

*Editing comments: Changes to this rule are indicated in bold strikethrough for removal and Bold, Small Cap, double underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.*

## **DEPARTMENT OF AGRICULTURE**

### **Plant Industry Division**

#### **~~QUARANTINE IMPOSED AGAINST ALL LIFE STAGES OF THE EMERALD ASH BORER (AGRILUS PLANIPENNIS, FAIRMAIRE) AND HOSTS OR POSSIBLE CARRIERS OF EMERALD ASH BORER PURSUANT TO THE COLORADO PEST CONTROL ACT~~**

##### **~~8 CCR 1203-24~~**

##### **~~1.0 Quarantine Established.~~**

~~A Quarantine is hereby established pursuant to § 35-4-110(1), C.R.S., of the Colorado Pest Control Act against the exotic pest known as Emerald Ash Borer (*Agrilus planipennis*, Fairmaire) ("EAB") that has been detected in Colorado and neighboring states and has limited distribution at this time. The EAB is known to have caused high levels of economic damage under similar conditions of climate and natural habitat in areas outside this state.~~

~~The EAB has been found infesting and killing ash trees in Boulder County, Colorado.~~

~~Ash trees are a valuable resource for the nursery and landscaping industries in Colorado.~~

~~Ash trees represent a significant component of the urban forest environment in Colorado.~~

~~This Quarantine is consistent with and does not exceed the USDA/APHIS quarantine insofar as it affects interstate commerce.~~

##### **~~2.0 Definitions.~~**

~~2.1 "Ash" means all species of the genus *Fraxinus*.~~

~~2.2 "Bud wood" means a shoot of a plant bearing a bud suitable for grafting.~~

~~2.3 "Certificate" means a document authorized or prepared by USDA/APHIS.~~

~~2.4 "Compliance agreement" means a written agreement between a person and USDA/APHIS, and /or the Commissioner to achieve compliance with this Quarantine.~~

~~2.5 "Emerald Ash Borer" means the insect known as Emerald Ash Borer (*Agrilus planipennis*, Fairmaire), in any stage of development.~~

~~2.6 "Firewood" means wood cut to lengths less than four feet long. This includes firewood cut for personal use.~~

~~2.7 "Inspector" means an employee of the Colorado Department of Agriculture or other individual authorized to enforce the provisions of this Quarantine.~~

~~2.8 "Log" means tree parts cut into lengths of four feet or longer.~~

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~~2.9 "Move" ("moved", "movement") means shipped, transported, carried; held or offered for shipment, transport or carriage; received for shipment, transport or carriage, allowed to be shipped, transported or carried.~~

~~2.10 "Person" means any individual, firm, association, partnership, corporation, government entity, or other legal entity.~~

~~2.11 "Quarantined Area" means any portion of Colorado listed in Section 4.0 of this Quarantine.~~

~~2.12 "Regulated Article" means any article listed under Section 3.0 of this Quarantine and any article, product or means of conveyance that the Commissioner determines to present a risk or spread of EAB.~~

~~2.13 "Receiving Facility" means any mill, incinerator, or other facility that receives a regulated article.~~

~~2.14 "Scion wood" means mature dormant shoots usually of the previous season's growth used for grafting. The scion is the part of the grafted plant that will produce the plant's shoots.~~

~~2.15 "State" means the District of Columbia, Puerto Rico, the Northern Mariana Islands, or any state, territory, or possession of the United States.~~

~~2.16 "Transit" ("transiting") means movement through an area.~~

~~2.17 "USDA/APHIS" means United States Department of Agriculture Animal Plant Health Inspection Service.~~

~~3.0 Regulated Articles.~~

~~3.1 The Emerald Ash Borer, *Agrilus planipennis*, in any stage of development.~~

~~3.2 All plants and plant parts of the genus *Fraxinus*, including but not limited to:~~

~~Logs and green lumber;~~

~~Nursery stock, scion wood, and bud wood;~~

~~Chips and mulch, either composted or uncomposted;~~

~~Stumps, roots and branches.~~

~~3.3 Firewood of any non-coniferous (hardwood) species.~~

~~3.4 Any article, product or means of conveyance that the Commissioner determines to present a risk of spread of EAB. Upon notification by the Commissioner to the person in possession of the article, product, or means of conveyance, of such determination, the article, product, or means of conveyance shall be subject to this Quarantine as a regulated article.~~

