

full cost of Optional insurance must be withheld from the annuity of an annuitant the compensation of a compensationner.

(2) The withholdings for Option A stop the month after the month in which an annuitant or compensationner reaches age 65.

(3) For an annuitant or compensationner who elects Full Reduction for any Option B or Option C multiples under § 870.705, the withholdings for those multiples stop the month after the month in which he/she reaches age 65.

(4) For an annuitant or compensationner who elects No Reduction for any Option B or Option C multiples, the withholdings for those multiples continue, as long as he/she remains insured.

(d)(1) For Option A and Option C, the amount withheld from pay, annuity, or compensation paid on other than a biweekly basis must be computed and adjusted to the nearest cent.

(2) For Option B, the amount withheld from pay, annuity, or compensation paid on other than a biweekly basis must be computed and adjusted to the nearest one-tenth of 1 cent.

(e) If an employee's annual pay is paid during a period shorter than 52 work weeks, the employing office must determine the amount to withhold. To do this, it converts the biweekly cost to an annual cost and prorates it over the number of installments of pay regularly paid during the year.

(f) When an agency withholds less than or none of the proper amount of Optional life insurance deductions from an individual's pay, annuity, or compensation, the agency must submit an amount equal to the uncollected deductions required under 5 U.S.C. 8714a, 8714b, and 8714c to OPM for deposit in the Employees' Life Insurance Fund.

■ 4. In § 870.404, revise paragraph (d) to read as follows:

**§ 870.404 Withholdings and contributions provisions that apply to both Basic and Optional insurance.**

\* \* \* \* \*

(d) The deposit described in §§ 870.401(f) and 870.402(f) must be made no later than 60 calendar days after the date the employing office determines the amount of the underdeduction that has occurred, regardless of whether or when the underdeduction is recovered by the agency. The agency must determine whether to waive collection of the overpayment of pay, in accordance with 5 U.S.C. 5584, as implemented by 4 CFR

chapter I, subchapter G. However, if the agency involved is excluded from the provisions of 5 U.S.C. 5584, it may use any applicable authority to waive the collection.

\* \* \* \* \*

■ 5. In § 870.801, revise paragraph (e) to read as follows:

**§ 870.801 Order of precedence and payment of benefits.**

\* \* \* \* \*

(e) Upon the death of an insured family member, Option C benefits are paid to the employee, annuitant, or compensationner responsible for withholdings under § 870.402(a), except as provided in paragraph (f) of this section.

\* \* \* \* \*

[FR Doc. 03-25945 Filed 10-10-03; 8:45 am]

BILLING CODE 6325-50-U

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 301**

[Docket No. 02-125-1]

**Emerald Ash Borer; Quarantine and Regulations**

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

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

**SUMMARY:** We are quarantining 13 counties in Michigan because of the emerald ash borer and restricting the interstate movement of regulated articles from these quarantined areas. This action is necessary on an emergency basis to prevent the artificial spread of this plant pest from infested areas in the State of Michigan to noninfested areas of the United States.

**DATES:** This interim rule was effective October 8, 2003. We will consider all comments that we receive on or before December 15, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-125-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-125-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body

of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-125-1" on the subject line.

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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah McPartlan, Operations Officer, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-4387.

**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.

EAB has been found in ash trees in several Michigan counties. Within those counties, EAB has infested thousands of square miles, and we estimate that over 30 million ash trees are currently at risk in affected counties. EAB has already caused an estimated \$11.6 million in landscape industry and wood lot losses, and approximately \$2 million in lost nursery stock sales. Inestimable, though, is the loss of aesthetic, recreational, and habitat-providing values that ash trees provide. Should EAB spread from infested areas in Michigan into forests of the north-central United States, where nursery, landscaping, and timber industries and forest-based recreation and tourism industries are vital components of the economy, the pest's impact would be tremendous. Further, in the affected counties and the areas that surround those counties, ash is a major component of the urban forest because of its natural resistance to other

tree pests and its hardness in urban environments.

Officials of the U.S. Department of Agriculture (USDA) and officials of State, county, and city agencies in Michigan have been conducting an intensive survey and eradication program in the infested areas. The State of Michigan has quarantined 13 counties in the southeastern portion of the State and is restricting the intrastate movement of certain articles from the quarantined areas to prevent the artificial spread of EAB within Michigan. However, Federal regulations are necessary to restrict the interstate movement of certain articles from the quarantined areas to prevent the artificial spread of EAB to other States.

Therefore, we are amending the "Domestic Quarantine Notices" in 7 CFR part 301 by adding a new subpart, "Emerald Ash Borer" (§§ 301.53-1 through 301.53-9, referred to below as the regulations). These regulations quarantine the 13 counties designated in Michigan's State quarantine and restrict the interstate movement of regulated articles from the quarantined areas.

#### Definitions

In § 301.53-1, we define the following terms: Administrator, Animal and Plant Health Inspection Service (APHIS), certificate, compliance agreement, emerald ash borer, infestation, inspector, interstate, limited permit, moved (movement, move), person, quarantined area, regulated article, and State. With one exception, these terms are widely used in our other domestic quarantines in part 301, and the definitions we provide in § 301.53-1 are consistent with those provided elsewhere in part 301. We have defined the term *emerald ash borer* as the insect known as emerald ash borer (*Agrilus planipennis*) in any stage of development.

