

The Texas Department of Agriculture (the Department) proposes 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), *Agrilus planipennis*. The new sections are proposed to establish requirements and restrictions necessary to address dangers posed by the potential spread of EAB infestations in Texas due to detected infestations in Bowie, Cass, Denton, Harrison, Marion, and Tarrant Counties.

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 34 states and the District of Columbia. The initial EAB detection in Texas occurred on April 29, 2016, as four adult EAB were discovered in Harrison County, Texas. In 2018, EAB was discovered in Cass, Marion, and Tarrant Counties. On May 19, 2020 new interceptions in Bowie and Denton Counties were confirmed by the United States Department of Agriculture (USDA) as EAB. During the 2020 trapping season, EAB was found in Bowie, Cass, Denton, Harrison, Marion, and Tarrant Counties.

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 tree species, 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 six affected counties, there are 1,341 licensed nursery floral operations, including 92 nursery plant growers, which are at risk due to EAB infestations. EAB infestations could spread beyond the six affected counties, across Texas and nationwide, in the event quarantine restrictions are not established to prevent the transportation of infested firewood, nursery stock, and other articles in accordance with the proposed rules.

Recent EAB infestations jeopardize the health of ash trees in Texas forests, woodlands, landscapes, nurseries, and urban environments. These proposed 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 proposed rules are both necessary and appropriate in order to effectively combat and prevent the spread of EAB in Texas.

The Department encourages residents, arborists, and local officials to vigilantly monitor ash trees for signs of EAB infestations and report suspect detections to the Department or the Texas Forest Service. The Department also implores residents, arborists, and local officials in quarantined and non-quarantined counties to make a plan to address the threat posed by EAB, through removal or treatment of infested trees or through discouraging new ash plantings.

Mr. Perry Cervantes, Director for Environmental and Biosecurity Programs, has determined that for the first five-year period the proposal is in effect, there will be minimal fiscal implications for state or local government.

Mr. Cervantes has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of administering the proposed rules will be the reduction in the spread of EAB in Texas resulting in many urban and forested ash trees being saved from infestation. There will be small economic impact on small businesses, municipalities, and persons required to comply with the proposed rules. There will be treatment costs to quarantined article producers, processors, and vendors, including small businesses and micro-businesses that move quarantined articles within or from quarantined areas, but these depend on many factors and cannot be calculated. However, there will be a small positive economic impact on persons and businesses in non-quarantined areas that ship products interstate, as other states will consider those areas free of EAB and will not require treatment.

Mr. Cervantes has provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. As a result of implementing the proposal, for the first five years the proposed rules are in effect:

- (1) no new or current government or Department programs will be created or eliminated;
- (2) no employee positions will be created, nor will any existing Department staff positions be eliminated;
- (3) there will not be an increase or decrease in future legislative appropriations to the Department;
- (4) there will be no increase or decrease in fees paid to the Department;
- (5) new regulations, which have been previously adopted on an emergency basis, will be created;
- (6) there will be no expansion, limitation, or repeal of existing regulations;
- (7) there will be an increase in the number of individuals subject to the rule's applicability; however, most of those individuals were previously subject to these regulations adopted on an emergency basis; and
- (8) the proposal will have a slight negative impact on the Texas economy, as there are minor costs associated with the proposal and its enforcement.

Written comments on the proposal may be submitted to Mr. Perry Cervantes, Director for Environmental and Biosecurity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to: [RuleComments@TexasAgriculture.gov](mailto:RuleComments@TexasAgriculture.gov). Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed 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; and §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.

Chapter 71 of the Texas Agriculture Code is affected by the proposal.

<rule>

Chapter 19, Subchapter Z, EMERALD ASH BORER QUARANTINE  
§19.700. Quarantined Pest.

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

§19.701. Quarantined Areas.

(a) The quarantined areas are those areas described on the department's website (<http://www.TexasAgriculture.gov>) as quarantined areas under this subchapter.

(b) The department may designate additional or expanded quarantined areas, or a reduction of the quarantined area based upon the confirmation of the presence or absence of the emerald ash borer. The designations will be effective upon the posting of the notification of the quarantined areas on the department's website.

§19.702. Quarantined Articles.

The quarantined articles are:

- (1) the quarantined pest;
- (2) firewood of all hardwood (non-coniferous) species;
- (3) ash (*Fraxinus* spp.) nursery stock; and
- (4) any other material living, dead, cut, or fallen, including green lumber, logs, stumps, roots, branches, and composted and uncomposted chips of the genus *Fraxinus*.

§19.703. Restrictions.

(a) General. Quarantined articles originating from quarantined areas are prohibited entry into or through the free areas of Texas, except as provided in subsections (b) and (c) of this section.

(b) Exemptions.

- (1) Processed lumber that is free of bark or has been kiln dried or fumigated.
- (2) Finished wood products without bark.

(c) Exceptions.

(1) Quarantined articles from quarantined areas are allowed entry into or through the free areas of Texas if:

- (A) treated or processed as prescribed by the department; and
- (B) accompanied by a phytosanitary certificate, compliance agreement, or other phytosanitary document, issued by an authorized inspector of the state of origin certifying that the article was treated or processed as prescribed and is free of the quarantined pest.

(2) Quarantined articles that originate outside the quarantined area may transit through the quarantined area without a certificate if:

- (A) the article is safeguarded in an enclosed vehicle or with adequate covering against infestation;
- (B) the points of origin and destination are specified on the waybill accompanying the shipment; and
- (C) the article is moved directly through the quarantined area without stopping beyond the time required for simple transit.