

**§ 417.870 When do I know if the USDA debarring official debar me?**

(a) The debarring official must make a written decision whether to debar within 45 days of closing the official record. The official record closes upon the debarring official's receipt of final submissions, information and findings of fact, if any. The debarring official may extend that period for good cause. However, the record will remain open for the full 30 days, as called for in § 180.820, even when you make a submission before the 30 days expire.

(b) The debarring official sends you written notice, pursuant to § 180.615, that the official decided, either:

- (1) Not to debar you; or
- (2) To debar you. In this event, the notice:

(i) Refers to the Notice of Proposed Debarment;

(ii) Specifies the reasons for your debarment;

(iii) States the period of your debarment, including the effective dates; and

(iv) Advises you that your debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the Executive Branch of the Federal Government unless an agency head or an authorized designee grants an exception.

**Subpart I—Definitions****§ 417.930 Debarring official (USDA supplement to governmentwide definition at 2 CFR 180.930).**

(a) Debarring official means an agency official who is authorized to impose debarment. The debarring official is either:

- (1) The agency head; or
- (2) An official designated by the agency head.

(b) The head of an organizational unit within USDA (e.g., Administrator, Food and Nutrition Service), who has been delegated authority in 7 CFR part 2 to carry out a covered transaction, is delegated authority to act as the debarring official in connection with such transaction. This authority to act as a debarring official may not be redelegated below the head of the organizational unit, except that, in the case of the Forest Service, the Chief may redelegate the authority to act as a debarring official to the Deputy Chief for the National Forest System or an Associate Deputy Chief for the National Forest System.

**§ 417.1010 Suspending official (USDA supplement to governmentwide definition at 2 CFR 180.1010).**

(a) Suspending official means an agency official who is authorized to impose suspension. The suspending official is either:

- (1) The agency head; or
- (2) An official designated by the agency head.

(b) The head of an organizational unit within USDA (e.g., Administrator, Food and Nutrition Service), who has been delegated authority in 7 CFR part 2 of this title to carry out a covered transaction, is delegated authority to act as the suspending official in connection with such transaction. This authority to act as a suspending official may not be redelegated below the head of the organizational unit, except that, in the case of the Forest Service, the Chief may redelegate the authority to act as a suspending official to the Deputy Chief for the National Forest System or an Associate Deputy Chief for the National Forest System.

**Subpart J—[Reserved]****TITLE 7—AGRICULTURE****■ 2. Remove 7 CFR part 3017.**

Dated: March 24, 2010.

Issued at Washington, DC.

**Thomas J. Vilsack,**

*Secretary.*

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**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****7 CFR Part 301**

[Docket No. APHIS-2009-0098]

**Emerald Ash Borer; Addition of Quarantined Areas in Kentucky, Michigan, Minnesota, New York, Pennsylvania, West Virginia, and Wisconsin**

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

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the emerald ash borer regulations by adding portions of Kentucky, Michigan, Minnesota, New York, Pennsylvania, Wisconsin, and the entire State of West Virginia to the list of quarantined areas. This action will restrict the interstate movement of regulated articles from areas in the States of Kentucky, Michigan,

Minnesota, New York, Pennsylvania, West Virginia, and Wisconsin. This interim rule is necessary to prevent the artificial spread of the emerald ash borer to noninfested areas of the United States.

**DATES:** This interim rule is effective May 25, 2010. We will consider all comments that we receive on or before July 26, 2010.

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

• Federal eRulemaking Portal: Go to (<http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0098>) to submit or view comments and to view supporting and related materials available electronically.

• Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2009-0098, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2009-0098.

*Reading Room:* You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Chaloux, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1231; (301) 734-0917.

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

The emerald ash borer (EAB) (*Agrilus planipennis*) is a destructive wood-boring insect that attacks ash trees (*Fraxinus* spp., including green ash, white ash, black ash, and several horticultural varieties of ash). The insect, which is indigenous to Asia and known to occur in China, Korea, Japan, Mongolia, the Russian Far East, Taiwan, and Canada, eventually kills healthy ash trees after it bores beneath their bark and disrupts their vascular tissues.

