

tree pests and its hardness in urban environments.

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

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

Definitions

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

Regulated Articles

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

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

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

Quarantined Areas

In § 301.53–3, paragraph (a) provides that the Administrator will quarantine each State or portion of a State in which EAB has been found by an inspector, in which the Administrator has reason to believe that EAB is present, or which the Administrator deems necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where EAB has been found. Less than an entire State will be designated as a quarantined area only under certain conditions. Such a designation may be made if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles listed in § 301.53–2 that are equivalent to the interstate movement restrictions imposed by the regulations in §§ 301.53–1 through 301.53–9; and (2) the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of the EAB.

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

terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

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

Interstate Movement of Regulated Articles From Quarantined Areas

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

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

Certificates and Limited Permits

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