

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****7 CFR Part 301****[Docket No. APHIS–2010–0128]****Asian Longhorned Beetle; Quarantined Areas and Regulated Articles****AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Interim rule and request for comments.

SUMMARY: We are amending the Asian longhorned beetle regulations by quarantining portions of Suffolk and Norfolk Counties, MA, and expanding the quarantined area in Worcester County, MA. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. We are also updating the list of regulated articles in order to reflect new information concerning host plants. These actions are necessary to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States.

DATES: This interim rule is effective August 23, 2011. We will consider all comments that we receive on or before October 24, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2010-0128-0001>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2010–0128, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0128> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Regulatory Policy Specialist, Regulations, Permits, and Manuals, PPQ, APHIS; 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–0754.

SUPPLEMENTARY INFORMATION:**Background**

The Asian longhorned beetle (ALB, *Anoplophora glabripennis*), an insect native to China and Korea is a destructive pest of hardwood trees. It attacks many healthy hardwood trees, including maple, horse chestnut, birch, poplar, willow, and elm. In addition, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and wood debris of half an inch or more in diameter are subject to infestation. Immature beetles bore into tree trunks and branches of a host tree, causing heavy sap flow from wounds and sawdust accumulation at the tree base, eventually killing the tree. They feed on, and over-winter in, the interiors of trees. Adult beetles emerge in the spring and summer months from round holes approximately three-eighths of an inch in diameter (about the size of a dime) that they bore through branches and trunks of trees. After emerging, adult beetles feed for 10 to 15 days and then mate. Adult females then lay eggs in oviposition sites that they make on the branches of trees. A new generation of ALB is produced each year. If this pest moves into the hardwood forests of the United States, the nursery, maple syrup, and forest product industries could experience severe economic losses. In addition, urban and forest ALB infestations will result in environmental damage, aesthetic deterioration, and a reduction of public enjoyment of recreational spaces.

Quarantined Areas

The regulations in 7 CFR 301.51–1 through 301.51–9 restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of ALB to noninfested areas of the United States. Surveys conducted in Massachusetts by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that infestations of ALB have occurred outside the existing quarantined area in Worcester County, and in areas in Suffolk and Norfolk Counties. Officials of the U.S. Department of Agriculture and officials of State, county, and city agencies in Massachusetts are conducting intensive survey and eradication programs in the infested areas. The State of Massachusetts has quarantined the infested areas and is restricting the intrastate movement of regulated articles from the quarantined areas to prevent the further spread of ALB within the State. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined area to

prevent the spread of ALB to other States and other countries.

The regulations in § 301.51–3(a) provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State in which ALB has been found by an inspector, where the Administrator has reason to believe that ALB is present, or where the Administrator considers regulation necessary because of its inseparability for quarantine enforcement purposes from localities where ALB has been found. Less than an entire State will be quarantined only if (1) the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles and (2) the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of ALB. In accordance with these criteria and the recent ALB findings described above, we are amending the list of quarantined areas in § 301.51–3(c) to expand the quarantined area in Worcester County and to include portions of Suffolk and Norfolk Counties. With these changes to the quarantined areas, the total square mileage of the quarantined areas in Worcester County is 98 square miles, with 22 square miles added in this expansion of the quarantined area; in Suffolk and Norfolk Counties, the total square mileage of the quarantined area is 10 square miles. These updated quarantined areas are described in the regulatory text at the end of this document.

Regulated Articles

Section 301.51–2 of the regulations designates certain items as regulated articles. Regulated articles may not be moved interstate from quarantined areas except in accordance with the conditions specified in §§ 301.51–4 through 301.51–9 of the regulations. Regulated articles listed in § 301.51–2(a) have included green lumber and other material living, dead, cut, or fallen, inclusive of nursery stock, logs, stumps, roots, branches, and debris of half an inch or more in diameter of the following genera: *Acer* (maple), *Aesculus* (horse chestnut), *Albizia* (mimosa), *Betula* (birch), *Celtis* (hackberry), *Cercidiphyllum* (katsura), *Fraxinus* (ash), *Platanus* (sycamore), *Populus* (poplar), *Salix* (willow), *Sorbus* (mountain ash), and *Ulmus* (elm). This list of genera was based on scientific literature provided by government officials, scientists, and government and individual researchers from China as

well as survey information collected in the United States since the time of discovery of the pest.

