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6. Statutory Authority <b>S.C. Code Ann. §§ 46-9-40 and 46-9-50</b>		

**7. Type of Filing**

- NOTICE OF GENERAL PUBLIC INTEREST
- NOTICE OF DRAFTING
- PROPOSED REGULATION
- EMERGENCY REGULATION
- FINAL REGULATION FOR GENERAL ASSEMBLY REVIEW
- RESUBMISSION OF WITHDRAWN REGULATION FOR GENERAL ASSEMBLY REVIEW
- RESUBMISSION OF WITHDRAWN REGULATION FOR GENERAL ASSEMBLY REVIEW WITH NO SUBSTANTIVE CHANGES
- FINAL REGULATION EXEMPT FROM GENERAL ASSEMBLY REVIEW

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**CLEMSON UNIVERSITY**

**CHAPTER 27**

Statutory Authority: 1976 Code Section 46-9-40 and 46-9-50.

Regulation 27-58 – Asian Longhorned Beetle Quarantine

**Emergency Situation:**

The Asian Longhorned Beetle (ALB) is a federally actionable, quarantine level pest requiring swift action on the part of the state of South Carolina to identify, contain, and eradicate the infestation. Survey, quarantine, and tree removals will be a necessary part of this program in order to achieve eradication, which has been successfully attained in other states with the establishment of similar regulations. The emergency quarantine will establish boundaries extending to about one and one-half miles from the nearest, known infested tree and will limit the movement of regulated articles from within those boundaries. This restriction is necessary to prevent further human-assisted movement of ALB during the eradication efforts. Lastly, the establishment of a state quarantine allows the United States Department of Agriculture's Animal and Plant Health Inspection Service (USDA-APHIS) to implement a similar quarantine which mirrors the size of the state quarantine. Without the more localized state quarantine, USDA-APHIS would quarantine the entire state of South Carolina and many more citizens, businesses, and industries would be negatively impacted.

**Text:**

27-58. Asian Longhorned Beetle Quarantine.

58.1. Definitions.

- A. "Asian Longhorned Beetle" (ALB) means the insect known as Asian longhorned beetle (*Anoplophora glabripennis*) in any living stage of development.
- B. "Certificate" means a document or permit, electronic or otherwise, issued or authorized to be issued by the Department or USDA-APHIS inspector to allow the movement of regulated articles to any destination.
- C. "Compliance agreement" means a written agreement between an individual or concern engaged in growing, dealing in, or moving regulated articles and a state or USDA-APHIS, wherein the former agrees to comply with conditions specified in the agreement to prevent the dissemination of Asian Longhorned Beetle.
- D. "Department" means the Clemson University Department of Plant Industry, or its representatives, acting on behalf of the South Carolina Crop Pest Commission or the Director and acting as the plant regulatory representative of South Carolina.
- E. "Director" means the Director of Regulatory and Public Service Programs at Clemson University.
- F. "Firewood" means any wooden material less than four feet in length that is gathered and used for fuel when species present are not labeled and/or readily identifiable.

- G. "Inspector" means any authorized employee or agent of the State Crop Pest Commission, state, or USDA-APHIS, or any other person authorized by the Director to enforce the provisions of these regulations.
- H. "Moved" means shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.
- I. "Movement documents" means any certificates and/or compliance agreements applicable to these regulations issued by the Department, state, or USDA-APHIS representatives.
- J. "Nursery stock" means all fruit, nut and shade trees, all ornamental plants and trees, bush fruits, buds, grafts, scions, vines, roots, bulbs, seedlings, slips or other portions of plants (excluding true seeds) grown or kept for propagation, sale or distribution. Also includes any other plant included by the Director, if regulating its movement is necessary to control any plant pest.
- K. "Person" means any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.
- L. "Quarantined area" means the designated area set by the South Carolina Crop Pest Commission to isolate all known occurrences of the Asian longhorned beetle in one geographical area.
- M. "Regulated Articles" means those articles that require a movement document(s) year-round except as indicated.
- N. "USDA-APHIS" means the United States Department of Agriculture's Animal and Plant Health Inspection Service.

