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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2007-0111]

RIN 0579-AC87

Importation of Ash Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations governing the importation of nursery stock to prohibit or restrict the importation of ash (Fraxinus spp.) plants for planting, except seed, from all foreign countries except for certain areas in Canada that are not regulated areas for emerald ash borer. This action is necessary to prevent further introductions of this plant pest into the United States and to prevent the artificial spread of the emerald ash borer.

DATES: This interim rule was effective September 17, 2008. We will consider all comments that we receive on or before [60 days after date of publication in the Federal Register, expected to be September 23].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0111> to submit or view comments and to view supporting and related materials available electronically.

- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2007-0111, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2007-0111.

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: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold T. Tschanz, Senior Risk Manager, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 734-5306.

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, and Taiwan, eventually kills healthy ash trees after it bores beneath their bark and disrupts their vascular tissues.

EAB was first found in North America in ash trees in several counties in Michigan in July 2002, and subsequently in an area in Ontario, Canada, and in the States of Illinois, Indiana, Ohio, Pennsylvania, and Maryland. These States have quarantined

the EAB-infested areas and imposed restrictions on the intrastate movement of certain articles from the regulated areas to prevent the artificial spread of EAB within each State. Officials of the United States Department of Agriculture (USDA) and of State, county, and city agencies have been conducting intensive survey and eradication programs in the infested areas in the affected States.

Similarly, provincial officials in Ontario and officials of the Canadian Food Inspection Agency (CFIA) have been conducting extensive survey and eradication activities in the infested areas in Ontario. Plant health officials in the United States and Canada have been working cooperatively to establish a regulatory framework to address the risk of the artificial spread of EAB between the two countries. To that end, on June 1, 2007, we published an interim rule in the Federal Register (72 FR 30462-30468, Docket No. APHIS-2006-0125) which amended our regulations in 7 CFR part 319 to restrict or prohibit the importation of EAB host material into the United States from EAB-infested areas of Canada. That interim rule also prohibited the importation of all ash trees that originate in any county or municipal regional county in Canada regulated because of the EAB, i.e., those areas of Canada regulated under the Canadian Ministry of Agriculture and the CFIA's EAB Infested Place Declaration and Orders.¹

The regulations in 7 CFR part 319, "Foreign Quarantine Notices," prohibit or restrict the importation of certain plants and plant products to prevent the introduction or dissemination of plant pests and noxious weeds into the United States. Specifically, the regulations contained in "Subpart–Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other

¹ Infested Place Declaration and Orders are the means by which the CFIA regulates EAB-infested areas within Canada. Links to the Infested Place Declaration and Orders for the infested areas in Canada and other information about Canada's EAB program can be viewed online at the CFIA's Web site at <http://www.inspection.gc.ca/english/plaveg/pestrava/agrpla/mc/2007ontarioe.shtml>.

Plant Products,” §§ 319.37 through 319.37-14 (referred to below as the regulations), restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

Nursery stock, plants, and other propagative plant material that cannot be feasibly inspected, treated, or handled to prevent them from introducing plant pests new to or not known to be widely prevalent in or distributed within and throughout the United States are listed in § 319.37-2 as prohibited articles. Prohibited articles may not be imported into the United States unless imported by the USDA for experimental or scientific purposes, or under specified safeguards. These prohibited articles are listed in paragraph (a) of § 319.37-2.

Under paragraph (a) of § 319.37-2, ash (Fraxinus spp.) plants for planting, except seed, from Europe have been prohibited because of Pseudomonas savastanoi var. fraxini, canker and dwarfing disease of ash. In addition, as of the June 1, 2007, effective date of the interim rule discussed above, ash (Fraxinus spp.) plants for planting, except seed, are also prohibited from any county or municipal regional county in Canada regulated because of EAB.

As noted previously, EAB is indigenous to Asia and is known to be prevalent in several countries in that region. We do not, however, know the full extent of the distribution of EAB throughout Asia and in other regions, nor do we know if there are other serious plant pests affecting Fraxinus spp. plants for planting present elsewhere in the world. Therefore, we are further amending the regulations in § 319.37-2 to prohibit ash (Fraxinus spp.) plants for planting, except seed, from all foreign countries except those areas of Canada that are not regulated because of EAB. To reflect this prohibition, we are also amending § 319.37-7(a)(3) by removing Fraxinus spp. from the list of plants

requiring postentry quarantine. This action is necessary to prevent the artificial spread of EAB into uninfested areas of the United States.

We note that Fraxinus spp. plants for planting are only occasionally imported into the United States, none have been imported from any country other than Canada in several years, and regulations are already in place with respect to Fraxinus spp. plants for planting from Canada. Therefore, the practical effect of this rule will be minimal. In addition, we would, if requested, consider lifting the prohibition in whole or in part after completing a pest risk analysis to determine the pest risk associated with the importation of Fraxinus spp. plants for planting from a particular country.

Emergency Action

Immediate action is necessary to prevent the spread of EAB into noninfested regions 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 action 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.

The following analysis addresses the economic effects of this rule on small entities, as required by the Regulatory Flexibility Act.

This rule amends the regulations to prohibit or restrict the importation of ash (Fraxinus spp.) plants for planting, except seed, from all foreign countries except for certain areas of Canada which are not currently regulated for emerald ash borer. Fraxinus spp. plants for planting are only occasionally imported into the United States, and in these few importations the number of ash plants is small. During the fiscal years 2005 and 2006, no Fraxinus spp. plants for planting were imported from any country except Canada. As discussed above, the importation from Canada of Fraxinus spp. plants for planting, and other articles, is already regulated to prevent the artificial spread of EAB. Therefore we do not anticipate that this rule will have any economic effect on any entities, large or small.

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 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 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 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 319.37-2, paragraph (a), the table entry for “Fraxinus spp. (ash)” is revised to read as follows:

§ 319.37-2 Prohibited articles.

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