#### Regulated Articles

Certain articles present a significant risk of spreading EAB if the articles are moved from quarantined areas without restriction. We call these articles "regulated articles." Regulated articles may not be moved interstate from quarantined areas except in accordance with the conditions specified in §§ 301.53-4 through 301.53-9 of the regulations. In § 301.53-2, paragraph (a) designates the following as regulated articles: (1) The emerald ash borer; (2) firewood (all hardwood species); and (3) nursery stock, green lumber, and other material living, dead, cut, or fallen, including logs, stumps, roots, branches, and composted and uncomposted chips of the genus *Fraxinus*. We are

designating all hardwood species of firewood as regulated articles because as hardwood is dried and cut into firewood, it is difficult to identify the species of the tree from which the firewood was derived.

Paragraph (b) of § 301.53-2 provides that any other article, product, or means of conveyance not listed in paragraph (a) of that section may be designated as a regulated article if an inspector determines that it presents a risk of spreading EAB and notifies the person in possession of the article, product, or means of conveyance that it is subject to the restrictions of the regulations. This provision will allow an inspector who discovers evidence of EAB in an article, product, or means of conveyance to take immediate action after informing the person in possession of it that it is being regulated.

#### Quarantined Areas

In § 301.53-3, paragraph (a) provides that the Administrator will quarantine each State or portion of a State in which EAB has been found by an inspector, in which the Administrator has reason to believe that EAB is present, or which the Administrator deems necessary to regulate 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 listed in § 301.53-2 that are equivalent to the interstate movement restrictions imposed by the regulations in §§ 301.53-1 through 301.53-9; and (2) the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of the EAB.

Paragraph (b) of § 301.53-3 provides that the Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area in accordance with the criteria in § 301.53-3(a). The Administrator will give written notice of this temporary designation to the owner or person in possession of the nonquarantined area, or, in the case of publicly owned land, the person responsible for the management of the nonquarantined area. This is necessary to prevent the spread of EAB before restrictions can be published in the **Federal Register** concerning the interstate movement of regulated articles from the designated area. As soon as practicable, this area will be added to the list of quarantined areas 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.

In accordance with these criteria, we are quarantining 13 counties in Michigan because of the EAB and restricting the interstate movement of regulated articles from the quarantined areas. Specifically, in § 301.53-3(c) we list Genesee, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Shiawassee, Washtenaw, and Wayne Counties, MI, as quarantined areas.

#### Interstate Movement of Regulated Articles From Quarantined Areas

In § 301.53-4, paragraph (a) provides that regulated articles may be moved interstate from a quarantined area into or through an area that is not quarantined if they are accompanied by a certificate or limited permit issued and attached as prescribed by §§ 301.53-5 and 301.53-8.

Paragraph (b) of § 301.53-4 provides that a regulated article may be moved interstate without a certificate or limited permit if the regulated article is moved by the USDA for experimental or scientific purposes or if the regulated article originates outside the quarantined area. Articles originating outside the quarantined area that are moved interstate through a quarantined area must be moved under the following conditions: (1) The points of origin and destination are indicated on a waybill accompanying the regulated article; (2) the regulated article, if moved through the quarantined area during the period of May 1 through August 31 or when the ambient air temperature is 40 °F or higher, is moved in an enclosed vehicle or is completely covered to prevent access by the EAB; (3) the regulated article is moved directly through the quarantined area without stopping (except for refueling or for traffic conditions, such as traffic lights or stop signs), or has been stored, packed, or handled at locations approved by an inspector; and (4) the article has not been combined or commingled with other articles so as to lose its individual identity.

#### Certificates and Limited Permits

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and the use of limited permits. Prior to movement, certificates are issued for regulated articles upon a finding by an inspector that, because of certain conditions (e.g., the article is

free of a pest), the movement presents low risk of disseminating pests. With a certificate, the article may be moved interstate without further restrictions. Limited permits are issued for regulated articles when an inspector has determined that, because of possible pest or disease risk, such articles may be safely moved interstate only subject to further restrictions, such as movement to specified areas and movement for specified purposes. Section 301.53-5 sets out the conditions for issuing certificates and limited permits for movement from areas quarantined for EAB and for canceling certificates and limited permits.

Paragraph (a) of 301.53-5 provides that an inspector or a person operating under a compliance agreement (discussed below) will issue a certificate for the interstate movement of a regulated article if he or she determines that the regulated article:

- Is apparently free of EAB, based on inspection, or the article has been grown, produced, manufactured, stored, or handled in a manner that, in the judgment of the inspector, prevents the regulated article from presenting a risk of spreading EAB;
- Is to be moved in compliance with any additional emergency conditions the Administrator may impose under the Plant Protection Act to prevent the artificial spread of EAB; and
- Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

Paragraph (b) of 301.53-5 provides for the issuance of a limited permit (rather than a certificate) by an inspector or person operating under a compliance agreement for movement of a regulated article if he or she determines that the regulated article:

- Is to be moved interstate to a specified destination for specific processing, handling, or utilization (the destination and other conditions to be listed in the limited permit and/or compliance agreement), and the interstate movement will not result in the artificial spread of EAB because EAB will be destroyed by the specific processing, handling, or utilization;
- Is to be moved interstate in compliance with any additional emergency conditions the Administrator may impose under the Plant Protection Act to prevent the artificial spread of EAB; and
- Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

Paragraph (c) of 301.53-5 provides that an inspector will issue blank certificates and limited permits to a person operating under a compliance agreement or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates or limited permits may then be completed and used, as needed, for the interstate movement of regulated articles that have met all of the requirements of § 301.53-5(a) or § 301.53-5(b), respectively.

