

(4) Public utilities;  
 (5) Transmitting utilities or electric utilities engaged in the wholesale sale or transmission of electricity or having obtained an interconnection or wheeling order under part II of the Federal Power Act;

(6) Liquefied natural gas terminals as defined by section 3 of the Natural Gas Act; or

(7) Parent companies of an entity identified in paragraphs (a)(1) through (a)(6) of this section.

(b) *Prohibited securities list.* A prohibited securities list shall be maintained, published, and distributed by the Office of the General Counsel's General and Administrative Law section, updated annually or on a more frequent basis to include entities that meet the criteria in paragraph (a) or are otherwise subject to the Commission's jurisdiction and to remove entities that do not raise impartiality concerns after considering the above criteria.

(c) *Exception.* Nothing in this section prohibits an employee, or the spouse or minor child of an employee, from acquiring or holding an interest in a publicly traded or publicly available mutual fund or other collective investment fund, or in a widely held pension or mutual fund, provided:  
 (1) That the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund; or (2) that the fund's prospectus or practice does not indicate the stated objective of concentrating its investments in entities identified in paragraphs (a)(1) through (a)(7) of this section.

(d) *Reporting and divestiture—*  
 (1) *Reporting of prohibited securities.* An employee must promptly report in writing to the DAEO any acquired interest prohibited under paragraphs (a) and (b) of this section. New employees must report in writing to the DAEO prohibited financial interests within 30 days of commencement of employment. Prohibited financial interests acquired after employment commences and without specific intent, such as through gift, inheritance, or marriage, must be reported in writing to the DAEO within 30 days of acquisition of such interest.

(2) *Divestiture of prohibited securities.* A prohibited financial interest must be divested within 90 days from the date divestiture is ordered by the DAEO unless the employee obtains a written waiver from the DAEO in accordance with this section.

(3) *Disqualification pending divestiture.* Pending divestiture of prohibited securities, an employee must disqualify himself or herself, in accordance with 5 CFR 2635.402 and

3401.103, from participating in particular matters which, as a result of continued ownership of prohibited securities, could affect the financial interests of the employee or those of the spouse or minor child of the employee. Disqualification is not required where a waiver described in § 2635.402(d) applies.

(4) *Tax treatment of gain on divested securities.* Where divestiture is required by this section, the employee or the spouse or minor child of an employee may be eligible to defer the tax consequences of divestiture by obtaining a Certificate of Divestiture from the Director of the Office of Government Ethics before selling the securities in accordance with subpart J of 5 CFR part 2634.

(e) *Waiver.* The DAEO may grant a written waiver from this section based on a determination that the waiver is not inconsistent with 5 CFR part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of an employee's misuse of position or loss of impartiality, or to otherwise ensure confidence in the impartiality and objectivity with which the Commission's programs are administered, or in the case of a special Government employee, divestiture would result in substantial financial hardship. A waiver under this paragraph must be in writing and may impose appropriate conditions, such as requiring execution of a written disqualification.

(f) *Definitions.* For the purposes of this section:

(1) The term *securities* includes an interest in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets, and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(2) The term *parent* means a company that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of an entity identified in paragraphs (a)(1) through (a)(6) of this section.

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS-2009-0014]

#### Asian Longhorned Beetle; Additions to Quarantined Areas in Massachusetts and New York

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

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

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the Asian longhorned beetle (ALB) regulations by adding a portion of Worcester County, MA, to the list of quarantined areas and updating the description of the quarantined area in the Borough of Staten Island in the City of New York, NY. The interim rule, which restricted the interstate movement of regulated articles from these areas, was necessary to prevent the artificial spread of ALB to noninfested areas of the United States.

**DATES:** Effective on January 10, 2011, we are adopting as a final rule the interim rule published at 74 FR 57243-57245 on November 5, 2009.

**FOR FURTHER INFORMATION CONTACT:** Dr. Brendon Reardon, National Program Manager, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737-1231; (301) 734-5705.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Asian longhorned beetle (ALB, *Anoplophora glabripennis*), an insect native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. It attacks many healthy hardwood trees, including maple, horse chestnut, birch, poplar, willow, and elm. In addition, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and wood debris of half an inch or more in diameter are subject to infestation. The beetle bores into the heartwood of a host tree, eventually killing the tree. Immature beetles bore into tree trunks and branches, causing heavy sap flow from wounds and sawdust accumulating at tree bases.

The regulations in 7 CFR 301.51-1 through 301.51-9 restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of ALB to noninfested areas of the United States.

In an interim rule<sup>1</sup> effective and published in the **Federal Register** on November 5, 2009 (74 FR 57243–57245, Docket No. APHIS–2009–0014), we amended the regulations by adding a portion of Worcester County, MA, to the list of quarantined areas in § 301.51–3(c) and by updating the description of the quarantined area in the Borough of Staten Island in the City of New York, NY.

Comments on the interim rule were required to be received on or before January 4, 2010. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

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

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

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

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

#### PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 74 FR 57243–57245 on November 5, 2009.

Done in Washington, DC, this 4th day of January 2011.

**Kevin Shea,**

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

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#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS–2008–0072]

#### Emerald Ash Borer; Quarantined Areas; Maryland, Michigan, Minnesota, Missouri, Pennsylvania, Virginia, West Virginia, and Wisconsin

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

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

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the regulations to add areas in Maryland, Michigan, Minnesota, Missouri, Pennsylvania, Virginia, West Virginia, and Wisconsin to the list of areas quarantined because of emerald ash borer (EAB). The interim rule was necessary to prevent the artificial spread of EAB into noninfested areas of the United States. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted.

**DATES:** Effective on January 10, 2011, we are adopting as a final rule the interim rule published at 74 FR 47999–48001 on September 21, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Chaloux, National Program Coordinator, Emerald Ash Borer Program, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1231; (301) 734–0917.

#### SUPPLEMENTARY INFORMATION:

##### Background

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

The EAB regulations in 7 CFR 301.53–1 through 301.53–9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of EAB to noninfested areas of the United States.

In an interim rule<sup>1</sup> effective and published in the **Federal Register** on September 21, 2009 (74 FR 47999–48001, Docket No. APHIS–2008–0072), we amended § 301.53–3(c) to add portions of Maryland, Michigan, Minnesota, Missouri, Pennsylvania, Virginia, West Virginia, and Wisconsin to the list of areas quarantined for EAB.

Comments on the interim rule were required to be received on or before November 20, 2009. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are

adopting the interim rule as a final rule without change.

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

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

#### Regulatory Flexibility Act

This rule affirms an interim rule that amended the EAB regulations by adding areas in Maryland, Michigan, Minnesota, Missouri, Pennsylvania, Virginia, West Virginia, and Wisconsin to the list of areas quarantined because of EAB.

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

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

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

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

<sup>1</sup>To view the interim rule, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0014>.

<sup>1</sup>To view the interim rule, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0072>.