without a certificate or limited permit under the following conditions: (1) If the article is moved through the quarantined area during October, November, or December, or when the ambient air temperature is below 10° C (50° F); if the article is moved through the quarantined area without stopping except for drop-off loads, for refueling, or for traffic conditions, such as traffic lights and stop signs; and if the point of origin of the article is indicated on the waybill; or (2) if, during the period of January through September, the article is moved through the quarantined area when the temperature is 10° C (50° F) or higher, it is shipped in an enclosed vehicle or completely covered so as to prevent access by the pine shoot beetle; and if the point of origin of the article is indicated on the waybill.

Because the major flight periods of the pine shoot beetle occur during the months of January through September, and because the pine shoot beetle is unlikely to fly when ambient temperatures fall below 10° C (50° F), the requirement that the regulated article be in an enclosed vehicle, or completely covered, when moved through a quarantined area at higher temperatures during the months of January through September, will ensure that regulated articles originating outside of a quarantined area and moved interstate through a quarantined area present no risk of spreading this pest.

Section 301.50–4(c) allows the Department to move regulated articles interstate for experimental or scientific purposes. However, the regulated articles must be moved in accordance with a limited permit issued by the Administrator, under conditions that prevent the spread of the pine shoot beetle.

Section 301.50–4 contains a footnote to remind persons of other applicable domestic plant quarantine and regulation requirements that need to be met for the interstate movement of regulated articles.

Issuance and Cancellation of Certificate and Limited Permits

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles upon a finding by an inspector that, because of certain conditions (e.g., the article is free of the pine shoot beetle), there is an absence of a pest risk prior to movement. Regulated articles accompanied by a certificate can be moved interstate without further restrictions being imposed. Limited permits are issued for regulated articles when an inspector has determined that, because of a possible pest risk, such articles may only be safely moved interstate subject to further restrictions, such as movement to specified areas and movement for specified purposes. Section 301.50–5 explains the conditions for issuing a certificate or limited permit.

Specifically, § 301.50–5(a) provides that an inspector will issue a certificate for the movement of a regulated article upon determining that the article: (1) Is free of the pine shoot beetle, has been treated under direction of an inspector in accordance with § 301.50–10, or comes from a premises of origin free from the pine shoot beetle; (2) will be moved through the quarantined area during October, November, or December, or when the ambient air temperature is below 10 °C (50 °F); or, during the period of January through September, when the ambient air temperature is higher than 10 °C (50 °F), will be moved through the quarantined area in a enclosed vehicle or completely covered to prevent access by the pine shoot beetle; (3) will be moved in compliance with any additional emergency conditions the Administrator may impose, under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), to prevent the spread of the pine shoot beetle; and (4) is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to that article.

A footnote explains that the Secretary of Agriculture may, pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), take emergency actions.

Section 301.50–5(b) provides for the issuance of a limited permit (in lieu of a certificate) by an inspector for movement of a regulated article if: (1) The inspector determines that the article is to be moved to a specified destination for specified handling, utilization or processing (such as movement in an enclosed container for immediate export or immediate chipping and cooking at an approved pulp mill), and that the movement will not result in the spread of the pine shoot beetle; or (2) the article will transit a non-quarantined area during interstate movement, and is in an enclosed vehicle or completely enclosed by a covering adequate to prevent access by the pine shoot beetle.

Because it is impossible to certify, on the basis of a casual visual inspection, that pine Christmas trees are free of the pine shoot beetle, limited permits will be issued for these regulated articles on the basis of a biometrically based inspection procedure. The number of trees to be inspected depends on the size of the shipment and on whether the trees have been painted ("color-enhanced"). Paint camouflages the yellowing that is often observable in the needles of an infested tree, making it more difficult to detect the pine shoot beetle's presence in a painted tree than in one that is natural. Therefore, to detect an infestation rate of 5 percent or higher with a confidence level of 95 percent, the number of trees requiring inspection for a shipment of painted trees is higher than for a shipment of natural (unpainted) trees. If a shipment includes both painted and natural trees, the inspection table for painted trees will be used (as provided in § 301.50–5(c).) Trees to be inspected will be selected at random from each shipment.

If no pine shoot beetle is detected, interstate movement of the regulated articles will be allowed. The limited permit issued for a shipment of pine Christmas trees will state that all trees unsold by December 25 of the same year must be either fumigated or destroyed by chipping or burning prior to January 1.

Section 301.50–5(c) contains tables indicating the number of painted pine Christmas trees and the number of natural (unpainted) pine Christmas trees that must be inspected per shipment, based on shipment size. Inspections based on these tables will detect infestation rates of 5 percent or higher with a confidence level of 95 percent. We have determined this to be an acceptable level of risk because Christmas trees that are sold will be used in interior spaces, where the pine shoot beetle will die of natural causes, and unsold trees will be destroyed or fumigated.

Section 301.50–5(d) allows any person who has entered into, and is operating under, a compliance agreement to execute a certificate or limited permit for the interstate movement of a regulated article after an inspector has made a determination that the article is eligible for a certificate or limited permit in accordance with § 301.50–5 (a) or (b).

Also, § 301.50–5(e) contains provisions for the withdrawal of a certificate or limited permit by an inspector upon a determination by the inspector that the holder of the certificate or limited permit has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact.

