

PROPOSED
RULES
OF
GEORGIA DEPARTMENT OF AGRICULTURE

CHAPTER 40-4-25
EMERALD ASH BORER QUARANTINE

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40-4-25-.01 Establishment and Purpose of Quarantine

1. The Emerald Ash Borer (*Agrilus planipennis*), an exotic invasive plant pest that is established in several other states, has been found in Georgia. This insect can be highly destructive to Georgia's ash trees (*Fraxinus* species) and ash nursery stock. Therefore, 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.
2. 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.
3. 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 Georgia Forestry Commission quarantine regulation at Ga. Comp. R. & Regs. r. 224-3-.01 through .13
4. These rules shall apply to any ash tree originating within an urban setting or regulated articles which are derived from urban ash trees.

40-4-25-.02 Definitions

1. “Commissioner” means the Commissioner of Agriculture or any employee of the Georgia Department of Agriculture or other person authorized to act on his behalf.
2. “Certificate” means a document issued by the Commissioner or by an authorized person operating under a compliance agreement to allow the movement of regulated articles to a destination.
3. “Compliance Agreement” means a written agreement between a person and the Georgia Department of Agriculture, in accordance with the provisions of this quarantine regulation, the Georgia Forestry Commission, in accordance with the provisions of its quarantine regulation, Ga. Comp. R. & Regs. r. 224-3-.01 through .13, or the U.S. Department of Agriculture, in accordance with its quarantine regulation 7 CFR § 301.53-1 through .53-9 or all three agencies, in which the person agrees to comply with the requirements and conditions of the agreement and the quarantine regulation(s) governing the agreement.
4. “Emerald Ash Borer” means the insect known as Emerald Ash Borer (*Agrilus planipennis* [Coleoptera: Buprestidae]) in any stage of development (egg, larva, pupa, adult).
5. “Infestation” means 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. “Intrastate” means within the State of Georgia.
7. “Inspector” means any employee of the Georgia Department of Agriculture, or other individual authorized by the Commissioner to enforce the provisions of this quarantine.
8. “Limited Permit” means a document issued by the Commissioner in which a person operating under a compliance agreement affirms that the regulated article is not eligible for a certificate and will be moved only to a specified destination and in accordance with conditions of the permit.
9. “Moved (Movement, Move)” means shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.
10. “Person” means any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.
11. “Quarantined Area” means any area that has been placed under quarantine by the Georgia Department of Agriculture.
12. “Regulated Article” means any article determined by the Commissioner as capable of harboring or carrying any life stage of the Emerald Ash Borer.

40-4-25-.03 Regulated Articles

1. The following are regulated articles:
 - (a) the Emerald Ash Borer in any life stage,
 - (b) firewood of all hardwood (non-coniferous) species,
 - (c) ash nursery stock,
 - (d) green (non-heat treated) ash lumber,
 - (e) 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 EAB in any life stage, as required by USDA APHIS.
2. Any other article, product, or means of conveyance not listed above 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.

40-4-25-.04 Quarantined Areas

In accordance with O.C.G.A. §2-7-20, the Commissioner will declare the areas of quarantine. Quarantine declarations will be conspicuously posted on the Department of Agriculture's website at: <http://agr.georgia.gov/>.

40-4-25-.05 Conditions Governing the Intrastate Movement of Regulated Articles

1. Movement of a regulated article solely within the regulated area is allowed without restriction.
2. At no time are the regulated articles permitted to be transported through a non-infested area without a limited permit.

40-4-25-.06 Conditions Governing the Movement of Regulated Articles from Quarantined Areas

1. Regulated articles may be moved from a quarantined area only if moved with a certificate or limited permit issued and attached in accordance with 40-4-25.07 and 40-4-25.08 from an area of Georgia identified by USDA APHIS as having a "no fly" period for EAB, and only during the period 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 quarantined area to a non-quarantined area. See map in appendix for this zone.
2. Without a certificate or limited permit, regulated articles may be moved from a quarantined area only 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 quarantined area and is moved through the quarantined 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 quarantined 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 an inspector 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.

40-5-25-.07 Issuance and Cancellation of Certificates and Limited Permits

1. The Commissioner or person operating under a compliance agreement may issue a certificate for the movement of a regulated article if he or she determines that the regulated article:
 - (a) Is apparently free of the Emerald Ash Borer, based on inspection; or
 - (b) Has been grown, produced, manufactured, stored, or handled in a manner that, in the judgment of the inspector, prevents the regulated article from presenting a risk of spreading the Emerald Ash Borer; and

- (c) Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated articles.
 2. The Commissioner or a person operating under a compliance agreement may issue a limited permit for the movement of a regulated article not eligible for a certificate if he or she determines that the regulated article:
 - (a) Is to be moved to a specified destination for specific processing, handling, or utilization (the destination and other conditions to be listed on the limited permit), and this movement will not result in the spread of Emerald Ash Borer because the pest will be destroyed by the specific processing, handling, or utilization; and
 - (b) Is to be moved in compliance with any additional emergency conditions that the Commissioner may impose to prevent the spread of Emerald Ash Borer; and
 - (c) Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.
 3. The Commissioner may issue blank certificates and limited permits to a person operating under a compliance agreement in accordance with rule 40-4-25-.08 or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates and limited permits may then be completed and used, as needed, for the movement of regulated articles that have met all of the requirements of paragraph 1 or 2 of this section.
 4. 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. 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 certificate or limited permit 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.

40-4-25-.08 Compliance Agreements and Cancellation

1. Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when the Commissioner determines that the person understands this quarantine. The agreement shall stipulate that safeguards will be maintained against the establishment and spread of infestation, and will comply with the conditions governing the maintenance of identity, handling, and subsequent movement of such articles, and the cleaning and treatment of means of conveyance and containers.
2. 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. 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.

40-4-25-.09 Assembly and Inspection of Regulated Articles

1. Persons requiring certification or other services shall request the services from the Commissioner at least 48 hours before the regulated article is to be moved.
2. The regulated articles must be assembled at the place and in the manner that the Commissioner designates as necessary to comply with this chapter.

40-4-25-.10 Attachment and Disposition of Certificates and Limited Permits

1. A regulated article must be plainly marked with the name and address of the consignor and the name and address of the 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:
 - (a) The regulated article;
 - (b) The container carrying the regulated article; or
 - (c) 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.
2. The carrier must furnish the certificate or limited permit authorizing movement of a regulated article to the consignee at the destination of the shipment.

40-4-25-.11 Costs and Charges

The Commissioner may assess fees for inspections, and/or for issuance of limited permits, certificates, or compliance agreements.

40-4-25-.12 Inspection and Disposal of Regulated Articles and Pests

1. 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.
2. All costs for treatment, destruction, and/or disposal of regulated articles shall be borne by the person in possession of the regulated article.

40-4-25-.13 Unlawful Acts

1. The following are violations of this chapter:
 - (a) The movement of any regulated article outside of a quarantined area without proper permit;
 - (b) Providing false information in an attempt to obtain a limited permit or compliance agreement;
 - (c) Using a limited permit or certificate issued to another person or allowing another person to use a limited permit not issued to him;
 - (d) Failure to follow all the conditions contained in a limited permit or compliance agreement; and
 - (e) The obstruction of the Commissioner in the performance of his duties.

40-4-25-.14 Enforcement and Penalties

Any person violating any provision of this chapter shall be guilty of a misdemeanor.