

# Rules and Regulations

Federal Register

Vol. 70, No. 41

Thursday, March 3, 2005

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 02–125–3]

#### **Emerald Ash Borer; Quarantined Areas**

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

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

**SUMMARY:** We are amending the emerald ash borer regulations by adding areas in Indiana, Michigan, and Ohio to the list of areas quarantined because of emerald ash borer. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary to prevent the artificial spread of the emerald ash borer from infested areas in the States of Indiana, Michigan, and Ohio into noninfested areas of the United States.

**DATES:** This interim rule was effective February 25, 2005. We will consider all comments that we receive on or before May 2, 2005.

**ADDRESSES:** You may submit comments by any of the following methods:

- **EDOCKET:** Go to <http://www.epa.gov/feddoCKET> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the “View Open APHIS Dockets” link to locate this document.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 02–125–3, 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. 02–125–3.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

**Reading Room:** 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.

**Other Information:** You may view APHIS documents published in the **Federal Register** and related information on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

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

##### **Quarantined Areas**

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. Portions of the States of Indiana, Michigan, and Ohio are already designated as quarantined areas.

Recent surveys conducted by inspectors of State, county, and city agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that

infestations of EAB have occurred outside the quarantined areas in Michigan, Indiana, and Ohio. Specifically, infestations of EAB have been detected in Alcona, Antrim, Barry, Branch, Calhoun, Cheboygan, Clinton, Eaton, Emmet, Grand Traverse, Gratiot, Hillsdale, Ionia, Iosco, Kalkaska, Kent, Manistee, Midland, Oceana, Oscoda, Presque Isle, Saginaw, Saint Joseph, and Sanilac Counties, MI; Millgrove Township in Steuben County, IN; and in new areas of Fulton, Henry, and Lucas Counties, OH. Officials of the U.S. Department of Agriculture (USDA) and officials of State, county, and city agencies in Indiana, Michigan, and Ohio are conducting intensive survey and eradication programs in the infested areas. Indiana, Michigan, and Ohio have quarantined the infested areas and have restricted the intrastate movement of regulated articles from the quarantined areas to prevent the spread of EAB within each State. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined areas to prevent the spread of EAB to other States.

The regulations in § 301.53–3(a) provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, where EAB has been found by an inspector, where the Administrator has reason to believe that EAB is present, or where the Administrator considers regulation necessary 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 that are equivalent to those imposed by the regulations 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 spread of the EAB.

In accordance with these criteria and the recent EAB findings described above, we are amending § 301.53–3(c) to add portions of Alcona, Antrim, Barry, Branch, Calhoun, Cheboygan, Clinton, Eaton, Emmet, Grand Traverse, Gratiot,

Hillsdale, Ionia, Iosco, Kalkaska, Kent, Manistee, Midland, Oceana, Oscoda, Presque Isle, Saginaw, Saint Joseph, and Sanilac Counties, MI; Millgrove Township in Steuben County, IN; and new areas of Fulton, Henry, and Lucas Counties, OH, to the list of quarantined areas. An exact description of the quarantined areas can be found in the rule portion of this document.

#### Emergency Action

This rulemaking is necessary on an emergency basis to help prevent the spread of EAB to 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. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This emergency situation makes timely compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a regulatory flexibility analysis.

#### 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

This interim rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### 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. In § 301.53–3, paragraph (c) is amended as follows:

■ a. Under the heading Indiana, by revising the entry for Steuben County to read as set forth below.

■ b. Under the heading Michigan, by revising the entries for Branch County, Calhoun County, Eaton County, Kent County, and Saginaw County, and by adding, in alphabetical order, entries for Alcona and Iosco Counties, Antrim, Grand Traverse, and Kalkaska Counties, Barry and Ionia Counties, Cheboygan and Presque Isle Counties, Clinton County, Emmet County, Gratiot County, Hillsdale County, Manistee County, Midland County, Oceana County, Oscoda County, Presque Isle County, Sanilac County, and St. Joseph County to read as set forth below.

■ c. Under the heading Ohio, by revising the entries for Fulton County, Henry County, and Lucas County to read as set forth below.

#### § 301.53–3 Quarantined areas.

\* \* \* \* \*

(c) \* \* \*

Indiana

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*Steuben County.* Jamestown Township, Millgrove Township.

Michigan

*Alcona and Iosco Counties.* Cedar Lake/Van Etten area: That portion of the

counties bounded by a line drawn as follows: Beginning at the intersection of Poor Farm Road and Kings Corner Road; then north on Poor Farm Road to Wissmiller Road; then east on Wissmiller Road to Cedar Lake Road; then north on Cedar Lake Road to Smith Road; then east on Smith Road to and across U.S. Highway 23, continuing east to the Lake Huron shoreline; then south along the Lake Huron shoreline to a point on the shoreline east of the intersection of Interlake Drive and Ridge Road; then west to Interlake Drive and continuing west on Interlake Drive to Loud Drive, then northwest on Loud Drive to Love Road; then north on Love Road to the point of beginning.

*Antrim, Grand Traverse, and Kalkaska Counties.* Lake Skegemog/Torch Lake area: That portion of the counties bounded by a line drawn as follows: Beginning in Grand Traverse County at the intersection of Elk Lake Road and Michigan Route 72; then east on Michigan Route 72, crossing into Kalkaska County, to McNulty Hill Road NW.; then east on McNulty Hill NW. to Hill Road NW.; then east on Hill Road NW. to Way Road NW.; then north and northwest on Way Road NW. to Gillett Road NW.; then north on Gillett Road NW. to Valley Road NW.; then east on Valley Road NW. to Kellogg Road NW.; then north on Kellogg Road NW. to Plum Valley Road NW.; then west on Plum Valley Road NW. to Manley Road NW.; then north on Manley Road NW. to the Kalkaska/Antrim County line; then west along the Kalkaska/Antrim County line to the intersection of the Clearwater, Milton, and Helena Township lines; then northeast along the Helena/Milton Township line to a point due east of Ringler Road; then west from that point to Ringler Road and continuing west on Ringler Road to its western terminus; then due west from the terminus of Ringler Road to the Milton/Elk Rapids Township line; then south along the Milton/Elk Rapids Township line to the Antrim/Grand Traverse County line; then west along the Antrim/Grand Traverse County line to Elk Lake Road; then south on Elk Lake Road to the point of beginning.

*Barry and Ionia Counties.* Lake Odessa area: That portion of the counties bounded by a line drawn as follows: Beginning at the intersection of Thompson Road and Bell Road; then south on Bell Road to its intersection with Vedder Road and Messer Road; then continuing south on Messer Road to Brown Road; then east on Brown Road to Osborne Road; then south on Osborne Road to Jordon Road; then east on Jordon Road to Martin Road; then north on Martin Road to its intersection

with Vedder Road and Bliss Road; then continuing north on Bliss Road to Musgrove Highway; then west on Musgrove Highway to Jackson Road; then north on Jackson Road to Campbell Road; then west on Campbell Road to Nash Highway; then south on Nash Highway to Thompson Road; then west on Thompson Road to the point of beginning.

\* \* \* \* \*

*Branch County.* The entire county.

*Calhoun County.* The entire county.

*Cheboygan and Presque Isle Counties.*

Forest Township area: That portion of the counties bounded by a line drawn as follows: Beginning at the intersection of Walters Road and Center Line Road; then south on Center Line Road to Clute Road; then east on Clute Road to Martins Grove; then south on Martins Grove to Schommer Road; then south on Schommer Road to its end then continuing south along an imaginary line to Post Road; then east on Post Road to Black River Road; then east on Black River Road to Canada Creek Road; then east on Canada Creek Road to Highway 634; then north and east on Highway 634 to Michigan Route 33; then northwest and north on Michigan Route 33 to 4 Mile Highway; then west on 4 Mile Highway to the Cheboygan/Presque Isle County line; then continuing west on an imaginary line to Walters Road; then west on Walters Road to the point of beginning.

*Clinton County.* The entire county.

*Eaton County.* The entire county.

*Emmet County.* Petoskey area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Pickerel Lake Road and Fletcher Road; then south on Fletcher Road to Atkins Road; then east and south on Atkins Road to Greenwood Road; then south and east on Greenwood Road to Russett Road; then south on Russett Road to King Road; then west and southwest on King Road to Evergreen Trail; then northwest and west on Evergreen Trail to River Road; then south on River Road to Gruler Road; then west on Gruler Road to U.S. Highway 131; then north on U.S. Highway 131 to Sheridan Street; then west on Sheridan Street to Eppler Road; then north on Eppler Road to Charlevoix Avenue, and continuing north on an imaginary line to Little Traverse Bay; then north and northeast along the shoreline of Little Traverse Bay to Bear Creek/Little Traverse Township line; then east along the Bear Creek/Little Traverse Township line to U.S. Highway 31; then southwest on U.S. Highway 31 to Graham Road; then east on Graham Road to Bellmer Road; then

south on Bellmer Road to Pickerel Lake Road; then west on Pickerel Lake Road to the point of beginning.

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*Gratiot County.* The entire county.

*Hillsdale County.* The entire county.

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*Kent County.* Kentwood/Wyoming/Grand Rapids area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of 36th Street SW. and Byron Center Avenue SW.; then east on 36th Street SW. to 36th Street SE.; then east on 36th Street SE. to Kalamazoo Avenue SE.; then south on Kalamazoo Avenue SE. to 68th Street SE.; then west on 68th Street SE. to 68th Street SW.; then west on 68th Street SW. to Burlingame Avenue SW.; then south on Burlingame Avenue SW. to 72nd Street SW.; then west on 72nd Street SW. to Byron Center Avenue SW.; then north on Byron Center Avenue SW. to the point of beginning.

\* \* \* \* \*

*Manistee County.* Tippy Dam area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of the Dickson, Maple Grove, and Marilla Township lines; then west along the Maple Grove/Dickson Township line to Clements Road; then south on Clements Road to Fife Springs Road; then east on Fife Springs Road to Dilling Road; then south and southeast on Dilling Road to River Road; then east and northeast on River Road to the Dickson/Marilla Township line; then west along the Dickson/Marilla Township line to the point of beginning.

*Midland County.* Coleman area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Shearer Road and East County Line Road; then south on East County Line Road to its end, then continuing south along the Midland/Isabella County line to Ruhle Road; then east on Ruhle Road to Coleman Road; then south on Coleman Road to McNally Road; then east on McNally Road to Castor Road; then north on Castor Road to Grant Street; then northwest on Grant Street to Barden Road; then northeast on Barden Road to Saginaw Road; then southeast on Saginaw Road to Michigan Route 18; then north on Michigan Route 18 to Shearer Road; then west on Shearer Road to the point of beginning.

\* \* \* \* \*

*Oceana County.* Pentwater Township, including the Village of Pentwater.

*Oscoda County.* McKinley area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Reber Road and Abbe Road; then east on Reber Road to

Pearsall Road; the south and east on Pearsall Road to Barakel Trail; then east on Barakel Trail to Shear Lake Road; then south on Shear Lake Road to Miller Road, then continuing due south along an imaginary line to Old State Road; then west on Old State Road to McKinley Road; then west on McKinley Road to Abbe Road; then north on Abbe Road to the point of beginning.

*Presque Isle County.* Ocqueoc Lake area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Town Hall Highway and Thorne Road; then east on Town Hall Highway to Balch Road; then north on Balch Road to Beach Highway; then east on Beach Highway to U.S. Highway 23; then southeast on U.S. Highway 23 to Acorn Ridge Highway; then west on Acorn Ridge Highway to Brege Road; then south on Brege Road to its terminus; then due south from that point along an imaginary line to where Brege Road begins again; then south on Brege Road to Pomranke Highway; then west on Pomranke Highway to Dittmar Road; then continuing due west along an imaginary line to Roost Road; then north on Roost Road to its northern end; then continuing due north from that point to Shells Highway; then west on Shells Highway to Thorne Road; then north on Thorne Road to the point of beginning.