#### 58.2. Regulated Articles.

- A. The Asian longhorned beetle in any life stage.
- B. 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), *Cercidiphyllum* (katsura), *Fraxinus* (ash), *Koelreuteria* (golden rain tree), *Platanus* (sycamore), *Populus* (poplar), *Salix* (willow), *Sorbus* (mountain ash), *Ulmus* (elm), and any other genus of plant confirmed by the Department and/or USDA-APHIS to be a host of ALB.
- C. Any other article, product, or means of conveyance not listed in paragraph (2) of this section may be designated as a regulated article if an inspector determines that it presents a risk of spreading ALB and notifies the person in possession of the article, product, or means of conveyance that it is subject to the restrictions of the regulations.

#### 58.3. Conditions Governing the Movement of Regulated Articles.

- A. Regulated articles may not at any time be moved from quarantined parts of South Carolina or any other state into or through non-quarantined parts of South Carolina or any other state without a state- or federally-issued certificate and/or compliance agreement allowing for such movement provided that no other state or federal provisions prevent it.

- B. Regulated articles may be moved from quarantined parts of South Carolina or any other state into or through quarantined parts of South Carolina or any other state without state- or federally-issued certificates and/or compliance agreements provided that no other state or federal provisions prevent it.
- C. Regulated articles may be moved for experimental or scientific purposes in accordance with specified conditions provided a scientific permit is securely attached to the container of such articles or to the article itself. Scientific permits may be supplied by the Department or USDA-APHIS.

#### 58.4. Issuance of Movement Documents.

- A. Certificates - An inspector from the Department or USDA-APHIS, or their representatives, will issue certificates for movement of regulated articles when it has been deemed that ALB is not apparently present and risk of movement of ALB from a quarantined area to a non-quarantined area has been mitigated. In all cases, certificates and permits shall be furnished by the carrier to the consignee at the destination of the shipment.
- B. Compliance Agreements - The Department or USDA-APHIS may enter into compliance agreements with persons growing, handling, or moving regulated articles once an inspector has reviewed all provisions of the compliance agreement and each agrees to comply with the provisions of this subpart and any conditions imposed under this subpart. As a condition of issuance of certificates for the movement of regulated articles, any person engaged in purchasing, assembling, exchanging, handling, or moving such articles may be required to sign a compliance agreement stipulating that he will maintain such safeguards against the establishment and spread of infection and comply with such conditions as to the maintenance of identity, handling, and subsequent movement of such articles.
- C. Attachment — Movement documents must be attached to or accompany shipments of all regulated articles or containers carrying regulated articles and such articles must be clearly marked with the name and address of the consignor and consignee.
- D. Cancellation — Certificates and/or Compliance Agreements may be canceled orally or in writing by an inspector or representative of the Department or USDA-APHIS whenever the inspector determines that the holder of the certificate or compliance agreement has not complied with this subpart or any conditions imposed under this subpart.

#### 58.5. Inspection and Disposal.

Any properly identified inspector is authorized to stop and inspect, without a warrant, any person or means of conveyance moving within or from the State of South Carolina upon probable cause to believe that non-permitted or non-certified regulated articles are present; and, such inspector is authorized to seize, destroy or otherwise dispose of articles found to be moving in violation of these regulations.

#### 58.6. Removal of Areas from Regulation.

When satisfactory evidence has been presented that ALB has been eradicated from an area affected by this quarantine, the Department may remove regulated areas from the quarantine.

#### 58.7. Waiver of Liability.

The South Carolina State Crop Pest Commission disclaims liability for any cost incident to inspection or treatment required under the provisions of this quarantine, other than for the services of the South Carolina State Crop Pest Commission.

#### 58.8. Regulated Areas.

The areas listed in this emergency regulation are declared to be regulated areas where the pest is known to exist at a level or within proximity of a level which poses a risk of spreading the pest to non-infested areas of South Carolina and other states:

