

**ORDER OF THE FOREST SUPERVISOR  
RESTRICTING THE OCCUPANCY AND USE  
OF  
NATIONAL FOREST LANDS, TO WIT:  
HIAWATHA NATIONAL FOREST**

Under authority of the Act of Congress of June 4, 1897, as amended (16 U.S.C. 551), and pursuant to the Secretary of Agriculture's Regulations set forth at 36 CFR Part 261, Subpart B (CFR 261.50(a) and (b)), the following acts and omissions are prohibited on National Forest System lands in the Hiawatha National Forest (Michigan), said area being described and designated as shown on the map set forth at Exhibit A, which is attached hereto and made a part hereto:

1. Possessing, storing or transporting any part of a tree or other plant as described below, from regulated areas and identified by: USDA, Animal and Plant Health Inspection Service; Michigan Dept. of Agriculture; Ohio Dept. of Agriculture; and Indiana Dept. of Natural Resources; as shown on the maps set forth at Exhibit B and areas described in Exhibit C, which is attached hereto and made a part hereto. 36 CFR 261.58(t)
  - a. Entire Ash (*Fraxinus* spp) trees.
  - b. Ash limbs and branches.
  - c. Ash logs or untreated ash lumber with bark attached. Uncomposted ash wood chips and uncomposted ash bark chips larger than 1 inch in diameter.
  - d. Any cut firewood of any species originating from regulated areas.

**PURPOSE OF EMERGENCY ACTION:**

The Emerald Ash Borer (EAB) (*Agilus planipennis*) is a destructive, non-native wood-boring insect that attacks ash trees (*Fraxinus* spp., including green ash, white ash, black ash, and several horticultural varieties of ash). This emergency action is necessary to prevent the spread of Emerald Ash borer (EAB) into non-infested areas of the National Forest System.

This closure is consistent with the emergency Federal regulations found at Title 7 Code of Federal Regulations (CFR), Part 301, set forth in Exhibit D which is attached hereto and made a part hereto; all of which are necessary to restrict the interstate movement of certain articles from the quarantined areas to prevent the artificial spread of EAB to National Forest System lands.

Pursuant to 36 CFR 261.50(e), the following persons are exempt from this order:

1. Persons with a permit granted either by USDA-Animal and Plant Health Inspection Service (APHIS) or USDA-Forest Service specifically authorizing the otherwise prohibited act or omission.
2. Any Federal, State, or local officer or member of any organized rescue or fire fighting force in the performance of an official duty.
3. Any USDA, APHIS Administrator, Inspector or its agents thereof.

**These prohibitions are in addition to the general prohibitions set forth in 36 CFR 261, Subpart A. The prohibitions will be in effect from the date of this order until specifically withdrawn by termination order of the Forest Supervisor.**

Dated this \_\_1st\_\_\_\_\_ day of \_\_\_\_\_November\_\_\_ 2004, at Escanaba, Michigan.

s/ *Thomas A. Schmidt* \_\_\_\_\_  
Thomas A. Schmidt  
Forest Supervisor  
Hiawatha National Forest

Violations of these prohibitions are punishable by a fine of not more than \$5,000 for an individual or \$10,000 for an organization, or imprisonment for not more than 6 months, or both. (16 U.S.C. 551 and 18 U.S.C 3559 and 3571).

**Definitions:**

**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.

Moving (movement, move, moved). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

**Quarantined area.** Any State, or any portion of a State, listed in Title 7 CFR Sec. 301.53-3(c) or otherwise designated as a quarantined area in accordance with Sec. 301.53-3(b).

**National Forest System.** Includes all national forest lands and waters reserved or withdrawn from the public domain of the United States and other lands acquired through purchase, exchange or other means.

**Forest Officer.** Means an employee of the USDA-Forest Service. (*A Forest Officer may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles.*)

**Permit.** Means authorization in writing from a Forest Officer or USDA-APHIS employee.

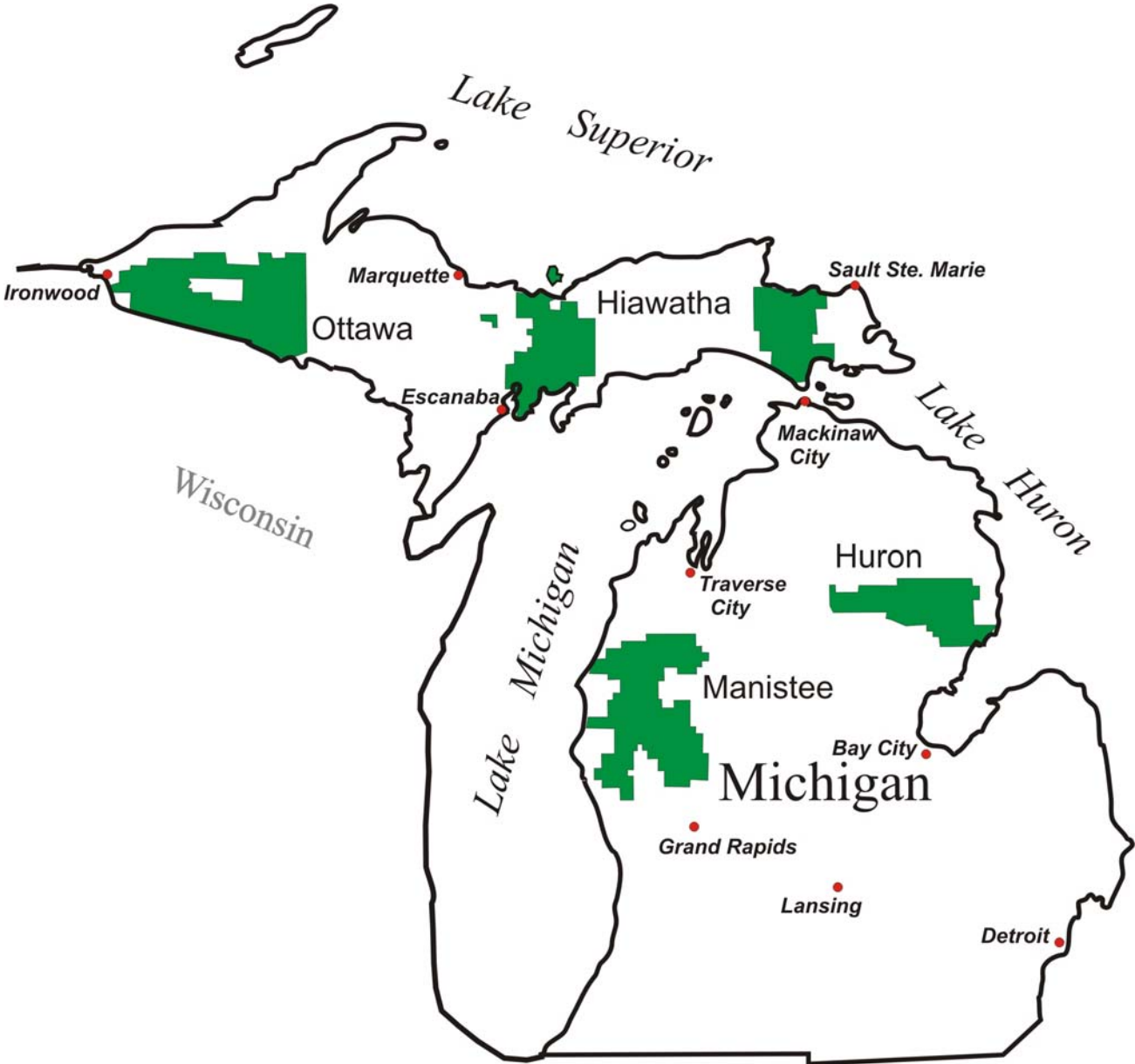
**The following are regulated articles:**