Compliance Agreements and Cancellation (Section 301.50–6)

Section 301.50–6 provides for the issuance and cancellation of compliance agreements. Specifically, compliance agreements can be entered into by any person engaged in growing, handling, or moving regulated articles who agrees, in writing, to comply with the provisions of the pine shoot beetle regulations in subpart 301.50. Compliance agreements are provided for the convenience of persons who are involved in shipments of regulated articles from quarantined areas; they are written to ensure that persons issuing certificates or limited permits are knowledgeable with respect to the requirements of subpart 301.50 and have agreed to comply with them.

Section 301.50–6 also provides that an inspector supervising enforcement of a compliance agreement may cancel the agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact, pursuant to rules of practice adopted by the Administrator. This section contains a footnote to explain where compliance agreement forms can be obtained.

Assembly and Inspection of Regulated Articles (Section 301.50–7)

Section 301.50–7 provides that any person who desires a certificate or limited permit to move regulated articles interstate must request the services of an inspector to issue a certificate or limited permit at least 48 hours in advance of the desired movement. This provision ensures that persons desiring inspection services can obtain them before the intended movement date. A footnote explains how to contact the inspectors for inspection and how to obtain additional information from offices of the Animal and Plant Health Inspection Service.

Attachment and Disposition of Certificates and Limited Permits (Section 301.50–8)

Section 301.50–8 requires the certificate or limited permit, issued for the movement of the regulated article, to be attached to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill during the interstate movement. This section also provides that the certificate or limited permit may be attached to the consignee's copy of the waybill only if the certificate or limited permit and the waybill contain a sufficient description of the regulated article to identify the regulated article. This provision is necessary for enforcement purposes.

Costs and Charges (Section 301.50–9)

Section 301.50–9 explains the APHIS policy that the services of an inspector that are needed to comply with the provisions of the regulations in subpart 301.50 are provided without cost during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays). The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

Treatments (Section 301.50–10)

Section 301.50–10 provides that logs with bark attached, lumber with bark attached, and Christmas trees may be treated by fumigation with methyl bromide at normal atmospheric pressure. This is a treatment known to be efficacious for wood-borers and bark beetles, including the pine shoot beetle. Fumigation causes premature needle-fall, so the treatment is not advised for Christmas trees, except as a means of killing the pine shoot beetle in unsold Christmas trees, as an alternative to chipping or burning. Additional treatments will be added when supported by efficacy data.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the pine shoot beetle from spreading to noninfested areas of the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This interim rule restricts the interstate movement of pine Christmas trees; pine nursery stock; pine, spruce, larch, and fir logs with bark attached; and pine, spruce, larch, and fir lumber with bark attached from quarantined areas in six States.

Affected small entities include pine Christmas tree farms with annual sales of less than $500,000, commercial timber companies that harvest logs worth less than $1 million annually, and landscape nurseries with annual sales of less than $150,000. Of the estimated 982 small entities that grow and harvest regulated articles in the quarantined areas, most market their products locally. With fewer than 143 of these shipping regulated articles interstate, the estimated value of shipments affected by this rule represents less than 1 percent of the total value of production in the quarantined areas.

Farmers in the quarantined areas produce about 698,490 pine Christmas trees annually, accounting for 5.8 percent of the 12.1 million Christmas trees harvested each year in the six States affected by this rule. About 98 percent of the 426 Christmas tree farms in the quarantined areas produce for the local market; many are choose-and-cut operations, which sell trees to local residents, who harvest and transport their own trees. Twenty-seven Christmas tree operations produce trees for both local and interstate wholesale markets. These entities ship about 32,810 cut pine Christmas trees out of the quarantined counties each year. Current prices range from $9 to $17 per cut pine tree, depending on quality, size, and market location. Total estimated losses for these producers could be between $15,000 and $26,000 annually if tree shipments cannot be diverted from interstate markets to alternative markets within the quarantined areas.

Spruce and fir trees are not harvested by commercial timber companies in the quarantined areas. Commercial harvests of larch vary from year to year; the current standing larch inventory in the quarantined areas is estimated to be about 1.4 million board feet. Pine accounts for about 1 percent of the annual sawlog harvest and about 16 percent of the annual pulpwood harvest. The pine timber harvest in pine shoot beetle-infested areas totaled about 4.7 million board feet in 1990. Timber harvests in the six affected States total more than 1,000 million board feet annually. Approximately 21 of the 83 commercial timber harvesting companies in the quarantined areas harvest and ship an estimated 247,000 board feet of pine and larch logs to noninfested areas each year. Prices for pine and larch timber range from $89 to $174 per thousand board feet, depending on quality. Timber producers will be minimally affected by this rule because relatively inexpensive fumigation treatments for logs and lumber permit certification for unrestricted movement. In addition, regulated shipments of pine logs could readily be processed at saw and pulp mills within the quarantined areas, mitigating the negative economic impact of this rule.

Approximately 473 landscape nurseries are located within the quarantined areas. Exact figures are unavailable, but we estimate lost markets of between $52,000 and $74,000 annually for miscellaneous pine nursery products, as a result of interstate shipping restrictions imposed by this rule. However, the affected shipments could be diverted to areas within the quarantined areas, mitigating any negative economic impact of 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 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the treatment of logs with bark attached and lumber with bark attached, under the conditions specified in this rule, will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this interim rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Part 301 is amended by adding a new "Subpart—Pine Shoot Beetle" (§§ 301.50 through 301.50–10) to read as follows:

Subpart—Pine Shoot Beetle

Subpart—Pine Shoot Beetle

§ 301.50 Restrictions on interstate movement of regulated articles.

(a) Interstate movement of mature, field-grown pine nursery stock (*Pinus* spp.) from any quarantined area is prohibited.