- A. A. The portion of Charleston County, including portions or all of the municipalities of Hollywood, Ravenel, and Charleston that is bounded by a line starting at the intersection of Bulow Landing Road and County Line Road continue west on County Line Road to intersection of Hyde Park Road (S.C. 1332); then south and west on Hyde Park Road (S.C. 1332) to the intersection with S.C. 165; then south on S.C.165 to the intersection with point (80.2382726°W 32.7438883°N); then west along property boundaries to intersection with point (80.2420020°W 32.7448314°N); then southwest along property boundaries to intersection with point (80.2458378°W 32.7407861°N); then southeast along property boundary to intersection with S.C. 165 at point (80.2399048°W 32.7368987°N); then south on S.C. 165 to intersection of S.C. 162; then east on S.C. 162 to intersection of Dixie Plantation Road; continue east on Dixie Plantation Road to the intersection of Gibson Road; south on Gibson Road to the intersection of Church Flats Road; then east along Church Flats Road to the intersection of Westervelt Road; south on Westervelt Road to the intersection of Shark Hole Road; then east on Shark Hole Road to the end of the road in marsh/creek of Wadmalaw River (80.2045760°W 32.7194025°N); then southeast along Wadmalaw River into Church Creek; east along Church Creek to intersection with unnamed creek at point (80.1399242°W 32.7117634°N); then north along the unnamed creek to the intersection with Chisolm Road (S.C. 54) at bridge; east then south on Chisolm Road (S.C. 54) to the intersection of Mary Ann Point Road (S.C. 1333); then east on Mary Ann Point Road (S.C. 1333) to intersection of Main Road (S.C. 20); north on Main Road (S.C. 20) to the intersection of Patton Avenue; then east on Patton Avenue and Fickling Hill Road to the intersection of Turtle Marsh Lane; then west on Turtle Marsh Lane to intersection with point (80.0896517°W 32.7520536°N); then northeast along property boundaries from point (80.0896517°W 32.7520536°N) to point (80.0856907°W 32.7586340°N); then northwest to point (80.0920635°W 32.7629036°N) and then north to the intersection of Old Pond Road (S.C. 1632) and point (80.0910956°W 32.7650052°N); then northwest on Old Pond Road (S.C. 1632) to the private road (Joyner Road) at point (80.094066°W 32.770028°N); then east on the private road (Joyner Road) to the intersection with point (80.0920480°W 32.7690658°N); then northeast along property boundaries from point (80.0920480°W 32.7690658°N) to the intersection of point (80.0905036°W 32.7706821°N) and Simmons Creek; then north along Simmons Creek to the intersection of point (80.0889116°W 32.7782614°N) and the Stono River; then northeast across the main body of the Stono River and north along Stono River Creeks to the intersection of Stono River Creeks and point (80.0749385°W

32.7919170°N); northwest along unnamed drainage ditch to the intersection of Marginal Road at point (80.0783450°W 32.7962810°N); then northwest on Marginal Road to intersection of Carolina Bay Drive; north on Carolina Bay Drive to intersection of Cornsilk Drive; west and north on Cornsilk Drive to intersection of Conservancy Lane; east on Conservancy Lane to intersection of Halfshell Lane; then north on Halfshell Lane to the intersection of Sanders Road; west and northwest on Sanders Road to the intersection of Bees Ferry Road (S.C. 57); then northeast on Bees Ferry Road (S.C. 57) to the intersection of Proximity Drive; then northwest on Proximity Drive to the intersection of Barons Drive; west on Barons Drive to intersection with point (80.0992048°W 32.8267727°N); then north along property boundaries to the intersection with point (80.1046114°W 32.8355374°N); then northeast along property boundaries to intersection with point (80.0989634°W 32.8411654°N); then northwest along property boundaries to the intersection with point (80.1046759°W 32.8468555°N); then northeast along property boundaries to the intersection with point (80.1015949°W 32.8495865°N); then west along property boundaries to the intersection with point (80.1276450°W 32.8542581°N); then south following property boundaries to the intersection with point (80.1333798°W 32.8411314°N); then northwest along property boundaries to the intersection with point (80.1456840°W 32.8486665°N); then south following property boundaries to the intersection with the Charleston, Dorchester County Line at Rantowles Creek point (80.1495332°W 32.8205181°N); then south along the Charleston, Dorchester County Line to the terminus of Bulow Landing Road; west following Bulow Landing Road to the intersection of County Line Road to the point of beginning.

B. Additional regulated areas may be designated as quarantined by the Department pursuant to S.C. Code of Regulation 27-135.

C. The official listing of quarantined areas in South Carolina shall be maintained and made publicly available on Clemson's website located at: [www.clemson.edu/invasives](http://www.clemson.edu/invasives)

### **Statement of Need and Reasonableness:**

#### **DESCRIPTION OF REGULATION:**

Purpose: The proposed regulations will define the quarantine area and process for containing and eradicating the Asian Longhorned Beetle. Specifications for how some regulated articles may still move are also provided.