- a. The emerald ash borer; firewood of all hardwood species; nursery stock, green lumber with bark attached, and other material living, dead, cut, or fallen, including logs, stumps, roots, branches, and composted and uncomposted chips greater than 1" in diameter of the genus *Fraxinus* (Ash). Refer to Title 7 code of Federal Regulations (CFR), Part 301, Exhibit C
  1. Any cut firewood of any species originating from regulated areas. Refer to Michigan Department of Agriculture Pesticide and Plant Pest Management Division Emerald Ash Borer Interior Quarantine. (Revised July 15, 2004) Exhibit D.
- 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.

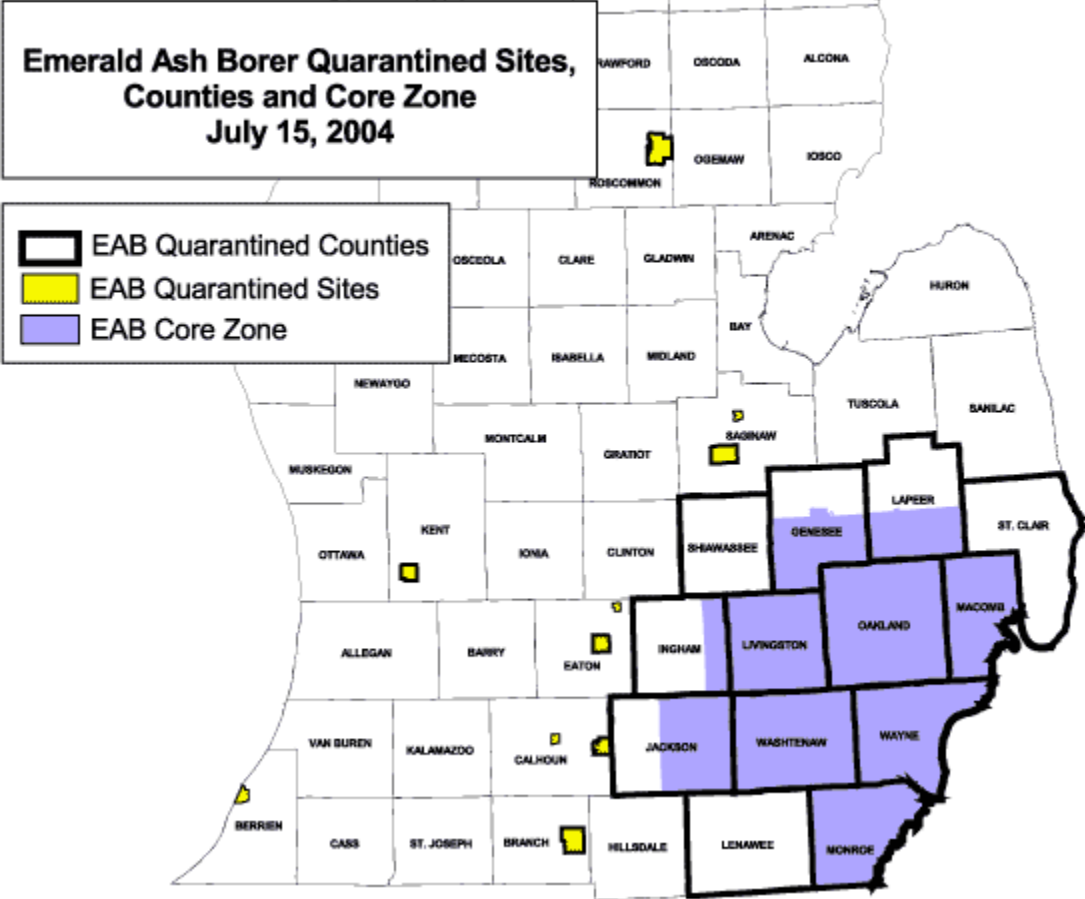
**Regulated articles may be moved interstate from a quarantined area only if moved under the following conditions:**

- a. With a certificate or limited permit issued and attached in accordance with Title 7 CFR Section 301.53-5 and 301.53-8;
- b. 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
- c. The article has not been combined or commingled with other articles so as to lose its individual identity.
- d. 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 rules established by USDA-APHIS at 7 CFR Part 301