Although EAB adults have been known to fly as much as one-half mile from one tree to the next, the pest can also spread when infested nursery trees,

logs, or firewood are transported from one region to the next. Ash trees are valuable to the commercial timber industry and are commonly planted in urban areas.

#### Quarantined Areas

The EAB regulations in 7 CFR 301.53-1 through 301.53-9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of EAB to noninfested areas of the United States. Portions of Illinois, Indiana, Minnesota, Michigan, Ohio, Pennsylvania, West Virginia, and Wisconsin have already been designated as quarantined areas.

Surveys conducted by inspectors of State, county, and city agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have resulted in the detection of infestations of EAB in the States of Kentucky, Michigan, Minnesota, New York, Pennsylvania, West Virginia, and Wisconsin. Officials in each of those States (except West Virginia, which has opted to adopt a statewide quarantine) have quarantined the infested areas and, in some cases, neighboring areas to prevent the spread of EAB to noninfested areas. By establishing these quarantined areas, the States of Kentucky, Michigan, Minnesota, New York, Pennsylvania, West Virginia, and Wisconsin have restricted the intrastate movement of regulated articles from the quarantined areas. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined areas within those six States and from the entire State of West Virginia to prevent the spread of EAB to other States.

The regulations in § 301.53-3(a) provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, where EAB has been found by an inspector, where the Administrator has reason to believe that EAB is present, or where the Administrator considers regulation necessary because of its inseparability for quarantine enforcement purposes from localities where EAB has been found.

Less than an entire State will be designated as a quarantined area only under certain conditions. Such a designation may be made if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles; and (2) the designation of less than an entire State as a quarantined

area will be adequate to prevent the artificial spread of EAB.

In accordance with these criteria and the recent EAB findings described above, we are amending § 301.53-3(c) to add Boone, Bourbon, Campbell, Carroll, Fayette, Franklin, Gallatin, Grant, Greenup, Harrison, Henry, Jefferson, Jessamine, Kenton, Oldham, Owen, Pendleton, Scott, Shelby, Trimble, and Woodford Counties in Kentucky; Alger, Chippewa, and Luce Counties in Michigan; Hennepin and Ramsey Counties in Minnesota; Cattaraugus and Chautauqua Counties in New York; Armstrong, Indiana, Juniata, Washington, and Westmoreland Counties in Pennsylvania; the entire State of West Virginia; and Brown, Kenosha, Milwaukee, Racine, and Waukesha Counties in Wisconsin to the list of quarantined areas.

#### Emergency Action

This rulemaking is necessary on an emergency basis to help prevent the spread of EAB to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

#### Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the EAB regulations by adding areas in Kentucky, Michigan, Minnesota, New York, Pennsylvania, and Wisconsin and the entire State of West Virginia to the list of areas quarantined because of EAB. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary to prevent the artificial spread of the EAB from infested areas in the States of Kentucky, Michigan, Minnesota, New York, Pennsylvania, West Virginia, and Wisconsin into noninfested areas of the United States.

We have prepared an economic analysis for this interim rule. The analysis, which considers the number and types of entities that are likely to be affected by this action and the potential economic effects on those entities, provides the basis for the Administrator's determination that the rule will not have a significant economic impact on a substantial number of small entities. The economic analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov). Copies of the economic analysis are also available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are 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 this rule.

#### Paperwork Reduction Act

This interim rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 7 CFR Part 301

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

■ Accordingly, we are amending 7 CFR part 301 as follows:

#### PART 301—DOMESTIC QUARANTINE NOTICES

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

**Authority:** 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

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

■ 2. In § 301.53-3, paragraph (c) is amended as follows:

■ a. Under the heading Michigan, under Upper Peninsula, by revising the entry

for Chippewa County and by adding, in alphabetical order, entries for Alger County and Luce County to read as set forth below.

■ b. Under the heading Minnesota, by adding, in alphabetical order, entries for Hennepin County and Ramsey County to read as set forth below.

■ c. Under the heading Pennsylvania, by adding, in alphabetical order, entries for Armstrong County, Indiana County, Juniata County, Washington County, and Westmoreland County to read as set forth below.

