

## 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1 NYCRR Part 141 is repealed and a new Part 141 is added to read as follows: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) *Certificate of inspection*. A document issued by the Department certifying the eligibility of products for intrastate movement under this Part.

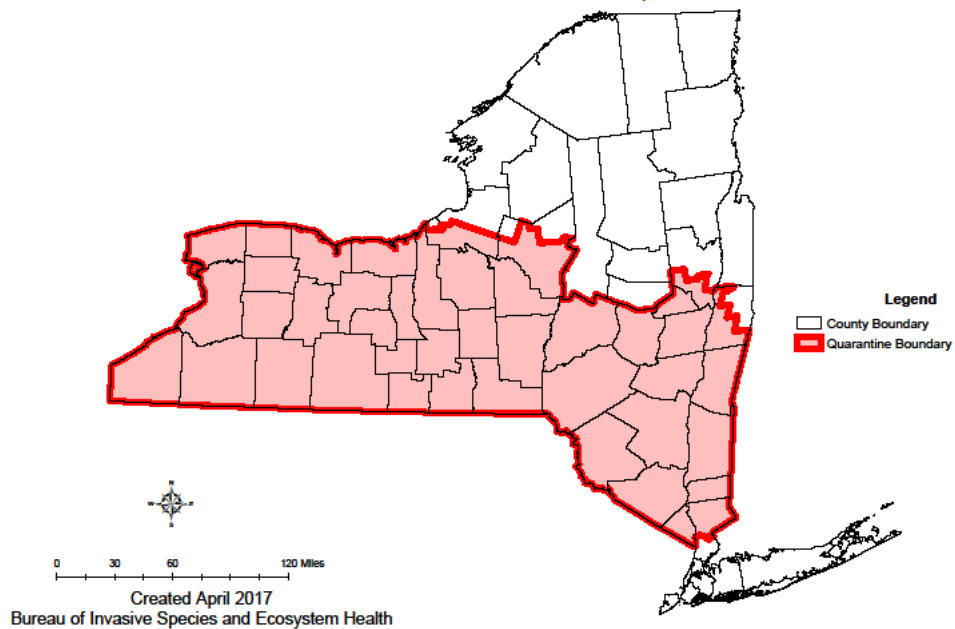
- (e) *Commissioner*. The Commissioner of the Department of Agriculture and Markets or the Commissioner's duly authorized representative.
- (f) *Compliance agreement*. A document issued by the Department setting forth the requirements covering the restricted movement, processing, handling or utilization 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.
- (g) *DEC*. The Department of Environmental Conservation.
- (h) *Department*. The Department of Agriculture and Markets.
- (i) *Emerald ash borer or EAB*. The insect known as the emerald ash borer, *Agrilus planipennis*, in any stage of development.
- (j) *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.
- (k) *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.
- (l) *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.
- (m) *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.

- (n) *Local government.* A village, town, city or county.
- (o) *Moved; movement.* Shipped, offered or received for shipment, carried, transported, or relocated into or through any area of the State.
- (p) *Nursery stock.* All trees, shrubs, plants and vines and parts thereof.
- (q) *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.
- (r) *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.
- (s) *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.
- (t) *Restricted zone.* A geographic area of the state delineated on the EAB quarantine map.

§141.2 Establishment and amendment of quarantine maps.

- (a) Establishment of quarantine area. The quarantine areas are on the quarantine map set forth below.