Paragraph (d) of 301.53-5 provides that a certificate or limited permit may be canceled by an inspector, orally or in writing, whenever the inspector determines that the holder of the certificate or limited permit has not complied with the regulations. If the cancellation is oral, the cancellation will become effective upon notification by the inspector. The cancellation and the reasons for the cancellation will then be confirmed in writing as soon as circumstances allow after oral notification of the cancellation. Any person whose certificate or limited permit has been canceled may appeal the decision, in writing, within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

#### *Compliance Agreements*

Section 301.53-6 provides for the use and cancellation of compliance agreements. Under § 301.53-6(a), compliance agreements may be entered into by any person engaged in the growing, handling, or interstate movement of regulated articles if such persons review with an inspector each stipulation of the compliance agreement. Any person who enters into a compliance agreement with APHIS must agree to comply with the regulations.

Paragraph (b) of 301.53-6 explains that a compliance agreement may be canceled by an inspector, orally or in writing, whenever the inspector determines that the person who entered into the compliance agreement has not complied with the regulations. If the cancellation is oral, the cancellation will become effective upon oral notification by the inspector. The

cancellation and the reasons for the cancellation will then be confirmed in writing as soon as circumstances allow after oral notification of the cancellation. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

#### *Assembly and Inspection of Regulated Articles*

Paragraph (a) of § 301.53-7 provides that any person who requires certification or other services from an inspector must request the services at least 48 hours before they are needed. Paragraph (b) of § 301.53-7 provides that regulated articles must be assembled at the place and in the manner an inspector designates as necessary to comply with the regulations.

#### *Attachment and Disposition of Certificates and Limited Permits*

In § 301.53-8, paragraph (a) requires that regulated articles intended for interstate movement be plainly marked with the name and address of the consignor and the name and address of the consignee and that, during the interstate movement, the certificate or limited permit issued for the interstate movement of regulated articles be attached to either: (1) The regulated article, (2) the container carrying the regulated article, or (3) the accompanying waybill. However, 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.

Paragraph (b) of 301.89-9 requires the carrier of the article to furnish the certificate or limited permit to the consignee at the shipment's destination.

#### *Costs and Charges*

Section 301.53-9 provides that the services of an inspector are provided without cost during normal business hours to persons requiring those services to comply with the regulations. The user will be responsible for all costs

and charges arising from inspection and other services provided outside of normal business hours.

#### Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of EAB into 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 rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are quarantining 13 counties in Michigan because of the EAB and restricting the interstate movement of regulated articles from these quarantined areas. This action is necessary on an emergency basis to prevent the artificial spread of this plant pest from infested areas in the State of Michigan to noninfested areas of the United States.

As stated previously, EAB is a highly destructive, wood-boring insect pest that attacks several species of ash (*Fraxinus* spp.). White ash (*Fraxinus americana* L.), black ash (*Fraxinus nigra* Marsh.), and green ash (*Fraxinus pennsylvanica* Marshall.) varieties are known to be susceptible in the United States; however, there are indications that other varieties of ash may also be at risk. Therefore, we are placing restrictions on certain articles of the genus *Fraxinus*.

If the EAB spreads from infested areas in Michigan to the surrounding forests of the northeastern United States, where nursery, landscaping, and timber industries and forest-based recreation and tourism industries play a vital economic role, its impact would be severe. Within 50 miles of Detroit, there are 2,280 square kilometers of forest land, and within 100 miles of the city, there are 7,836 square kilometers of

forest. The pest has the potential to destroy entire stands of ash, and any incursion of the pest can result in substantial losses to forest ecosystems, urban trees, and the timber industry. Adults bore D-shaped holes up to a diameter of 1 centimeter into sapwood, and these holes create pathways for pathogens and insect vectors.

Domestically, black, green, and white ash serve as an important component in the forests of the northeast. Further, the wood is used for a variety of applications that require a strong, hard wood with less rigidity than maple. White ash is one of the primary commercial hardwoods used for the production of tool handles, baseball bats, furniture, antique vehicle parts, containers, railroad cars and ties, canoe paddles, snowshoes, boats, doors, and cabinets. Green ash is a valued species for solid wood products, pulp and paper requiring hardwood fibers, crating, boxing, handle stock, and rough lumber. Black ash, while not as strong as other varieties, is regularly used for interior furnishings, furniture, and cabinets. Damage left by the EAB reduces the quality and market value of wood products, and dying and dead trees are useless for manufacturers.

Beyond manufacturing, ash trees play an important role in the urban landscape. Ash is known for its natural resistance to many other tree pests and its hardiness in cities. Many of the ash trees that now serve as ornamental, street, shade, and landscape beautification trees were planted to replace elm trees destroyed because of Dutch elm disease. Ash trees are vital sources of food and shelter for wildlife and livestock, and they have been planted in the rehabilitation of damaged natural areas. Because of the EAB, these natural and aesthetic values are at risk in affected regions.

Earlier this year, Michigan's State EAB quarantine designated only six counties as quarantined areas. Recently, Michigan expanded its quarantine to include seven more counties. County-specific figures included in this analysis apply only to the six counties (Livingston, Macomb, Monroe, Oakland, Washtenaw, and Wayne) originally quarantined by the State; information for the seven counties (Genesee, Ingham, Jackson, Lapeer, Lenawee, St. Clair, and Shiawassee) recently added to the quarantine is not yet available.

