

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS–2006–0127]

#### Asian Longhorned Beetle; Additions to Quarantined Areas

**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 expanding the boundaries of the quarantined areas in New Jersey and restricting the interstate movement of regulated articles from these areas. This action is necessary to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States.

**DATES:** This interim rule was effective October 4, 2006. We will consider all comments that we receive on or before December 11, 2006.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click “Submit.” In the Docket ID column, select APHIS–2006–0127 to submit or view public comments and to view supporting and related materials available electronically. Information on using [Regulations.gov](http://www.regulations.gov), including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link.

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies)

to Docket No. APHIS–2006–0127, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0127.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room 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.

**Other Information:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael B. Stefan, ALB National Coordinator, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–7338.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Asian longhorned beetle (ALB, *Anoplophora glabripennis*), an insect native to China, Japan, Korea, and the Isle of Hainan, 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. The beetle bores into the heartwood of a host tree, eventually killing the tree. Immature beetles bore into tree trunks and branches, causing heavy sap flow from wounds and sawdust accumulation at tree bases. 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 2 to 3 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 in public enjoyment of recreational spaces.

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. Recent surveys conducted in New Jersey by inspectors of State, county, and city agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that infestations of ALB have occurred outside the existing quarantined areas. Officials of the U.S. Department of Agriculture and officials of State, county, and city agencies in New Jersey are conducting intensive survey and eradication programs in the infested area, and the State of New Jersey has quarantined the infested area and is restricting the intrastate movement of regulated articles from the quarantined area to prevent the further spread of ALB within that 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, where 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 include the City of Linden in Union County, as well as portions of the Borough of Roselle, the City of Elizabeth, and Clark Township, also in Union County. In addition, the quarantined area in the City of Carteret in Middlesex County is also being expanded. The expanded quarantined area is described in the regulatory text at the end of this document.

**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 has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This interim rule amends the ALB regulations by expanding the

boundaries of the quarantined areas in New Jersey and restricting the interstate movement of regulated articles from these areas. This action is necessary to prevent the artificial spread of the ALB to noninfested areas of the United States.

The Regulatory Flexibility Act (RFA) requires that agencies consider the economic impact of their rules on small entities, i.e. small businesses, organizations, and governmental jurisdictions. We estimate that about 124 small entities, including 4 local governments, may be affected. Types and numbers of entities located within the newly quarantined areas, and corresponding small-entity criteria, are shown in table 1. We expect that most if not all of the affected entities are small.

TABLE 1.—TYPES OF ESTABLISHMENT, NUMBER, AND SMALL ENTITY SIZE STANDARD FOR BUSINESSES AND LOCAL GOVERNMENTS LOCATED WITHIN THE AREAS NEWLY QUARANTINED FOR ALB

Establishment type	Number of entities	Code	Industry title	Small entity size standard
Tree service .....	30	561730 .....	Landscaping services .....	< \$6.5m.
Landscaping company .....	30	561730 .....	Landscaping services .....	< \$6.5m.
Excavator .....	30	238910 .....	Site preparation contractors .....	< \$13.0m.
Garden center .....	10	444220 .....	Nursery and garden centers .....	< \$6.5m.
Firewood dealer .....	5	454319 .....	Other fuel dealers .....	< \$6.5m.
Local government .....	4	RFA § 601 .....	Small governmental jurisdiction .....	< 50,000 population.
Utility .....	5	237130 .....	Power and communication lines and related structures construction.	< \$31.0m.
Waste management .....	10	562111 .....	Solid waste collection .....	< \$11.5m.
		562219 .....	Other non-hazardous waste treatment and disposal.	< \$11.5m.

The regulations in § 301.51–4 set conditions for the interstate movement of regulated articles from quarantined areas. An affected entity may (1) enter into a compliance agreement with APHIS for the inspection and certification of regulated articles to be moved interstate, or (2) present its regulated articles for inspection and obtain a certificate or a limited permit, issued by an inspector, for the interstate movement of regulated articles. Inspections may be inconvenient, but they should not be costly in most cases, even for entities operating under a compliance agreement that would perform the inspections themselves. For those entities that elect not to enter into a compliance agreement, APHIS provides the services of an inspector without cost. There is also no fee for the compliance agreement, certificate, or limited permit for the interstate movement of regulated articles.

Second, there is a possibility that, upon inspection, a regulated article could be determined by the inspector to

be potentially infested by ALB and, as a result, the inspector would not be able to issue a certificate. In this case, the entity’s ability to move regulated articles interstate would be restricted. However, the affected entity could conceivably obtain a limited permit under the conditions of § 301.51–5(b). Whether an affected entity would be denied certificates as a result of inspections of regulated articles is unknown. However, because the newly regulated area is primarily urban, the entities located in that area are more likely to be receiving regulated articles from outside the quarantined area than they are to be shipping regulated articles interstate to nonquarantined areas. It is unlikely, therefore, that most entities located in the newly regulated area would be moving regulated articles that would require inspection in the first place.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not

have a significant economic impact on a substantial number of small entities.

