

WEST VIRGINIA EMERALD ASH BORER QUARANTINE

West Virginia Department of Agriculture
Plant Industries Division

Statutory Authority: Chapter 19, Article 12, Section 6 of the Code of West Virginia.

I. **Declaration of quarantine.**

Under authority of Chapter 19, Article 12, Section 6 of the Code of West Virginia, as amended, a quarantine is hereby established to regulate the movement of certain articles capable of transporting the highly destructive pest of ash (*Fraxinus* spp.) known as the emerald ash borer, *Agrilus planipennis* (Fairemaire), into uninfested or unregulated areas of the State, unless such articles comply with the conditions specified herein.

II. **Purpose of quarantine.**

The emerald ash borer is an introduced beetle that specifically attacks and kills ash trees (*Fraxinus* spp.). It has become established in Fayette and Morgan Counties, West Virginia, and has the potential to spread to uninfested counties by both natural means and humans moving infested articles. The purpose of this quarantine is to prevent the artificial spread of the emerald ash borer to uninfested areas of the state by regulating the movement of those articles that pose a significant threat of transporting the emerald ash borer.

III. **Definitions.**

The following words and terms, when used in these regulations, shall have the following meaning unless the context clearly indicates otherwise: terms used in the singular form shall be construed as the plural, and vice versa, as the case may demand.

Certificate - A document issued by an inspector or any other person operating in accordance with a compliance agreement to allow the movement of regulated articles to any destination.

Compliance agreement - A written agreement between a person engaged in growing, handling or moving regulated articles and the West Virginia Department of Agriculture, United States Department of Agriculture, or both, wherein the former agrees to comply with the requirements set forth in the compliance agreement.

Emerald ash borer - The live insect known as the emerald ash borer, *Agrilus planipennis* (Fairemaire), in any life stage (egg, larva, pupa, adult).

Inspector - An employee of the West Virginia Department of Agriculture, or other person authorized by the Commissioner of Agriculture to enforce the provisions of this quarantine.

Limited permit - A document issued by an inspector or other person operating in accordance with a compliance agreement to allow the movement of regulated articles to a specific destination.

IV. **Regulated articles.**

1. The emerald ash borer in any life stage.
2. Firewood of all hardwood (non-coniferous) species.
3. Ash (*Fraxinus* spp.) nursery stock.
4. Green (non-heat treated) ash lumber.
5. Other living, dead, cut, or fallen material of the genus *Fraxinus*, including logs, stumps, roots, branches, and composted and uncomposted wood chips.
6. Any other products, articles or means of conveyance of any character whatsoever, when it is determined by an inspector that the articles present a threat of artificial spread of the emerald ash borer and the person in possession thereof has been so notified.

V. **Regulated areas.**

Fayette and Morgan Counties in their entirety.

VI. **Conditions governing the movement of regulated articles.**

Regulated articles may not be moved from the regulated area to an unregulated area of the state unless a certificate or limited permit has been issued and attached to the regulated article in accordance with the provisions set forth in Sections VII and VIII of these regulations; or

1. The regulated article is moved by the United States Department of Agriculture or the West Virginia Department of Agriculture for experimental or scientific purposes; or
2. The regulated article originates outside the regulated area and is moved through the regulated 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 regulated area during the period of May 1 through August 31 or when the ambient air temperature is 40 degrees Fahrenheit 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 regulated 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 an inspector as not posing a risk of infestation by the emerald ash borer; and
 - d. The regulated article has not been combined or commingled with other articles so as to lose its individual identity.

VII. Conditions governing the issuance of certificates or limited permits.

1. Certificates - Certificates may be issued by an inspector or any person operating under a compliance agreement for the intrastate movement of regulated articles when:
 - a. In the judgment of the inspector the articles have not been exposed to the emerald ash borer;
 - b. The articles have been examined by the inspector and found to be apparently free of the emerald ash borer;
 - c. The articles have been treated to destroy the emerald ash borer under the direction of the inspector and according to methods selected by him from administratively authorized procedures known to be effective under the conditions in which applied;
 - d. The articles have been grown, produced, manufactured, stored or handled in such a manner that, in the judgment of the inspector, their movement does not present a risk of spreading the emerald ash borer.

2. Limited Permits - Limited permits may be issued by an inspector for the movement of regulated articles to specific destinations if:
 - a. The regulated article is apparently free of emerald ash borer, based on inspection; or the article has been grown, produced, manufactured, stored, or handled in a manner that, in the judgment of the West Virginia Department of Agriculture, prevents the article from presenting a risk of spreading the emerald ash borer; or
 - b. The regulated article is to be moved intrastate to a specified destination under conditions which specify the limited handling, utilization, processing or treatment of the articles, when the inspector determines that such movement will not result in the spread of the emerald ash borer because the life stage (s) of the insect will be destroyed by such specified handling, utilization, processing or treatment.

3. Compliance agreement - Any person engaged in the business of growing, purchasing, assembling, exchanging, handling, processing, utilizing, treating or moving regulated articles may be required to sign a compliance agreement as a condition for the issuance of certificates or permits. The agreement shall specify safeguards that will be maintained to prevent the establishment and spread of the emerald ash borer. The person must comply with all conditions set forth in the agreement, such as the maintenance of identity, handling, and subsequent movement of the regulated articles, and the cleaning and treatment of means of conveyance and containers.

VIII. Conditions governing the use of certificates or limited permits.

The attachment of a certificate or limited permit to a regulated article will not be required if a certificate or limited permit is attached to the invoice or waybill that accompanies the regulated article. Certificates or limited permits attached to the invoice, waybill or other shipping documents shall be given by the carrier to the consignee at the destination of the shipment, or an inspector when requested.

A copy of the limited permit must be forwarded to Plant Industries Division, West Virginia Department of Agriculture, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305-0191 within two weeks of the date of the actual movement of the regulated article.

IX. Cancellation of certificates, limited permits or compliance agreements.

Any certificate, limited permit or compliance agreement, which has been issued or authorized, may be canceled or withdrawn by an inspector, who is supervising the enforcement of this quarantine, whenever the inspector determines that the holder of the document has failed to comply with any conditions set forth for the use of the certificate, limited permit or compliance agreement.

X. Assembly of articles for inspection.

Persons intending to move any regulated articles shall apply for inspection at least 48 hours before the services are needed. The articles shall be assembled at the place and in a manner that the inspector designates as necessary to allow an adequate inspection.

XI. Inspection and disposal of regulated articles and pests.

Any properly identified inspector may stop and inspect, destroy, stop sale, seize, treat, or order returned to the point of origin, at the owner's expense, any regulated article under the authority granted this quarantine by the West Virginia Plant Pest Act (Chapter 19, Article 12 of the Code of West Virginia, as amended).

XII. Penalties for violation.

Any violation of this quarantine is subject to the full authority of the enabling statute, Chapter 19, Article 12, Section 6 of the Code of West Virginia, as amended.

XIII. Effective date and duration.

This amended quarantine is hereby ordered by the West Virginia Commissioner of Agriculture to be effective May 27, 2009 and will remain in effect until rescinded by same.