~~3.5 Exceptions:~~

~~3.5.1 Ash seeds and leaves.~~

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~~3.5.2 Processed lumber that is free of bark and wane, kiln-dried and with squared edges.~~

~~3.5.3 Finished wood products without bark, including furniture, baskets, and baseball bats.~~

#### ~~4.0 Quarantined Areas.~~

~~The following are designated as Quarantined Areas:~~

~~Boulder County, Colorado;~~

~~The entire town of Erie, Colorado;~~

~~The area extending East from Boulder County with a Southern boundary of and including Highway 7, a Northern boundary of and including Highway 52 and an Eastern boundary of and including Weld County Road 7;~~

~~Highway 93 extending South from the Boulder County line to the entrance of Republic Landfill, including the entire landfill property, and including the entire property at 11218 Highway 93 on which the business of the Singing Saw Woodworks is operated;~~

~~The 15 acre, fenced, Community Sort Yard located at 8200 Highway 7 in Allenspark CO on the Boulder/Larimer County line.~~

#### ~~5.0 Restrictions on Regulated Articles.~~

##### ~~5.1 Use of Regulated Articles in a Quarantined Area.~~

~~The use of ash wood material for the manufacture of pallets and wood crafting is prohibited in the Quarantine areas, unless the wood is treated by methods approved by the Commissioner and takes place in accordance with a Compliance Agreement.~~

##### ~~5.2 Movement from a Quarantined Area to a Non-Quarantined area.~~

~~5.2.1 The sale and/or movement of ash nursery stock out of a quarantined area is prohibited.~~

~~5.2.2 The movement of regulated articles, other than ash nursery stock, from any quarantined area to any non-quarantined area is prohibited, except under conditions 5.2.2.1. or 5.2.2.2. below.~~

~~5.2.2.1 The regulated article must be treated or subjected to special handling in accordance with a Compliance Agreement issued by the Commissioner. The point of origin and the final destination must be indicated on the bill of lading or other shipping documents.~~

~~5.2.2.2 Regulated articles moved outside the state of Colorado must have a certificate issued by USDA/APHIS. The certificate must be attached to or accompany the regulated articles and shall remain on/with the regulated articles until such articles reach their final destination. The certificate must be given to the recipient of the shipment and shall be retained with the shipping documents.~~

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### ~~5.2.3 Movement Transiting a Quarantined Area when Regulated Articles Originate from a Non-Quarantined Area.~~

~~5.2.3.1 The transit of regulated articles originating from a non-quarantined area through a quarantined area to a non-quarantined area is prohibited, except under the following conditions:~~

~~5.2.3.1.1 During the period of May 1 through Sept 30, if the regulated articles are shipped in an enclosed vehicle or completely enclosed by a covering adequate to prevent the infestation of regulated articles by EAB.~~

~~5.2.3.1.2 During the period of May 1 through Sept 30, uncovered regulated articles may transit without stopping except for refueling or traffic conditions.~~

~~5.2.3.2 Transit is not regulated during the period October 1 through April 30.~~

### ~~5.2.4 Movement within a Quarantined Area.~~

~~Regulated articles may move within a quarantined area.~~

### ~~5.2.5 Movement from a Non-Quarantined Area.~~

~~Regulated articles may move from a non-quarantined area into a quarantine area. Once an article has entered a quarantined area, it is subject to the same restrictions as an article that originated from the quarantined area.~~

### ~~5.2.6 Unauthorized Movement of Regulated Articles from a Quarantined Area.~~

~~Any regulated articles moved in violation of this Quarantine or Compliance Agreement entered into thereunder must be removed to an approved location specified by the Commissioner within 24 hours of discovery or may be subject to destruction under the direction of the Commissioner and at the expense of the owner or owners.~~

### ~~5.2.7 Documentation.~~

~~All regulated articles moved from a quarantined area must be accompanied by the documents required in section 5.2.2.1 or 5.2.2.2 above. Such documents must be shown to the Commissioner or any USDA/APHIS employee when requested.~~

## ~~6.0 Penalties.~~

~~Any person violating this Quarantine or any Compliance Agreement entered into thereunder is subject to civil penalties up to \$1000 per violation pursuant to § 35-4-114.5, C.R.S.~~

