

Rules and Regulations

Federal Register

Vol. 76, No. 74

Monday, April 18, 2011

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2010–0075]

Gypsy Moth Generally Infested Areas; Additions in Indiana, Maine, Ohio, Virginia, West Virginia, and Wisconsin

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 areas in Indiana, Maine, Ohio, Virginia, West Virginia, and Wisconsin to the list of generally infested areas based on the detection of infestations of gypsy moth in those areas. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary to prevent the artificial spread of the gypsy moth to noninfested areas of the United States.

DATES: This interim rule is effective April 18, 2011. We will consider all comments that we receive on or before June 17, 2011.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0075> to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0075, 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–2010–0075.

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: Ms. Julie S. Spaulding, Forest Pest Programs Manager, Emergency and Domestic Programs, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737; (301) 734–5332.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest, shade, and commercial trees such as nursery stock and Christmas 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 regulated articles from generally infested areas to prevent the artificial spread of the gypsy moth.

In accordance with § 301.45–2 of the regulations, 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.

Designation of Areas as Generally Infested Areas

Section 301.45–3 of the regulations lists generally infested areas. In this rule, we are amending § 301.45–3(a) by adding the following to the list of generally infested areas:

- *Indiana:* LaPorte County.
- *Maine:* In Penobscot County, the townships of Mount Chase, T5 R8 WELS, T6 R8 WELS, and the portion of T3 R8 WELS within the boundaries of Baxter State Park; in Piscataquis County, the townships of Mount Katahdin, Nesourdnhunk, Trout Brook, T3 R10 WELS, T4 R9 WELS, T5 R9 WELS, T6 R10 WELS, and the portion of T4 R10 WELS within the boundaries of Baxter State Park; and, in Somerset County, the townships of Bigelow, Lower Enchanted, Pierce Pond, and T3 R4 BKP WKR.

- *Ohio:* Athens, Crawford, Marion, and Vinton Counties.
- *Virginia:* The Cities of Covington and Radford, and Bland, Floyd, Franklin, and Pulaski Counties.
- *West Virginia:* Fayette County.
- *Wisconsin:* The Madeline Island area and the Apostle Islands National Lakeshore (island units only) of Ashland County, and Iron and Monroe Counties.

As a result of this rule, the interstate movement of regulated articles from these areas will be restricted.

We are taking this action because, in cooperation with the States of Indiana, Maine, Ohio, Virginia, West Virginia, and Wisconsin, the United States Department of Agriculture conducted surveys that detected multiple life stages of the gypsy moth in the areas to be added. Based on these surveys, we determined that reproducing populations exist at significant levels in these areas and that eradication is not feasible. Adding these areas to the existing generally infested area will help prevent the artificial spread of the gypsy moth.

Editorial Amendments

We periodically review the list of generally infested areas for accuracy. During our last review, we noted several errors in the listing of generally infested areas in Maine:

- T3 R4 WELS, in Aroostook County, has long been considered a generally infested area, but has never been added to the regulations due to an inadvertent omission.

- Eustis, in Franklin County, should be included, in alphabetical order, in the list of townships rather than being listed separately as Eustis area.

- In Penobscot County, Patten should be included, in alphabetical order, in the list of townships rather than being listed separately as Patten area. In the same county, "Seboeis Plantation" should be spelled Seboeis Plantation.

- The Township of Veazie Gore is erroneously listed under Piscataquis, rather than Penobscot County.

- The Township of Wellington in Piscataquis County appears incorrectly as Willington.

We are amending the regulations in § 301.45–3 accordingly to correct these errors.

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 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.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis, which considers the number and types of entities that are likely to be affected by this action and the potential economic effects on those entities, provides the basis for the Administrator's determination that the rule will not have a significant economic impact on a substantial number of small entities. The economic analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov). Copies of

the economic analysis are also available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

The requirements of this rule may cause a slight increase in costs for some of the affected entities, depending on the proportion of their sales made to buyers in non-quarantined areas. However, any negative impacts that may be incurred because of the rule will be small, especially when compared to the harm to the forest industry and the U.S. economy from further spread of the gypsy moth. Regulated articles that meet quarantine requirements can continue to be sold in non-quarantined areas. Impacts on prices and competitiveness will be insignificant.

Although the majority of affected establishments in the newly quarantined areas are small entities, the effects of this rule on these businesses will be minor. Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would 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 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 § 301.45–3, paragraph (a) is amended as follows:

■ a. Under the heading Indiana, by adding, in alphabetical order, an entry for LaPorte County to read as set forth below.

■ b. Under the heading Maine, by revising the entries for Aroostook County, Franklin County, Penobscot County, Piscataquis County, and Somerset County to read as set forth below.

■ c. Under the heading Ohio, by adding, in alphabetical order, entries for Athens County, Crawford County, Marion County, and Vinton County to read as set forth below.

■ d. Under the heading Virginia, by adding, in alphabetical order, entries for the Cities of Covington and Radford and for Bland County, Floyd County, Franklin County, and Pulaski County to read as set forth below.

■ e. Under the heading West Virginia, by adding an entry for Fayette County to read as set forth below.

■ f. Under the heading Wisconsin, by adding, in alphabetical order, entries for Ashland County, Iron County, and Monroe County to read as set forth below.

§ 301.45–3 Generally infested areas.

(a) * * *

Indiana

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LaPorte County. The entire county.

