

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 02-053-1]

#### 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 nine counties in Wisconsin to the list of generally infested areas based on the detection of infestations of gypsy moth in those counties. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the gypsy moth to noninfested States.

**DATES:** This interim rule is effective June 20, 2002. We will consider all comments that we receive on or before August 19, 2002.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-053-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-053-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-053-1" on the subject line.

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; (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 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 nine counties in Wisconsin to the list of generally infested areas. 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 State of Wisconsin, the United States Department of Agriculture conducted surveys that detected multiple life stages of the gypsy moth in Columbia, Florence, Forest, Green Lake, Jefferson, Langlade, Portage, Rock, and Wood Counties, WI. 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.

#### 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 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 § 301.45–3, paragraph (a), the entry for Wisconsin is amended by adding new counties in alphabetical order to read as follows:

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

(a) \* \* \*

#### Wisconsin

\* \* \* \* \*

*Columbia County.* The entire county.

\* \* \* \* \*

*Florence County.* The entire county.

\* \* \* \* \*

*Forest County.* The entire county.

*Green Lake County.* The entire county.

*Jefferson County.* The entire county.

\* \* \* \* \*

*Langlade County.* The entire county.

\* \* \* \* \*

*Portage County.* The entire county.

\* \* \* \* \*

*Rock County.* The entire county.

\* \* \* \* \*

*Wood County.* The entire county.

Done in Washington, DC, this 14th day of June 2002.

**Bobby R. Acord,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 02–15587 Filed 6–19–02; 8:45 am]

**BILLING CODE 3410–34–P**

#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 99–080 2]

#### Citrus Canker; Packing in the Quarantined Area

**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 allowed citrus fruit produced outside the quarantined areas to be moved into a quarantined area for packing and then moved from that quarantined area to any destination in the United States, including commercial citrus-producing areas. The interim rule provided that citrus fruit produced outside the quarantined areas, if moved into a quarantined area for packing, must be moved and handled according to specific conditions designed to prevent the artificial spread of citrus canker, including conditions to prevent its commingling with, and possible contamination by, citrus fruit produced within a quarantined area. The interim rule was necessary in order to relieve unnecessary restrictions on regulated fruit originating outside a quarantined area but packed within a quarantined area.

**EFFECTIVE DATE:** The interim rule became effective on October 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Poe, Operations Officer, Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–8899.

#### SUPPLEMENTARY INFORMATION:

#### Background

In an interim rule effective October 29, 1999, and published in the **Federal Register** on November 4, 1999 (64 FR 60088–60092, Docket No. 99–080–1), we amended the regulations in “Subpart Citrus Canker” (7 CFR 301.75 through 301.75–16, referred to below as the regulations) to allow citrus fruit produced outside the quarantined areas to be moved into a quarantined area for packing and then moved from that quarantined area to any destination in the United States, including commercial citrus-producing areas. The interim rule provided that citrus fruit produced outside the quarantined areas, if moved into a quarantined area for packing, must be moved and handled according to specific conditions designed to prevent the artificial spread of citrus canker, including conditions to prevent its commingling with, and possible contamination by, citrus fruit produced within a quarantined area.

We solicited comments on the interim rule for 60 days ending on January 3, 2000. We received three comments by that date. They were from State agricultural agencies and a citrus industry organization. While two of the commenters supported the provisions of the interim rule, all three commenters expressed specific concerns. These are addressed below.

#### Current Detection and Quarantine Programs

All three commenters expressed concern that the description of quarantined areas in § 301.75–4 of the regulations was not current and did not, therefore, reflect all the areas in which citrus canker has been detected in Florida. This, the commenters stated, could result in the continuing spread of citrus canker due to the lack of restrictions on the movement of regulated articles from areas affected with citrus canker but not under Federal quarantine.

Despite close monitoring by Animal and Plant Health Inspection Service (APHIS) inspectors and frequent updates to the citrus canker regulations, unavoidable delays in the Federal rulemaking process occasionally result