

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER Z. EMERALD ASH BORER QUARANTINE

4 TAC §§19.700 - 19.703

The Texas Department of Agriculture (the Department) adopts on an emergency basis new Title 4, Part 1, Chapter 19, Subchapter Z, titled Emerald Ash Borer Quarantine, §§19.700 - 19.703, concerning a quarantine for a dangerous plant pest, the emerald ash borer (EAB), *Agrilus planipennis*, that can lethally infest all species of ash (*Fraxinus* spp.). EAB is an invasive wood-boring beetle native to China and other areas of East Asia. On April 29, 2016, four adult males of EAB were discovered 1.5 miles north of Leigh on Route 134 in Harrison County, Texas (Lat. 32.61619, Long. -94.14606), in a green prism trap baited with (3Z)-hexenol and (3Z)-lactone pheromone by the U.S. Forest Service.

Since the 2002 initial North American discovery of EAB in Michigan and Ontario, Canada, the pest has killed at least 50 million ash trees and threatens an estimated 7.5 billion ash trees. The United States Department of Agriculture (USDA) has quarantined all or parts of Arkansas, Colorado, Connecticut, District of Columbia, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and Wisconsin for EAB.

Intrastate or interstate movement into uninfested areas of ash nursery trees, hardwood firewood and other ash products from quarantined areas presents a risk for further spread of this invasive pest into uninfested areas. If introduced in the state, EAB could infest and kill Texas ash trees, *Fraxinus* spp., such as *F. albicans* (= *F. texensis*) (Texas ash), *F. americana* (American ash or white ash), *F. berlandieriana* (Berlandier ash, Mexican ash, or fresno), *F. caroliniana* (Carolina ash, Florida ash, pop ash, swamp ash, or water ash), *F. cuspidata* (flowering ash or fragrant ash), *F. greggii* (Gregg ash), *F. papillosa* (Chihuahua ash), *F. pennsylvanica* (downy ash, green ash or red ash), *F. smallii* (Small's white ash) and *F. velutina* (Arizona ash, desert ash, velvet ash or fresno). There are 41 nurseries, including four nursery plant growers, in Harrison County, Texas.

The incipient infestation of Texas by EAB, which was discovered through trapping, puts ash trees in Texas woodlands, landscapes, and nurseries in peril requiring immediate quarantine restrictions and requirements. These emergency regulations mit-

igate risk of the establishment and spread of this pest insect, thus protecting the important forest, landscape, and nursery resources and firewood industries of the state. The rules which are being adopted on an emergency basis are both necessary and appropriate in order to effectively combat and prevent the spread of EAB into Texas. The Department may propose adoption of this rule on a permanent basis in a separate submission.

The new sections are adopted on an emergency basis under the Texas Agriculture Code, §71.001 and §71.002, which authorize the Department to establish quarantines against in-state and out-of-state diseases and pests; §71.004, which authorizes the Department to establish emergency quarantines; §71.007, which authorizes the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of quarantined articles; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis without notice and comment.

The code affected by the emergency adoption is the Texas Agriculture Code, Chapter 71.

§19.700. Quarantined Pest.

The quarantined pest is emerald ash borer (EAB), *Agrilus planipennis*, in any life stage.

§19.701. Quarantined Areas.

Quarantined areas are described on the Texas Department of Agriculture's website at www.TexasAgriculture.gov. A map of the quarantined area is also available on the Department's website.

(1) On the basis of new or revised information, the Department may declare, augment, diminish, fuse, eliminate, rename or otherwise modify quarantined areas.

(2) Designation or modification of a quarantined area is effective upon the posting of the notification of the quarantined area on the department's webpage on Emerald Ash Borer Quarantine.

§19.702. Regulated Articles.

The following are regulated articles:

(1) The emerald ash borer; firewood of all hardwood (non-coniferous) species; 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*.

(2) Any other article, product, or means of conveyance not listed in paragraph (1) of this section may be designated as a regulated article if an inspector determines that it presents a risk of spreading emerald ash borer and the inspector notifies the person in possession of the article, product, or means of conveyance that it is subject to this subchapter.

(3) For purposes of this subchapter, regulated articles are quarantined articles under Texas Agriculture Code, §71.0092.

§19.703. Restrictions.

(a) Interstate movement of a regulated article from a quarantined area is subject to 7 CFR Part 301--Domestic Quarantine Notices, Subpart--Emerald Ash Borer.

(b) Intrastate movement of regulated articles from a quarantined area shall be done only under the following conditions:

(1) Under a certificate, special permit or compliance agreement issued by the Department or USDA; or

(2) Without a phytosanitary certificate, permit or compliance agreement if:

(A) The regulated article is moved by the Department or USDA for regulatory, experimental or scientific purposes; or

(B) The regulated article originates outside the quarantined area and is moved intrastate through the quarantined area under the following conditions:

(i) The points of origin and destination are indicated on a waybill accompanying the regulated article; and

(ii) The regulated article, if moved through the quarantined area during the period 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 EAB; and

(iii) The regulated article is moved directly through the quarantined area without stopping (except for refueling or for traf-

fic conditions, such as traffic lights or stop signs), or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by EAB; and

(iv) The regulated article has not been combined or commingled with other articles so as to lose its individual identity.

(c) A regulated article moved in violation of a requirement or restriction in this subchapter shall be seized and may be destroyed, with all associated costs being the responsibility of the owner of the regulated article pursuant to §71.009 of the Texas Agriculture Code.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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