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Maine

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Aroostook County. The townships of Amity, Bancroft, Benedicta, Cary Plantation, Crystal, Dyer Brook, Forkstown, Glenwood Plantation, Haynesville, Hodgdon, Houlton, Island Falls, Linneus, Macwahoc Plantation, Molunkus, New Limerick, North Yarmouth Academy Grant, Oakfield, Orient, Reed Plantation, Sherman, Silver Ridge, Upper Molunkus, Weston, T1 R5 WELS, T2 R4 WELS, T3 R3 WELS, T3 R4 WELS, T4 R3 WELS, and TA R2 WELS.

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Franklin County. Avon, Carthage, Chesterville, Coplin Plantation, Crockertown, Dallas Plantation, Davis, Eustis, Farmington, Freeman, Industry, Jay, Jerusalem, Kingfield, Lang, Madrid, Mount Abraham, New Sharon, New

Vineyard, Perkins, Phillips, Rangeley, Rangeley Plantation, Redington, Salem, Sandy River Plantation, Strong, Temple, Township 6 North of Weld, Township D, Township E, Washington, Weld, Wilton, and Wyman.

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Penobscot County. The townships of Alton, Argyle, Bangor City, Bradford, Bradley, Brewer City, Burlington, Carmel, Carroll Plantation, Charleston, Chester, Clifton, Corinna, Corinth, Dexter, Dixmont, Drew Plantation, E. Millinocket, Eddington, Edinburg, Enfield, Etna, Exeter, Garland, Glenburn, Grand Falls Plantation, Greenbush, Greenfield, Grindstone, Hampden, Hermon, Hersey Town, Holden, Hopkins Academy Grant, Howland, Hudson, Indian Purchase, Kenduskeag, Kingman, Lagrange, Lakeville, Lee, Levant, Lincoln, Long A, Lowell, Mattamiscontis, Mattawamkeag, Maxfield, Medway, Milford, Millinocket, Mount Chase, Newburgh, Newport, Old Town City, Orono, Orrington, Passadumkeag, Patten, Plymouth, Prentiss Plantation, Seboeis Plantation, Soldiertown, Springfield, Stacyville, Stetson, Summit, Veazie, Veazie Gore, Webster Plantation, Winn, Woodville, T1 ND, T1 R6 WELS, T1 R8 WELS, T2 R8 NWP, T2 R8 WELS, T2 R9 NWP, T3 R1 NBPP, T3 R9 NWP, T5 R1 NBPP, T5 R8 WELS, T6 R8 WELS, TA R7, TA R8, TA R9, and the portion of T3 R8 within the boundaries of Baxter State Park.

Piscataquis County. The townships of Abbot, Atkinson, Barnard, Blanchard Plantation, Bowerbank, Brownville, Dover-Foxcroft, Ellitsville, Greenville, Guilford, Katahdin Iron Works, Kingsbury Plantation, Lakeview Plantation, Medford, Milo, Monson, Mount Katahdin, Nesourdnahunk, Orneville, Parkman, Sangerville, Sebec, Shirley, Trout Brook, Wellington, Williamsburg, Willimantic, T1 R9 WELS, T1 R10 WELS, T1 R11 WELS, T2 R10 WELS, T2 R9 WELS, T3 R10 WELS, T4 R9 NWP, T4 R9 WELS, T5 R9 NWP, T5 R9 WELS, T6 R10 WELS, T7 R9 NWP, TA R10 WELS, TA R11 WELS, TB R10 WELS, TB R11 WELS, and the portion of T4 R10 WELS within the boundaries of Baxter State Park.

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Somerset County. The townships of Anson, Athens, Bald Mountain, Bigelow, Bingham, Bowtown, Brighton Plantation, Cambridge, Canaan, Caratunk, Carrying Place, Carrying Place Town, Concord Plantation, Cornville, Dead River, Detroit, East Moxie, Embden, Fairfield, Harmony, Hartland, Highland Plantation, Lexington Plantation, Lower Enchanted, Madison,

Mayfield, Mercer, Moscow, Moxie Gore, New Portland, Norridgewock, Palmyra, Pierce Pond, Pittsfield, Pleasant Ridge Plantation, Ripley, Skowhegan, Smithfield, Solon, St. Albans, Starks, The Forks Plantation, West Forks Plantation, and T3 R4 BKP WKR.

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Ohio

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Athens County. The entire county.

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Crawford County. The entire county.

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Marion County. The entire county.

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Vinton County. The entire county.

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Virginia

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City of Covington. The entire city.

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City of Radford. The entire city.

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Bland County. The entire county.

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Floyd County. The entire county.

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Franklin County. The entire county.

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Pulaski County. The entire county.

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West Virginia

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Fayette County. The entire county.

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Wisconsin

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Ashland County. Madeline Island area and Apostle Islands National Lakeshore (island units only).

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Iron County. The entire county.

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Monroe County. The entire county.

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Done in Washington, DC, this 13th day of April 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011-9291 Filed 4-15-11; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Doc. No. AMS-FV-11-0019; FV11-916/917-5 IR]

Nectarines and Peaches Grown in California; Suspension of Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule suspends the quality, inspection, reporting, and assessment requirements specified under the California nectarine and peach marketing orders (orders). The orders regulate the handling of nectarines and peaches grown in California. During recent referenda, less than the required two-thirds majority of growers, by number and production volume, favored continuation of the orders. After consideration of the referendum results and other factors, the Department of Agriculture (USDA) has decided to seek termination of the orders. Suspension of the handling regulations for the 2011 and subsequent marketing seasons will relieve handlers of all regulatory burden under the orders while USDA processes the terminations. Termination of the orders must be delayed until after a 60-day Congressional notification period following issuance of a proposed rule, which will be published in a future issue of the **Federal Register**.

DATES: Effective April 19, 2011; comments received by June 17, 2011 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the