**FOREST PROXIMTY MAP**



Michigan Map of Regulated Areas



Ohio Map of Regulated Areas  
Fulton, Lucas, Henry and Defiance Counties

**Emerald Ash Borer Quarantine Area Enclosed In Red**

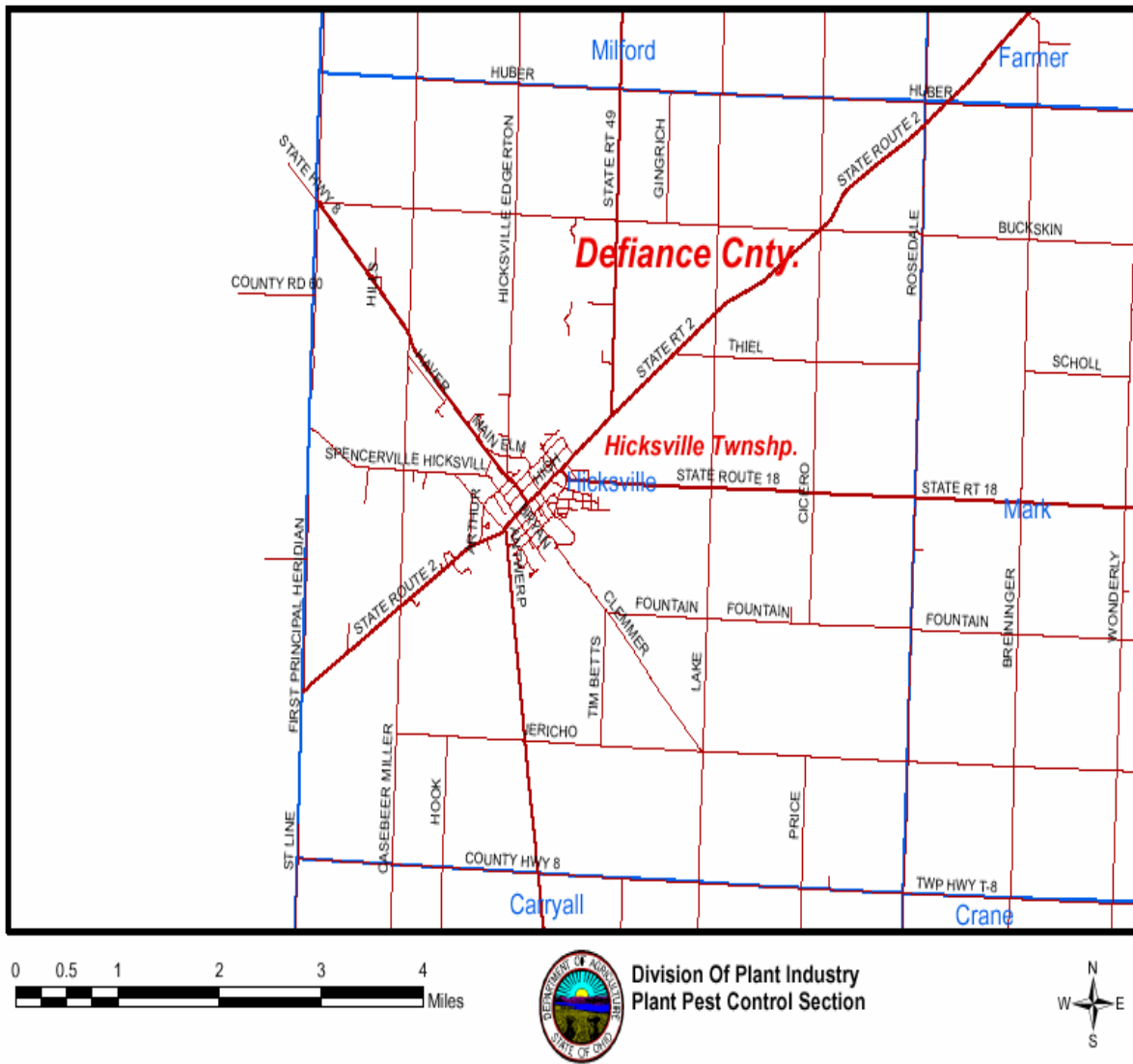


Division Of Plant Industry  
Cooperative Emerald Ash Borer Program



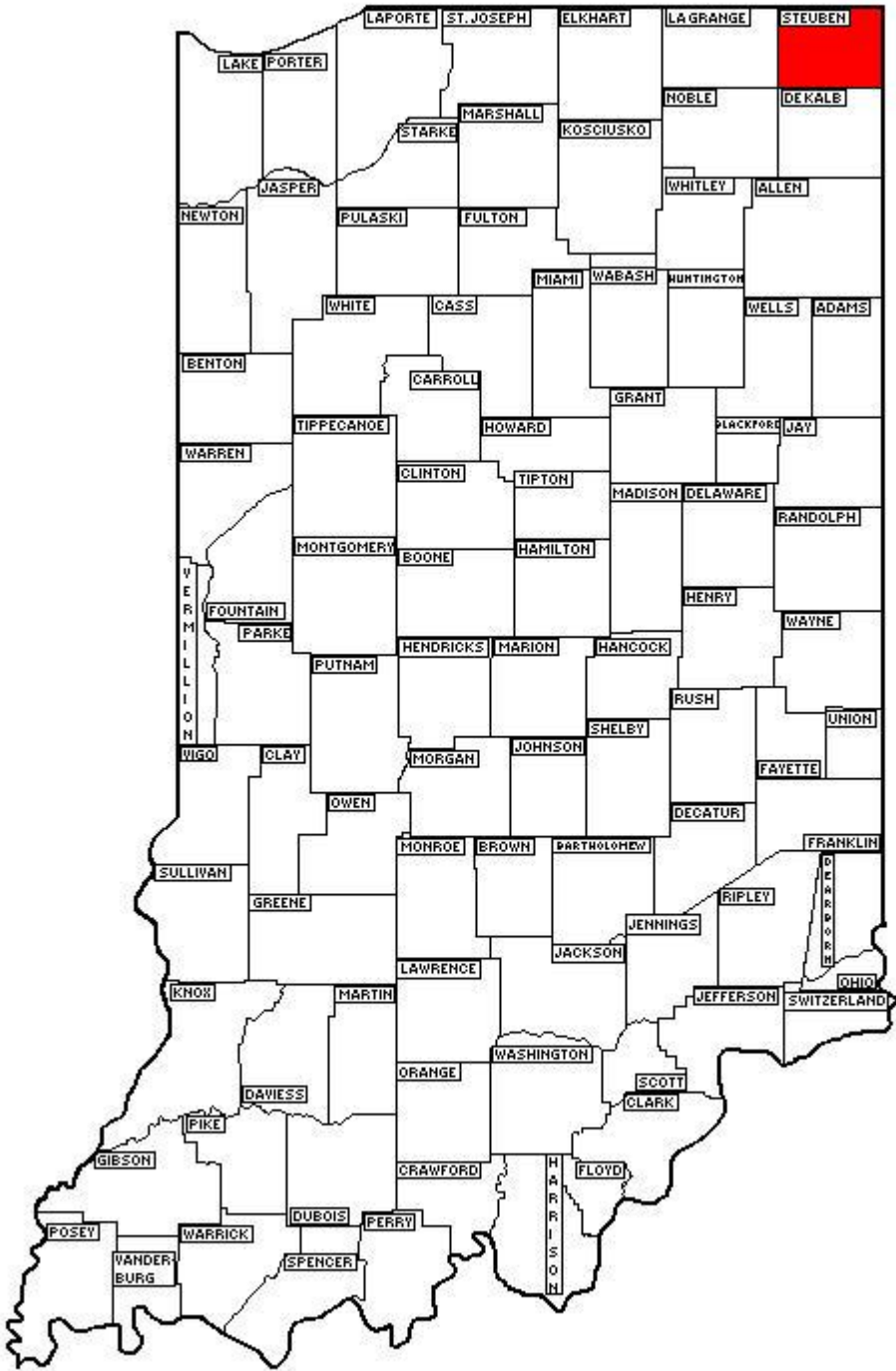
**Ohio Map of Regulated Areas**

**Emerald Ash Borer Quarantine In Hicksville Township, Defiance County**

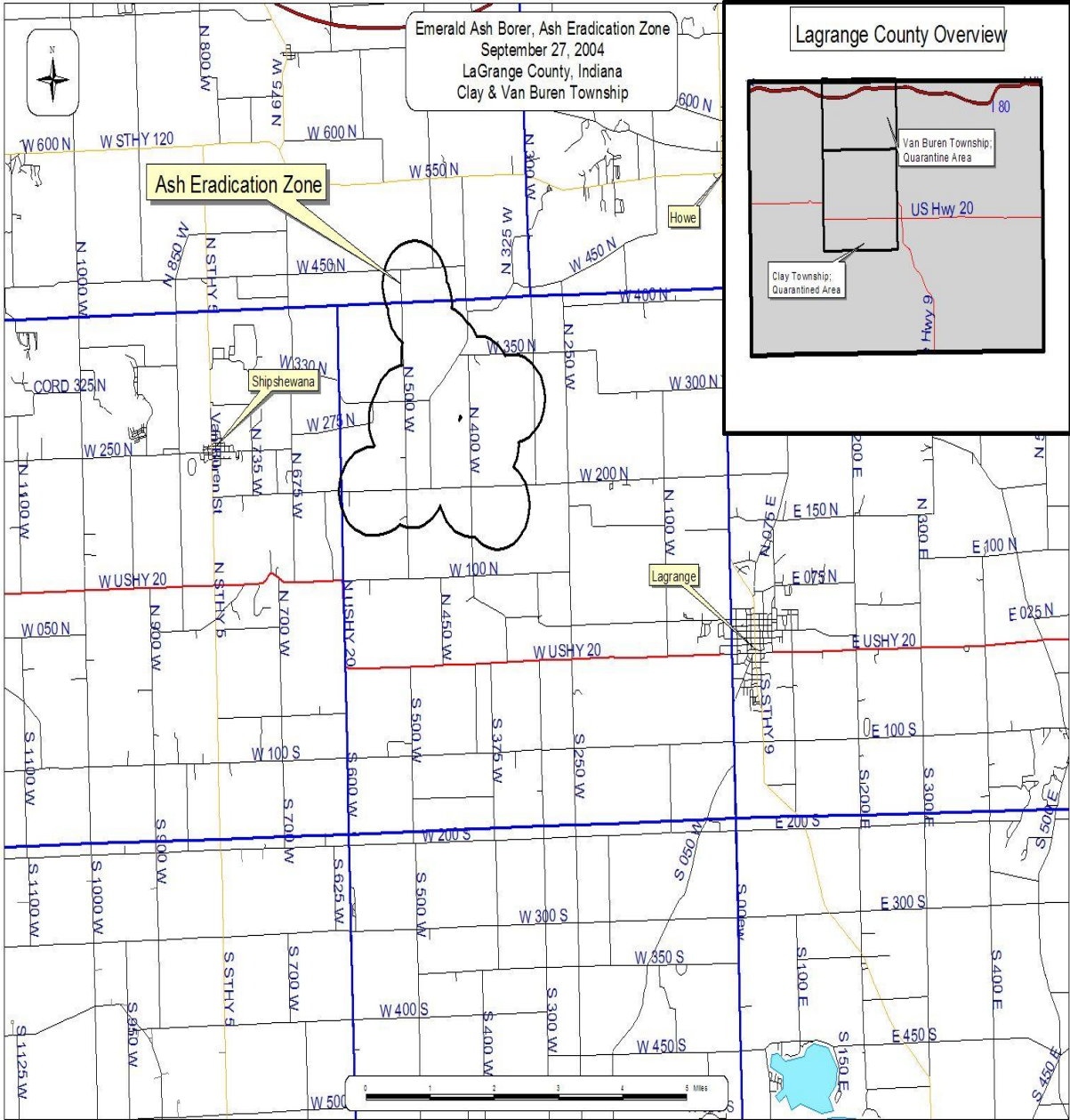




**State of Indiana**  
**Steuben Co. Map of Regulated Areas**




**State of Indiana**  
**LaGrange Co. Regulated Areas**



Emerald Ash Borer Quarantine, Revised July 15, 2004

Page 1 of 6

**MICHIGAN DEPARTMENT OF AGRICULTURE  
PESTICIDE AND PLANT PEST MANAGEMENT DIVISION  
EMERALD ASH BORER INTERIOR QUARANTINE**  
(Revised July 15, 2004)

**WHEREAS**, the Director, Michigan Department of Agriculture, having found that an exotic pest, known as the emerald ash borer, Coleoptera: Buprestidae: *Agilus planipennis*, has been detected in this state and has a limited distribution at this time; and 

**WHEREAS** the emerald ash borer has been found infesting and killing ash, *Fraxinus* spp. trees in certain counties and townships, and

**WHEREAS**, ash trees are a valuable resource for the nursery, landscaping and timber industries in Michigan; and

**WHEREAS**, ash trees represent a significant component of the natural environment in Michigan; and

**NOW, THEREFORE**, the Director of the Michigan Department of Agriculture by the authority of Act No. 72 of the Public Acts of 1945, as amended, and Quarantine Regulation No. 620, does promulgate this quarantine to prevent the further spread of this pest and sets forth: definitions, regulated articles, regulated areas, conditions of movement, violations and penalties, and special exemptions. This revised quarantine shall become effective immediately and will remain in effect until rescinded by the Director.

**I. DEFINITIONS.**

The following terms shall be construed to mean:

(A) **DIRECTOR** means the Director of the Michigan Department of Agriculture or his or her authorized representative.