Legal Authority: S.C. Code Ann. Sections 46-9-40 and 46-9-50.

Plan for Implementation: In collaboration with United States Department of Agriculture dedicated South Carolina program staff, the described quarantine will be implemented and enforced immediately upon passage. Outreach and education efforts to inform the public about said quarantine have already ensued and will continue. Additionally, any person, business, or entity regularly engaged in the possible movement of regulated articles, such as nurseries, landscapers, and arborists, will be contacted by the ALB program and entered into a compliance agreement which will indicate their understanding of the new regulation and provide them with direct contact to program officials. Since the movement of yard debris may be impacted

by this quarantine, a marshalling yard will be established by the program for the receipt of such materials for destruction at no cost to the affected citizen. There are plans for establishing permanent signage which will indicate when residents are entering or leaving ALB eradication areas.

**DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:** ALB is an invasive wood-boring beetle that infests and kills hardwood trees in North America, preferring maples, elms, birch, true poplars, and willows, but also capable of reproducing in ash, Golden raintree, sycamore, buckeye, katsura, mimosa and mountain ash. Signs of ALB start to show about 3 to 4 years after infestation, with tree death occurring in 10 to 15 years depending on the tree's overall health and site conditions. Infested trees do not recover, nor do they regenerate. Foresters have observed ALB-related tree deaths in every affected state, which in addition to South Carolina currently includes New York, Ohio, Massachusetts, New Jersey, and Illinois. Forestry is the number one industry in South Carolina with a total annual economic impact of \$17 billion. South Carolina exports \$1.4 billion in forest products each year and timber represents the state's number one rural commodity at \$759 million annually.

Quarantining ALB-infested areas in South Carolina will protect uninfested areas and trees from the negative impacts associated with the beetle, which include expedited tree death, potentially reduced national and international trade from South Carolina and with and from other U.S. states, increased human health risks due to falling trees and branches, and increased tree debris management expenses. The quarantine will also stabilize accompanying eradication efforts so that in the long term, the quarantined areas can respawn with these native trees.

**DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:** An ALB quarantine is necessary in South Carolina to aid eradication efforts, prevent additional pest spread, and save the many more yet to be affected trees in the state.

**DETERMINATION OF COSTS AND BENEFITS:** The cost of this quarantine program is largely being supported by a grant from the USDA. Primarily impacted industries include foresters, nurseries, firewood producers, arborists, and landscapers. Through compliance agreements and added precautions, these industries will be able to continue business operations at nearly normal levels. Retarding or preventing movement of some regulated articles will increase expenses to these industries inside the quarantine, but these impacts are necessary to protect the much larger percentage located outside of the quarantine.

**UNCERTAINTIES OF ESTIMATES:** Great efforts have gone into predicting and mitigating unnecessary financial impacts to the aforementioned industries through researching impacts from similar ALB quarantines in other states. Where these impacts are identified, efforts are made to provide movement allowances or other options to mitigate the risk of pest spread and provide as little negative impact to industry as possible.

**EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:**

Quarantining ALB-infested areas in South Carolina will protect uninfested areas and trees from the negative impacts associated with the beetle, which include expedited tree death, potentially reduced national and international trade from South Carolina and with and from other U.S. states, increased human health risks due to falling trees and branches, and increased tree debris management expenses. The quarantine will also stabilize accompanying eradication efforts so that in the long term, the quarantined areas can respawn with these native trees.

Will support and follow public health guidance and requirements as set forth by certain both State and Federal authorities.

**DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:**

Without implementation of the proposed regulations, ALB will spread at least to the borders of South Carolina where the USDA will establish their quarantine. Forestry and other industries would be impacted exponentially as a result of this pest spread, which would include millions of dead and falling trees, loss of critical habitats for wildlife, and reduced public safety.

**Statement of Rationale:**

Quarantining ALB-infested areas in South Carolina will protect uninfested areas and trees from the negative impacts associated with the beetle, which include expedited tree death, potentially reduced national and international trade from South Carolina and with and from other U.S. states, increased human health risks due to falling trees and branches, and increased tree debris management expenses. The quarantine will also stabilize accompanying eradication efforts so that in the long term, the quarantined areas can respawn with these native trees.