

Document: Proposed Rule, **Register Page Number:** 28 IR 1201

Source: January 1, 2005, Indiana Register, Volume 28, Number 4

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TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule LSA Document #04-177

DIGEST

Adds 312 IAC 18-3-18 concerning entomology and plant pathology to regulate the emerald ash borer (*Agrilus planipennis*) as a pest or pathogen, to provide standards for quarantine in a county infested with the species, and to provide standards for quarantine of areas infested with the species. Effective 30 days after filing with the secretary of state.

312 IAC 18-3-18

SECTION 1. 312 IAC 18-3-18 IS ADDED TO READ AS FOLLOWS:

312 IAC 18-3-18 Control of the emerald ash borer

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 18. (a) The emerald ash borer (Coleoptera: Buprestidae: *Agrilus planipennis*) is a pest or pathogen and is regulated under this section.

(b) The definitions in 312 IAC 1, 312 IAC 18-1, and as follows apply throughout this section:

(1) “Certificate of inspection” means a document issued or authorized to be issued by the state entomologist or the U.S. Department of Agriculture to allow the movement of a regulated article to any destination. A certificate may be in any form approved by the state entomologist or the U.S. Department of Agriculture for this purpose, including a phytosanitary document or multiple use quarantine certificate.

(2) “Compliance agreement” means a written agreement between the department or the U.S. Department of Agriculture and another person that authorizes the movement of regulated articles under this section and other stated conditions.

(3) “Eradication area” means the area including all plants infected by the emerald ash borer and any other ash species within one-half (½) mile radius of an infected plant.

(4) “Infested area” means a site where the emerald ash borer is present or where circumstances make it reasonable to believe that the ash borer is present.

(5) “Inspector” means a division inspector or a person authorized by the U.S. Department of Agriculture authorized to enforce this section.

(6) “Move” means to:

(A) ship;

(B) offer for shipment;

(C) receive for transportation;

(D) transport;

(E) carry; or

(F) allow to move or ship.

(c) The following counties include an infested area and are regulated under this section:

(1) Clay Township and Van Buren Township in LaGrange County.

(2) Jamestown Township and Millgrove Township in Steuben County.

(d) The following items are regulated articles:

(1) The emerald ash borer in any living stage of development.

(2) Any ash tree (*Fraxinus* spp.), including nursery stock.

(3) A limb, stump, branch, or debris of at least one (1) inch in diameter of an ash tree.

- (4) An ash log, slab, or untreated ash lumber with bark attached.
- (5) Composted and noncomposted ash chips and composted and noncomposted ash bark chips at least one (1) inch in diameter.
- (6) An article, product, or means of conveyance reasonably determined by the state entomologist to present the risk of the spread of the emerald ash borer.
- (7) Cut firewood of any nonconiferous species originating from a regulated area.

(e) A person must not move a regulated article outside an infested area except under the following conditions:

- (1) An inspector issues a certificate of inspection following a thorough examination of the regulated article and any treatment method. The certificate must be properly supported by a determination by the inspector, or by a grower or shipper authorized to conduct an inspection under a compliance agreement, that no life stage of the emerald ash borer is present. A certificate may be conditioned upon the completion of treatments administered under methods approved by the state entomologist or by a United States federal officer authorized by the state entomologist.
- (2) A certificate of inspection is attached to any regulated article or to a shipping document that adequately describes the regulated article. The certification must remain attached until the regulated article reaches its destination.

(f) A person must not move a regulated article originating outside an infested area, through a county regulated under subsection (c), without a certificate of inspection for the emerald ash borer, except under the following conditions:

- (1) From September 1 through April 30, or when the ambient air temperature is below forty (40) degrees Fahrenheit, if the person does not stop except to refuel or for traffic conditions.
- (2) From May 1 through August 31 when the temperature is forty (40) degrees Fahrenheit or higher if the article is:
 - (A) shipped in an enclosed vehicle; or
 - (B) completely enclosed by a covering adequate to prevent access by the emerald ash borer.
- (3) The point of origin of the regulated article is indicated on the bill of lading or shipping document.
- (4) The regulated article is moved within Indiana by approval of the state entomologist for scientific purposes.
- (5) The article is not combined or commingled with other articles so as to lose its individual identity.

(g) A regulated article originating outside a regulated area that is moved into a county regulated under subsection (c) and exposed to potential infestation by the emerald ash borer is considered to have originated from a regulated area. A person must not move the regulated article from the regulated area except under subsection (e).

(h) A person must not move a regulated article from an infested area through any nonregulated area to a regulated destination without a certificate of inspection for emerald ash borer, except under the following conditions:

- (1) From September 1 through April 30, or when the ambient air temperature is below forty (40) degrees Fahrenheit, if the person does not stop except to refuel or for traffic conditions.
- (2) From May 1 through August 31 when the temperature is forty (40) degrees Fahrenheit or higher, if the article is:
 - (A) shipped in an enclosed vehicle; or
 - (B) completely enclosed by a covering adequate to prevent the escape of any emerald ash borer.
- (3) The county and state of origin and the final destination of the regulated article is indicated on the bill of lading or shipping document.

(i) The bill of lading or shipping document accompanying any shipment of regulated articles in Indiana must indicate the county and state of origin of the regulated articles.

(j) A person who moves a regulated article in violation of this section must move or destroy the article, at the person's or owner's expense, as directed by the state entomologist.

(k) The state entomologist may issue a special permit for the movement of the emerald ash borer into or within Indiana for research purposes. The permit may, by express language, exempt the permit holder from conditions of this section.

(l) Uncomposted ash chips and uncomposted ash bark chips no larger than one (1) inch in diameter are exempted from the requirements of this section.

(m) Any ash species within the eradication area shall be removed and rendered incapable of supporting a life stage of the emerald ash borer.

(n) Regulated articles from another infested state or any part of a state infested with the emerald ash borer are prohibited entry into Indiana without an accompanying certificate of inspection or phytosanitary document issued by the U.S. Department of Agriculture or the plant health regulatory agencies of the originating state.

(o) Harvest for timber or other use of the wood of any non-ash forest species within the eradication area is prohibited until after all ash has been removed and the site is released by the state entomologist or his or her designee.

(p) A person must not move ash, in any form, from the eradication area without a compliance agreement signed by the state entomologist or his or her designee. *(Natural Resources Commission; 312 IAC 18-3-18)*

Notice of Public Hearing

*Under IC 4-22-2-24, notice is hereby given that on January 24, 2005 at 11:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on a proposed new rule to regulate the emerald ash borer (*Agrilus planipennis*) as a pest or pathogen, to provide standards for quarantine in a county infested with the species, and to provide standards for quarantine of areas infested with the species. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Michael Kiley
Chairman
Natural Resources Commission