

# 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 new Title 4, Chapter 19, Subchapter Z, Emerald Ash Borer Quarantine, §§19.700 - 19.703, concerning a quarantine for a dangerous plant pest, the emerald ash borer (EAB), *Agilus planipennis* on an emergency basis. The new sections are adopted to establish requirements and restrictions necessary to address dangers posed by the potential spread of Emerald Ash Borer (EAB) infestations in Harrison County, and recently in Marion, Cass, and Tarrant Counties of Texas.

EAB is a highly destructive invasive wood-boring beetle native to China and other areas of East Asia that targets ash trees (*Fraxinus* spp.). Since its introduction into the United States in 2002, EAB has been detected in over 35 states. During the 2018 trapping season, EAB were intercepted at multiple sites in Harrison County, Jefferson County, and Cass County. On November 6, 2018, suspected EAB larvae were sampled from ash trees in the Eagle Mountain Lake area of Tarrant County and were subsequently confirmed as EAB by the United States Department of Agriculture (USDA).

Intrastate or interstate movement of ash nursery trees, hardwood firewood, and other ash products from quarantined areas present a risk for further spread of this invasive pest into uninfested areas. An EAB infestation could kill Texas ash trees, such as *F. albicans* (= *F. texensis*) (Texas ash), *F. americana* (American ash or white ash), *F. berlandieriana* (Berlandier ash, or Mexican ash), *F. caroliniana* (Carolina ash, Florida ash, pop ash, swamp ash, or water ash), *F. cuspidata* (fragrant ash), *F. greggii* (Gregg's ash), *F. papillosa* (Chihuahuan ash), *F. pennsylvanica* (green ash or red ash), *F. smallii* (Small's white ash), and *F. velutina* (Arizona ash, desert ash, or velvet ash). In the four affected counties, there are 999 licensed nursery floral operations, including 58 nursery plant growers, which are at risk due to EAB infestations. The infestation of susceptible plants could spread beyond the four affected counties, across Texas and nationwide, in the event a quarantine and requirements are not established to prevent the transportation of infested plants in accordance with the new emergency rules.

Recent EAB infestations jeopardize the health of ash trees in Texas forests, woodlands, landscapes, nurseries, and urban en-

vironments. These emergency regulations mitigate the risk of establishment and spread of this invasive insect pest, thereby protecting the vulnerable forest, landscape, nursery, 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 in Texas. In order to address the ongoing threat of EAB, the Department may propose adoption of the emergency rules on a permanent basis in a separate submission.

New §19.700 defines the quarantined pest. New §19.701 defines the quarantined area. New §19.702 defines the regulated articles subject to the quarantine. New §19.703 prescribes requirements and restrictions for movement of regulated articles from a quarantined area to a pest-free area.

The new sections are adopted on an emergency basis under the Texas Agriculture Code, §§71.001 and 71.002, which authorizes 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, Chapters 12 and 71.

###### §19.700. Quarantined Pest.

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

###### §19.701. Quarantined Areas.

(a) Quarantined areas in Texas include the following counties: Cass, Harrison, Marion, and Tarrant.

(b) Quarantined areas outside of Texas include all other states, districts, and areas within other states that are designated quarantined areas by 7 CFR §301.53-3.

###### §19.702. Regulated Articles Subject to the Quarantine.

(a) For purposes of this subchapter, a regulated article is a quarantined article defined under Texas Agriculture Code, §71.0092.

(b) 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 subsection 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.

§19.703. Restrictions.

(a) Interstate movement of regulated articles from quarantined areas is subject to 7 CFR §301.53-4.

(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 the 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;

(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;

(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 this subchapter shall be seized and may be destroyed by the Department, with all associated costs being the responsibility of the owner or the shipper of the regulated article.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be a valid exercise of the agency's legal authority.

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