(b) Regulated articles may be moved interstate from any quarantined area only in accordance with this subpart.[1]

§ 301.50–1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any individual authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Certificate. A document in which an inspector, or person operating under a compliance agreement, affirms that a specified regulated article is free of pine shoot beetle and may be moved interstate to any destination.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, in which the person agrees to comply with the provisions of this subpart.

Infestation. The presence of the pine shoot beetle or the existence of circumstances that make it reasonable to believe that the pine shoot beetle is present.

Inspector. Any employee of the Animal and Plant Health Inspection Service, or other individual, authorized by the Administrator to enforce this subpart.

Interstate. From any State into or through any other State.

Limited permit (permit). A document in which an inspector, or person operating under a compliance agreement, affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.50–5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

Moved (Move, Movement). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

Pine nursery stock. All *Pinus* spp. woody plants, shrubs, and rooted trees, including ornamental pine, such as bonsai.

Pine shoot beetle. The insect known as pine shoot beetle, *Tomicus piniperda* (Linnaeus), in any stage of development.

Quarantined area. Any State, or any portion of a State, listed in § 301.50–3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.50–3(b) of this subpart.

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[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance; and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act 7 U.S.C. 150dd, 150ff).

Regulated article. Any article listed in § 301.50–2 (a) or (b) of this subpart or otherwise designated as a regulated article in accordance with § 301.50–2(c) of this subpart.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

§ 301.50–2 Regulated articles

The following are regulated articles:

(a) Pine Christmas trees and nursery stock (*Pinus* spp.); logs of fir (*Abies* spp.), larch (*Larix* spp.), pine (*Pinus* spp.), and spruce (*Picea* spp.), with bark attached; and lumber of fir (*Abies* spp.), larch (*Larix* spp.), pine (*Pinus* spp.), and spruce (*Picea* spp.), with bark attached.

(b) Any article, product, or means of conveyance not covered by paragraph (a) of this section, that presents a risk of spread of the pine shoot beetle and that an inspector notifies the person in possession of it is subject to the restrictions of this subpart.

§ 301.50–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area, in paragraph (c) of this section, each State, or each portion of a State, in which the pine shoot beetle has been found by an inspector, in which the Administrator has reason to believe that the pine shoot beetle is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the pine shoot beetle has been found. 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 this subpart on the interstate movement of these 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 the pine shoot beetle.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice of this temporary designation to the owner or person in possession of the nonquarantined area; thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section, or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas:

Illinois

Kane County. The entire county.

Indiana

Allen County. The entire county.
Elkhart County. The entire county.
Fulton County. The entire county.
Jasper County. The entire county.
Kosciusko County. The entire county.
Lagrange County. The entire county.
Lake County. The entire county.
La Porte County. The entire county.
Marshall County. The entire county.
Newton County. The entire county.
Noble County. The entire county.
Porter County. The entire county.
Pulaski County. The entire county.
St. Joseph County. The entire county.
Starke County. The entire county.
Steuben County. The entire county.
Wells County. The entire county.
Whitley County. The entire county.

Michigan

Berrien County. The entire county.
Cass County. The entire county.
Monroe County. The entire county.
St. Joseph County. The entire county.

New York

Erie County. The entire county.
Niagara County. The entire county.

Ohio

Ashland County. The entire county.
Ashtabula County. The entire county.
Cuyahoga County. The entire county.
Geauga County. The entire county.
Huron County. The entire county.
Lake County. The entire county.
Lorain County. The entire county.
Mahoning County. The entire county.
Medina County. The entire county.
Portage County. The entire county.
Richland County. The entire county.
Summit County. The entire county.
Trumbull County. The entire county.
Wayne County. The entire county.

Pennsylvania

Crawford County. The entire county.
Erie County. The entire county.
Lawrence County. The entire county.

§ 301.50–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area [2] only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.50–5 and 301.50–8 of this subpart;

(b) Without a certificate or limited permit, if:

(1)(i) The regulated article originates outside any quarantined area and is moved through the quarantined area without stopping (except for dropoff loads, refueling, or traffic conditions, such as traffic lights or stop signs) during October, November, or December, or when ambient air temperature is below 10 °C (50 °F); or

(ii) The regulated article originates outside any quarantined area and, during the period of January through September, is moved through the quarantined area at a temperature higher than 10 °C (50 °F), if the article is shipped in an enclosed vehicle or completely covered (such as with plastic, canvas, or other closely woven cloth) so as to prevent access by the pine shoot bettle; and

(2) The point of origin of the regulated article is indicted on the waybill.

(c) With a limited permit issued by the Administrator if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Under conditions, specified on the permit, which the Administrator has found to be adequate to prevent the spread of the pine shoot beetle; and

(3) With a tag or label, bearing the number of the permit issued for the regulated article, attached to the outside of the container of the regulated article or attached to the regulated article itself, if the regulated article is not in a container.

§ 301.50–5 Issuance and cancellation of certificates and limited permits.

(a) A certificate will be issued by an inspector [3] for the interstate movement

[2] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

[3] Services of an inspector may be requested by contacting the local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the Administrator, c/o Domestic and Emergency Operations, PPQ, APHIS, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland, 20782.

of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with § 301.50-10 of this subpart; or

(ii) Based on inspection of the premises of origin, if the regulated article is a greenhouse-grown ornamental pine (such as bonsai), that the greenhouse is free from the pine shoot beetle and is screened to prevent entry of the pine shoot beetle; or

(iii) Based on inspection of the regulated article, if the regulated article is a pine seedling less than 24 inches tall, that it is free of the pine shoot beetle; and

(2)(i) The regulated article will be moved through the quarantined area during October, November, or December, or when the ambient air temperature is below 10 °C (50 °F); or

(ii) The regulated article will be moved through the quarantined area during the period of January through September, if the ambient air temperature is 10 °C (50 °F) or higher, in an enclosed vehicle or completely enclosed by a covering adequate to prevent access by the pine shoot beetle; and

(3) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose, under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd),[4] to prevent the spread of the pine shoot beetle; and

(4) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated articles.

