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- 02/08/2018 Received by Lt. Gov & Speaker 02/05/2019

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Document No. 4807

**CLEMSON UNIVERSITY**

**STATE CROP PEST COMMISSION**

CHAPTER 27

Statutory Authority: 1976 Code Sections 46-9-40 and 46-9-50

**Synopsis:**

The State Crop Pest Commission proposes to update and add language regarding the listing of certain plant pests (Emerald Ash Borer and Benghal Dayflower), as well as quarantine areas across the State.

The Notice of Drafting was published in the *State Register* on October 27, 2017.

**Instructions:**

Add Regulation 27-56 as listed below.

Add Regulation 27-56.1 as listed below.

Add Regulation 27-56.2 as listed below.

Add Regulation 27-56.3 as listed below.

Add Regulation 27-56.4 as listed below.

Add Regulation 27-56.5 as listed below.

Add Regulation 27-56.6 as listed below.

Add Regulation 27-56.7 as listed below.

Add Regulation 27-56.8 as listed below.

Add Regulation 27-56.9 as listed below.

Add Regulation 27-56.10 as listed below.

Add Regulation 27-56.11 as listed below.

Add Regulation 27-57 as listed below.

Add Regulation 27-57.1 as listed below.

Add Regulation 27-57.2 as listed below.

Add Regulation 27-57.3 as listed below.

Add Regulation 27-57.4 as listed below.

Add Regulation 27-57.5 as listed below.

**Text:**

27-56. Benghal Dayflower Quarantine.

56.1. Definitions.

 A. “Certificate” means a document, electronic or otherwise, issued or authorized to be issued by an inspector to allow the movement of regulated articles to any destination.

 B. “Compliance agreement” means a written agreement between an individual or concern engaged in growing, dealing in, or moving regulated articles and the South Carolina Crop Pest Commission, wherein the former agrees to comply with conditions specified in the agreement to prevent the dissemination of benghal dayflower.

 C. “Crop” means a cultivated plant or plants grown as food for sale or use in producing another food product.

 D. “Exemptions” means conditions contained in a regulation supplemental hereto which provide for modifications in conditions of movement of regulated articles from regulated areas under specific conditions.

 E. “Farm Tool” means any device not motor-driven used in any process on lands purposed for production agriculture.

 F. “Infested area” means any area designated by an inspector where benghal dayflower or the existence of circumstances that make it reasonable to believe that benghal dayflower is present.

 G. “Inspector” means any authorized employee of the South Carolina Crop Pest Commission to enforce the provisions of the quarantine and regulations supplemental thereto.

 H. “Mechanized equipment” means motor-driven equipment used for cultivating, planting, or harvesting purposes, including but not limited to turning, disc plows, no-till planters, tractors, combines and other harvesters, or to move or transport soil, including but not limited to draglines, bulldozers, road scrapers and dump trucks.

 I. “Quarantined area” means the designated area set by the South Carolina Crop Pest Commission to isolate all known occurrences of the benghal dayflower in one geographical area.

 J. “Regulated Articles” means those articles that require a certificate year‑round except as indicated.

 K. “Scientific Permit” means a document, electronic or otherwise, issued by the Director, or his designee, to allow the movement or use of regulated articles, not otherwise eligible for movement or use, for experimental or scientific purposes.

 L. “Soil” means that part of the upper layer of earth in which plants can grow.

56.2. Regulated Articles.

 A. The benghal dayflower (*Commelina benghalensis*) in any living stage of development including seeds, vegetative growth, roots and stolons.

 B. Soil, whether on commodities, seed or equipment, mulch, compost, decomposed manure, humus, muck and peat, separately or with other things, sand, and gravel from infested areas.

 C. Any crop above ground or below, including hay, grown and harvested from infested areas.

 D. Any farm tool, including hand tools, crates, boxes, burlap bags, and other farm product containers used in planting, growing, or harvesting of crops in or from infested areas.

 E. Mechanized equipment used for cultivating, planting, harvesting, or moving soil in or from infested areas.

 F. Any other products, articles, or means of conveyance, including livestock, of any character whatsoever, not covered by the above when it is determined by an inspector that they present a hazard of spread of benghal dayflower and the person in possession thereof has been so notified.

