

**STATE OF NEW YORK  
DEPARTMENT OF AGRICULTURE AND MARKETS**

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In the Matter of the Addition of 1 NYCRR,  
Part 141  
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**CERTIFICATION**

I hereby certify, pursuant to the requirements of section 102(2) of the Executive Law and section 203(1) of the State Administrative Procedure Act of the State of New York, that annexed is the original promulgation of Part 141 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York (1 NYCRR) duly promulgated by me on this date, pursuant to the authority conferred upon me by sections 18, 164 and 167 of the Agriculture and Markets Law as an emergency measure in accordance with the State Administrative Procedure Act.



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PATRICK HOOKER  
Commissioner of Agriculture and  
Markets of the State of New York

Dated and Sealed at the Town of Colonie  
(Albany County), New York on this 23<sup>rd</sup> day  
of July, 2009.

**STATE OF NEW YORK**  
**DEPARTMENT OF AGRICULTURE AND MARKETS**

-----X  
In the Matter of the Addition of 1 NYCRR,  
Part 141

**PROMULGATION**

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I, PATRICK HOOKER, Commissioner of Agriculture and Markets of the State of New York, pursuant to the authority conferred upon me by sections 18, 164 and 167 of the Agriculture and Markets Law, dispense with the regular notice requirements of the State Administrative Procedure Act and adopt the annexed Part 141 of Title 1 of the Official Compilation of Codes, Rules and Regulations as an emergency measure pursuant to subdivision six of section 202 of said Act. I find that the immediate adoption of this rule is necessary for the preservation of the general welfare and that compliance with subdivision one of section 202 of the State Administrative Procedure Act would be contrary to the public interest. The rule is being adopted as an emergency measure because of the threat that the Emerald Ash Borer will spread outside the area it now infests. It was first discovered in Michigan in June 2002, and has since spread to twelve other states as well as to two provinces in Canada. The most recent detection of this pest occurred on June 16, 2009 in the Town of Randolph, New York which is located in southwestern Cattaraugus County and is adjacent to Chautauqua County. The Emerald Ash Borer can cause serious damage to healthy trees by boring through their bark, consuming cambium tissue, which contains growth cells, and phloem tissue, which is responsible for carrying nutrients throughout the tree. This boring activity results in loss of bark, or girdling, and ultimately results in the death of the tree within two years. Nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter are subject to infestation. Materials at risk of attack and infestation by the Emerald Ash Borer include the following species of North American ash trees: White Ash (*Fraxinus Americana*); Green Ash (*Fraxinus pennsylvanica*); Black Ash (*Fraxinus nigra*); and Blue Ash (*Fraxinus quadrangulata*). Since the Emerald Ash Borer is not considered established in the State, moving infested nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter poses a serious threat to susceptible ash trees in forests as well as in parks and yards throughout the State. The immediate adoption of this rule is necessary to preserve the general welfare. The failure to immediately establish a quarantine in Cattaraugus and Chautauqua Counties could result in the further spread of the Emerald Ash Borer and threaten the State's forest trees as well as trees in yards and parks. It could also lead to the imposition of a federal quarantine and quarantines by other states which would affect the entire State. The spread of the Emerald Ash Borer would cause economic hardship to the nursery and forest products industry as well as cause reductions in private property values and recreation revenues. The consequent loss of business would harm industries which are important to New York State's economy and as such would harm the general welfare. This rule shall take effect immediately.



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PATRICK HOOKER  
Commissioner of Agriculture and  
Markets of the State of New York

Dated and Sealed at the Town of Colonie  
(Albany County), New York on this 23<sup>rd</sup> day  
of July, 2009.

Part 141  
Control of the Emerald Ash Borer  
(Statutory Authority: Agriculture and Markets Law sections 18, 164 and 167)

Section

141.1.	Definitions
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Section 141.1. Definitions

For the purpose of this Part, the following words, names and terms shall be construed respectively, to mean:

- (a) Certificate of inspection. A valid form certifying the eligibility of products for intrastate movement under the requirements of this Part.
- (b) Compliance agreement. An approved document, executed by persons or firms, covering the restricted movement, processing, handling or utilization of regulated articles not eligible for certification for intrastate movement.
- (c) Emerald Ash Borer. The insect known as the Emerald Ash Borer, *Agrilus planipennis*, in any stage of development.
- (d) Firewood. This term applies to any kindling, logs, chunkwood, boards, timbers or other wood cut and split, or not split, into a form and size appropriate for use as fuel.
- (e) Infestation. This term refers to the presence of the Emerald Ash Borer in any life stage or as determined by evidence of activity of one or more of the life stages.
- (f) Inspector. An inspector of the New York State Department of Agriculture and Markets, or cooperator from the New York State Department of Environmental Conservation (DEC) or the United States Department of Agriculture (USDA), when authorized to act in that capacity.
- (g) Limited permit. A valid form authorizing the restricted movement of regulated articles from a quarantine area to a specified destination for specified processing, handling or utilization.
- (h) Moved; movement. Shipped, offered for shipment to a common carrier received for transportation or transported by a common carrier, or carried, transported, moved or allowed to be moved into or through any area of the State.

(i) Nursery stock. This term applies to and includes all trees, shrubs, plants and vines and parts thereof.

(j) Quarantine Area. This term applies to Chautauqua and Cattaraugus Counties.

(k) Regulated article. This term applies to firewood from any species of tree, and any trees and all host material, living, dead, cut or fallen, inclusive of nursery stock, logs, green lumber, stumps, roots, branches and debris of the following genera: White Ash (*Fraxinus Americana*); Green Ash (*Fraxinus pennsylvanica*); Black Ash (*Fraxinus nigra*); and Blue Ash (*Fraxinus quadrangulata*), and any wood material that is commingled and otherwise indistinguishable from the regulated article.

#### Section 141.2. Quarantine area.

Regulated articles as described in section 141.3 of this Part shall not be shipped, transported or otherwise moved from any point within Chautauqua and Cattaraugus Counties to any point outside of said counties, except in accordance with this Part.

#### Section 141.3. Regulated articles.

(a) Prohibited movement.

(1) The intrastate movement of living Emerald Ash Borer in any stage of development, whether moved independent of or in connection with any other article, except as provided in section 141.9 of this Part.

(2) The intrastate movement of nursery stock from the quarantine area to any point outside the quarantine area.

(3) The intrastate movement of regulated articles other than nursery stock from the quarantine area to any point outside the quarantine area, except as provided in section 141.5 of this Part.

(b) Regulated movement.

(1) Regulated articles shall not be moved within the quarantine area, except pursuant to a compliance agreement.

(2) Regulated articles shall not be moved from the quarantine area to any point outside the quarantine area, except under a limited permit or unless accompanied by a certificate of inspection indicating freedom from infestation.

(3) Regulated articles may be moved through the quarantine area if the regulated articles originated outside the regulated area and:

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

(ii) the regulated articles, if moved through the quarantine area during the period of May 1 through August 31 or when the ambient air

temperature is 40 degrees F or higher, are moved in an enclosed vehicle or are completely covered to prevent access by the Emerald Ash Borer; and

(iii) the regulated articles are moved directly through the quarantine area without stopping, except for refueling and traffic conditions, or have been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by the Emerald Ash Borer.

#### Section 141.4. Conditions governing the intrastate movement of regulated articles

(a) Movement from quarantine area. Unless exempted by administrative instructions of the Commissioner of Agriculture and Markets of the State of New York, regulated articles shall not be moved intrastate from the quarantine area to or through any point outside thereof unless accompanied by a valid certificate or limited permit issued by an inspector, authorizing such movement.

#### Section 141.5. Conditions governing the issuance of certificates and permits

(a) Certificates of inspection. Certificates of inspection may be issued for the intrastate movement of regulated articles when those articles have been inspected and determined to have been:

(1) treated, fumigated, or processed by approved methods; or

(2) grown, produced, manufactured, stored, or handled in such a manner that, in the judgment of the inspector, no infestation would be transmitted thereby, provided that subsequent to certification, the regulated articles shall be loaded, handled, and shipped under such protection and safeguards against reinfestation as are required by the inspector.

(b) Limited permits. Limited permits may be issued for the movement of noncertified regulated articles to specified destinations for specified processing, handling, or utilization. Persons shipping, transporting, or receiving such articles may be required to enter into written compliance agreements to maintain such sanitation safeguards against the establishment and spread of infestation and to comply with such conditions as to the maintenance of identity, handling, processing, or subsequent movement of regulated products and the cleaning of cars, trucks and other vehicles used in the transportation of such articles, as may be required by the inspector. Failure to comply with conditions of the agreement will result in its cancellation.

(c) Cancellation of certificates of inspection or limited permits. Certificates or limited permits issued under these regulations may be withdrawn or canceled by the inspector and further certification refused whenever in his or her judgment the further use of such certificates or permits might result in the dissemination of infestation.

#### Section 141.6. Inspection and disposition of shipments

Any car or other conveyance, any package or other container, and any article or thing to be moved, which is moving, or which has been moved intrastate from the quarantine area, which

contains, or which the inspector has probable cause to believe may contain, infestations of the Emerald Ash Borer, or articles or things regulated under this quarantine, may be examined by an inspector at any time or place. When articles or things are found to be moving or to have been moved intrastate in violation of these regulations, the inspector may take such action as he or she deems necessary to eliminate the danger of dissemination of the Emerald Ash Borer. If found to be infested, such articles or things must be freed of the infestation without cost to the State except that for inspection and supervision.

#### Section 141.7. Assembly of regulated articles for inspection

(a) Persons intending to move intrastate any regulated articles shall make application for certification as far in advance as possible, and will be required to prepare and assemble materials at such points and in such manner as the inspector shall designate, so that thorough inspection may be made or approved treatments applied. Articles to be inspected as a basis for certification must be free from matter which makes inspection impracticable.

(b) The New York State Department of Agriculture and Markets will not be responsible for any cost incident to inspection, treatment, or certification other than the services of the inspector.

#### Section 141.8. Marking requirements

Every container of regulated articles intended for intrastate movement shall be plainly marked with the name and address of the consignor and the name and address of the consignee, when offered for shipment, and shall have securely attached to the outside thereof a valid certificate (or limited permit) issued in compliance with these regulations, provided, that:

(a) for lot freight shipments, other than by road vehicle, one certificate may be attached to one of the containers and another to the waybill; and for carlot freight or express shipment, either in containers or in bulk, a certificate need be attached to the waybill only and a placard to the outside of the car, showing the number of the certificate accompanying the waybill; and

(b) for movement by road vehicle, the certificate shall accompany the vehicle and be surrendered to consignee upon delivery of shipment.

#### Section 141.9. Shipments for experimental and scientific purposes.

Regulated articles may be moved intrastate for experimental or scientific purposes, on such conditions and under such safeguards as may be prescribed by the New York State Department of Agriculture and Markets. The container of articles so moved shall bear, securely attached to the outside thereof, an identifying tag issued by the New York State Department of Agriculture and Markets showing compliance with such conditions.