(b) An inspector [5] will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the pine shoot beetle. If the regulated article is part of a shipment of pine Christmas trees, the inspector will make a pest-risk determination on the basis of an inspection conducted in accordance with § 301.50-5(c) of this paragraph; or

(ii) The regulated article is to be moved interstate from a quarantined area to a quarantined area and will transit any non-quarantined area in an enclosed vehicle or completely enclosed by a covering adequate to prevent access by the pine shoot beetle; and

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose, under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), to prevent the spread of the pine shoot beetle; and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) The number of pine Christmas trees randomly selected for inspection is determined by the size and type of shipment, in accordance with the following tables. If a shipment mixes painted and natural trees, the inspection procedure for painted trees will apply.

TABLE 1.—PAINTED (COLOR-ENHANCED) PINE CHRISTMAS TREES [1]

No. of trees in shipment	No. of trees to sample	No. of trees in shipment	No. of trees to sample
1-72	All	701-800	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

[1] If a pine shoot beetle is detected in any one 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 TREES [1]

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

[1] If a pine shoot beetle is detected in any one 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."

(d) Certificates and limited permits for use for interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if an inspector has determined that the regulated article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(e) Any certificate or limited permit that has been issued may be withdrawn by an inspector orally, or in writing, if he or she determines that the holder of the certificate or limited permit has not complied with all conditions under this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning such a hearing will be adopted by the Administrator.

§ 301.50-6 Compliance agreements and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands this subpart.[6]

(b) Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and

[4] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides that the Secretary of Agriculture may—under certain conditions—seize, quarantine, treat, destroy, or apply other remedial measures to articles that the Administrator has reason to believe are infested, infected by, or contain plant pests.

[5] See footnote 3 to § 301.50-5(a).

[6] Compliance agreement forms are available without charge from the Administrator, c/o Permits Unit, PPQ, APHIS, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and from local offices of Plant Protection and Quarantine, which are listed in telephone directories.

the reasons for the cancellation shall be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning such a hearing will be adopted by the Administrator.

§ 301.50-7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.50-5(c)), who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector,[7] at least 48 hours in advance of the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

§ 301.50-8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article must be attached, at all times during the interstate movement, to the outside of the container containing the regulated article, or to the regulated article itself, if not in a container. The requirements of this section may also be met by attaching the certificate or limited permit to the consignee's copy of the waybill, provided the regulated article is sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article.

§ 301.50-9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

[7] See footnote 3 to § 301.50-5(a).

§ 301.50-10 Treatments.

Fumigation is authorized for use on pine, larch, spruce, or fir logs with bark attached and pine, spruce, larch, or fir lumber with bark attached, or pine Christmas trees, as follows: Logs, lumber, and trees may be treated with methyl bromide at normal atmospheric pressure with 48 g/m³ (3 lb/1000 ft³) for 16 hours at 21 °C (70 °F) or above, or 80 g/m³ (5 lb/1000 ft³) for 16 hours at 4.5–20.5 °C (40–69 °F.)

Done in Washington, DC, this 13th day of November 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-27995 Filed 11-18-92; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 11

[Docket No. 92-21]

RIN 1557-AA58

Securities Exchange Act Disclosure Rules

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule; correction.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is correcting its final rule regarding its Securities Exchange Act Disclosure Rules which appeared in the **Federal Register** on October 7, 1992. These corrections are necessary to ensure that sections of those rules (12 CFR part 11) rendered superfluous by OCC's incorporation through cross reference of Securities and Exchange Commission regulations are removed from the *Code of Federal Regulations.* These technical corrections merely accomplish the intended goal of the final rule as previously stated.

EFFECTIVE DATE: November 6, 1992.

FOR FURTHER INFORMATION CONTACT: Jeff Mace, Attorney, Securities, Investments, and Fiduciary Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219, (202) 874-5210.

SUPPLEMENTARY INFORMATION: These corrections will insure that part 11 is fully revised as intended. The text of §§ 11.1 through 11.4 is unchanged from that in the final rule as published on October 7, 1992, and material rendered obsolete by the incorporation through cross reference is removed. Therefore, the following corrections are made to OCC's final rule, FR Doc. 92-23996, published on October 7, 1992 (57 FR 46081).

1. On page 46083, third column, the words of issuance are corrected to read as follows: "For the reasons set out in the preamble, 12 CFR part 11 is revised and 12 CFR parts 5 and 16 are amended to read as follows:"

2. On page 46083, third column, the heading "PART 11—[AMENDED]" and amendatory instruction 3 are removed.

3. On page 46084, first column, the first two lines at the top of the column are removed.

4. On page 46084, first column, amendatory instruction 4 is renumbered as amendatory instruction 3 and revised, and the part heading, table of contents, and authority citation for part 11 are added immediately preceding § 11.1 to read as follows:

3. Part 11 is revised to read as follows:

PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

Sec.

Authority: 12 U.S.C. 93a; 15 U.S.C. 78l, 78m, 78n, 78p, and 78w.