## Emerald Ash Borer (EAB) Quarantine



- (b) A copy of the map delineating the quarantine areas is maintained in the office of the clerk of each local government in which a restricted zone or a portion thereof is located.
- (c) The map depicts the creation of a new quarantine area as follows: of that section, to create a quarantine area as follows: starting from a point where the Northwestern corner of Niagara County meets the Province of Ontario; heading East along the shore of Lake Ontario to a point where Cayuga and Oswego Counties meet; then South along the border between Cayuga and Oswego Counties to the Northwestern corner of the Town of Hannibal; then East along the Northern border of Hannibal to the Northwestern corner of the Town of Granby; then East along the Northern Border of Granby to a point where Granby meets the Town of Volney; then Northwest along the border between Volney and the Town of Minetto to a point where it meets the Town of Scriba; then East and Northeast along the border of between Scriba and Volney to a point where it meets the Town of New Haven; then Southeast along the Southern borders of the Towns of New Haven, Mexico, Parish and Amboy to a point where Oswego and Oneida Counties meet; then Southeast along the Northern border of the Town of Vienna to a point where it meets the Town of Annsville; then North along the Western border of Annsville to a point where it meets Lewis County; then Southeast and South along the border of Annsville to a point where it meets the Town of Lee; then East along the Northern border of Lee to a point where it meets the Town of Western; then South along the Eastern border of Lee to a point where it meets the Town of Rome; then East along the Northern border of Rome to a point where it meets the Town of Floyd; then East along the Northern

border of Floyd to a point where it meets the Town of Trenton; then Northeast and East along the Northern border of Trenton to a point where it meets Herkimer County; then South along the border between Herkimer and Oneida Counties to a point where it meets Otsego County; then East along the border between Herkimer and Otsego Counties to a point where it meets Montgomery County; then East along the border between Montgomery and Otsego Counties to a point where it meets Schoharie County; then East along the border between Montgomery and Schoharie Counties to a point where it meets Schenectady County; then Northeast and North along the border between Montgomery and Schenectady Counties to a point where it meets Saratoga County; then North along the Western borders of the Towns of Charlton and Galway to a point where the Towns of Galway and Providence meet; then East along the Northern border of Galway to a point where it meets the Town of Milton; then South along the Eastern border of Galway to a point where it meets the Town of Charlton; then East along the Southern border of the Town of Milton to a point where it meets the Town of Malta; then North along the Western border of the Town of Malta to a point where it meets the Town of Saratoga Springs; then East along the Northern border of Malta to a point where it meets the Town of Saratoga; then South along the Eastern border of Malta to a point where it meets the Town of Halfmoon; then East along the Northern border of Halfmoon to a point where it meets the City of Mechanicville; then East along the Northern border of Mechanicville to a point where it meets Rensselaer County; then Northeast and East along the Northern border of the Town of Schaghticoke to a point where it meets the Town of Pittstown; then Southwest along the border between Schaghticoke and the Town of Pittstown to a point where it meets the Town of Brunswick; then East along the Northern border of Brunswick to a point where it meets the Town of Grafton; then South along the Eastern Border of Brunswick to a point where it meets the Town of Poestenkill; then East along the Northern border of Poestenkill to a point where it meets the Town of Berlin; then South along the Western border of Berlin to a point where it meets the Town of Stephentown; then East along the Northern border of Stephentown to a point where it meets the border between the States of New York and Massachusetts; then South along the border between New York and Massachusetts to a point where it meets the State of Connecticut; then South along the border between New York and Connecticut to a point where it meets the Town of Rye; then South along the Western border of Rye to a point where it meets the Town of Harrison; then West along the Southern border of the Town of North Castle to a point where it meets the Town of Greenburgh; then West along the Northern border of Greenburgh to a point where it meets Orange County; then South along the Eastern border of Orange County to a point where the border between the States of New York and New Jersey; then Northwest along the border between the New York and New Jersey to a point where it meets the border between the States of New York and Pennsylvania; then Northwest and West along the border between New York and Pennsylvania to a point where it meets the Southwest Corner of Chautauqua County; then North along the border between New York and Pennsylvania to a point where it meets the province of Ontario; then Northeast

and North along the border between New York and Ontario ending at a point where the Northwestern corner of Niagara County meets the Province of Ontario following south to Long Island.

- (d) A list of local governments within each of the quarantine areas is maintained in the Office of the New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235. A copy of the list is available upon request
- (e) 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 larger than one inch in two dimensions from the restricted zone during the period commencing on April fifteenth and continuing up to and including May fifteenth of each year; 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.