\* \* \* \* \*

*Saginaw County.* The entire county.

*Sanilac County.* (1) Brown City area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Montgomery Road and Cade Road; then south on Cade Road to Wilcox Road; then east on Wilcox Road to Shephard Road; then north on Shephard Road to Montgomery Road; then west on Montgomery Road to the point of beginning.

(2) Sanilac Township area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Walker Road and Ridge Road; then south on Ridge Road to Townsend Road; then west on Townsend Road to Wildcat Road; then south on Wildcat Road to Aitken Road; then east on Aitken Road to its terminus; then east to the Lake Huron shoreline; then north along the Lake Huron shoreline to a point on the shore due west of Walker Road; then west along an imaginary line to Walker Road; then west on Walker Road to the point of beginning.

\* \* \* \* \*

*St. Joseph County.* Nottawa/Colon area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Prairie

Corners Road and Bucknell Road; then south on Bucknell Road to Michigan Route 86; then east on Michigan Route 86 to Michigan Route 66, then continuing east on Bonham Road to Lepley Road; then north on Lepley Road to Spring Creek Road; then east on Spring Creek Road to Hodges Road; then north on Hodges Road to Colon Road; then west on Colon Road to Michigan Route 66; then north on Michigan Route 66 to Prairie Corners Road; then west on Prairie Corners Road to the point of beginning.

\* \* \* \* \*

Ohio

\* \* \* \* \*

*Fulton County.* That portion of the county east of State Route 109.

*Henry County.* That portion of the county east of State Route 109 and north of the Maumee River.

*Lucas County.* That portion of Lucas County west of the Maumee River.

Done in Washington, DC, this 25th day of February 2005.

**Elizabeth E. Gaston,**

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

[FR Doc. 05-4095 Filed 3-2-05; 8:45 am]

**BILLING CODE 3410-34-P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2005-20063; Airspace Docket No. 05-ACE-5]

#### Modification of Class E Airspace; Neosho, MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Neosho, MO. A review of the Class E airspace area extending upward from 700 feet above ground level (AGL) at Neosho, MO revealed it is not in compliance with established airspace criteria. The area is modified and enlarged to conform to the criteria in FAA Orders. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing Standard Instrument Approach Procedures (SIAPs) to Neosho Hugh Robinson Airport.

**DATES:** This direct final rule is effective on 0901 UTC, July 7, 2005. Comments

for inclusion in the Rules Docket must be received on or before April 15, 2005.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2005-20063/ Airspace Docket No. 05-ACE-5, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE-520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329-2524.

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Neosho, MO. An examination of controlled airspace for Neosho, MO revealed the Class E airspace area does not comply with airspace requirements for diverse departures from Neosho Hugh Robinson Airport as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL, taking into consideration rising terrain, is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. Additionally, the examination revealed the description and dimensions of the extension to the airspace area were not in compliance with FAA Orders 7400.2E and 8260.19C, Flight Procedures and Airspace. This amendment expands the airspace area from a 6.5-mile to a 7-mile radius of Neosho Hugh Robinson Airport, decreases the width of the extension from 1.8 miles to 1.5 miles each side of the Neosho very high frequency omni-directional radio range/distance measuring equipment (VOR/DME) 310° radial, expands the extension from 7 miles northwest of the airport to 7 miles northwest of the VOR/DME and defines the extension in relation to the VOR/DME. Additional,

the location of the VOR/DME is corrected in the legal description. These modifications provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing SIAPs to Neosho Hugh Robinson Airport and bring the legal description of the Neosho, MO Class E airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

#### The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulations will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does not receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

#### Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the view and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above.