Dated: November 12, 1992.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

[FR Doc. 92-28107 Filed 11-18-92; 8:45 am]

BILLING CODE 4810-33-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions; Reimbursement, Insurance and Indemnification of Officials and Employees

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This rule permits federal credit unions (FCUs) to reimburse FCU officials for expenses related to credit union travel for an official and one immediate family member, in accordance with written policies and procedures, including documentation requirements, established by each FCU's board of directors. Each board of directors may define the term

"immediate family member" for purposes of this rule. Each board of directors is responsible to ensure that its policies allow only for payments that are necessary or appropriate to carry out FCU official business and reasonable in amount in relation to the resources and financial condition of the FCU.

EFFECTIVE DATE: December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, General Counsel, or Martin E. Conrey, Staff Attorney, Office of General Counsel, at the above address or telephone: (202) 682-9630.

SUPPLEMENTARY INFORMATION:

A. Background

In accordance with its policy to review existing regulations every three years, the NCUA Board proposed an amendment to § 701.33 of its Rules and Regulations to allow FCUs to reimburse travel costs of officials and one immediate family member, under specified conditions. The NCUA Board issued a notice of proposed rulemaking on May 1, 1992 (57 FR 18837) and the sixty-day comment period ended on June 30, 1992.

The rule, as proposed, would have permitted FCUs to reimburse FCU officials for expenses related to travel costs for an official and one immediate family member (which would be defined by each FCU) in accordance with written policies established by each FCU's board of directors. Payment of these costs would have been conditioned upon a determination by the board of directors that the payment was necessary or appropriate to carry out FCU official business and reasonable in amount in relation to the resources and financial condition of the FCU. The reimbursements would have required a recorded vote of the board of directors. The total amount of all such payments for each year would have been disclosed to members. Comments were specifically requested regarding whether all proposed conditions were necessary, items to be included in the proposed written policies, and on the definition of key phrases in the proposal.

In response to the comments received, the Board amends § 701.33 of the NCUA Rules and Regulations to permit FCU boards of directors to reimburse officials for expenses related to travel costs for the official and a family member as set forth below.

B. Comments

A total of 276 comments were received. One hundred and eighty-five of the commenters were FCUs. Eighteen of the commenters were federally insured state-chartered credit unions ("FISCUs"). Forty-eight commenters were individuals (often FCU board officials); thirteen were state credit union leagues (some leagues sent more than one comment); four were national trade associations; two were states; three were law firms; and one was an accounting firm. One hundred and sixty-seven or 61% of the commenters were in favor of the proposed rule, albeit often with conditions different from those proposed; ninety-two or 33% of the commenters were against the proposed rule; seventeen or 6% of the commenters expressed no opinion about the rule (most of these limited their comments to the issue of lost wages).

As noted above, sixty-one percent of the commenters approved of the proposed rule. These commenters consisted of 114 FCUs, twelve FISCUs, twenty-four individuals, four national trade associations, two law firms, the accounting firm, and the eight state leagues. Reasons cited by commenters for supporting the rule are as follows: (1) It encourages needed education of volunteers, which is reflected in stronger, better managed FCUs; (2) it returns FCUs to the pre-1989 NCUA policy of permitting such expenses; (3) it encourages members to become volunteers; (4) it recognizes the sacrifices made to FCUs by officials and their families; (5) it removes the drain on officials' personal finances; (6) it could lessen exposure to NCUSIF by encouraging better managed FCUs; and (7) the existing rule has not been uniformly enforced, and is difficult to enforce.

Thirty-three percent of the commenters disapproved of the proposed rule. These commenters consisted of sixty-five FCUs, six FISCUs, fourteen individuals, two states, one law firm, and three state leagues. Reasons cited by commenters for opposing the rule are as follows: (1) The proposed rule permits payments not necessary or appropriate to carry out FCU official business; (2) since the reimbursement of family member expenses will be taxable income it will "make the bankers' case for taxation [of FCUs] stronger"; (3) it will impact volunteerism and make the FCUs more like banks; and (4) it is an unwarranted expense of the FCU and will be reflected in lower returns to members; (5) it will be abused by some FCUs and reflect poorly upon all FCUs; (6) spouses usually do not participate in FCU-related activities at conferences and seminars; and (7) FCUs would spend money for administration and staff in complying with the regulation.

Three commenters cited the President's regulatory moratorium and regulatory burden as reasons to oppose the proposed regulation. One commenter suggested that, instead of allowing travel compensation for a family member, large credit unions institute a scholarship fund to award training and travel costs to officials of smaller credit unions.

C. Discussion

The NCUA Board believes that as long as expenditures are reasonable and safety and soundness concerns are met, FCU payment for an official and one family member should be within the discretion of the individual FCU. In order to pay or reimburse officials for these costs, two basic conditions were proposed and are adopted in the final rule. First, payments would need to be made in accordance with written policies established by the FCU's board of directors. Second, the board of directors must determine that the payments are necessary or appropriate to carry out FCU official business and reasonable in amount in relation to the resources and financial condition of the FCU. A separate board vote on each payment or reimbursement is not required in this regard, as long as the written policies or other board resolutions reflect that the board made the required determinations.

The reimbursement permitted by this rule is discretionary on the part of an FCU board of directors, not mandatory. The rule is not intended to foreclose an FCU board of directors from adopting a more stringent reimbursement policy, or from prohibiting such payments entirely. Such decisions would be left to the FCU board of directors, within the parameters of the rule.