Damage to ash trees in the lots owned by the landscape industry and woodlots in southeast Michigan over the past 5 years is estimated at \$11.6 million. In Michigan and Canada, we estimate that between 250,000 and 2 million trees are already affected by the pest. In the six

counties originally quarantined by the State of Michigan, 26.1 million trees are at risk, and the replacement value of those trees is estimated to be \$11.7 billion; this figure, of course, excludes their aesthetic, oxygen-producing, and habitat-providing values. Already, because of EAB infestation and subsequent damage and the effects of the quarantine placed by the State of Michigan, producers have lost approximately \$2 million in nursery stock sales. While ash species other than black, green, and white ash have not been attacked in North America, we believe the remaining 13 species may also be susceptible, and in 2002 the Canadian Food Inspection Agency confirmed that theory in the results of an EAB pest risk assessment. In Japan, EAB has also affected trees in the genus *Ulmus* (elms), *Juglans* (walnuts and butternuts), and *Pterocarya* (wingnuts).

The pattern and significant numbers of trees harmed or destroyed because of the pest suggest that EAB has been established in Michigan for at least 5 years, though it was definitively identified only in July 2002. We are not aware of the capability for EAB's natural spread in North America, and information on EAB biology in Asia is scarce. Studies on the pest in both North America and Asia are underway. Current research suggests that EAB typically completes one generation per year in northeastern China and that females lay 68 to 90 eggs in their lifetime. Usually, trees die 2 to 4 years after an EAB attack. We know that adult beetles are capable of dispersing by flight in 8 to 12 meter bursts, and we are aware of EAB "bursting" distances of several kilometers in search of new ash host material.

Since EAB appears to survive well in North American climatic conditions, it is probable that EAB could continue to disperse among various contiguous corridors of host material in natural and urban environments. In northeastern China, EAB has successfully built severely damaging populations and traveled great distances in search of new hosts. Especially troubling in North America is the apparent lack of natural predators and other biological factors that would contribute to EAB mortality. A relative of EAB, the bronze birch borer (*Agrilus axius*), is capable of a natural spread of 10 to 20 miles per year, and this might be a possible estimate of EAB's spreading capability.

The spread of EAB can be accelerated through human-assisted movement and trade of nursery stock, lumber, and logs. Solid wood packing materials (SWPM), especially if those materials include bark, pose a special concern. From 1985

to 2000, APHIS personnel reported 38 interceptions of species of the genus *Agrilus* in shipments of SWPM at ports of entry in 11 different States, and those shipments originated in at least 11 countries. Since EAB larvae can overwinter in the sapwood they burrow into, it is uncertain whether debarking of lumber is an effective way to destroy the pest.

**Specific Risks to Urban Forests**

Urban areas of the United States cover approximately 3.5 percent of the total land area of the country, contain more than 75 percent of the population, and

support an estimated 3.8 billion trees valued at \$2.4 trillion. Michigan's total urban tree population is estimated at 110,858,000 trees, and ash is a vital component of this urban forest. Trees in urban Michigan, like trees in any city, sequester gaseous air pollutants and particulate matter, help people conserve energy through the shade they provide, assist in the dispersal of storm water, provide protective shelter belts for urban fauna, and contribute aesthetic pleasure to the lives of city-dwellers and tourists.

Field data from eight cities suggests that ash trees comprise up to 14 percent

of the total leaf area of those cities. Based on these data, the ash tree resources at risk in just those eight cities would amount to \$565 million; see table 1 below. The survey, the only available data regarding urban ash at risk, concentrates on ash in the eastern United States; however ash is more widely planted in urban regions of the midwest. These estimates are based on the assumption that all living ash in the cities may be destroyed by EAB and did not incorporate estimates of the EAB's biological or artificial spread rates, since those are not known.

TABLE 1.—PRELIMINARY ESTIMATES OF TREE RESOURCES AT RISK FOR INFESTATION BY AGRILUS PLANIPENNIS IN EIGHT U.S. CITIES (ORDERED BY ASH LEAF AREA) BASED ON THE TOTAL OF ALL LIVING PREFERRED HOST SPECIES (ASH TREES)

City	Leaf area (%)	Number of ash trees	Value lost	Value per tree
Chicago, IL .....	14.4	603,000	\$230,949,000	\$383
Baltimore, MD .....	8.5	292,700	227,568,000	777
Philadelphia, PA .....	4.7	117,000	68,408,000	584
Boston, MA .....	0.9	29,200	13,341,000	457
Syracuse, NY .....	0.9	6,900	6,400,000	929
New York, NY .....	0.3	27,600	9,770,000	354
Atlanta, GA .....	0.3	38,900	7,119,000	183
Oakland, CA .....	0.2	7,500	1,514,000	202
Total value loss for all cities .....			565,069,000	

Further, assuming that the EAB is capable of spreading through all urban areas of the lower 48 States and destroying all urban ash trees, the United States could suffer a national undiscounted loss of \$20 to \$60 billion. Since firm data are not available regarding the pest's biological or artificial spread patterns in North America, all losses are based on limited data that assume a 100 percent destruction rate. More field data from urban areas across the United States are needed to provide more accurate estimates of the resources at risk from EAB.

