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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:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended 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 interim rule, which restricted the interstate movement of regulated articles from those areas, was necessary to prevent the artificial spread of the emerald ash borer to noninfested areas of the United States.

**DATES:** Effective on February 2, 2011, we are adopting as final the interim rule published at 75 FR 29189 on May 25, 2010.

**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.

In an interim rule<sup>1</sup> effective and published in the **Federal Register** on May 25, 2010 (75 FR 29189–29191, Docket No. APHIS–2009–0098), we amended the EAB regulations in 7 CFR part 301 by adding areas in Kentucky, Michigan, Minnesota, New York, Pennsylvania, Wisconsin, and the entire state of West Virginia to the list of quarantined areas.

Comments on the interim rule were required to be received on or before July 26, 2010. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

#### **Regulatory Flexibility Act**

This action affirms an interim rule that amended the EAB regulations to expand the quarantine area to include an additional 21 counties in Kentucky, 3 counties in Michigan, 2 counties in Minnesota, 2 counties in New York, 5 counties in Pennsylvania, 5 counties in Wisconsin, and the entire State of West Virginia. Prior to this regulation, one county in Minnesota, six counties in Pennsylvania, six counties in Wisconsin, and one county in West Virginia were under quarantine. The interim rule helped to protect uninfested areas from further spread of EAB.

<sup>1</sup> To view the interim rule, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0098>.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

If left unregulated, the spread of EAB could negatively impact several industries including nurseries, timber operations, and landscaping. These potential economic impacts would likely be much greater than government program costs and any additional costs incurred from the expansion of the quarantine area. While some firms may have been negatively affected by the interim rule, those effects will be limited to those firms that ship regulated products interstate or from quarantined areas to areas that are not under quarantine. Such firms will be required to obtain a certificate or limited permit from an APHIS inspector in order to comply with the regulation or enter into a compliance agreement with APHIS for the inspection and certification of the articles to be moved. Additional restrictions on movement during adult fly season (roughly May through September) may result in additional impacts on entities in some quarantined counties. Limited information was available on the extent to which firms in the potentially affected industries deal in ash products.

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

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

#### **PART 301—DOMESTIC QUARANTINE NOTICES**

■ Accordingly, we are adopting as final, without change, the interim rule that amended 7 CFR part 301 and that was published at 75 FR 29189 on May 25, 2010.

Done in Washington, DC, this 27th day of January 2011.

**Kevin Shea,**

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

[FR Doc. 2011–2234 Filed 2–1–11; 8:45 am]

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