(B) **INSPECTOR** means an employee of the Department of Agriculture authorized to enforce the provisions of this quarantine.

(C) **INFESTATION** means the presence of the ash borer or the existence of the circumstances that make it reasonable to believe that the ash borer is present.

(D) **CERTIFICATE** and **CERTIFICATE OF INSPECTION** mean a document issued or authorized to be issued by the Director, including state-issued certificates of quarantine compliance, state phytosanitary certificates and multiple-use quarantine certificates, to allow the movement of regulated articles to any destination.

(E) **COMPLIANCE AGREEMENT** means a written agreement between a person moving regulated articles and the Department of Agriculture wherein the former agrees to comply with the requirements of the agreement.

(F) **PERSON** means an individual, society, association, partnership, corporation or other organized entities.

(G) **MOVED (MOVE, MOVEMENT)** means shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved or shipped.

## II. REGULATED ARTICLES.

- (A) The emerald ash borer, Coleoptera: Buprestidae: *Agrilus planipennis*, in any living stage of development.
- (B) Entire ash (*Fraxinus* spp.) trees.
- (C) Ash limbs and branches.
- (D) Ash logs or untreated ash lumber with bark attached.
- (E) Uncomposted ash chips and uncomposted ash bark chips larger than 1 inch in diameter.
- (F) Any article, product or means of conveyance when it is determined by the Director to present the risk of spread of the emerald ash borer, Coleoptera: Buprestidae: *Agrilus planipennis*.
- (G) Any cut firewood of any species originating from regulated areas

## III. REGULATED AREAS.

The counties and portions of counties as listed below are designated as regulated areas, based on the confirmed presence of emerald ash borer, Coleoptera: Buprestidae: *Agrilus planipennis*. In addition any county or portion thereof where the presence of emerald ash borer, Coleoptera: Buprestidae: *Agrilus planipennis* is confirmed in the future, shall be considered a regulated area.

