

CHAPTER [12:51:10](#)

EMERALD ASH BORER

Section

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[12:51:10:01](#). Definitions. Words and phrases defined in SDCL chapter [38-24A](#) have the same meaning when used in this chapter. Terms used in this chapter mean:

- (1) "Firewood," tree parts in any measure or volume, whether for commercial or private purposes, that is intended to be burned for heating or recreational use;
- (2) "Log," parts of trees cut to certain lengths to be milled, processed, or otherwise used in buildings or construction;
- (3) "Quarantine area," an area established by the secretary of Agriculture and Natural Resources from which the emerald ash borer is likely to spread;
- (4) "Secretary," the secretary of the South Dakota Department of Agriculture and Natural Resources;
- (5) "USDA-APHIS-PPQ," the United States Department of Agriculture, Animal and Plant Inspection Service, Plant Protection and Quarantine;
- (6) "External embargoed area," the area outside of South Dakota established by the secretary from which regulated articles are restricted;
- (7) "Department," the South Dakota Department of Agriculture and Natural Resources.

Source: 45 SDR 84, effective December 19, 2018; SL 2021, ch 1, §§ 8, 19, effective April 19, 2021; 47 SDR 125, effective May 30, 2021.

General Authority: SDCL [38-24A-9](#).

Law Implemented: SDCL [38-24A-1](#).

12:51:10:02. Regulated insects. Emerald ash borer (*Agrilus planipennis* (Fairmaire)) is a regulated insect under SDCL [38-24A-6](#).

Source: 45 SDR 84, effective December 19, 2018.

General Authority: SDCL 38-24A-9.

Law Implemented: SDCL 38-24A-6, 38-24A-9.

12:51:10:03. Regulated articles. The following articles that originate within the quarantine area are considered regulated articles:

- (1) The emerald ash borer, *Agrilus planipennis* (Fairmaire), in any living stage of development;
- (2) Entire ash trees (*Fraxinus spp.*), and nursery stock;
- (3) Ash logs or untreated ash lumber with any bark or the outer one half inch of wood attached;
- (4) Non-coniferous, or hardwood, wood chips and non-coniferous, or hardwood, bark chips larger than one inch diameter in two dimensions;
- (5) Other ash material (*Fraxinus spp.*), living or dead, cut or fallen, including logs, limbs, branches, stumps, or roots;
- (6) Firewood of any non-coniferous, or hardwood, species;
- (7) Any other article, product, or means of conveyance, when it is determined by the secretary to present a risk of spreading the emerald ash borer. Other items identified as regulated articles in this manner will be communicated through publication of a notice in public newspapers.

Source: 45 SDR 84, effective December 19, 2018.

General Authority: SDCL 38-24A-9.

Law Implemented: SDCL 38-24A-6, 38-24A-7.

12:51:10:04. Movement of regulated articles out of the quarantine area. Regulated articles described in § 12:51:10:03 may be moved out of the quarantine area if each of the following conditions are met:

- (1) A thorough examination of the regulated articles and treatment is conducted by an inspector authorized by the secretary; and
- (2) A permit is granted for movement of regulated articles; and
- (3) The permit is attached to the regulated articles, or with the shipping documents, for that specific lot of regulated articles until the final destination. The permit shall be provided to an inspector, if requested, or to the consignee at the final destination.

Source: 45 SDR 84, effective December 19, 2018.

General Authority: SDCL 38-24A-9.

Law Implemented: SDCL 38-24A-6, 38-24A-10.

12:51:10:05. Movement of regulated articles through the quarantine area. The movement of regulated articles, listed in § 12:51:10:03, originating from outside a quarantine area, through a quarantine area, then out to a non-quarantine area again, is prohibited, except if passage is made without stopping except for refueling or traffic conditions and if the articles are completely enclosed by a covering adequate to prevent the escape or entry of emerald ash borer.

Source: 45 SDR 84, effective December 19, 2018.

General Authority: SDCL 38-24A-9.

Law Implemented: SDCL 38-24A-6, 38-24A-10.

12:51:10:06. Treatment of regulated articles. Regulated articles listed in § [12:51:10:03](#) may receive a permit from the secretary or a designated agent to authorize movement outside of the quarantine area. A permit will include specific treatment activities that must be performed in order to prevent the spread of emerald ash borer out of the quarantine area. The treatment activities are as follows:

- (1) Heat Treatment: the article has been brought to an internal temperature of 140 deg F (60 deg C) for 60 minutes, or other temperature and exposure time as described in USDA Heat Treatment Schedule T314-a (Regulated Wood Articles including Fraxinus and all Hardwood Firewood from Emerald Ash Borer Quarantine areas) or USDA Kiln Sterilization Schedule T404-b-4 (Wood Products including containers);
- (2) Fumigation: Fumigation must be approved and conducted under expert guidance and appropriate for the particular article, and under official observation by USDA-APHIS-PPQ or the department;
- (3) Chipping: Bark or other wood may be chipped so that the size of the chips is 1 inch or less in two dimensions;
- (4) Debarking: The article has 100% of the bark removed, plus an additional 1/2 inch of wood. No residual bark or cambium shall remain; or
- (5) Other: If the secretary determines the article will not present a risk of transporting the emerald ash borer.

Source: 45 SDR 84, effective December 19, 2018; SL 2021, ch 1, §§ 8, 19, effective April 19, 2021; 47 SDR 125, effective May 30, 2021.

General Authority: SDCL [38-24A-9](#).

Law Implemented: SDCL [38-24A-12](#).

12:51:10:07. Prohibited acts. No person may transport, buy, sell, or offer for sale, in a manner contrary to § 12:51:10:04 or 12:51:10:05, any regulated article, as described in § 12:51:10:03. No person may move any regulated article from, into, or through the quarantine area, except as provided in §§ 12:51:10:04 and 12:51:10:05.

Source: 45 SDR 84, effective December 19, 2018.

General Authority: SDCL 38-24A-9.

Law Implemented: SDCL 38-24A-6, 38-24A-10.

12:51:10:08. USDA-APHIS-PPQ as a designated agent. The USDA-APHIS-PPO is considered a designated agent as defined in SDCL subdivision 38-24A-1(2) working with the secretary to prevent the spread of emerald ash borer. As a designated agency, USDA-APHIS-PPQ may allow, through permits and certificates, the movement of regulated materials out of and through the quarantine area.

Source: 45 SDR 84, effective December 19, 2018.

General Authority: SDCL 38-24A-9.

Law Implemented: SDCL 38-24A-1, 38-24A-9, 7 C.F.R. Part 301.53-1 to 301.53-9, inclusive.

12:51:10:09. External embargoed articles. All regulated articles described in § [12:51:10:03](#) that originate from an external embargoed area, and that have not been treated as described in § [12:51:10:06](#), are embargoed, except when each of the following conditions are met:

- (1) The articles enter directly from portions of states that border a county regulated by the South Dakota emerald ash borer internal quarantine as established by the secretary;
- (2) The articles travel directly to a facility located within the South Dakota emerald ash borer quarantine; and
- (3) The articles will not leave the South Dakota emerald ash borer quarantine area, unless they are subsequently treated to meet the requirements described in § [12:51:10:06](#).

Source: 47 SDR 125, effective May 30, 2021.

General Authority: SDCL [38-24A-9](#).

Law Implemented: SDCL [38-24A-6](#), [38-24A-10](#).