Based on additional survey experience and research, we are amending the list of regulated articles by adding *Koelreuteria* spp. (golden rain tree). This action is necessary because studies conducted in China by APHIS scientists have found ALB completing a full life cycle in trees of this genus in the environment.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the artificial spread of ALB to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We have prepared an economic analysis for this action. The action identifies nurseries; site developers, excavators, or construction companies; tree service companies or landscapers; firewood dealers; municipal departments; and facilities having grounds-keeping staffs, such as schools, golf courses, and apartment complexes as the small entities most likely to be affected by this action and considers the costs associated with complying with the inspection and other requirements imposed by the regulations on the interstate movement of regulated articles from quarantined areas. Based on the information presented in the analysis, we expect that affected entities would not experience any additional compliance costs as a result of this rule because a State-imposed quarantine is already in place that applies the same movement restrictions and inspection requirements. We invite comment on our economic analysis, which is posted with this interim rule on the

Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) and may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.51–2, paragraph (a) is revised to read as follows:

§ 301.51–2 Regulated articles.

* * * * *

(a) Firewood (all hardwood species), and green lumber and other material living, dead, cut, or fallen, inclusive of nursery stock, logs, stumps, roots, branches, and debris of half an inch or more in diameter of the following genera: *Acer* (maple), *Aesculus* (horse chestnut), *Albizia* (mimosa), *Betula* (birch), *Celtis* (hackberry), *Cercidiphyllum* (katsura), *Fraxinus* (ash), *Koelreuteria* (golden rain tree),

Platanus (sycamore), *Populus* (poplar), *Salix* (willow), *Sorbus* (mountain ash), and *Ulmus* (elm).

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■ 3. In § 301.51–3, paragraph (c), under the heading “Massachusetts,” a new entry for *Suffolk and Norfolk Counties* is added and the entry for *Worcester County* is revised to read as follows:

§ 301.51–3 Quarantined areas.

* * * * *

(c) * * *

Massachusetts

Suffolk and Norfolk Counties. The area in Suffolk and Norfolk Counties, including the City of Boston and the Town of Brookline, that is bounded by a line starting at the intersection of Metropolitan Avenue and Poplar Street, which becomes Canterbury Street; then northeast on Canterbury Street to American Legion Highway; then northeast on American Legion Highway to Route 28; then north and northwest on Route 28 to Centre Street; then west on Centre Street, which becomes Perkins Street; then west on Perkins Street to Chestnut Street; then northwest on Chestnut Street to Cypress Street; then northwest on Cypress Street to Walnut Street; then west and south on Walnut Street, which becomes Warren Street; then west on Warren Street to Lee Street; then northwest on Lee Street to Heath Street; then southwest and west on Heath Street to Hammond Street; then south on Hammond Street to Lagrange Street; then south on Lagrange Street to Beverly Road; then southeast on Beverly Road to Independence Drive; then southwest on Independence Drive to VFW Parkway; then southwest on VFW Parkway to Corey Street; then southeast on Corey Street to Centre Street; then east on Centre Street to West Roxbury Parkway; then southeast on West Roxbury Parkway to Washington Street; then northeast on Washington Street to Metropolitan Avenue; then southeast on Metropolitan Street to the point of beginning.

Worcester County. The portion of Worcester County, including portions or all of the municipalities of Worcester, Holden, West Boylston, Boylston, Auburn, and Shrewsbury that is bounded by a line starting at the intersection of Route 140 (Grafton Circle) and Route 9 (Belmont Street) in Shrewsbury; then north and northwest on Route 140 to the Boylston Town Boundary; then follow the entirety of the Boylston Town Boundary until it comes to the West Boylston Town boundary on the Massachusetts Department of Conservation and