## ~~7.0 – 8.0 Reserved.~~

## ~~9.0 Statements of Basis, Specific Statutory Authority and Purpose.~~

### ~~9.1 Emergency Rule Adopted November 12, 2013 – Effective November 12, 2013~~

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### **Statutory Authority**

~~This Emergency Quarantine and Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Pest Control Act (the "Act"), § 35-4-110(1) C.R.S.~~

### **Purpose**

~~The purposes of this Emergency Quarantine and Rules are to:~~

- ~~1. Establish an Emergency Quarantine against Emerald Ash Borer (*Agrillus planipennis* Fairmare), an insect in the order Coleoptera in Part 1.~~
- ~~2. Adopt Rules in Part 2 setting forth definitions of specific terms used in these Rules.~~
- ~~3. Adopt Rules in Part 3 specifying the regulated articles.~~
- ~~4. Adopt Rules in Part 4 establishing the Quarantine areas.~~
- ~~5. Adopt Rules in Part 5 specifying the restrictions established on regulated articles.~~
- ~~6. Adopt Rules in Part 6 specifying violations of these Rules for which penalties may be imposed.~~

### **Factual and Policy Basis**

~~The factual and policy issues encountered when developing this Emergency Quarantine and Rules include:~~

- ~~1. The Emerald Ash borer is an invasive pest that kills ash trees. There is no known control other than continued pesticide application. Once pesticide applications are ceased, the ash tree is susceptible.~~
- ~~2. USDA APHIS will quarantine the entire state of Colorado unless Colorado acts immediately to adopt and enforce restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the APHIS interstate quarantine. There is not time, therefore, to adopt these measures through the normal rulemaking process. This Emergency Quarantine and these Rules will be made permanent within 120 days after public notice and hearing pursuant to § 24-4-103, C.R.S.~~

~~9.2 Adopted January 9, 2014 – Effective March 2, 2014~~

### **Statutory Authority**

~~These Permanent Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Pest Control Act, § 35-4-110(1), C.R.S.~~

### **Purpose**

~~The purpose of these Rules is to make permanent the Emergency Quarantine against Emerald Ash Borer (*Agrillus planipennis* Fairmare) ("EAB") that was adopted by the Commissioner on November 12, 2013. Consistent with the Emergency Quarantine Rules, these Permanent Rules:~~

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- ~~1. Establish a Quarantine against EAB, an insect in the order Coleoptera in Part 1.~~
- ~~2. Adopt Rules in Part 2 setting forth definitions of specific terms used in these Rules.~~
- ~~3. Adopt Rules in Part 3 specifying the regulated articles.~~
- ~~4. Adopt Rules in Part 4 establishing the Quarantine areas.~~
- ~~5. Adopt Rules in Part 5 specifying the restrictions established on regulated articles.~~
- ~~6. Adopt Rules in Part 6 specifying violations of these Rules for which penalties may be imposed.~~

#### ~~Factual and Policy Basis~~

~~The factual and policy issues encountered when developing these Rules include:~~

- ~~1. USDA/APHIS will quarantine less than the entire state of Colorado only if Colorado adopts and enforces restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the USDA/APHIS interstate quarantine.~~
- ~~2. The EAB is an invasive pest that kills ash trees. There is no known control other than continued pesticide application. Once pesticide applications are ceased, the ash tree is susceptible.~~
- ~~3. Costs to affected Cities are high. The City of Boulder estimates that it has 98,000 public and private ash trees; they estimate over time that removal of EAB infested trees may cost \$1.8 million on public property and over \$27.8 million on private property. In addition there will be tree replacement costs, annual pesticide treatment costs and wood disposal costs.~~
- ~~4. If left unchecked this pest could spread and cause the loss of over 2 million ash trees in the State of Colorado.~~
- ~~5. CDA is focused on detecting, controlling, and preventing the human spread of the EAB and minimizing the impact of the beetle.~~
- ~~6. CDA worked closely with USDA/APHIS and held nine public meetings to determine what rules were necessary to implement this Quarantine and determine the boundaries of the Quarantine zone to impact business as little as possible.~~
- ~~7. A permanent Quarantine is necessary to deal with the ongoing impact of this pest as eradication is unlikely in the foreseeable future.~~