One hundred and forty-six commenters responded to NCUA's request for comments regarding "whether one or more of the conditions is unnecessary and, if so, what combination should remain in the final rule." The three conditions set forth in the proposed rule were that the FCU: (1) Have written reimbursement policies; (2) hold a recorded board vote for each reimbursement; and (3) disclose the amount spent at the annual meeting. Sixty-six commenters stated that NCUA should require only written reimbursement policies, and not the recorded vote or annual meeting disclosure requirements. The Board has adopted only the written policy requirement in the final rule.

Twenty-four commenters stated that NCUA should require all three stated conditions; fifteen stated that NCUA should require the written reimbursement policies and recorded vote conditions, but not the annual meeting disclosure condition [twenty-eight more stated that they objected to the annual meeting disclosure, but remained silent on the other conditions]; eight stated that NCUA should not require any conditions; and three stated that the conditions should apply solely to those FCUs which planned to reimburse family member expenses. Of these, 115 comments contained expanded discussion regarding the annual meeting disclosure requirement. Ninety were strenuously against; ten were for the disclosure only if it were disclosed solely as a line item on the annual financial report; five were in favor; four were against unless the amount were "material" or "exceeded peer"; two would disclose only to members requesting the information; two would disclose it monthly by lobby postings; and two would disclose it quarterly by a statement insert. Some commenters correctly stated that the travel and conference expenses of officers and directors are disclosed in general ledger account no. 232 in the Accounting Manual for FCUs. (Employees' travel and conference expenses are disclosed in general ledger account no. 231). FCUs already disclose these figures to members in the annual financial report. Many commenters felt the level of signature authority, supervisory committee audits, internal auditor audits, public accounting firm audits, and NCUA examinations were more appropriate methods for review rather than annual disclosure to members. Many stated that members would feel something was wrong with the expenditures if they were singled out for special treatment, and that it would lead to members infringing upon board authority issues. The NCUA Board agrees with the commenters and has deleted the requirement for annual meeting disclosure in the final rule.

Several commenters also stated that recorded votes for each reimbursement were not necessary, as it was common practice for the board to budget an amount for travel of officials once a year. Along these same lines, other commenters stated that a vote for all reimbursements would be a great burden upon an FCU board and, at the very least, NCUA should allow the board to delegate these authorizations to either a board committee, director or FCU manager. The Board finds that many credit unions follow travel reimbursement standards adopted by their boards of directors, and has deleted the requirement for a recorded vote for each reimbursement.

NCUA also solicited comment on whether it would be useful to provide regulatory guidance as to the meaning of other key phrases of the proposed rule.

NCUA requested comment on whether FCUs should adopt some form of "reasonableness test" or "common business practice test" containing specific common examples of what does and does not meet such tests in defining the term "travel costs." Comment was also requested on whether these issues should be addressed in the regulation itself, or, alternatively, be handled as a management decision of individual FCUs, subject to NCUA's supervisory oversight. Thirty-one commenters responded to NCUA's request for comments regarding the definition of "travel costs." Of these, twenty-six suggested that no further definition was necessary, and that the term should be defined by each FCU's board; three suggested that the NCUA define it further; two suggested that the NCUA use the IRS definition. The NCUA Board has decided to leave the defintion of this term to each FCU's board of directors, within the boundaries of reasonableness and safety and soundness.

NCUA solicited comment regarding whether the phrase "necessary or appropriate in order to carry out the official business of the credit union" should be expanded, for example, to include the idea that the meeting or program attended by the volunteer official is related to current or planned FCU operations and will enhance the FCU and the capability of the FCU volunteer official. Of the thirty-one commenters responding to the definition of this phrase, all but one requested that the NCUA permit the FCU boards to define it. The NCUA Board has decided to allow the boards of directors of FCUs to define this term, but suggests that FCUs assess the need for travel and training before approving it.

NCUA requested comment regarding the need for a definition of the phrase "reasonable in amount in relation to the resources and financial condition of the credit union." Likewise, of the sixteen commenters that responded to NCUA's request for further definition of this phrase, all but two requested that the NCUA permit the FCU boards to define it themselves. The Board has decided to leave the definition to individual FCUs and their boards of directors. In addition, the regulation already states that reimbursement payments shall only be made for "reasonable and proper costs." This concept fully incorporates the "reasonable in amount in relation to the resources and financial condition of the credit union" in the judgment of the Board.

NCUA also requested comment on whether certain FCUs should automatically be excluded from utilizing reimbursement policies, such as: FCUs that are rated at CAMEL 4 or 5; FCUs with negative earnings, declining or low capital, low liquidity, or in weakened financial condition; or FCUs receiving assistance under Section 116 or 208 of the FCU Act. In response to NCUA's request for comments regarding whether certain FCUs in unsatisfactory condition should be permitted to partake of any family member reimbursement policy, thirty-one commenters responded. Sixteen stated that such credit unions should be excluded; thirteen stated that such credit unions should not be excluded; and three suggested that NCUA approval be required before a weak FCU could reimburse for family member expenses. NCUA has decided not to exclude any FCUs from coverage of the rule, but reserves the right to take exception to any such expense, especially when made by a credit union in weakened condition, if it finds them excessive, unsubstantiated, or otherwise unsound.

NCUA also solicited comment on the information to be included in written reimbursement policies. Such policies would presumably include: (1) Requirements for signed travel vouchers; (2) documented receipts; (3) disclosures of the consequences of filing incorrect or fraudulent claims; (4) examples of reimbursable and nonreimbursable costs (e.g., coach v. first class airfares); (5) maximum lodging and meal expenses; (6) maximum number of trips for which accompaniment is permitted; (7) proper reporting to the IRS; and (8) whether travel to and from meetings is eligible for a reimbursement. Twenty-three commenters responded to NCUA's request for items to be included in the written reimbursement policies. The commenters repeated the eight items noted above, without adding anything new. Some FCUs included their current travel policies. While the Board has not included specific policies and procedures standards to be followed by credit unions, it has added a requirement that the written policies established by an FCU's board of directors also include written procedures and proper documentation requirements.

NCUA proposed to use the term "immediate family member" rather than "spouse" in order to provide greater flexibility to individual FCUs to determine the relationships that qualify for reimbursement. NCUA noted that the term "members of their immediate families" has been used for several years by credit unions in connection with field of membership and chartering policy. Thirty-eight comments focused on the definition of "immediate family." Fifteen stated that each FCU should make its own definition; ten stated that a guest (an adult over eighteen years of age, significant other, accompanying person, associated individual) should be included, as family member was too restrictive; six stated that a family member be defined as a person in the same household; five stated that it be defined as a spouse only; and two stated that it should include either a spouse or a nurse. NCUA has, without incident or controversy, allowed individual credit unions to define that term as deemed appropriate for field-of-membership purposes. The Board has decided to use this approach here as well, so long as reimbursement, if any, is limited to one family member per official and the other conditions of the regulation are met. Further, it would not be necessary for an FCU to use the same definition "immediate family member" for this regulation as it does for field of membership. However, the term "immediate family member" must be defined in the required written reimbursement policy.

Two commenters requested a clarification regarding how the NCUA would treat the one compensated board director, whether as an official or as an employee. The Board would treat the one compensated board director as an employee. This individual is not subject to restrictions limiting officials' compensation. However, safety and soundness considerations still apply.

Although no other amendments were proposed, NCUA requested comments on other aspects of Section 701.33. In 1988, NCUA proposed a change that would allow reimbursement of volunteer officials for pay or leave actually lost due to attendance at board or committee meetings. (See 53 FR 4592, 2/19/1988.) This proposal was soundly rejected by commenters (see 53 FR 29640, 8/8/1988). Fifty of the comments to this request strongly supported such reimbursements, mainly on grounds of equity, especially to hourly workers. One commenter requested permission to pay retainers to FCU officials. Another commenter asked if FCUs could pay honorariums to volunteers. Twenty-five of the comments opposed such reimbursements, mainly on grounds that the issue was settled in a previous rulemaking in 1988. The lost wages comments included those from the seventeen (or six percent) commenters who did not express an opinion regarding the proposed rule. These commenters most often commented in favor of lost wages and consisted of six FCUs, ten individuals, and one state league. Due to the lack of comment and consensus on this issue, the Board has decided not to pursue the lost wages issue in this rulemaking. No other issues within the scope of § 701.33 of the NCUA Rules and Regulations were commented upon.

Three commenters, including one trade association, requested that NCUA apply the same reimbursement standards permitted for officials and family members of FCUs to the officials and family members of credit union service organizations (CUSOs). The NCUA Board has determined that this comment is outside of the scope of this rulemaking and not considerable by the NCUA Board under the Administrative Procedures Act. This issue will, however, be considered during the next review of the CUSO regulation. 12 CFR 701.27.

NCUA intends that the reimbursement permitted by this rule would be discretionary on the part of an FCU board of directors, not mandatory. Once again, the Board cautions FCUs that this proposal has no effect on applicable IRS regulations regarding the reporting and taxing of any payments or reimbursements. For such information, NCUA recommends that FCUs consult their tax advisors or attorneys.

The Board also notes that nothing in this final rule affects the right of the NCUA to make exceptions in examination reports and to bring enforcement actions based upon any unsafe and unsound credit union reimbursement practices.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). Analysis concerning the effect the proposed compensation rule will have on small credit unions indicates that no significant economic impact will result from the rule. Therefore, the NCUA Board has determined and certifies under the authority granted in 5 U.S.C. 605(b) that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required

Paperwork Reduction Act

The information collection requirements in the final rule have been submitted to, and approved by, the Office of Management and Budget. The control number assigned for this rule is 3133–0130, approved for use through September 30, 1995. Due to the reduction in paperwork requirements from the proposed rule, NCUA will file an amendment reflecting the reduction to the Office of Management and Budget.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed regulation applies only to FCUs and therefore will not affect state interests. Three commenters disputed NCUA's certification under E.O. 12612 that the rule would have no effect on state-chartered credit unions and state law. The reasoning seems to be that, since some states incorporate federal regulations by law or by practice, federal regulation has an effect on state-chartered credit unions. We note that the states decide for themselves whether or not to incorporate federal regulations and are free to establish their own policies concerning official reimbursement.

List of Subjects in 12 CFR Part 701

Credit unions; Reporting and recordkeeping requirements; Travel and transportation expenses; Travel restrictions.

By the National Credit Union Administration Board on November 12, 1992.

Allan Meltzer,

Acting Secretary of the Board.

For the reasons set forth in the preamble, 12 CFR part 701 is amended as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789 and P.L. 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1861 and 42 U.S.C. 3601–3610.

2. Section 701.33(b)(2)(i) is revised to read as follows:

§ 701.33 Reimbursement, insurance, and indemnification of officials and employees.

