

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 01-049-1]

#### Gypsy Moth Generally Infested Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the gypsy moth regulations by adding counties in Illinois, Indiana, Michigan, Ohio, West Virginia, and Wisconsin to the list of generally infested areas. As a result of this action, the interstate movement of certain articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the gypsy moth to noninfested States. We are also making nonsubstantive revisions to the entries for Maine, Virginia, West Virginia, and Wisconsin to address inconsistencies in the county listings and to correct misspellings.

**DATES:** This interim rule is effective on July 17, 2001. We invite you to comment on this docket. We will consider all comments that we receive by September 17, 2001.

**ADDRESSES:** Please send four copies of your comment (an original and three copies) to: Docket No. 01-049-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 01-049-1.

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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jonathan Jones, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737-1236, (301) 734-8247.

#### SUPPLEMENTARY INFORMATION:

##### Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest and shade trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45-12 and referred to below as the regulations) restrict the interstate movement of certain articles from generally infested areas in the quarantined States to prevent the artificial spread of the gypsy moth.

Section 301.45-2 provides that generally infested areas are, with certain exceptions, those States or portions of States in which a gypsy moth general infestation has been found by an inspector or each portion of a State that the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Less than an entire State will be designated as a generally infested area only if:

(1) The State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of such articles; and (2) The designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth. Section 301.45-3 lists generally infested areas in the quarantined States.

Surveys conducted by the United States Department of Agriculture, in cooperation with the States, detected multiple life stages of the gypsy moth in 22 additional areas in 5 states (Illinois,

Indiana, Ohio, West Virginia, Wisconsin). Based on these surveys, we determined that reproducing populations exist at significant levels in these areas. Eradication of these populations is not considered feasible because these areas are immediately adjacent to areas currently recognized as generally infested and are, therefore, subject to reinfestation.

In addition, the State of Michigan recommended that the remaining six counties in Michigan be designated as generally infested areas due to patterns of moth catches, the counties proximity to infestation, and the State's desire for uniform application of Federal regulations.

Therefore, in accordance with the regulations, we are designating Lake County, IL; DeKalb and Noble Counties, IN; Baraga, Gogebic, Houghton, Iron, Keweenaw, and Ontonagon Counties, MI; Fairfield, Huron, Knox, Morgan, Perry, Richland, and Washington Counties, OH; Braxton, Calhoun, Gilmer, Greenbrier, Nicholas, Pleasants, Ritchie, Wirt, and Wood Counties, WV; and Walworth, Waupaca, and Waushara Counties, WI, as generally infested areas, and we are adding them to the list of generally infested areas provided in § 301.45-3(a). In addition, we are adding Illinois to the notice of quarantined states provided in § 301.45(a).

#### Miscellaneous

We are also making nonsubstantive revisions to § 301.45-3(a) to address inconsistencies in the county listings and to correct misspellings in the entries for Maine, Virginia, West Virginia, and Wisconsin.

#### Emergency Action

This rulemaking is necessary on an emergency basis because of the possibility that the gypsy moth could be artificially spread to noninfested areas of the United States, where it could cause economic losses due to the defoliation of susceptible forest and shade trees. 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 that are received within 60 days of publication

of this rule in the **Federal Register**. 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 as a result of the comments.

#### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

#### 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. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

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

2. In § 301.45, paragraph (a) is amended by adding the word “Illinois” in alphabetical order.

3. In § 301.45–3, paragraph (a) is amended as follows:

- a. By adding an entry for Illinois.
- b. Under Indiana, by adding new counties in alphabetical order.
- c. Under Maine, in the entry for Aroostook County, by removing the word “Aroostook” and adding in its place the word “Aroostook”.
- d. Under Maine, in the entry for Penobscot County, by removing the word “LaGrange” and adding in its place the word “Lagrange”.
- e. Under Michigan, by revising the entries to include the entire State.
- f. Under Ohio, by adding counties in alphabetical order.
- g. Under Virginia, in the entry for Appomattox County, by removing the word “Appomattox” and by adding in its place the word “Appomattox”.
- h. Under West Virginia, by adding counties in alphabetical order and by revising the entry for Brook County.
- i. Under Wisconsin, by adding new counties in alphabetical order and by revising the entry for Fond du Lac.

#### § 301.45–3 Generally infested areas.

(a) \* \* \*

##### Illinois

*Lake County.* The entire county.

##### Indiana

\* \* \* \* \*

*De Kalb County.* The entire county.

\* \* \* \* \*

*Noble County.* The entire county.

\* \* \* \* \*

##### Michigan

The entire State.

\* \* \* \* \*

##### Ohio

\* \* \* \* \*

*Fairfield County.* The entire county.

\* \* \* \* \*

*Huron County.* The entire county.

\* \* \* \* \*

*Knox County.* The entire county.

\* \* \* \* \*

*Morgan County.* The entire county.

\* \* \* \* \*

*Perry County.* The entire county.

\* \* \* \* \*

*Richland County.* The entire county.

\* \* \* \* \*

*Washington County.* The entire county.

\* \* \* \* \*

##### West Virginia

\* \* \* \* \*

*Braxton County.* The entire county.

*Brooke County.* The entire county.

*Calhoun County.* The entire county.

\* \* \* \* \*

*Gilmer County.* The entire county.

\* \* \* \* \*

*Greenbrier County.* The entire county.

\* \* \* \* \*

*Nicholas County.* The entire county.

\* \* \* \* \*

*Pleasants County.* The entire county.

\* \* \* \* \*

*Ritchie County.* The entire county.

\* \* \* \* \*

*Wirt County.* The entire county.

*Wood County.* The entire county.

##### Wisconsin

\* \* \* \* \*

*Fond du Lac County.* The entire county.

\* \* \* \* \*

*Walworth County.* The entire county.

\* \* \* \* \*

*Waupaca County.* The entire county.

*Waushara County.* The entire county.

\* \* \* \* \*

Done in Washington, DC, this 10th day of July 2001.

**Bobby R. Acord,**

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

[FR Doc. 01–17695 Filed 7–16–01; 8:45 am]

BILLING CODE 3410–34–U

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 353

[Docket No. 99–100–3]

### Export Certification; Canadian Solid Wood Packing Materials Exported From the United States to China

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the export certification regulations for the certification of softwood (coniferous) packing materials used with goods exported from the United States to China. Prior to this interim rule, the