The Director may designate as regulated any area where the presence of emerald ash borer, Coleoptera: Buprestidae: *Agrilus planipennis*, has been confirmed. Thereafter, the movement of any regulated article from an area designated as a quarantined area will be subject to this quarantine. As soon as practicable, this area will be added to the list in this quarantine and the Director will post an update to the official listing of all regulated areas on the Michigan Department of Agriculture web site located at [www.michigan.gov/mda](http://www.michigan.gov/mda).

A current printed listing will also be available upon request at all Michigan Department of Agriculture Regional offices and through the Michigan Department of Agriculture Pesticide and Plant Pest Management Division Lansing Office P.O. Box 30017 Lansing, Michigan 48909, (517)373-1087.

### Berrien Co.

Quarantine Boundary - Berrien Co. St. Joseph area That area in St. Joseph Twp., the city of St. Joseph, the Village of Shoreham and Benton Twp.

in Berrien Co. that is bounded as follows: Beginning at the intersection of Interstate 94 and Maiden Lane; then west along Maiden Lane to where it intersects Red Arrow Highway; then continuing west along an imaginary line to Lake Michigan, passing at the south edge of properties known as Sunset Shores, Woodgate by the Lake, The Shores North and Shoreham Condominiums; then northeasterly along the Lake Michigan shoreline to the mouth of the St. Joseph River; then easterly along the southern shoreline of the St. Joseph River and continuing southeasterly along the west channel shoreline to a point opposite of West May St.; then east along an imaginary line across the St. Joseph River to West May St.; then east along West May St. to Windsor Rd.; then south and east along Windsor Rd. to the intersection of Colfax Ave.; then south along Colfax and continuing south along an imaginary line to Interstate 94 near Hollywood Rd.; then southwesterly along Interstate 94 to the point of beginning.

### Branch Co.

Quarantine Boundary – Branch Co. Quincy area

That area in the city of Coldwater, Coldwater Twp., Quincy Twp., Ovid Twp. and Algansee Twp. in Branch Co. that is bounded as follows: Beginning at the intersection of State Rd. and North Briggs Rd., then south along North Briggs Rd. to East Central Rd.; then west along East Central Rd. to North Wood Rd.; then north on North Wood Rd. to Dorrance Rd.; the west on Dorrance Rd. to North Fiske Rd.; then north on North Fiske Rd. to State Rd.; then east along State Rd. to the point of beginning.

Calhoun Co.

Quarantine Boundary – Calhoun Co. Albion area

That area in Albion Twp., the city of Albion and Sheridan Twp. in Calhoun Co. that is bounded as follows: Beginning at the intersection of 27 Mile Rd and D Drive North; then east along D Drive North to the point where it intersects the Calhoun Co.-Jackson Co. boundary line; then south along an imaginary line to D Drive South; then west along D Drive South to 25 1/2 Mile Rd, then northeast along 25 1/2 Mile Rd to B Drive South; then continuing west along B Drive South to the north portion of 25 1/2 Mile Rd; then north along 25 1/2 Mile Rd. to B Drive North; then east along B Drive North to 26 1/2 Mile Rd.; then north along 26 1/2 Mile Rd. to C Drive North; then east along C Drive North to 27 Mile Rd.; then north along 27 Mile Rd. to the point of beginning.

Quarantine Boundary – Calhoun Co. Marshall area

That area in Marshall Twp. and the city of Marshall in Calhoun Co. that is bounded as follows: Beginning at the intersection of F Drive North and 15 mile Rd.; then south along 15 mile Rd. to where it ends at C Drive North; then continuing south along an imaginary line to A Drive North; then east along A Drive North and continuing along West Hughes St. past Interstate 69 to the intersection of South Kalamazoo St./M-227; then north along South Kalamazoo St./M-227 past business loop 94 and continuing north along that same street to where it becomes Old US 27 North; then continuing north along Old US-27 North to the intersection of F Drive North; then east along F Drive North to the point of beginning.

Eaton Co.

Quarantine Boundary – Eaton Co. Delta Twp. area

That area in Delta Twp. in Eaton Co. that is bounded as follows: Beginning at the intersection of Nixon Rd. and Willow Hwy; then east along Willow Hwy. to North Canal Rd.; then south along North Canal Rd. to East Saint Joseph Hwy.; then west along East Saint Joseph Hwy. to Upton Rd.; then north along Upton Rd. to East Saginaw Hwy.; then west along East Saginaw Hwy. to Nixon Rd.; then north to the point of beginning.

Quarantine Boundary - Eaton Co. Potterville area

That area in Benton Twp., Eaton Twp. and the city of Potterville in Eaton Co. that is bounded as follows: Beginning at the intersection of Otto Rd. and East Gresham Hwy; then east along East Gresham Hwy. to North Royston Rd.; then south along North Royston to Interstate 69; then continuing south along an imaginary line to the intersection of Vermontville Rd. and the southern portion of North Royston Rd.; then continuing south along North Royston to Packard Hwy; then west along Packard Hwy. to Otto Rd.; then north along Otto Rd. to the point of beginning.

Genessee Co. - the entirety

Ingham Co. – the entirety

Jackson Co. – the entirety

Kent Co.

Quarantine Boundary – Kent Co. Kentwood/Wyoming area

That area in the city of Kentwood, the city of Wyoming, Byron Twp. and Gaines Twp. in Kent Co. that is bounded as follows: Beginning at the intersection of 36<sup>th</sup> St. SW and Byron Center Ave. SW; then east along 36<sup>th</sup> St. SW, past US 131, and continuing along 36<sup>th</sup> St. SE then 36<sup>th</sup> St. SW to Eastern Ave. SE; then south along Eastern Ave. SE to 68<sup>th</sup> St. SW; then west along 68<sup>th</sup> St. SW past US 131 to Burlingame Ave. SW; then north along Burlingame Ave. SW to 64<sup>th</sup> St. SW; then west along 64<sup>th</sup> St. SW to Byron Center Ave. SW; then north along Byron Center Ave. SW to the point of beginning.

Lapeer Co. – the entirety

Lenawee Co. – the entirety

Livingston Co. - the entirety

Macomb Co.- the entirety

Monroe Co.- the entirety

Oakland Co.- the entirety

Roscommon Co.

