

to regulate because of their proximity to infestation or their inseparability for quarantine enforcement purposes from infested localities. The townships of Elba and Byron in Genesee County, NY, were regulated for golden nematode in 1977 on the basis of their proximity to and association with three fields in Orleans County, NY, in which golden nematode was detected.

Paragraph (c) of § 301.85–2 states that, in accordance with the criteria listed in § 301.85–2(a), the Deputy Administrator shall terminate the designation of any area listed as a regulated area and suppressive or generally infested area when he or she determines that such designation is no longer required. From 1977 until 2010, potato production fields in the townships of Elba and Byron have had a sequence of surveys with negative laboratory results for the detection of golden nematode. As a result, it is no longer necessary to regulate these townships in Genesee County, NY, and restrict interstate movement of golden nematode regulated articles from these townships. This is the first time APHIS has removed an area that had been listed as generally infested with golden nematode from regulation.

#### Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary on two townships in Genesee County, NY, that have been regulated for golden nematode. Under these circumstances, the Administrator, APHIS, 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 action 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 is summarized below. The full analysis

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

This rule codifies a Federal Order issued in December 2010, removing the townships of Elba and Byron in Genesee County, NY, from the areas listed in § 301.85–2a as regulated because of the golden nematode. These two townships are the first areas removed from the golden nematode quarantine.

In 2007, there were 13 farms in Genesee County that harvested potatoes. These farms represented about 2 percent of such farms in New York, and comprised about 6 percent of the State's acres of harvested potatoes. New York farms that harvested potatoes in 2007 represented about 6 percent of such farms in the United States and held about 2 percent of the U.S. acres of harvested potatoes.

Affected entities will benefit from no longer needing to satisfy compliance requirements of the quarantine. They are also expected to find improved export opportunities. While the potato farms in the two townships qualify as small entities, they are few in number and their share of the U.S. potato industry is minor.

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 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).

#### § 301.85–2a [Amended]

■ 2. In § 301.85–2a, under the heading New York, in paragraph (1), the entry for Genesee County is removed.

Done in Washington, DC, this 23rd day of September 2011.

**Kevin Shea,**

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

[FR Doc. 2011–25088 Filed 9–28–11; 8:45 am]

**BILLING CODE 3410–34–P**

#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS–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:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the regulations to add 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. The interim rule was necessary to prevent the artificial spread of the gypsy moth to noninfested areas of the United States.

**DATES:** Effective on September 29, 2011, we are adopting as a final rule the interim rule published at 76 FR 21613–21615 on April 18, 2011.

**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. Section 301.45-3 of the regulations lists generally infested areas.

In an interim rule<sup>1</sup> effective and published in the **Federal Register** on April 18, 2011 (76 FR 21613-21615, Docket No. APHIS-2010-0075), we amended § 301.45-3(a) by adding portions of Indiana, Maine, Ohio, Virginia, West Virginia, and Wisconsin to the list of generally infested areas.

Comments on the interim rule were required to be received on or before June 17, 2011. We received one comment from a State agricultural agency that was in favor of this action. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action the Office of Management and Budget has waived its review under Executive Order 12866.

##### List of Subjects in 7 CFR Part 301

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

#### PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 76 FR 21613-21615 on April 18, 2011.

<sup>1</sup> To view the interim rule and its supporting economic analysis, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0075>.

Done in Washington, DC, this 23rd day of September 2011.

**Kevin Shea,**

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

[FR Doc. 2011-25089 Filed 9-28-11; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

##### Animal and Plant Health Inspection Service

##### 7 CFR Part 305

[Docket No. APHIS-2008-0022]

RIN 0579-AC94

##### Phytosanitary Treatments; Location of and Process for Updating Treatment Schedules; Technical Amendment

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** In a final rule that was published in the **Federal Register** on January 26, 2010, and effective on February 25, 2010, we amended the phytosanitary treatment regulations by removing the lists of approved treatments and treatment schedules from the regulations, while retaining the general requirements for performing treatments and certifying or approving treatment facilities. The final rule also removed treatment schedules from other places where they had been found in APHIS regulations and provided that approved treatment schedules will instead be found in the Plant Protection and Quarantine Treatment Manual, which is available on the Internet. In the final rule, we neglected to provide for the Administrator of the Animal and Plant Health Inspection Service to approve treatments that are not found in the Treatment Manual, and we did not retain text explaining that irradiation can be used as a substitute for other treatments. In this amendment, we are amending the regulation to provide for such approval of treatments and to restore the text we removed.

**DATES:** *Effective Date:* September 29, 2011.

**FOR FURTHER INFORMATION CONTACT:** Dr. Inder P. S. Gadh, Senior Risk Manager—Treatments, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 734-0627.

**SUPPLEMENTARY INFORMATION:**

##### Background

In a final rule that was published in the **Federal Register** on January 26, 2010 (75 FR 4228-4253, Docket No. APHIS-2008-0022), and effective on February 25, 2010, we amended the phytosanitary treatment regulations in 7 CFR part 305 by removing the lists of approved treatments and treatment schedules from the regulations, while retaining the general requirements for performing treatments and certifying or approving treatment facilities. The final rule also removed treatment schedules from other places where they had been found in 7 CFR chapter III.

We replaced the lists of approved treatments that had been in § 305.2 with a general statement in paragraph (b) of that section that approved treatment schedules are set out in the Plant Protection and Quarantine (PPQ) Treatment Manual. Paragraph (b) went on to state that treatments may only be administered in accordance with the treatment requirements of part 305 and in accordance with treatment schedules found in the PPQ Treatment Manual. We also amended the general requirements for performing treatments and certifying or approving treatment facilities to indicate that such facilities need to be able to conduct the treatments in the PPQ Treatment Manual.

However, while the PPQ Treatment Manual contains only approved treatment schedules, it is inappropriate to refer to the PPQ Treatment Manual as the sole place where approved treatment schedules may be found and to set requirements for treatment facilities based only on the treatments in the PPQ Treatment Manual. A treatment schedule is ultimately approved for use not by dint of its inclusion in the PPQ Treatment Manual but because the Administrator of the Animal and Plant Health Inspection Service has decided that the treatment schedule is effective at neutralizing the targeted plant pest. Ultimately, the regulations should refer to approval by the Administrator as the standard for use of a treatment schedule.

Therefore, we are amending paragraph (b) of § 305.2 to indicate that treatments may only be administered in accordance with the requirements of part 305 and in accordance with treatment schedules approved by the Administrator as effective at neutralizing quarantine pests. We are also amending paragraph (b) to explicitly indicate that the treatment schedules found in the PPQ Treatment Manual have been approved by the Administrator.