Recreation Watershed Property; then along the West Boylston Town boundary until it intersects Manning Street; then southwest on Manning Street in Holden to Wachusett Street (Route 31); then south on Wachusett Street to Highland Street (still Route 31); then southwest on Highland Street to Main Street; then southeast on Main Street to Bailey Road; then south on Bailey Road to Chapin Road; then south on Chapin Road to its end; then continuing in a southeasterly direction to Fisher Road; then southwest on Fisher Road to Stonehouse Hill Road; then south on Stonehouse Hill Road to Reservoir Street; then southeast on Reservoir Street until it intersects the Worcester City boundary; then along the Worcester City boundary until it intersects Oxford Street; then south on Oxford Street to Auburn Street; then southeast on Auburn Street crossing under the Massachusetts Turnpike (I-90) and continuing southeast on Millbury Street; then northeast on Washington Street to the Massachusetts Turnpike (I-90); then east along the Massachusetts Turnpike (I-90) to the Auburn Town boundary; then north along the Auburn Town boundary to the Worcester City boundary; then northeast, north, and northwest along the Worcester City boundary until it intersects Route 20 (Hartford Turnpike); then east on Route 20 to Lake Street; then north and northeast on Lake Street to Route 9 (Belmont Street); then east on Route 9 to the point of beginning.

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Done in Washington, DC, this 17th day of August 2011.

Gregory L. Parham,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011-21520 Filed 8-22-11; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2011-0029]

European Larch Canker; Expansion of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the domestic quarantine regulations to expand the regulated area for European

larch canker to include additional areas in Maine. We are also correcting some misidentifications of previously listed regulated areas. This action is necessary to prevent human-assisted transmission of European larch canker from infested areas to noninfested areas.

DATES: This interim rule is effective August 23, 2011. We will consider all comments that we receive on or before October 24, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0029-0001>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2011-0029, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0029> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Chaloux, National Program Manager, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737; (301) 734-0917.

SUPPLEMENTARY INFORMATION:

Background

European larch canker (ELC), *Lachnellula willkommii* (Dasycypha), is a serious plant disease caused by a fungus that can kill mature and immature species of the genus *Larix* (larch) and *Pseudolarix* (Golden larch). In parts of Europe, ELC has eliminated the European larch as a plantation species. ELC was first discovered in the United States in Massachusetts in 1927. It was declared eradicated in 1965, but in 1984, infestations were found in portions of Maine.

Under the regulations in “Subpart—European Larch Canker” (7 CFR 301.91 through 301.91-9, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) restricts the interstate movement of certain regulated articles from regulated areas to prevent the spread of ELC. These regulations, which were

established in May 1984, list parts of several counties in Maine as regulated areas. Articles regulated under the subpart include logs, pulpwood, branches, twigs, plants, and scion and other propagative material of *Larix* or *Pseudolarix* spp., except seeds. Such articles may be moved interstate from regulated areas only under certificates, limited permits, or compliance agreements. The regulations also include provisions for the issuance of certificates and limited permits, and requirements for compliance agreements, as well as for assembly and inspection of regulated articles.

Maine has State-imposed ELC quarantine requirements that mirror APHIS’ requirements. Each year, the Maine Forest Service conducts survey activities in and around the regulated areas. Since APHIS established the ELC regulations, Maine’s survey data have revealed additional instances of ELC in native forested areas in previously uninfested townships within the regulated area. The State of Maine has confirmed the establishment of an intrastate quarantine for the townships of Beddington, Boothbay, South Bristol, T24 Middle Division Bingham’s Penobscot Purchase, and T25 Middle Division Bingham’s Penobscot Purchase. These townships have been quarantined either because they have been found to be infested with ELC or because they provide a buffer area between infested and uninfested townships.

In this interim rule, we are adding the above-named townships to our list of ELC-regulated areas in § 301.91-3. This action is necessary to prevent the human-assisted dissemination of ELC, thus safeguarding the Nation’s forests, landscapes, and natural resources from this highly destructive pathogen.

Because our list of areas regulated for ELC in § 301.91-3 has not been revised in a number of years, certain additional changes are needed to make it current. We are revising the names of some of the listed jurisdictions to reflect current naming conventions, including the use of abbreviations, for townships in Maine. These naming conventions are also used elsewhere in our regulations, e.g., in the list of areas in Maine regulated for gypsy moth under § 301.45-3. We are also correcting some misspellings in the regulations of the names of townships regulated for ELC. These changes and corrections are intended to prevent any misidentification of, or confusion about, ELC-regulated areas.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the human-