

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 80 Department of Agriculture and Industries

Chapter No.: 80-10-20

Chapter Title: Emerald Ash Borer Quarantine

x New; Amend; Repeal; Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? Yes

Is there a reasonable relationship between the State's police power and the protection of the public health, safety or welfare? Yes

Is there another less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? Yes, Very minimal

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have any economic impact? Yes

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official
I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer John M. ...
Date: 11-8-2016

(DATE FILED)
(STAMP)

APA-6
07/04

ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23 (f))

Control No. 80 Department or Agency Agriculture & Industries

Chapter No. 80-10-20

Chapter Title: Emerald Ash Borer Quarantine

New Amend Repeal Adopt by Reference

This rule has no economic impact.

This rule has an economic impact as explained below:

1. NEED/EXPECTED BENEFIT OF RULE: Emerald Ash Borer, a federally regulated pest, has been found in Calhoun County, Alabama. To comply with federal law and protect the Alabama forest industry, we must establish this quarantine.

2. COST/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:

After consulting with USDA, the Alabama Forestry Commission and private stakeholder groups, the Alabama Department of Agriculture and Industries determined that this is the most cost effective and efficient way to prevent the spread of Emerald Ash Borer.

3. EFFECT OF THIS RULE ON COMPETITION:
Minimal, if any.

4. EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE
GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:
Minimal, if any

5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEORGRAPHICAL AREA
WHERE THE RULE IS TO BE IMPLEMENTED:
This rule should protect forest industry jobs throughout Alabama.

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:

Current revenues at the Alabama Department of Agriculture and Industries will be used. No additional revenue will be needed.

7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:

Movement of Ash timber will adjust in the market place to accommodate federal "no fly" dates for this pest.

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:

The exact amount of Ash timber in Alabama is unknown. Data from the Alabama Forestry Commission and our private stakeholders indicates that Ash timber comprises approximately around 1% of Alabama's timber.

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:

This rule will protect Alabama's Ash trees and the associated timber industry.

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED: Emerald Ash Borer will spread unchecked and possibly prevent the export and inter-state sale of Alabama Timber.

ALABAMA DEPARTMENT OF AGRICULTURE AND INDUSTRIES

NOTICE OF INTENDED ACTION

Agency Name: Alabama Department of Agriculture and Industries

Chapter No. and Title: 80-10-20 Emerald Ash Borer Quarantine

Intended Action: To create new chapter

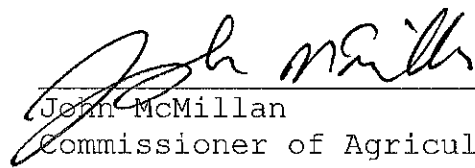
Substance of Proposed Action: This emergency rule will establish a quarantine to prevent the spread of Emerald Ash Borer, a federally regulated pest. This action is necessary to protect Alabama's forest products industry and comply with federal law.

Time, Place, Manner of Presenting Views: Views may be presented in writing to the contact person below or in person on Tuesday, February 14, 2016, at 10:00 a.m., in the Board Room of the Richard Beard Building, 1445 Federal Drive, Montgomery, Alabama, 36117.

Final Date for Comment and Completion of Notice: February 14, 2016.

Contact Person at Agency: Patrick B. Moody, Legal Counsel, Department of Agriculture and Industries, 1445 Federal Drive, Montgomery, Alabama 36107-1123, Telephone No. (334) 240-7117.

11-8-2016
Date



John McMillan
Commissioner of Agriculture
and Industries

ALABAMA DEPARTMENT OF AGRICULTURE AND INDUSTRIES
PLANT INDUSTRY
ADMINISTRATIVE CODE

CHAPTER 80-10-20
Emerald Ash Borer Quarantine

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<u>80-10-20-.01</u>	<u>Determination Of Problem And Establishment Of Quarantine.</u>

(1) It has been determined that the destructive insect pest known as the the Emerald Ash Borer (*Agrilus planipennis*), an exotic invasive plant pest that is established in several other states, has been found in Alabama. This insect can be highly destructive to Alabama's ash trees (*Fraxinus species*) and ash nursery stock. Therefore, it is in the best interest of Alabama's citizens, agriculture, and silviculture that this quarantine be established to limit the pest's human-assisted spread within the state.