**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 interim rule contains no 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 § 301.51–3, paragraph (c), the entry for New Jersey is revised to read as follows:

**§ 301.51–3 Quarantined areas.**

\* \* \* \* \*

(c) \* \* \*

**New Jersey**

*Middlesex and Union Counties.* That portion of the counties, including the municipalities of Roselle, Elizabeth City, Linden, Carteret, Woodbridge, Rahway, and Clark, that is bounded by a line drawn as follows: Beginning at the intersection of Locust Street (County Road 619) and West Grand Avenue (Union County 610) in Roselle, NJ; then east on West Grand Avenue to Chilton Street; then south on Chilton Street to South Street; then east on South Street to Broad Street; then south on Broad Street to Summer Street; then east on Summer Street to the Elizabeth River; then east along the Elizabeth River to the Arthur Kill; then south along the Arthur Kill (New Jersey and New York State border) to the point where Roosevelt Avenue (State Route 602) meets the Arthur Kill in Carteret, NJ; then south along Roosevelt Avenue to Port Reading Avenue (State Route 604); then west southwest along Port Reading Avenue to the Conrail railroad; then north and west along the Conrail railroad right-of-way to the NJ Transit railroad right-of-way; then north and northwest along the NJ Transit railroad right-of-way to the south branch of the Rahway River; then west along the south branch of the Rahway River to St. Georges Avenue (State Highway 27); then north along St. Georges Avenue to its intersection with the eastern border of Rahway River Park (Union County Park); then north along the eastern

border of Rahway River Park to the intersection of Valley Road and Union County Parkway; then north along Union County Parkway to North Stiles Street; then northwest along North Stiles Street to Raritan Road; then northeast along Raritan Road to the perpendicular intersection of Raritan Road and the Cranford/Linden township border (144 Raritan Road); then north along the Cranford/Linden border to Myrtle Street; then east along Myrtle Street to the intersection of Amsterdam Avenue and Wood Avenue; then southeast along Wood Avenue to 5th Avenue; then northeast along 5th Avenue to Locust Street; then north along Locust Street to the point of beginning.

\* \* \* \* \*

Done in Washington, DC, this 4th day of October 2006.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E6–16755 Filed 10–10–06; 8:45 am]

**BILLING CODE 3410–34–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2006–26028; Directorate Identifier 2006–NM–222–AD; Amendment 39–14786; AD 2006–20–51]**

**RIN 2120–AA64**

**Airworthiness Directives; Boeing Model 777–200LR Series Airplanes Powered by General Electric (GE) Model GE90–110B Engines, and Model 777–300ER Series Airplanes Powered by GE Model GE90–115B Engines**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2006–20–51 that was sent previously to all known U.S. owners and operators of certain Boeing Model 777–200LR and –300ER series airplanes by individual notices. This AD requires revising the Airplane Flight Manual to prohibit takeoffs at less than full-rated thrust. This AD is prompted by a report of two occurrences of engine thrust rollback (reduction) during takeoff. We are issuing this AD to prevent dual-engine thrust rollback, which could result in the airplane failing to lift off before

reaching the end of the runway or failing to clear obstacles below the takeoff flight path.

**DATES:** This AD becomes effective October 16, 2006 to all persons except those persons to whom it was made immediately effective by emergency AD 2006–20–51, issued September 30, 2006, which contained the requirements of this amendment.

We must receive comments on this AD by December 11, 2006.

**ADDRESSES:** Use one of the following addresses to submit comments on this AD.

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.

- *Fax:* (202) 493–2251.

- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6500; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:** On September 30, 2006, we issued emergency AD 2006–20–51, which applies to all Boeing Model 777–200LR series airplanes powered by General Electric (GE) Model GE90–110B engines, and Model 777–300ER series airplanes powered by GE Model GE90–115B engines.

**Background**

We have received a report of two occurrences of engine thrust rollback (reduction) during takeoff on Boeing Model 777–300ER series airplanes powered by GE Model GE90–115B engines. In both cases, only one engine was affected. The N1 (fan speed—the normal thrust setting parameter for this engine type) thrust level on the affected engine progressively dropped resulting in a thrust loss of 65 to 77% due to an erroneous N1 command computed by the Full Authority Digital Engine Control (FADEC). In both cases, the engine recovered to the proper N1 thrust level as the airplane climbed beyond 400 feet above ground level. In one case,