56.3. Conditions Governing the Movement of Regulated Articles.

 A. Certificate is required. Unless exempted in a regulation supplemental hereto, a certificate shall accompany the movement of regulated articles from any regulated area into or through any point outside thereof, except that, regulated articles originating outside of a regulated area moving through a regulated area to other nonregulated areas may be moved without a certificate or permit if the point of origin is clearly indicated on the shipping document accompanying the regulated articles and they are protected from infestation while within regulated areas, to the satisfaction of an inspector.

 B. Attachment of certificates. When certificates are required, they shall be securely attached to the outside of the container in which the articles are moved except where the certificate is attached to the shipping document and the regulated articles are adequately described in the shipping document or on the certificate, the attachment of the certificate to each of the containers is not required. Tractors and other slow-moving farm equipment do not require attachment of certificates if traveling within a 25-mile radius of main farm.

 C. Issuance of certificates. Certificates may be issued by an inspector if the regulated articles:

 (1) Have originated in non-infested areas in the quarantined area and have not been exposed to infestation while within the quarantined area; or

 (2) Have been treated to destroy infestation in accordance with approved procedures thereof; or

 (3) Have been grown, harvested, manufactured, stored or handled in such manner that no infestation would be transmitted thereby.

 D. Requirements under other applicable quarantines must also be met.

56.4. Disposition of Certificates.

 In all cases, certificates shall be furnished by the carrier to the consignee at the destination of the shipment.

56.5. Movement for Scientific Purposes.

 Regulated articles may be moved for experimental or scientific purposes in accordance with specified conditions provided an approved scientific permit is securely attached to the container of such articles or to the article itself.

56.6. Compliance Agreement.

 As a condition of issuance of certificates for the movement of regulated articles, any person, including lessors and lessees, engaged in purchasing, assembling, exchanging, handling, processing, utilizing, treating or moving such articles may be required to sign a compliance agreement stipulating that he/she will maintain such safeguards against the establishment and spread of infestation and comply with such conditions as to the maintenance of identity, handling 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 inspector.

56.7. Inspection and Disposal.

 Any properly identified state inspector is authorized to stop and inspect, without a warrant, any person or conveyance moving within or from the State of South Carolina upon probable cause to believe that such means of conveyance or articles are infested with the benghal dayflower; and, such inspector is authorized to seize, treat, destroy or otherwise dispose of articles found to be moving in violation of these regulations.

56.8. Disclaimer of Liability.

 The South Carolina Crop Pest Commission disclaims liability for any cost incident to inspection or treatment required under the provisions of the quarantine, other than for the services of the South Carolina Crop Pest Commission.

56.9. Penalties.

 Any person who shall violate this regulation shall be punished as authorized and set forth by the provisions in Section 46-9-90.

56.10. Exemptions to Regulated Articles.

A regulated article may be exempt if article(s) is/are:

 A. Soil samples of any size collected and shipped to State Crop Pest Commission-approved soils laboratory.

 B. Soil in form of typical waste material collected during harvest including but not limited to residue, dust, rocks, or damaged crop materials.

 C. Any crop washed free of soil and plant material with running water.

 D. Farm tools cleaned free of soil and plant material and not exposed to infested areas after cleaning or other prescribed handling.

 E. Mechanized equipment cleaned free of soil and plant material and not exposed to infested areas after cleaning or other prescribed handling.

56.11. Regulated Areas. The official listing of quarantined areas in SC shall be maintained and made publicly available on Clemson’s website located at: [www.clemson.edu/invasives](http://www.clemson.edu/invasives).

27-57. Emerald Ash Borer Quarantine.

57.1. Definitions.

 a. “Certificate” means a document, electronic or otherwise, issued or authorized to be issued by the Department, state, or USDA-APHIS inspector to allow the movement of regulated articles to any destination.

 b. “Compliance agreement” means a written agreement between an individual or concern engaged in growing, dealing in, or moving regulated articles and a state or USDA-APHIS, wherein the former agrees to comply with conditions specified in the agreement to prevent the dissemination of emerald ash borer.

 C. “Department” means the Clemson University Department of Plant Industry, or its representatives, acting on behalf of the South Carolina Crop Pest Commission or the Director and acting as the plant regulatory representative of South Carolina.