(2) Due to the above determination, a quarantine against the above defined pest is hereby established.

Author: Patrick B. Moody

Statutory Authority: Code of Ala. 1975, §§2-25-1, et seq.

History: New Rule Filed:

80-10-20-.02 Definitions. For the purpose of this quarantine and regulations, the following shall be construed respectively to mean:

- (1) Ash. The genus *Fraxinus*.
- (2) Commissioner. The Commissioner of the Department of Agriculture and Industries of the State of Alabama, or his authorized representatives.
- (3) Compliance Agreement. A written agreement between a person engaged in growing, harvesting, dealing in, or moving regulated articles and the Alabama Department of Agriculture and Industries, wherein the former agrees to comply with conditions specified in the agreement to prevent the dissemination of the Emerald Ash Borer.
- (4) Exemptions. Conditions described herein which provide for modifications in conditions of movement of regulated articles from regulated areas under specified conditions.
- (5) Infestations. The presence of the Emerald Ash Borer or the existence of circumstances that make it reasonable to believe that the Emerald Ash Borer is present.
- (6) Permit. A document issued by the commissioner to allow the movement of noncertified regulated articles to a specified destination for particular handling, utilization, or processing, or for treatment.
- (7) Person. Any individual, firm, partnership, corporation, association or other legal entity or organization.
- (8) Moved, Movement, Move. Shipped, hauled, transported, deposited for transmission in the mail, offered for shipment, received for transportation, carried, otherwise transported or moved, or allowed to be moved, by any means whatsoever, by any person, directly or indirectly.
- (9) Pest. The insect known as the Emerald Ash Borer (*Agrilus planipennis* [Coleoptera: Buprestidae]) in any stage of development (egg, larva, pupa, adult).
- (10) Regulated Area. Any county, parish, township, city or other civil division or part thereof in any state, country, or territory listed in this quarantine as being placed under

quarantine, and such other areas as may become infested or deemed to present a hazard of spread of the Emerald Ash Borer.

Author: Patrick B. Moody

Statutory Authority: Code of Ala. 1975, §§2-25-1, et seq.

History: New Rule Filed:

80-10-20-.03 Regulated Articles. The following pest and articles shall be regulated by this quarantine.

(1) The insect known as the Emerald Ash Borer (*Agrilus planipennis* [Coleoptera: Buprestidae]) in any stage of development (egg, larva, pupa, adult);

(2) firewood of all hardwood (non-coniferous) species;

(3) ash nursery stock;

(4) non-heat treated (green) ash lumber;

(5) other living, dead, cut, or fallen, material of the genus *Fraxinus*, including logs, stumps, roots, branches, and composted and uncomposted chips that have not been ground to a small enough size to destroy Emerald Ash Borer in any life stage, as required by USDA APHIS;

Any other products, articles, or means of conveyance of any character whatsoever, when it is determined by the commissioner that they present a risk of spreading Emerald Ash Borer and the person in possession thereof has been so notified.

Author: Patrick B. Moody

Statutory Authority: Code of Ala. 1975, §§2-25-1, et seq.

History: New Rule Filed:

80-10-20-.04 Regulated Areas.

A. The following Counties are designated as regulated areas:

- (1) Calhoun County,
- (2) Cherokee County,
- (3) Cleburne County

B. Any other county where the Emerald Ash Borer is found to be present by the Commissioner, or counties determined by the Commissioner to be at high risk for the presence of Emerald Ash Borer. Such counties will be conspicuously posted on the Department of Agriculture's website at: www.agi.alabama.gov

Author: Patrick B. Moody

Statutory Authority: Code of Ala. 1975, §§2-25-1, et seq.

History: New Rule Filed:

80-10-20-.05 Movement of Regulated Articles From Regulated Areas.

1. Regulated articles may be moved from a regulated area only:

(a) if moved with a permit that is attached as required by the Commissioner; and

(b) if the regulated articles originate in an area of Alabama identified by USDA APHIS as having a "no fly" period for Emerald Ash Borer, and only during the "no fly" period of November 1 through March 1. Counties outside of this "no fly" zone do not have a period when regulated articles can be moved from a regulated area to a non-regulated area.