■ d. Under the heading West Virginia, by removing the entry for Fayette County and adding the words "The entire State." in its place.

■ e. Under the heading Wisconsin, by adding, in alphabetical order, entries for Brown County, Kenosha County, Milwaukee County, Racine County, and Waukesha County to read as set forth below.

■ f. By adding, in alphabetical order, new entries for Kentucky and New York to read as set forth below.

#### § 301.53-3 Quarantined areas.

\* \* \* \* \*

(c) \* \* \*

#### Kentucky

*Boone County.* The entire county.  
*Bourbon County.* The entire county.  
*Campbell County.* The entire county.  
*Carroll County.* The entire county.  
*Fayette County.* The entire county.  
*Franklin County.* The entire county.  
*Gallatin County.* The entire county.  
*Grant County.* The entire county.  
*Greenup County.* The entire county.  
*Harrison County.* The entire county.  
*Henry County.* The entire county.  
*Jefferson County.* The entire county.  
*Jessamine County.* The entire county.  
*Kenton County.* The entire county.  
*Oldham County.* The entire county.  
*Owen County.* The entire county.  
*Pendleton County.* The entire county.  
*Scott County.* The entire county.  
*Shelby County.* The entire county.  
*Trimble County.* The entire county.  
*Woodford County.* The entire county.

\* \* \* \* \*

#### Michigan

Upper Peninsula:  
*Alger County.* The entire county.  
*Chippewa County.* The entire county.  
 [Note: This quarantined area includes tribal land of the Bay Mills Indian Community. Movement of regulated articles on those lands is subject to tribal jurisdiction.]

\* \* \* \* \*

*Luce County.* The entire county.

\* \* \* \* \*

#### Minnesota

*Hennepin County.* The entire county.

\* \* \* \* \*

*Ramsey County.* The entire county.

\* \* \* \* \*

#### New York

*Cattaraugus County.* The entire county.

*Chautauqua County.* The entire county.

\* \* \* \* \*

#### Pennsylvania

\* \* \* \* \*

*Armstrong County.* The entire county.

\* \* \* \* \*

*Indiana County.* The entire county.

*Juniata County.* The entire county.

\* \* \* \* \*

*Washington County.* The entire county.

*Westmoreland County.* The entire county.

\* \* \* \* \*

#### Wisconsin

*Brown County.* The entire county.

\* \* \* \* \*

*Kenosha County.* The entire county.

*Milwaukee County.* The entire county.

\* \* \* \* \*

*Racine County.* The entire county.

\* \* \* \* \*

*Waukesha County.* The entire county.

Done in Washington, DC, this 19<sup>th</sup> day of May 2010.

**Kevin Shea,**

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

[FR Doc. 2010-12533 Filed 5-24-10; 8:45 am]

**BILLING CODE 3410-34-S**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS-2010-0035]

#### Black Stem Rust; Additions of Rust-Resistant Varieties

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

**ACTION:** Direct final rule.

**SUMMARY:** We are amending the black stem rust quarantine and regulations by adding 21 varieties to the list of rust-resistant *Berberis* species or cultivars and 2 varieties to the list of rust-resistant *Mahonia* species or cultivars in

the regulations. This action will allow for the interstate movement of these newly developed varieties without unnecessary restrictions.

**DATES:** This rule will be effective on July 26, 2010, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before June 24, 2010. If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date.

**ADDRESSES:** You may submit comments or written notice of intent to submit adverse comments by either of the following methods:

- Federal eRulemaking Portal: Go to (<http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0035>) to submit or view comments and to view supporting and related materials available electronically.

- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2010-0035, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0035.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Prakash K. Hebbar, National Program Manager, Black Stem/Barberry Rust Program, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737-1231; (301) 734-5717.

#### SUPPLEMENTARY INFORMATION:

##### Background

Black stem rust is one of the most destructive plant diseases of small grains that is known to exist in the United States. The disease is caused by a fungus that reduces the quality and yield of infected wheat, oat, barley, and rye crops. In addition to infecting small grains, the fungus lives on a variety of alternate host plants that are species of