

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

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of EAB into noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

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

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

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

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

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

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

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

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

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