Quarantine Boundary - Roscommon Co. St. Helen area

That area in Richfield Twp. in Roscommon Co. that is bounded as follows: Beginning at the intersection of Marl Lake Rd. and North St. Helen Rd.; then south to the intersection of School Rd.; then easterly along School Rd. to Meridian Rd.; then south on Meridian Rd. to Carter Lake Rd.; then west on Carter Lake Rd. to M-76; then south on M-76 to Interstate 75; then west along Interstate 75 to where it intersects Maple Valley Rd.; then north along Maple Valley Rd. to the shore of Lake St. Helen; then continuing north along an imaginary line across the lake to a point on the shoreline; then east along the south boundary of Section 18 to where it intersects Moore Rd.; then northerly along Moore Rd. to Marl Lake Rd.; then east on Marl Lake Rd. to the point of beginning.

Saginaw Co.

Quarantine Boundary – Saginaw Co. St. Charles area

That area in St. Charles Twp., the Village of St. Charles, Brant Twp. and Thomas Twp. In Saginaw Co. that is bounded as follows: Beginning at the intersection of South Raucholz Rd. and Marion Rd.; then east along Marion Rd. to where it intersects M-52; then continuing east along an imaginary line to West Birch Run Rd.; then continuing east to Turner Rd.; then north along Turner Rd. to Ryan Rd. then continuing north along an imaginary line to the boundary line between St. Charles and James Twp.; then west along an imaginary line to West Townline Rd.; then continuing west along West Townline Rd. to South Raucholz Rd.; then south along South Raucholz Rd. to the point of beginning.

Quarantine Boundary – Saginaw Co. Shields area

That area in Thomas Twp. in Saginaw Co. that is bounded as follows: Beginning at the intersection of Kennely Rd. and Geddes Rd.; then east along Geddes Rd. to North River Rd.; then southerly along North River Rd. and continuing along South River Rd. to Dutch Rd.; then west along Dutch Rd. to South Miller Rd.; then south along South Miller Rd. to Ederer Rd.; then west along Ederer Rd. to Van Wormer Rd; then northerly along Van Wormer Rd. to Gratiot Rd.(M46); then west along Gratiot Rd. (M46) to Kennely Rd.; then north, west and then north again along Kennely Rd. to the point of beginning.

Saint Clair Co.- the entirety

Shiawassee Co.- the entirety

Washtenaw Co.- the entirety

Wayne Co.- the entirety

#### **IV. CONDITIONS OF MOVEMENT OF REGULATED ARTICLES.**

(A) Movement of the regulated articles from any regulated area to any destination outside the regulated area is prohibited, except under the following conditions:

1. A thorough examination of all regulated articles and treatment methods must take place. A certificate of inspection may be issued based upon the determination by the inspector, grower, or shipper authorized to conduct such inspection under a Compliance Agreement, that no life stages of emerald ash borer, Coleoptera: Buprestidae: *Agrilus planipennis* are present; based on conditions or treatments administered in accordance with methods approved by the Director.

2. The certificate of inspection shall be attached to the regulated articles, and shall remain on the regulated articles until such articles reach their final destination, except when the certificate of inspection is attached to the shipping document and the regulated article is adequately described on the shipping document or on the certificate of inspection.

(B) All regulated articles originating outside the regulated area may move through the regulated area without a certificate of inspection for this pest, under the following conditions:

1. Passage through the regulated area is made during the period of September 1 through April 30 or when the ambient air temperature is below 40 degrees F. and passage is made without stopping except to refuel or for traffic conditions; or during the period of May 1 through August 31 when the temperature is 40 degrees F. or higher if the articles are shipped in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by the emerald ash borer, Coleoptera: Buprestidae: *Agrilus planipennis*.

2. The point of origin of the regulated article must be indicated on the bill of lading or shipping documents.

(C) Regulated articles originating outside any regulated area which are moved into the regulated area and exposed to potential infestation by emerald ash borer, Coleoptera: Buprestidae: *Agrilus planipennis*, shall be considered to have originated from a regulated area. These regulated articles may only be moved from the regulated area under the conditions noted in IV (A) above.

(D) Movement of regulated articles from any regulated area through any non-regulated area to a regulated destination is prohibited without a certificate of inspection for this pest, except under the following conditions:

1. Passage through a non-regulated area is made during the period of Sept. 1 through April 30 and the passage is made without stopping except for refueling or for traffic conditions; or during the period of May 1 through August 31 if the articles are shipped in an enclosed vehicle or completely enclosed by a covering adequate to prevent the escape of any emerald ash borer, Coleoptera: Buprestidae: *Agrilus planipennis*

2. The county and state of origin and the final destination of the regulated articles must be indicated on the bill of lading or shipping documents.

(E) The bill of lading or shipping documents accompanying any shipment of regulated articles within or through Michigan shall indicate the county and state of origin of the regulated articles.

(F) The sale and movement of all ash nursery stock within, out of or into Michigan's Lower Peninsula is prohibited. This area consists of those 68 contiguous Michigan counties lying between the Michigan-Indiana/Ohio state line to the south and the northernmost point of Emmett County to the north.

(G) There exists a core area, which as the result of survey information, is considered generally infested with emerald ash borer. Movement of regulated articles from areas within the core area into any other area is prohibited, except as noted in section IV (A) above. The following counties and townships define this core area:

Genessee Co.: Argentine, Atlas, Clayton, Davison, Fenton, Flint, Gaines, Grand Blanc and Mundy townships including all cities and villages within the boundaries of these townships; and, including the entire City of Flint.

Ingham Co.: Leroy, Locke, Stockbridge and White Oak townships including all cities and villages within the boundaries of these townships.

Jackson Co.: Blackman, Columbia, Grass Lake, Henrietta, Leoni, Liberty, Napoleon, Norvell, Rives, Summit and Waterloo townships including all cities and villages within the boundaries of these townships.

Lapeer Co.: Almont, Attica, Dryden, Elba, Hadley, Imlay, Lapeer and, Metamora townships including all cities and villages within the boundaries of these townships; and, including the entire City of Lapeer.

Livingston Co.: the entire county including all cities and villages within the boundaries of the county.

Macomb Co.: the entire county including all cities and villages within the boundaries of the county.

Monroe Co.: the entire county including all cities and villages within the boundaries of the county.

Oakland Co.: the entire county including all cities and villages within the boundaries of the county.

Washtenaw Co.: the entire county including all cities and villages within the boundaries of the county.

Wayne Co.: the entire county including all cities and villages within the boundaries of the county.

For restriction on the movement of all ash nursery stock see section IV (F) above.

## **V. VIOLATIONS AND PENALTIES.**

(A) Any regulated article from the quarantined area, moved within Michigan in violation of this quarantine shall be removed from the non-regulated area immediately or destroyed at the expense of the owner or owners, under the direction of the Director.

(B) Any violation of this quarantine is subject to the full authority of Act No. 72, Public Acts of 1945, as amended.

## **VI. SPECIAL EXEMPTIONS.**

(A) The Director may allow, with written approval, the movement of emerald ash borer, Coleoptera: Buprestidae: *Agrilus planipennis*, into or within Michigan for research purposes.