2. Without a permit if:

(a) The regulated article is moved by the United States Department of Agriculture for experimental or scientific purposes; or

(b) The regulated article originates outside the regulated area and is moved through the regulated area under the following conditions:

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

(2) The regulated article is moved in an enclosed vehicle or is completely covered to prevent access by Emerald Ash Borer, or

(3) 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 the Commissioner as not posing a risk of infestation by Emerald Ash Borer; and

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

Author: Patrick B. Moody

Statutory Authority: Code of Ala. 1975, §§2-25-1, et seq.

History: New Rule Filed:

80-10-20-.06 Attachment Of Permits. When permits are required, they shall be securely attached to the shipping document that adequately describes the regulated articles being moved.

Author: Patrick B. Moody

Statutory Authority: Code of Ala. 1975, §§2-25-1, et seq.

History: New Rule Filed:

80-10-20-.07 Issuance Of Permits. Permits may be issued by the commissioner to allow the movement of regulated articles to locations outside the regulated areas for particular handling, utilization, processing, or for treatment in accordance with approved procedures, provided the commissioner has determined that such movement will not result in the spread of the Emerald Ash Borer.

Permits will remain valid as long as the permit holder maintains a compliance agreement as described in rule 80-10-20-.12.

Author: Patrick B. Moody

Statutory Authority: Code of Ala. 1975, §§2-25-1, et seq.

History: New Rule Filed:

80-10-20-.08 Movement Of Regulated Articles Within Regulated Areas. There are no restrictions imposed on the movement of regulated articles solely within regulated areas.

Author: Patrick B. Moody

Statutory Authority: Code of Ala. 1975, §§2-25-1, et seq.

History: New Rule Filed:

80-10-20-.09 Disposition Of Permits. In all cases, permits shall be furnished by the carrier to the consignee at the destination of the shipment.

Author: Patrick B. Moody

Statutory Authority: Code of Ala. 1975, §§2-25-1, et seq.

History: New Rule Filed:

80-10-20-.10 Waiver By Commissioner. The commissioner, in his discretion, may waive the requirements for movement of regulated articles for experimental or scientific purposes in accordance with specified conditions.

Author: Patrick B. Moody

Statutory Authority: Code of Ala. 1975, §§2-25-1, et seq.

History: New Rule Filed:

80-10-20-.11 Compliance Agreements.

1. As a condition of issuance of permits for the movement of regulated articles, any person engaged in purchasing, assembling, exchanging, handling, processing, utilizing, treating, or moving such articles shall be required to sign a compliance agreement stipulating that he will maintain such safeguards against the establishment and spread of infestation and subsequent movement of such articles, and the cleaning and treatment of means of conveyance and containers used in the transportation of such articles as may be required by the commissioner. United States Department of Agriculture compliance agreements may be utilized to meet the requirements of this rule.

2. Any compliance agreement may be canceled orally or in writing by the Commissioner whenever he determines that the person who has entered the compliance agreement has failed to comply with this quarantine. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose compliance agreement has been cancelled may appeal the decision in writing to the Commissioner within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Commissioner to consider in deciding the appeal. As soon as practicable, the Commissioner will grant or deny the appeal in writing, stating the reason for the decision.

Author: Patrick B. Moody

Statutory Authority: Code of Ala. 1975, §§2-25-1, et seq.

History: New Rule Filed:

80-10-20-.12 Inspection And Disposal. The commissioner, after displaying proper identification, is authorized to stop and inspect, without a warrant, any person or means of conveyance moving into, within or from the state of Alabama upon probable cause to believe that such means of conveyance or articles are infested with the Emerald Ash Borer or contain regulated articles; and to seize, treat, destroy, or otherwise dispose of, or require the disposal of pest and regulated articles found to be moving in violation of this quarantine.

All costs for treatment, destruction, or disposal of regulated articles and pest shall be borne by the person in possession of the regulated article.

Author: Patrick B. Moody

Statutory Authority: Code of Ala. 1975, §§2-25-1, et seq.

History: New Rule Filed:

80-10-20-.13 Penalty for Violation. Any person violating the provisions of this chapter shall be subject to the criminal penalties imposed under the provisions of Code of Ala. 1975, § 2-25-22 and the injunctive provisions of Code of Ala. 1975, § 2-25-19.1.

Author: Patrick B. Moody

Statutory Authority: Code of Ala. 1975, §§2-25-1, et seq.

History: New Rule Filed: