

EXPRESS TERMS

1 NYCRR Part 141 is repealed and a new Part 141 is added to read as follows:

PART 141

CONTROL OF THE EMERALD ASH BORER

(Statutory Authority: Agriculture and Markets Law §§18, 164 and 167)

Sec.

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§ 141.1 Definitions.

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

- (a) *AML*. The Agriculture and Markets Law
- (b) *Authorized Handler*. Any person who is granted a limited permit or certificate issued by the Department or enters into a compliance agreement with the Department.
- (c) *Ash*. All *Fraxinus* species including green ash (*Fraxinus pennsylvanica*), white ash (*Fraxinus americana*), black ash (*Fraxinus nigra*), blue ash (*Fraxinus quadrangulata*) and any horticultural cultivar of these species.
- (d) *Buffer Area*. The zone surrounding the core area of EAB infestation, which begins at the outside boundary of the core area of infestation and extends outward for a distance of five miles.

- (e) *Certificate of inspection.* A document issued by the Department certifying the eligibility of products for intrastate movement under this Part.
- (f) *Commissioner.* The Commissioner of the Department of Agriculture and Markets or the Commissioner's duly authorized representative.
- (g) *Compliance agreement.* A document issued by the Department setting forth the requirements covering the restricted movement, processing, handling or utilization of regulated articles not eligible for certification for intrastate movement, which, if followed, permits the persons or firm executing the document to issue an inspection certificate or a limited permit pursuant to the terms of the document and this Part without a Department inspection prior to each movement.
- (h) "Core Area." The location of an EAB infestation, as determined by the DEC and confirmed by the Department, based upon the detection of the emerald ash borer and/or evidence of its activity in one or more of its life stages at that location.
- (i) *DEC.* The Department of Environmental Conservation.
- (j) *Department.* The Department of Agriculture and Markets.
- (k) *Emerald ash borer or EAB.* The insect known as the emerald ash borer, *Agrilus planipennis*, in any stage of development.
- (l) *Firewood.* With respect to this Part, ash wood, cut or not cut, split or not split, regardless of length, which is either in a form and size appropriate for use as fuel, or intended for use as fuel. Firewood does not include: (1) kiln dried dimensional lumber; (2) wood that has been chipped; and (3) logs or wood being transported to or possessed by the following operations and facilities for use in their primary manufacturing process:
- (1) sawmills for dimensional lumber;
 - (2) pulp and/or paper mills;
 - (3) wood pellet manufacturing facilities;
 - (4) plywood manufacturing facilities;
 - (5) wood biomass-using refineries or power plants;
 - (6) re-constituted wood or wood composite product manufacturing plants;
- and
- (7) facilities treating firewood in accordance with department regulations.
- (m) *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.

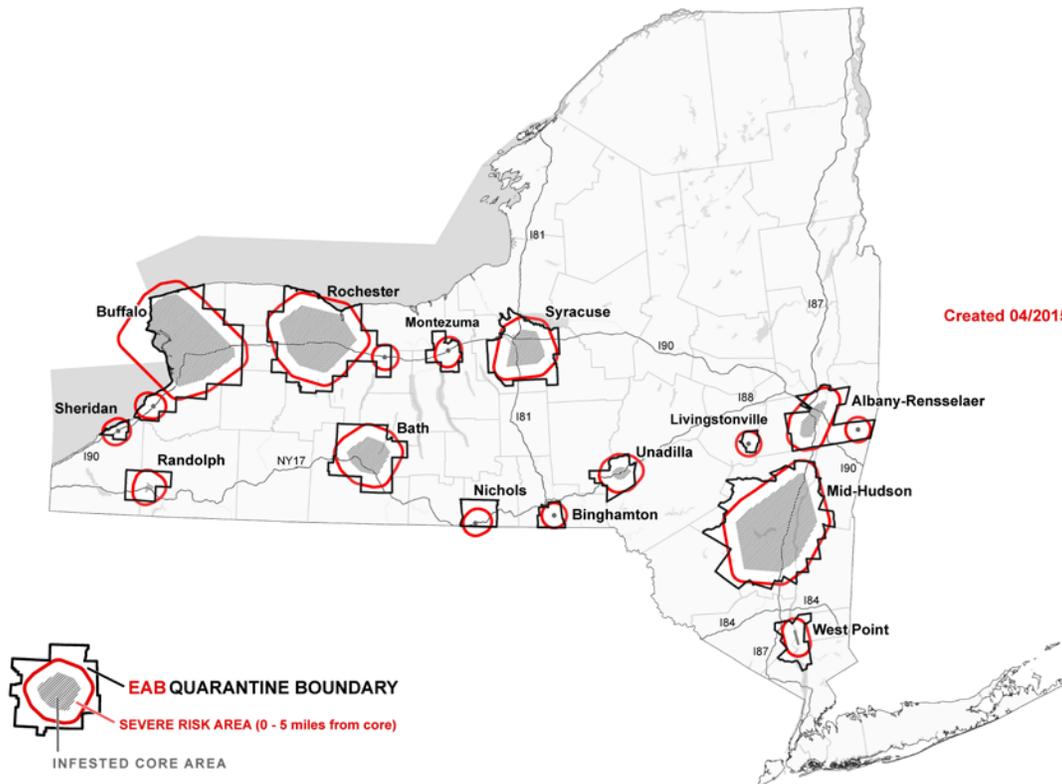
- (n) *Inspector*. An inspector of the Department, or cooperator from DEC or the United States Department of Agriculture (USDA), when authorized by the Department to act in that capacity.
- (o) *Limited permit*. A document issued under the authority of the Department permitting the one-time restricted movement of regulated articles from a quarantined area to a specified destination for specified processing, handling or utilization.
- (p) *Local government*. A village, town, city or county.
- (q) *Moved; movement*. Shipped, offered or received for shipment, carried, transported, or relocated into or through any area of the State.
- (r) *Nursery stock*. All trees, shrubs, plants and vines and parts thereof.
- (s) *Person*. An individual, organization, corporation or partnership, public authority, county, town, village, city, municipal agency or public corporation, or any other legal entity other than the Department or its respective authorized agents including DEC.
- (t) *Quarantine Area*. The geographic area delineated on the EAB quarantine map in section 141.2 of this Part, establishing the boundaries of the restricted zones within the state which are subject to the requirements set forth of this Part.
- (u) *Regulated article*. Any ash material, living, dead, cut or fallen, inclusive of nursery stock, logs, firewood, green lumber, stumps, roots, branches and debris, and any wood material that is commingled and otherwise indistinguishable from the above. Notwithstanding the above, (1) ash bark and mulch are not regulated articles; and (2) ash chips or chips indistinguishable from ash chips, regardless of size, are regulated articles only during the period commencing on April fifteenth and continuing up to and including May fifteenth.
- (v) *Restricted zone*. A geographic area of the state delineated on the EAB quarantine map, which includes a core area of infestation, the buffer area and the entire area of any town or city which has thirty (30) percent or more of its total area falling within the respective core area and/or the buffer area.

§141.2 Establishment and amendment of quarantine maps.

- (a) *Establishment of quarantine area*. The initial quarantine area is set forth on the quarantine map set forth below.

Emerald Ash Borer (EAB) Quarantine Boundaries

Albany-Rensselaer, Bath, Binghamton, Buffalo, Livingstonville,
Mid-Hudson, Montezuma, Nichols, Randolph, Rochester,
Sheridan, Syracuse, Unadilla, West Point



S. McDonnell - Geographer
Division of Lands and Forests
Forest Health Unit

- b) A copy of the map delineating the quarantine area is maintained in the office of the clerk of each local government in which a restricted zone or a portion thereof is located.
- c) Any amendment of or addition to the map delineating the quarantine area shall be made by regulation.

§141.3 Movement of regulated articles within restricted zones.

Regulated articles, including emerald ash borer infested material, may be moved, by any person, at any time, within a restricted zone, for processing, treatment, use or disposal at any other location within that same restricted zone provided the regulated article is eligible for unrestricted movement under all other state plant quarantines and regulations applicable to the regulated article.

§141.4 Restrictions on intrastate movement of regulated articles originating within or traveling through restricted zones

(a) No person shall move:

(1) Ash nursery stock from any restricted zone;

(2) Chips of any size from the restricted zone during the period commencing on April fifteenth and continuing up to and including May fifteenth of each year, chips of any size; and

(3) Regulated articles (other than ash nursery stock) from any restricted zone to or through any point outside the restricted zone, unless: (i) accompanied by a valid certificate of inspection; limited permit authorizing such movement; or administrative instructions of the Commissioner; or (ii) for experimental or scientific purposes, on such conditions and under such safeguards as may be prescribed in writing by the Department.

(b) Notwithstanding the above, regulated articles originating from within New York but outside any restricted zone in New York State may be moved through any restricted zone in the state, provided that:

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

(2) Regulated articles are moved directly through the restricted zone without stopping, except for refueling and traffic conditions.

§141.5 *Conditions governing compliance agreements for movement of regulated articles out of a restricted zones.*

(a) Persons engaged in growing, handling, or moving regulated articles intrastate may apply for a compliance agreement with the Department, which agreement will authorize the person executing the agreement to issue certificates of inspection and limited permits without a Department inspection prior to each movement.

(b) Any person who enters into a compliance agreement with the Department must agree to comply with the provisions of this Part and any conditions imposed under the compliance agreement.

(c) A compliance agreement shall be subject to the Department's acceptance in its sole discretion.

(d) Any compliance agreement may be cancelled by the Department either orally or in writing, whenever an inspector determines, in his or her sole discretion, that the person who has entered into the compliance agreement has not complied with this Part or the conditions imposed under the compliance agreement. The cancellation shall take effect upon the giving of the oral notice or the delivery of the written notice. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing.

§141.6 Conditions governing certificates of inspection and limited permits for the movement of regulated articles out of restricted zones.

(a) An inspector or an authorized holder of a compliance agreement may issue a certificate of inspection for the movement of a regulated article out of a restricted zone, provided that the regulated article:

(1) (i) is apparently free of emerald ash borer, based on inspection by an inspector; or (ii) has been grown, produced, manufactured, treated, stored, or handled in a manner that, in the judgment of the inspector, prevents the regulated article from presenting a risk of spreading emerald ash borer; and

(2) is eligible for unrestricted movement under all other state plant quarantines and regulations applicable to the regulated articles.

(b) If the regulated article is not eligible for a certificate of inspection, an inspector or authorized holder of a compliance agreement can issue a limited permit for the movement of the regulated article out of a restricted zone upon the following conditions:

(1) the inspector or authorized holder of a compliance agreement determines that the regulated article: (i) is to be moved intrastate to a specified destination; (ii) for specific processing, handling, or utilization; and (iii) this intrastate movement will not result in the spread of emerald ash borer because emerald ash borer will be destroyed by the specific processing, handling, or utilization;

(2) the regulated article is eligible for unrestricted movement under all other state plant quarantines and regulations applicable to the regulated article; and

(3) the destination of the regulated articles and other conditions determined by the inspector are stated in the limited permit.

- (c) An inspector or authorized holder of a compliance agreement may provide additional certificates of inspection or limited permits pursuant to the terms of a compliance agreement or authorize, in writing, reproduction of the certificates of inspection on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates of inspection and limited permits may then be completed and used, as needed, for the movement out of a restricted zone of regulated articles that have met all of the requirements of this Part.**
- (d) Any certificate of inspection or limited permit may be cancelled orally or in writing by an inspector whenever the inspector determines that the holder of the certificate of inspection or limited permit has not complied with this Part. The cancellation shall take effect upon the giving of the oral notice or the delivery of written notice. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing.**

§141.7 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 in writing by the Department. The container of articles so moved shall bear, securely attached to the outside thereof, an identifying tag issued by the Department showing compliance with such conditions.

§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 this Part, 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 may 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 the shipment.

§141.9 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 Department will not be responsible for any cost incident to inspection, treatment, or certification other than the services of the inspector.

§141.10 Inspection and disposition of shipments.

Any vehicle or other conveyance, any package or other container, and any item to be moved, which is moving, or which has been moved intrastate from the restricted zone, which may contain regulated articles or which may contain, infestations of the emerald ash borer, may be examined by an inspector at any time or place. When items are found to be moving or to have been moved intrastate in violation of these regulations, the inspector may take such action as deemed necessary to eliminate the danger of dissemination of the emerald ash borer. If found to be infested, such items must be rendered free of infestation without cost to the state other than services of the inspector.

§141.11 Other laws and regulations; interstate movement of regulated articles

No provision of this Part relieves any person from the obligation to comply with any other applicable Federal, state, county, regional or local law or regulation. This Part only applies to the intrastate movement of regulated articles. The interstate movement of regulated articles must comply with applicable federal laws and regulations.

§141.12 Effective date

This part shall become effective in a particular county on and after the tenth day from the filing of a certified copy in the office of the clerk of that county.