(B) Uncomposted ash chips and uncomposted ash bark chips 1 inch and smaller in diameter are not considered to be regulated articles under this quarantine and therefore are exempt from the conditions of movement prescribed.

Dan Wyant, Director



## Ohio Quarantine Restrictions

### **901:5-56-01 Definitions.**

(A) As used in rules 901:5-56-01 through 901:5-56-03:

(1) "Certificate of inspection" means a document issued by a person authorized by a governmental agency to issue the document, verifying that a regulated article has been inspected and complies with the requirements for movement from, into, through, or within a regulated or quarantined area.

(2) "Compliance agreement" means a written accord between the Ohio department of agriculture and a person subject to a quarantine, containing the requirements the person must comply with in order to move regulated articles from, into, through, or within a regulated or quarantined area.

(3) "Emerald ash borer" means the insect Coleoptera: Buprestidae: Agrilus planipennis in any living stage.

(4) "Infestation" means the presence of emerald ash borer or circumstantial evidence of its presence.

(5) "Person" means person as defined in division (C) of section 1.59 of the Revised Code.

(6) "Regulated area" means the portion of a quarantined area to which application of a quarantine is limited.

(7) "Regulated article" means any item, combination of items, or means of conveyance determined by the director of agriculture to be capable of or have the potential to harbor, spread, or assist in the spreading of emerald ash borer.

**HISTORY: Eff 9-16-03 (Emer.)**

Rule promulgated under: RC 119.03

Rule authorized by: RC 927.71

Rule amplifies: RC 927.71

### **901:5-56-02 Emerald ash borer quarantine.**

(A) In order to retard and prevent the spread of the emerald ash borer into the state of Ohio, the state of Michigan is quarantined. No person shall import or cause to be imported into the state of Ohio or move through the state of Ohio a regulated article from the state of Michigan except in accordance with the provisions of this chapter.

(B) In order to retard and prevent the spread of the emerald ash borer throughout the state of Ohio, the state of Ohio is quarantined, and within the state of Ohio the township of Hicksville, county of Defiance is designated a regulated area. No person shall move from, move within, or move through the regulated area a regulated article except in accordance with the provisions of this chapter.

(C) Under authority of division (B) of section 927.71 of the Revised Code the director of the Ohio department of agriculture may extend the regulated area to include any additional portions of the state of Ohio upon publication of notice of the extension in newspapers he selects.

**HISTORY: Eff 9-16-03 (Emer.)**

Rule promulgated under: RC 119.03

Rule authorized by: RC 927.71

Rule amplifies: RC 927.71

## Ohio Quarantine Restrictions

### **901:5-56-03 Regulated articles and quarantine restriction.**

(A) The following are regulated articles subject to the quarantine established in rule 901:5-56-02 of this chapter:

- (1) Ash trees (*Faxinus* spp.) of any size;
- (2) Limbs, branches, and firewood cut from ash trees;
- (3) Bark from ash trees and wood chips larger than one-half inch from ash trees;
- (4) Ash logs and lumber with either the bark or the outer one inch of sapwood or both, attached;
- (5) Any item made from or containing the wood of the ash tree which is capable of spreading the emerald ash borer; and,
- (6) Any means of conveyance which is capable of spreading the emerald ash borer.

(B) No person shall move or cause to be moved a regulated article from, within, or through a regulated area unless the person has first entered into a compliance agreement with the Ohio department of agriculture and the regulated article is accompanied by a certificate of inspection verifying that the regulated article has been inspected and found to be free of infestation.

Notwithstanding paragraph (D) of this rule, no person shall move or cause a regulated article to be moved into the state of Ohio from the state of Michigan unless the person has first entered into a compliance agreement with the Ohio department of agriculture and the regulated article is accompanied by a certificate of inspection verifying that the regulated article has been inspected and found to be free of infestation.

No person shall dispose of a regulated article except in a manner prescribed in a compliance agreement.

(C) The purpose of a compliance agreement is to permit utilization of a regulated article by a person affected by the quarantine in a manner that prevents the spread of the emerald ash borer.

A compliance agreement shall take into consideration the nature of the regulated article and its proposed use. The compliance agreement may require and specify the manner in which a regulated article is harvested, treated, stored, moved, processed, or disposed. The compliance agreement may contain any other requirements that the Ohio department of agriculture determines are necessary to ensure that the purpose of the quarantine is not compromised.

(D) Regulated articles originating outside a regulated area may move through a regulated area without a compliance agreement and certificate of inspection:

- (1) Between April 2nd. and September 29th. if the regulated article is either fully enclosed in the transporting vehicle, or the regulated article is fully covered with a tarpaulin or other device which will prevent infestation of the regulated article; and,
- (2) Between September 30th. and April 1st. with no enclosure or covering required; and,
- (3) The vehicle only stops to refuel, and for appropriate traffic control signals and signs.

(E) Regulated articles originating outside a regulated area which are moved into a regulated area between April 15th. and September 15th., other than as provided in paragraph (D)(1) of this rule, and remaining in the regulated area shall be subject to regulation in the same manner as regulated articles originating in a regulated area.

### **HISTORY: Eff 9-16-03 (Emer.)**

Rule promulgated under: RC 119.03

Rule authorized by: RC 927.71

Rule amplifies: RC 927.71

**Ohio Quarantine Restrictions**

**PUBLIC NOTICE**

Under authority of Section 921.71 of the Revised Code, The Department of Agriculture of the State of Ohio has placed the state of Ohio under quarantine in an effort to prevent the spread of the Emerald Ash Borer. The quarantine's restrictions are limited to specific areas of the State of Ohio, designated as regulated areas, where infestation has been confirmed. The regulated area within the Emerald Ash Borer quarantine currently includes Hicksville Township in Defiance County and portions of Swanton Township, Springfield Township, and Monclova Township in Lucas County. Infestation has now been confirmed in parts of Fulton County. **NOTICE** is hereby given that, under authority of paragraphs (B)(1) and (B)(2) of Section 921.71 of the Revised Code, the following areas are designated as regulated areas in Fulton County, Ohio: Fulton Township east of Township Road 5, and Swan Creek Township north of County Road B and east of County Road 5, as projected north to the township line, effective immediately.

Accordingly, no person shall move from, within or through the regulated areas any regulated article except in accordance with rule 901:5-56-03 of the Ohio Administrative Code, which may be viewed at the following website: <http://www.ohioagriculture.gov/pubs/divs/plnt/curr/rules/plnt-901-5-56.pdf> or at any public library in Ohio.