**Specific Risks to Timber**

Within Michigan, there are 693 million EAB-susceptible trees grown on

timberland, with an undiscounted compensatory value estimated at \$18.92 billion. In the 6 counties first quarantined by the State of Michigan, there are more than 31 million ash trees at risk. We are investigating possible monetary losses to forestry interests based on stumpage<sup>1</sup> value. These losses are likely to be less than monetary losses based on compensatory value, since stumpage values are usually applied to older trees that are greater than 5 inches in diameter, and compensatory values are applied for trees greater than 1 inch in diameter.

Should the EAB spread or be artificially introduced to areas outside of Michigan, monetary losses could grow significantly. Ash trees for timber

products are predominantly concentrated in the East, and available data on production volumes for ash were available only for this region. Table 2 shows the net volumes of ash trees grown for sawtimber in the Eastern region of the United States in 1996, the most recent year for which data is available. A net volume of 113,916 million board feet of ash sawtimber is grown in the Eastern region, comprising 7.5 percent of the volume of all hardwoods. The average stumpage price for sawtimber sold from national forests in 2000 was \$220.30 per 1,000 board feet for all eastern hardwoods.

TABLE 2.—NET VOLUME OF SAWTIMBER ON TIMBER LAND IN THE EASTERN UNITED STATES, BY REGIONS AND SPECIES [In million board feet]

Species	Total East	Total North	Northeast	North central	Total South	Southeast	South central
Ash .....	113,916	35,575	11,740	23,835	78,341	34,848	43,493
Total hardwoods .....	1,516,086	519,699	229,504	290,195	996,387	424,233	572,154
Ash as % of all hardwoods .....	7.5	6.8	5.1	8.2	7.9	8.2	7.6
All species .....	2,055,509	665,938	321,067	344,871	1,389,571	599,100	790,471

<sup>1</sup> Stumpage value refers to the commercial value of trees standing in the forest. Stumpage prices may

be offered in reference to board foot volume (\$/m.b.f.), weight (\$/ton), or truck loads (\$/load).

(From: [http://extension.usu.edu/forestry/Management/Timber\\_Valueterms2Know.htm](http://extension.usu.edu/forestry/Management/Timber_Valueterms2Know.htm))

TABLE 2.—NET VOLUME OF SAWTIMBER ON TIMBER LAND IN THE EASTERN UNITED STATES, BY REGIONS AND SPECIES—  
Continued  
[In million board feet]

Species	Total East	Total North	Northeast	North central	Total South	Southeast	South central
Ash as % of all species .....	5.5	5.3	3.7	6.9	5.6	5.8	5.5

Using the estimates provided in table 2, the value of ash timber grown in the eastern United States is \$25.1 billion (see table 3 below). Based on the establishment of the EAB in Michigan

and its range in Asia, it should be able to survive in most of the eastern United States. In Michigan, an estimated 7.7 billion board feet of ash timber is harvested annually. Using the stumpage

figures listed previously, Michigan alone could see a loss of \$1.7 billion in timber trees.

TABLE 3.—VALUE OF POTENTIAL LOSSES IN ASH TIMBER TREES IN THE EASTERN UNITED STATES BECAUSE OF INFESTATION BY THE EMERALD ASH BORER FOR DIFFERENT REGIONS, BASED ON STUMPAGE PRICES

Region	Volume of timber trees (million board feet)	Value of losses (million dollars) <sup>1</sup>
Michigan .....	7,700	\$1.697
Northeastern region .....	11,740	2,558
Northern region .....	35,575	7,842
Total Eastern region .....	113,916	25,111

<sup>1</sup> Assumes average stumpage price of \$22.43 per 1,000 board feet (Agricultural Statistics, 2002).

**Other Effects**

We must also consider the value of ash trees as important environmental and recreational resources. The recreational use of national forest lands amounted to 341.2 million visitor days<sup>2</sup> in 1996, the most recent year for which data were available. In Michigan, 4.87 million visitor days were spent in the national forests in 1997. While not specifically attributable to the presence of ash trees, these statistics illustrate the importance of forest-based recreation in the United States. Ash trees are important components of U.S. forests; in addition to their aesthetic value, they provide food and shelter for wildlife.

Citizens may also be affected by the presence of EAB in their own yards and neighborhoods. Removing dead or infested trees is costly and inconvenient, and replacement trees may have to grow for years before they offer the same amount of shade and ornamental value. Further, the quarantine restricts people from freely moving firewood and ash products through Michigan.

**Effects on Nursery Stock**

An estimated \$2 million in annual nursery stock sales have already been lost in the six Michigan counties first quarantined by the State. The Michigan

Nursery and Landscape Association reports that nursery, plant production, and landscaping industries employ 347,000 Michigan citizens and contribute \$3.7 billion to the State's economy. Michigan's nursery producers generate about \$711 million in annual sales and distribute their products to 35 U.S. States, Mexico, and Canada; these producers are the second largest agricultural group in Michigan and the fifth largest nursery industry in the United States. Losses, of course, could be larger if the EAB were allowed to spread to other areas of the country. Several European agrilids are known nursery pests, and we now know that EAB is capable of infesting small-diameter nursery stock.

**Economic Effects on Small Entities**

The Regulatory Flexibility Act requires that agencies specifically consider the economic effects of their rules on small entities. The Small Business Administration (SBA) has established size criteria based on the North American Industry Classification (NAICS) for determining which economic entities meet the definition of a small firm. The small entity size standard for nursery and tree production (NAICS code 111421) is \$750,000 or less in annual receipts, and \$5 million or less in annual receipts for forest nurseries and gathering of forest products (NAICS code 113210). The SBA classifies logging operations (NAICS code 113310), sawmills (NAICS

code 321113), and wood product manufacturers generally (NAICS subsector 321) as small entities if fewer than 500 people are employed.

More than 4,000 businesses considered small entities by the SBA are affected within the 6 counties first quarantined for EAB. These entities must meet certain requirements before moving regulated articles from the quarantined areas. Regulated entities may incur additional costs to dispose of articles such as wood debris from tree pruning and removal. Nurseries are currently prohibited from moving ash trees under the State quarantine. However, of the nurseries within those 6 counties, only 10 to 20 operations having a substantial amount of ash nursery stock in the ground are expected to be significantly affected. These entities represent only 0.2 to 0.5 percent of the number of nurseries in the six counties first quarantined.

**Conclusions**

Damage caused to EAB-affected ash trees in the landscape and woodlots in southeast Michigan over the past 5 years is estimated at \$11.6 million. In addition, \$2 million of nursery stock was restricted from sale due to the infestation. The monetary values at risk are \$11.7 billion in replacement costs in 6 counties first quarantined for EAB alone. The undiscounted value of the national urban tree population that are ash trees amounts to \$20 to \$60 billion. The undiscounted compensatory value

<sup>2</sup> A visitor day aggregates 12 visitor hours, which may entail 1 person visiting for 12 hours, 12 persons visiting for 1 hour, or any equivalent combination of individual or group use, either continuous or intermittent.

of the 693 million ash trees grown on timberland in Michigan is \$18.92 billion, and the corresponding nationwide estimate amounts to 7,553 million trees, valued at \$282.26 billion. There are approximately 31 million ash trees in the 6 counties first quarantined by the State.

When conservatively valued in terms of stumpage prices, the value of sawtimber at risk in the eastern United States alone amounts to \$25 billion. Over 4,000 businesses that are considered small by SBA standards are affected in the 6 counties first quarantined because of EAB in Michigan. However, very few nursery operations having a substantial amount of ash nursery stock in the ground are expected to be significantly affected. Overall, this rule will help safeguard U.S. ash trees from the EAB by restricting the interstate movement of the nursery stock, logs, and lumber that can serve as its vectors. Although, at this time, we are not able to evaluate the specific effects of this regulation on the seven counties most recently added to Michigan's EAB quarantine, we expect that those counties contain entities similar to those we have considered in this analysis. Therefore, we believe any economic effects on small entities will be small and are outweighed by the benefits associated with preventing a larger U.S. EAB infestation.

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 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 inconsistent 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

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim

rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579-0233 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 02-125-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 02-125, and send your comments within 60 days of publication of this rule.

This interim rule establishes regulations quarantining 13 counties in Michigan because of the emerald ash borer and restricting the interstate movement of regulated articles from these quarantined areas. This action is necessary on an emergency basis to prevent the artificial spread of this plant pest from infested areas in the State of Michigan to noninfested areas of the United States. The paperwork associated with the Emerald ash borer program will include the completion of compliance agreements, certificates, and limited permits. There will also be requests for inspections. We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.48 hours per response.

*Respondents:* Growers, packers, shippers, and exporters of regulated

articles and State plant health protection authorities and other cooperators.

*Estimated annual number of respondents:* 225.

*Estimated annual number of responses per respondent:* 1.6666.

*Estimated annual number of responses:* 375.

*Estimated total annual burden on respondents:* 180 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

#### Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

#### 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; 7 CFR 2.22, 2.80, and 371.3.

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

■ 2. Part 301 is amended by adding a new "Subpart—Emerald Ash Borer," §§ 301.53-1 through 301.53-9, to read as follows:

#### Subpart—Emerald Ash Borer

Sec.

301.53-1 Definitions.

301.53-2 Regulated articles.

301.53-3 Quarantined areas.

- 301.53-4 Conditions governing the interstate movement of regulated articles from quarantined areas.
- 301.53-5 Issuance and cancellation of certificates and limited permits.
- 301.53-6 Compliance agreements and cancellation.
- 301.53-7 Assembly and inspection of regulated articles.
- 301.53-8 Attachment and disposition of certificates and limited permits.
- 301.53-9 Costs and charges.

### Subpart—Emerald Ash Borer

#### § 301.53-1 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 that is issued for a regulated article by an inspector or by a person operating under a compliance agreement and that represents that such article is eligible for interstate movement in accordance with § 301.53-5(a).

*Compliance agreement.* A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles that are moved interstate, in which the person agrees to comply with the provisions of this subpart and any conditions imposed under this subpart.

*Emerald ash borer.* The insect known as emerald ash borer (*Agrilus planipennis* [Coleoptera: Buprestidae]) in any stage of development.

*Infestation.* The presence of the emerald ash borer or the existence of circumstances that make it reasonable to believe that the ash borer is present.

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

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

*Limited permit.* A document in which an inspector or a person operating under a compliance agreement affirms that the regulated article not eligible for a certificate is eligible for interstate movement only to a specified destination and in accordance with conditions specified on the permit.

*Moved (movement, move).* 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 any other legal entity.

*Quarantined area.* Any State, or any portion of a State, listed in § 301.53-3(c) or otherwise designated as a quarantined area in accordance with § 301.53-3(b).

*Regulated article.* Any article listed in § 301.53-2(a) or otherwise designated as a regulated article in accordance with § 301.53-2(b).

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

#### § 301.53-2 Regulated articles.

The following are regulated articles:

(a) The emerald ash borer; firewood of all hardwood species; nursery stock, green lumber, and other material living, dead, cut, or fallen, including logs, stumps, roots, branches, and composted and uncomposted chips of the genus *Fraxinus*.

(b) Any other article, product, or means of conveyance not listed in paragraph (a) of this section may be designated as a regulated article if an inspector determines that it presents a risk of spreading emerald ash borer and notifies the person in possession of the article, product, or means of conveyance that it is subject to the restrictions of the regulations.

#### § 301.53-3 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 emerald ash borer has been found by an inspector, in which the Administrator has reason to believe that the emerald ash borer is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where emerald ash borer 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 restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by this subpart 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 interstate spread of the emerald ash borer.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area in accordance with the criteria specified in paragraph (a) of this section. The Administrator will give

written notice of this designation to the owner or person in possession of the nonquarantined area, or, in the case of publicly owned land, to the person responsible for the management 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 either will be added to the list of designated quarantined areas in paragraph (c) of this section, or the Administrator will terminate the designation. The owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation is terminated will be given written notice of the termination as soon as practicable.

(c) The following areas are designated as quarantined areas:

Michigan

*Genesee County.* The entire county.

*Ingham County.* The entire county.

*Jackson County.* The entire county.

*Lapeer County.* The entire county.

*Lenawee County.* The entire county.

*Livingston County.* The entire county.

*Macomb County.* The entire county.

*Monroe County.* The entire county.

*Oakland County.* The entire county.

*Shiawassee County.* The entire county.

*St. Clair County.* The entire county.

*Washtenaw County.* The entire county.

*Wayne County.* The entire county.

#### § 301.53-4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Regulated articles may be moved interstate from a quarantined area only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.53-5 and 301.53-8;

(b) Without a certificate or limited permit if:

(1) The regulated article is moved by the United States Department of Agriculture for experimental or scientific purposes; or

(2) The regulated article originates outside the quarantined area and is moved interstate through the quarantined area under the following conditions:

(i) The points of origin and destination are indicated on a waybill accompanying the regulated article; and

(ii) The regulated article, if moved through the quarantined area during the period of May 1 through August 31 or when the ambient air temperature is 40 °F or higher, is moved in an enclosed vehicle or is completely covered to prevent access by the EAB; and



(iii) The regulated article is moved directly through the quarantined area without stopping (except for refueling or for traffic conditions, such as traffic lights or stop signs), or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by emerald ash borer; and

(iv) The article has not been combined or commingled with other articles so as to lose its individual identity.

**§ 301.53-5 Issuance and cancellation of certificates and limited permits.**

(a) An inspector<sup>1</sup> or person operating under a compliance agreement will issue a certificate for the interstate movement of a regulated article if he or she determines that the regulated article:

(1)(i) Is apparently free of EAB, based on inspection; or the article or

(ii) Has been grown, produced, manufactured, stored, or handled in a manner that, in the judgment of the inspector, prevents the regulated article from presenting a risk of spreading EAB; and

(2) Is to be moved in compliance with any additional emergency conditions that the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714)<sup>2</sup> in order to prevent the artificial spread of emerald ash borer; and

(3) Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated articles.

(b) An inspector or a person operating under a compliance agreement will issue a limited permit for the interstate movement of a regulated article not eligible for a certificate if he or she determines that the regulated article:

(1) Is to be moved interstate to a specified destination for specific processing, handling, or utilization (the destination and other conditions to be listed on the limited permit), and this interstate movement will not result in the spread of emerald ash borer because emerald ash borer will be destroyed by the specific processing, handling, or utilization; and

<sup>1</sup> Inspectors are assigned to local offices of APHIS, which are listed in the local telephone directories. Information concerning such local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

<sup>2</sup> An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 423 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

(2) Is to be moved in compliance with any additional emergency conditions that the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) in order to prevent the spread of emerald ash borer; and

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

(c) An inspector shall issue blank certificates and limited permits to a person operating under a compliance agreement in accordance with § 301.53-6 or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates and limited permits may then be completed and used, as needed, for the interstate movement of regulated articles that have met all of the requirements of paragraph (a) or (b), respectively, of this section.

(d) Any certificate or limited permit may be canceled orally or in writing by an inspector whenever the inspector determines that the holder of the certificate or limited permit has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose certificate or limited permit has been canceled may appeal the decision in writing to the Administrator within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

(Approved by the Office of Management and Budget under control number 0579-0233)

**§ 301.53-6 Compliance agreements and cancellation.**

(a) Persons engaged in growing, handling, or moving regulated articles interstate may enter into a compliance agreement<sup>3</sup> if such persons review with

<sup>3</sup> Compliance agreements may be initiated by contacting a local office of APHIS. The addresses and telephone numbers of local offices are listed in local telephone directories and may also be

an inspector each provision of the compliance agreement. Any person who enters into a compliance agreement with APHIS must agree to comply with the provisions of this subpart and any conditions imposed under this subpart.

(b) Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector determines that the person who has entered into the compliance agreement has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose compliance agreement has been canceled may appeal the decision in writing to the Administrator within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

(Approved by the Office of Management and Budget under control number 0579-0233)

**§ 301.53-7 Assembly and inspection of regulated articles.**

(a) Persons requiring certification or other services must request the services from an inspector<sup>4</sup> at least 48 hours before the services are needed.

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

(Approved by the Office of Management and Budget under control number 0579-0233)

**§ 301.53-8 Attachment and disposition of certificates and limited permits.**

(a) A regulated article must be plainly marked with the name and address of the consignor and the name and address of the consignee and must have the certificate or limited permit issued for the interstate movement of a regulated article securely attached at all times during interstate movement to:

- (1) The regulated article;
- (2) The container carrying the regulated article; or

obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, MD 20737-1236.

<sup>4</sup> See footnote 1 to § 301.53-5.

(3) The consignee's copy of the accompanying waybill: *Provided*, that the description of the regulated article on the certificate or limited permit, and on the waybill, are sufficient to identify the regulated article; and

(b) The carrier must furnish the certificate or limited permit authorizing interstate movement of a regulated article to the consignee at the destination of the shipment.

(Approved by the Office of Management and Budget under control number 0579-0233)

#### **§ 301.53-9 Costs and charges.**

The services of the inspector during normal business hours will be furnished without cost to persons requiring the services. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

Done in Washington, DC, this 8th day of October, 2003.

**Peter Fernandez,**

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

[FR Doc. 03-25881 Filed 10-10-03; 8:45 am]

BILLING CODE 3410-34-P

## **DEPARTMENT OF AGRICULTURE**

### **Animal and Plant Health Inspection Service**

#### **7 CFR Part 301**

[Docket No. 03-032-3]

#### **Sapote Fruit Fly**

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

**ACTION:** Affirmation of interim rules as final rule.

**SUMMARY:** We are adopting as a final rule, without change, two interim rules regarding sapote fruit fly. The first interim rule established regulations restricting the movement of regulated articles from a newly established quarantined area in Hidalgo County, TX. The second interim rule removed the quarantine on that portion of Hidalgo County, TX, and thus removed the restrictions on the interstate movement of regulated articles from that area. The first interim rule was necessary to prevent the spread of sapote fruit fly to noninfested areas of the United States, and the second interim rule was necessary to reflect our determination that the sapote fruit fly had been eradicated from Hidalgo County, TX.

**EFFECTIVE DATE:** The first interim rule became effective on May 2, 2003, and the second interim rule became effective on July 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen A. Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737-1236; (301) 734-8247.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

In an interim rule effective May 2, 2003, and published in the **Federal Register** on May 8, 2003 (68 FR 24605-24613, Docket No. 03-032-1), we amended the Domestic Quarantine Notices in 7 CFR part 301 by adding a new "Subpart—Sapote Fruit Fly" (§§ 301.99 through 301.99-10, referred to below as the regulations). The regulations designated a portion of Hidalgo County, TX, as a quarantined area because of an infestation of sapote fruit fly and restricted the interstate movement of regulated articles from the quarantined area.

In a second interim rule effective July 15, 2003, and published in the **Federal Register** on July 22, 2003 (68 FR 43285-43286, Docket No. 03-032-2), we amended the regulations by removing the quarantine on a portion of Hidalgo County, TX, and removing restrictions on the interstate movement of regulated articles from that area based on our determination that the sapote fruit fly had been eradicated from that area. Upon the effective date of our July 2003 interim rule, there were no longer any areas in the continental United States quarantined for the sapote fruit fly.

Comments on each interim rule were required to be received on or before 60 days after the date of its publication in the **Federal Register**. We did not receive any comments on either of the interim rules. Therefore, for the reasons given in the interim rules, we are adopting the interim rules as a final rule.

This action also affirms the information contained in the interim rules concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 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.

##### **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 a final rule, without change, the interim rule establishing "Subpart—Sapote Fruit Fly" (7 CFR 301.99 through 301.99-10)

that was published at 68 FR 24605-24613 on May 8, 2003, as amended by the interim rule published at 68 FR 43285-43286 on July 22, 2003.

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

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

Done in Washington, DC, this 8th day of October, 2003.

**Peter Fernandez,**

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

[FR Doc. 03-25882 Filed 10-10-03; 8:45 am]

BILLING CODE 3410-34-P

## **SMALL BUSINESS ADMINISTRATION**

### **13 CFR Part 102**

RIN 3245-AE94

#### **Disclosure of Information Regulations**

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Final rule.

**SUMMARY:** SBA is adopting its proposed regulations implementing the Electronic Freedom of Information Act Amendments of 1996 (EFOIA) and updating SBA's FOIA regulations to conform to current law and procedure. SBA's amended regulations will make more information available electronically, give SBA more time to respond to certain requests, and increase processing fees to more accurately reflect the full cost of search and document review.

**DATES:** This rule is effective on November 13, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kitty Higgins, Paralegal Specialist, Freedom of Information/Privacy Acts (FOI/PA) Office, at 202-401-8203 or [foia@sba.gov](mailto:foia@sba.gov).

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) upon request to the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:** On September 11, 2002, SBA issued a proposed rule to amend its Disclosure of Information regulations (13 CFR part 102, Subpart A) based on the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), 5 U.S.C. 552(a)(2), 67 FR 57539. EFOIA includes provisions authorizing or requiring agencies to promulgate regulations