



# Georgia Department of Agriculture

Capitol Square • Atlanta, Georgia 30334-4201

**Gary W. Black**  
Commissioner

**DATE:** November 15, 2013

**ACTION:** Notice of Intent to Consider the Adoption of Chapter 40-4-25

**TO ALL INTERESTED PERSONS AND PARTIES:**

Pursuant to the Official Code of Georgia Annotated, O.C.G.A. § 50-13-4 and O.C.G.A. § 2-7-23, notice is hereby given that the Georgia Department of Agriculture will be accepting written comments regarding the adoption of Chapter 40-4-25 entitled “Emerald Ash Borer Quarantine”. The Department will be accepting written comments from November 15, 2013, to close of business (4:30 p.m. EST) on December 16, 2013.

**SYNOPSIS, MAIN FEATURES AND DIFFERENCES:**

Proposed Adoption of Chapter 40-4-25 entitled “Emerald Ash Borer Quarantine”

The Emerald Ash Borer (*Agrilus planipennis*), an exotic invasive plant pest, has been found in Georgia. This insect is highly destructive to ash trees (*Fraxinus* species). Therefore, the Commissioner of Agriculture has determined that it is in the best interest of Georgia’s citizens, agriculture, and silviculture that this quarantine be established to limit its human-assisted spread within the state.

Accordingly, the Department is proposing to adopt Departmental Rule 40-4-25-.01 entitled “Establishment and Purpose of Quarantine” which explains that the purpose of this quarantine is to prevent the human-assisted spread of the Emerald Ash Borer to non-infested areas of the State by regulating the movement of those articles that are likely to transport this insect. This Quarantine closely parallels both the U.S. Department of Agriculture Animal and Plant Service (USDA APHIS) quarantine regulation in the Code of Federal Regulation, 7 CFR § 301.53-1 through § 301.53-9 and the proposed Georgia Forestry Commission quarantine regulation at Ga. Comp. R. & Regs. r. 224-3-.01 through .13. The proposed rules will apply to any ash tree originating within an urban setting or regulated articles which are derived from urban ash trees.

The Department is proposing to adopt Departmental Rule 40-4-25-.02 entitled “Definitions,” which defines certain language used throughout the Chapter, including Commissioner, Certificate, Compliance Agreement, Emerald Ash Borer, Infestation, Intrastate, Inspector, Limited Permit, Moved (Movement, Move), Person, Quarantined Area, and Regulated Article.

The Department is also proposing to adopt Departmental Rule 40-4-25-.03 entitled “Regulated Articles” which clarifies that the Emerald Ash Borer in any life stage, all non-coniferous firewood, ash nursery stock, green (non-heat treated) ash lumber, and any ash tree material (logs, stumps, roots, branches, mulch, etc.) are all regulated articles. However, articles, produces or means of conveyance not explicitly listed 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 that it is subject to the restrictions of the regulations.

The Department is proposing to adopt Departmental Rule 40-4-25-.04 entitled “Quarantined Areas” which explains that the Commissioner will declare the areas of quarantine, which will be conspicuously posted on the Department’s website.

The Department is also proposing to adopt Departmental Rule 40-4-25-.05 entitled “Conditions Governing the Intrastate Movement of Regulated Articles” which explains that movement of a regulated article solely within the regulated area is allowed without restriction, but at no time are the regulated articles permitted to be transported through a non-infested area without a limited permit.

Likewise, the Department is proposing to adopt Departmental Rule 40-4-25-.06 entitled “Conditions Governing the Movement of Regulated Articles from Quarantined Areas” which states that regulated articles may be moved from a quarantined area only with a certificate or limited permit from an area of Georgia identified by USDA APHIS as having a “no fly” period, and only during the period November 1 through March 1. Without a certificate or limited permit, regulated articles may be moved from a quarantined area only if by the United States Department of Agriculture for experimental or scientific purposes or if the regulated article originates outside the quarantined area and is moved through the quarantined area under specific delineated conditions.

The Department is proposing to adopt Departmental Rule 40-5-25-.07 entitled “Issuance and Cancellation of Certificates and Limited Permits” which will describe the conditions under which the Commissioner or person operating under a compliance agreement may issue a certificate or limited permit for the movement of a regulated article. The proposed rule further states that any certificate or limited permit may be canceled orally or in writing by the Commissioner whenever he determines that the holder of the certificate or limited permit has not complied with this chapter. Any person whose certificate or limited permit has been cancelled may appeal the decision in writing to the Commissioner.

The Department is also proposing to adopt Departmental Rule 40-4-25-.08 entitled “Compliance Agreements and Cancellation” explains that certain persons may enter into a compliance agreement with the Commissioner which shall stipulate safeguards against the establishment and spread of infestation, among other conditions. As with certificates and limited permits, any compliance agreement may be cancelled orally or in writing by the Commissioner whenever he determines that the person who has entered into the compliance agreement has failed to comply with this quarantine, subject to a right of appeal.

The Department is proposing to adopt Departmental Rule 40-4-25-.09 entitled “Assembly and Inspection of Regulated Articles” which will require persons seeking certifications or other services to request the same from the Commissioner at least 48 hours before the regulated article is to be moved. The regulated articles must be assembled at the place and in the manner that the Commissioner designates as necessary to comply with this proposed chapter.

The Department is also proposing to adopt Departmental Rule 40-4-25-.10 entitled “Attachment and Disposition of Certificates and Limited Permits” which will require that a regulated article be plainly marked with the name and address of both the consignor and consignee and must have the certificate or limited permit issued for the movement of a regulated article securely attached at all times during movement to the regulated article, the container carrying the regulated article, or the consignee's copy of the accompanying waybill provided that the description of the regulated article on the certificate or limited permit, and on the waybill, are sufficient to identify the regulated article. Furthermore, the proposed rule will require the carrier furnish the certificate or limited permit authorizing movement of a regulated article to the consignee at the destination of the shipment.

The Department is proposing to adopt Departmental Rule 40-4-25-.11 entitled “Costs and Charges” which allows the Commissioner to assess fees for inspections, and/or for issuance of limited permits, certificates, or compliance agreements.

The Department is also proposing to adopt Departmental Rule 40-4-25-.12 entitled “Inspection and Disposal of Regulated Articles and Pests” which explains that the Commissioner is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of, or require disposal of regulated articles and Emerald Ash Borers. All costs for treatment, destruction, and/or disposal of regulated articles shall be borne by the person in possession of the regulated article.

The Department is proposing to adopt Department Rule 40-4-25-.13 entitled “Unlawful Acts” which describes the particular acts that will constitute a violation of the proposed chapter, including the movement of any regulated article outside of a quarantined area without proper permit, providing false information in an attempt to obtain a limited permit or compliance agreement, using a limited permit or certificate issued to another person or allowing another person to use a limited permit not issued to him, failing to follow all the conditions contained in a limited permit or compliance agreement, and obstructing the Commissioner in the performance of his duties.

Finally, the Department is proposing to adopt Departmental Rule 40-4-25-.14 entitled “Enforcement and Penalties” which explains that any person violating any provision of this proposed chapter shall be guilty of a misdemeanor.

**COMMENT PERIOD AND ADDITIONAL INFORMATION:**

The Department will be accepting written comments from November 15, 2013, to close of business (4:30 p.m. EST) on December 16, 2013. Comments will be considered on December 17, 2013. Please submit written comments to:

Mike Evans, Program Director  
Georgia Department of Agriculture,  
1109 Experiment Street  
Griffin, Georgia 30223  
Telephone Number: 404-586-1140  
FAX Number: 770-228-7219

Interested persons may call or submit a written request to obtain a copy of the proposed rule. A copy of the synopsis and the proposed rule may be downloaded from the Georgia Department of Agriculture website at [www.agr.georgia.gov](http://www.agr.georgia.gov).

This notice is given in compliance with the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-4.