

Emergency Rules

Title 2—DEPARTMENT OF AGRICULTURE Division 70—Plant Industries Chapter 11—Missouri Plant Law Quarantines

EMERGENCY RULE

2 CSR 70-11.050 Emerald Ash Borer Intrastate Quarantine

PURPOSE: This rule prevents the spread of a serious insect pest, known as the Emerald Ash Borer, *Agrilus planipennis* Fairmaire, to other uninfested areas of the state of Missouri, and other states, and to establish those articles and areas which are to be regulated.

EMERGENCY STATEMENT: The Emerald Ash Borer, *Agrilus planipennis* Fairmaire, native to Asia, was discovered in Southeast Michigan in 2002 and has since been found to be established in ten (10) total U.S. states and parts of Canada. It was discovered in Wayne County, Missouri in July of 2008. This pernicious insect pest of ash trees has killed nearly all ash trees in many municipalities, parks, and woodlands in the infested areas in the United States and Canada, requiring the expensive removal of these dead hazard trees and decimating one (1) of the nations most desirable landscape, shade, and street trees. In Missouri it makes up three percent (3%) of our natural woodlands, but constitutes fourteen percent (14%) of street trees, twenty-one percent (21%) of trees in urban parks, and over thirty percent (30%) of trees in some parks and residential subdivisions. This percentage is much greater at high-profile Missouri landmarks such as the Jefferson National Expansion Memorial (Gateway Arch) and Forest Park in St. Louis. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Department of Agriculture, Plants Industries Division, believes this emergency rule is fair to all interested persons and parties under the circumstances. If this emergency rule is not enacted, then the United States Department of Agriculture will quarantine the entire state of Missouri for Emerald Ash Borer regulated articles, unnecessarily impeding a \$250 million+ per-year nursery and landscape industry and a \$4 billion-per-year forest products industry. This emergency rule was filed August 18, 2008, effective August 28, 2008, expires February 26, 2009.

(1) It has been determined that the Emerald Ash Borer, native to Asia, and a prolific and destructive pest of ash (*Fraxinus* spp.) has become established in Missouri. To date, it is estimated that this pest has destroyed nearly fifty (50) million ash trees in North America. It is not yet known to be generally distributed throughout the state of Missouri, and its introduction into the remainder of the state would cause further economic and ecological loss. As such, the state entomologist, under the authority of section 263.140, RSMo, of the Missouri Plant Law does now establish a quarantine to prevent the spread of this pest into uninfested parts of Missouri and other states, and now sets forth the name of this pest against which the quarantine is established, the quarantined area, the articles regulated, the rules governing movement of regulated articles, and the penalty.

(2) The following definitions shall apply to this quarantine:

(A) Bark means the natural bark of a tree, including the ingrown bark around the knots and bark pockets between rings of annual growth and an additional one-half ($\frac{1}{2}$)-inch of wood, including the vascular cambium;

(B) Certificate of Inspection is a document authorized to be issued by the director to allow the movement of regulated articles from the quarantined area to destinations within the state of Missouri;

(C) Compliance Agreement is a written agreement between the director and a person or entity moving regulated articles out of the quarantined area;

(D) Director is the director of the Missouri Department of Agriculture or his or her authorized representative;

(E) Emerald Ash Borer is the insect classified as *Agrilus planipennis* Fairmaire (Coleoptera: Buprestidae) in any life stage;

(F) Established refers to the presence of a reproducing population of Emerald Ash Borer; and

(G) Inspector refers to an employee of the Missouri Department of Agriculture Plant Pest Control Bureau or United States Department of Agriculture-Animal and Plant Health Inspection Service-Plant Protection and Quarantine (USDA-APHIS-PPQ) authorized to enforce the provisions of this quarantine.

(3) The following is a list of articles, the movement of which is regulated:

(A) The Emerald Ash Borer, *Agrilus planipennis* Fairmaire, in any living stage of development;

(B) Firewood of any non-coniferous (hardwood) species with bark as described in subsection (2)(A);

(C) 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*;

(D) Any item made from or containing ash wood that is capable of spreading the Emerald Ash Borer; and

(E) Any article, product, or means of conveyance when it is determined by the director to present the risk of spread of the Emerald Ash Borer.

(4) The counties listed below are designated as quarantined areas. In addition, the director may designate any area as quarantined for the Emerald Ash Borer in the future.

(A) All of Wayne County.

(5) The following are conditions of movement of regulated articles:

(A) The sale and/or movement of all ash nursery stock within or out of the quarantined area is prohibited under all conditions;

(B) Regulated articles listed in section (3) (with the exception of ash nursery stock) may be moved from a quarantined area to a destination within Missouri only under the following circumstances:

1. With a current compliance agreement with the director when a Certificate of Federal/State Domestic Plant Quarantines accompanies each shipment; or

2. With a Limited Permit for the Movement of Non-Certified Articles when a current compliance agreement with the director is in place and a copy of the limited permit accompanies each shipment; or

3. Without a certificate or limited permit when the regulated article is moved by an employee of the USDA-APHIS-PPQ (when authorized by the state plant health director of Missouri) or an employee of the Missouri Department of Agriculture (when authorized by the state entomologist) for experimental or scientific purposes; or

4. Without a certificate or limited permit if the article originates from and is destined to a point outside of the quarantined area under the following conditions:

A. The points of origin and destination are indicated on a waybill accompanying the regulated article; and

B. The regulated article, if moved through the quarantined area during the period of March 16 through September 30, or when the ambient air temperature is forty degrees fahrenheit (40°F) or higher, is moved in an enclosed vehicle or is completely covered to prevent access by the Emerald Ash Borer; and

C. The regulated article is moved directly through the quarantined area without stopping (except for refueling or for traffic conditions, such as traffic lights or stop signs) or has been stored, packed, or handled at locations approved by the state entomologist as not posing a risk of infestation by Emerald Ash Borer; and

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D. The article has not been combined or commingled with other articles so as to lose its individual identity.

(6) Regulated articles transported in violation of this quarantine must be treated, destroyed, or returned to the point of origin at the discretion of the state entomologist. Common carriers or other carriers, persons, firms, or corporations who transport or move regulated articles in violation of this quarantine and these rules will be subject to the penalties named in section 263.180, RSMo, of the Missouri Plant Law.

(7) These rules are distinct from, and in addition to, any federal statute, regulation, or quarantine order addressing the interstate movement of articles from the quarantined area or the state of Missouri.

AUTHORITY: sections 263.040, 263.050, and 263.180, RSMo 2000. Emergency rule filed Aug. 18, 2008, effective Aug. 28, 2008, expires Feb. 26, 2009. An emergency rule covering this same material will be published in the October 1, 2008 issue of the Missouri Register.