 D. “Director” means the Director of Regulatory and Public Service Programs at Clemson University.

 E. “Emerald ash borer” (EAB) means the insect known as emerald ash borer (*Agrilus planipennis* [Coleoptera: Buprestidae]) in any stage of development.

 F. “Firewood” means any wooden material that is gathered and used for fuel when species present are not labeled and/or readily identifiable.

 G. “Inspector” means any authorized employee or agent of the State Crop Pest Commission, state, or USDA-APHIS, or any other person authorized by the Director to enforce the provisions of these regulations.

 H. “Moved” means shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

 I. “Movement documents” means any certificates and/or compliance agreements applicable to these regulations issued by the Department, state, or USDA-APHIS representatives.

 J. “Nursery stock” means all fruit, nut and shade trees, all ornamental plants and trees, bush fruits, buds, grafts, scions, vines, roots, bulbs, seedlings, slips or other portions of plants (excluding true seeds) grown or kept for propagation, sale or distribution. Also includes any other plant included by the Director, if regulating its movement is necessary to control any plant pest.

 K. “Person” means any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

 L. “Quarantined area” means the designated area set by the South Carolina Crop Pest Commission to isolate all known occurrences of the emerald ash borer in one geographical area.

 M. “Regulated Articles” means those articles that require a certificate year‑round except as indicated.

 N. “State” means a state’s plant regulatory representative, usually a Department of Agriculture, in any state.

 O. “USDA-APHIS” means the United States Department of Agriculture’s Animal and Plant Health Inspection Service.

57.2. Regulated Articles.

 A. The emerald ash borer.

 B. Firewood of all hardwood (non-coniferous) species.

 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 other article, product, or means of conveyance not listed in paragraph (2) of this section may be designated as a regulated article if an inspector determines that it presents a risk of spreading emerald ash borer and notifies the person in possession of the article, product, or means of conveyance that it is subject to the restrictions of the regulations.

57.3. Conditions Governing the Movement of Regulated Articles.

 A. Regulated articles may not at any time be moved from quarantined parts of South Carolina or any other state into or through non-quarantined parts of South Carolina or any other state without a state- or federally-issued certificate and/or compliance agreement allowing for such movement provided that no other state or federal provisions prevent it.

 B. Regulated articles may be moved from quarantined parts of South Carolina or any other state into or through quarantined parts of South Carolina or any other state without state- or federally-issued certificates and/or compliance agreements provided that no other state or federal provisions prevent it.

57.4. Issuance of Movement Documents.

 A. Certificates - An inspector from the Department, state, or USDA-APHIS, or its representatives, will issue certificates for movement of regulated articles when it has been deemed that EAB is not apparently present and risk of movement of EAB from a quarantined area to a non-quarantined area has been mitigated.

 B. Compliance Agreements - The Department, state, or USDA-APHIS may enter into compliance agreements with persons growing, handling, or moving regulated articles once an inspector has reviewed all provisions of the compliance agreement and each agrees to comply with the provisions of this subpart and any conditions imposed under this subpart.

 C. Attachment – Movement documents must be attached to or accompany shipments of all regulated articles or containers carrying regulated articles and such articles must be clearly marked with the name and address of the consignor and consignee.

 D. Cancellation – Certificates and/or Compliance Agreements may be canceled orally or in writing by an inspector or representative of the Department, state, or USDA-APHIS whenever the inspector determines that the holder of the certificate or compliance agreement has not complied with this subpart or any conditions imposed under this subpart.

57.5. Regulated Areas.

 The entire state of South Carolina is quarantined for emerald ash borer. The official listing of quarantined areas in South Carolina shall be maintained and made publicly available on Clemson’s website located at: [www.clemson.edu/invasives](http://www.clemson.edu/invasives).

**Fiscal Impact Statement:**

There will be no increased cost to the State or its political subdivisions.

**Statement of Rationale:**

The proposed regulation changes will increase efficiency and accuracy for both the general public and Clemson officials as it relates to the management of plant pests Emerald Ash Borer and the Benghal Dayflower. Without implementation of the proposed regulations, the economic impacts of failing to manage these devastating plant pests to both the forestry and agriculture industries could be significant.