## Indiana Quarantine Restrictions

### TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-264(E)

#### DIGEST

Temporarily modifies 312 IAC 18-3 under the article pertaining to entomology and plant pathology to regulate the emerald ash borer (*Agrilus planipennis*) as a pest or pathogen. Provides standards for quarantine in Jamestown Township in Steuben County, Clay Township and Van Buren Township in LaGrange County, that is infested with the species. Adds definition of "eradication area" This document repeals LSA Document #04-152(E) printed at 27 IR 3089.

**SECTION 1. (a) Emerald ash borer (Coleoptera: Buprestidae: *Agrilus planipennis*) is a pest or pathogen and is regulated under this document.**

**(b) These terms apply to this document and are in addition to definitions contained in 312 IAC 1 and 312 IAC 18-1:**

- (1) "Certificate of inspection" means a document issued or authorized to be issued by the state entomologist or the US Department of Agriculture to allow the movement of a regulated article to any destination. A certificate may be in any form approved by the state entomologist or the US Department of Agriculture for this purpose, including a phytosanitary document or multiple use quarantine certificate.
- (2) "Compliance agreement" means a written agreement between the department or the U.S. Department of Agriculture and another person that authorizes the movement of regulated articles under this section and other stated conditions.
- (3) "Eradication area" means the area including all plants infected by emerald ash borer and any other ash species within one-half (½) mile radius of an infected plant.
- (4) "Infested area" means a site where the emerald ash borer is present or where circumstances make it reasonable to believe that the ash borer is present.
- (5) "Inspector" means a division inspector or a person authorized by the U.S. Department of Agriculture authorized to enforce this section.
- (6) "Move" means to ship, offer for shipment, receive for transportation, transport, carry, or allow to move or to ship.

**(c) The following counties include an infested area and are regulated under this document:**

- (1) Jamestown Township, Steuben County;
- (2) Clay Township, LaGrange County; and
- (3) Van Buren Township, LaGrange County.

**(d) The following items are regulated articles:**

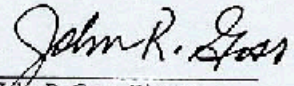
- (1) The emerald ash borer in any living stage of development.
- (2) Any ash tree (*Fraxinus* spp.), including nursery stock.
- (3) A limb, stump, branch, or debris of at least one (1) inch in diameter of an ash tree.
- (4) An ash log, slab, or untreated ash lumber with bark attached.
- (5) Composted and non-composted ash chips and composted and non-composted ash bark chips at least one (1) inch in diameter.
- (6) An article, product, or means of conveyance reasonably determined by the state entomologist to present the risk of spread of the emerald ash borer.


- (7) Cut firewood of any non-coniferous species originating from a regulated area.
- (e) A person must not move a regulated article outside an infested area except under the following conditions:
- (1) An inspector issues a certificate of inspection following a thorough examination of the regulated article and any treatment method. The certificate must be properly supported by a determination by the inspector, or by a grower or shipper authorized to conduct an inspection under a compliance agreement, that no life stage of emerald ash borer is present. A certificate may be conditioned upon the completion of treatments administered under methods approved by the state entomologist or by a United States federal officer authorized by the state entomologist.
  - (2) A certificate of inspection is attached to any regulated article or to a shipping document that adequately describes the regulated article. The certification must remain attached until the regulated article reaches its destination.
- (f) A person must not move a regulated article originating outside an infested area, through a county regulated under subsection (c), without a certificate of inspection for the emerald ash borer, except under the following conditions:
- (1) From September 1 through April 30, or when the ambient air temperature is below 40 degrees F., if the person does not stop except to refuel or for traffic conditions.
  - (2) From May 1 through August 31 when the temperature is 40 degrees F. or higher if the article is shipped in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by the emerald ash borer.
  - (3) The point of origin of the regulated article is indicated on the bill of lading or shipping document.
  - (4) The regulated article is moved within Indiana by approval of the state entomologist for scientific purposes.
  - (5) The article is not combined or commingled with other articles so as to lose its individual identity.
- (g) A regulated article originating outside a regulated area that is moved into a county regulated under subsection (c) and exposed to potential infestation by the emerald ash borer is considered to have originated from a regulated area. A person must not move the regulated article from the regulated area except under subsection (e).
- (h) A person must not move a regulated article from an infested area through any non-regulated area to a regulated destination without a certificate of inspection for emerald ash borer, except under the following conditions:
- (1) From September 1 through April 30, or when the ambient air temperature is below 40 degrees F., if the person does not stop except to refuel or for traffic conditions;
  - (2) From May 1 through August 31 when the temperature is 40 degrees F. or higher, if the article is shipped in an enclosed vehicle or completely enclosed by a covering adequate to prevent the escape of any emerald ash borer.
  - (3) The county and state of origin and the final destination of the regulated article is indicated on the bill of lading or shipping document.
- (i) The bill of lading or shipping document accompanying any shipment of regulated articles in Indiana must indicate the county and state of origin of the regulated articles.
- (j) A person who moves a regulated article in violation of this section must move or destroy the article, at the person's or owner's expense, as directed by the state entomologist.
- (k) The state entomologist may issue a special permit for the movement of the emerald ash borer into or within Indiana for research purposes. The permit may, by express language, exempt the permit holder from conditions of this document.

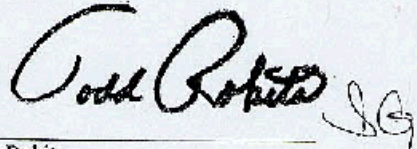
- (l) Uncomposted ash chips and uncomposted ash bark chips no larger than one (1) inch in diameter are exempted from the requirements of this document.
- (m) Any ash species within the eradication area will be removed and rendered incapable of supporting emerald ash borer life stages.
- (n) Regulated articles from another infested state or any part of a state infested with emerald ash borer are prohibited entry into Indiana without an accompanying certificate of inspection or phytosanitary document issued by the US Department of Agriculture or the plant health regulatory agencies of the originating state.
- (o) Harvest for timber or other use of the wood of any non ash forest species within the eradication area is prohibited until after all ash has been removed and the site is released by the state entomologist or his designee.
- (p) It is a violation of this section to move ash, in any form, out of the eradication area without a compliance agreement signed by the state entomologist or his designee.

SECTION 2. LSA Document #04-152(E) is repealed.

SECTION 3. SECTION 1 of this document expires the earlier of September 29, 2005, or the effective date of LSA Document #04-177.

  
John R. Goss, Director  
Department of Natural Resources  
DATE:

  
Legislative Services Agency  
DATE: 9/29/2004

  
Todd Rokita  
Secretary of State  
DATE: 9/29/04  
12:20pm

**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*. 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 woodboring  
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 firewood 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 from 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 trees 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. Countyspecific 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 a 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 axis*), 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 1 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       |

1 Stumpage value refers to the commercial value of trees standing in the forest. Stumpage price may

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

<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.

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

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 (*Agilus 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 1 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) 2 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

(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 3 if such persons review with

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 4 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

1 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.

2 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).

3 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

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. 4 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**

---