* * * * *

(b) * * *

(2) * * *

(i) Payment (by reimbursement to an official or direct credit union payment to a third party) for reasonable and proper costs incurred by an official in carrying out the responsibilities of the position to which that person has been elected or appointed, if the payment is determined by the board of directors to be necessary or appropriate in order to carry out the official business of the credit union, and is in accordance with written policies and procedures, including documentation requirements, established by the board of directors. Such payments may include the payment of travel costs for officials and one immediate family member per official;

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RESOLUTION TRUST CORPORATION

12 CFR Part 1606

Amended Statement of Policy on Contracting With Firms With Related Entity Defaults on Financial Obligations

AGENCY: Resolution Trust Corporation.

ACTION: Statement of policy.

SUMMARY: On July 23, 1992 (57 FR 32841), the Resolution Trust Corporation (RTC) published in the **Federal Register** a policy statement restricting RTC contracting with firms whose related entities are in default on financial obligations to the RTC, the Federal Deposit Insurance Corporation (FDIC), or the Federal Savings and Loan Insurance Corporation (FSLIC) in any of their capacities (the Default Policy).

After several months of operating experience under that policy, the RTC is revising the Default Policy to exclude from its coverage contractor firms whose affiliated business entities have defaulted on RTC post-intervention nonrecourse seller financing provided, in the sole discretion of the RTC, that no material dispute exists between the RTC and the contractor firm itself regarding the asset (the Exclusion). The RTC has also decided to revise the Default Policy and to publish the list of financial institutions under RTC or FDIC control in the **Federal Register** on a periodic rather than quarterly basis.

EFFECTIVE DATE: This policy statement is effective on November 19, 1992.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Supervisory Ethics Specialist, Office of Ethics, (202) 416-2029, Carl Gold, Counsel, Division of Legal Services, (202) 736-0728, or Richard J. Kurtz, Contractor Ethics Specialist, Office of Ethics, (202) 416-7088. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) and RTC regulations adopted under the authority of FIRREA (*see* 12 CFR 1606) establish a clear policy that, absent a compelling reason to the contrary, the RTC should not transact business with firms that have contributed to the nation's thrift crisis. The policy is primarily premised on the prevention of the conferral of financial profit to a party who caused a pre-intervention financial loss to an insured depository institution or federal regulatory entity, thereby increasing the burden on the taxpayer. See 12 U.S.C. 1441a(p)(6)(E); 12 CFR 1606.4(a)(2)-(6), (10)-(11). The RTC, however, is also charged with a statutory duty to preserve and conserve the assets and property of institutions under its control so as to minimize the burden on the American taxpayer. The RTC satisfies this duty through the sale of institution assets and the reduction of associated administrative costs.

Out of necessity, the RTC has exercised its statutory and regulatory authority on a case-by-case basis and contracted with firms whose related entities were in default on financial obligations, including obligations owed the RTC, FDIC or FSLIC. The Default Policy reflected a tightening of the general policy and announced the RTC's decision to further restrict contracting with firms whose related entities had defaulted on such obligations. Based on the experience gained since the publication of the Default Policy, the RTC has decided to further exercise its authority and create this Exclusion to the Default Policy.

Essentially, the RTC has identified certain hard-to-sell assets and determined that the best method of both facilitating their sale and maximizing their return is to offer prospective buyers RTC post-intervention nonrecourse seller financing. By facilitating the sale of these hard-to-sell assets, the RTC downsizes the institution through asset sales while simultaneously reducing the associated administrative costs, all in satisfaction of the conservator's obligation to the taxpayer.

Even where the buyer defaults on RTC post-intervention seller financing and voluntarily reconveys the asset, the reacquisition costs are de minimis and largely offset by the combination of the initial purchase price and the interim savings in administrative costs. Further, in the aggregate, RTC post-intervention seller financing defaults do not cause a loss to or contribute to the failure of financial institutions. On balance, therefore, this Exclusion minimizes taxpayer expense through the sale of assets and reduction of administrative costs and confers no profit to any party who either caused a loss or contributed to a failure of an insured depository institution. Accordingly, the RTC has determined that it is within its authority and in the best interests of the taxpayer to create this Exclusion.

However, where there is a material dispute between the RTC and the buyer/contractor over the nonrecourse seller financing, that dispute may result in substantial additional costs being incurred by the RTC. In such circumstances, the default on nonrecourse seller financing will be considered to be an affiliated business entity default (or related entity default).

The Default Policy, as revised, is as follows:

An affiliated business entity is defined to be a business organization (e.g., a corporation, partnership, etc.) that is controlled by the contractor, controls the contractor, or is under common control with the contractor. The term "control" is defined in the definition of "related entity" in 12 CFR 1606.2(n). For purposes of this definition, a general partner of a limited partnership is presumed to be in control of that partnership.

An unsatisfied RTC/FDIC obligation is either a "default" on an obligation to the RTC, FDIC, or FSLIC in any of their capacities, as "default" is defined in 12 CFR 1606.2(d) or an unsatisfied final judgment in favor of the RTC, FDIC, or FSLIC or any depository institution under RTC/FDIC control. See 12 CFR 1606.2(g)(2). The definition of unsatisfied RTC/FDIC obligation shall exclude contractors whose affiliated business entities have defaulted on RTC post-intervention nonrecourse seller financing provided, in the sole discretion of the RTC, that no material dispute exists between the RTC and the contracting firm itself regarding the asset. The definition shall include defaults on RTC post-intervention nonrecourse seller financing by the contractor itself.

When responding to a RTC solicitation of services, contractors will be expected to make a reasonable effort to comply with all RTC reporting, informational, and certification