

# Rules and Regulations

Federal Register

Vol. 72, No. 239

Thursday, December 13, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS-2006-0075]

RIN 0579-AC46

### Gypsy Moth Regulations; Updates and Clarifications

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the gypsy moth regulations by making editorial and nonsubstantive changes to several terms and providing necessary updates throughout the regulations. These actions will improve the clarity and consistency of the regulations while continuing to provide protection against the artificial spread of gypsy moth into noninfested areas of the United States.

**EFFECTIVE DATE:** January 14, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Weyman Fussell, Program Manager, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-5705.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in “Subpart—Gypsy Moth” (7 CFR 301.45 through 301.45-12, referred to below as the regulations) restrict the interstate movement of regulated articles from generally infested areas of States quarantined for gypsy moth in order to prevent the artificial spread of gypsy moth into noninfested areas of the United States.

On July 17, 2007, we published in the **Federal Register** (72 FR 39018-39021, Docket No. APHIS-2006-0075) a

proposal<sup>1</sup> to amend the regulations by making editorial and nonsubstantive changes to several terms and providing necessary updates throughout the regulations.

We solicited comments concerning our proposal for 60 days ending September 17, 2007. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the gypsy moth regulations by making editorial and nonsubstantive changes to several terms and providing necessary updates throughout the regulations. These actions improve the clarity and consistency of the regulations, while continuing to provide protection against the artificial spread of gypsy moth into noninfested areas of the United States.

The gypsy moth is a pest of concern for the U.S. forest industry. Defoliation of trees by gypsy moths often results in the death of the trees, which leads to economic loss, changes in ecosystems and wildlife habitat, and disturbed water flow and water quality. Economic costs to the U.S. forest industry, in addition to the costs of timber losses and pest control, can also arise from trade reductions as importing countries impose protective restrictions on access to their markets for wood products. Gypsy moths are already causing losses in quarantined areas in the United States. Annual losses attributable to gypsy moths are estimated to be about \$22 million.<sup>2</sup> Any spread of gypsy moth to noninfested areas could have a negative economic and environmental impact.

The Small Business Administration (SBA) has established size standards

based on the North American Industry Classification System (NAICS) to determine and to classify which economic entities can be considered small entities. Entities potentially affected by our gypsy moth regulations include sawmills, pulp mills, nursery and tree production farms, and nursery and garden centers that are involved in the interstate movement of Christmas trees, nursery products, household products, and bark and bark products from gypsy moth generally infested areas. Any effects on these entities resulting from these updates to the regulations would be positive.

The SBA classifies nursery and tree production (floriculture, nursery, Christmas trees, etc.) farms (NAICS code 111421) as small if their annual receipts are not more than \$750,000.<sup>3</sup> Sawmills (NAICS code 321113) are regarded as small if they employ 500 or fewer employees, and pulp mills (NAICS code 322110) are small if they employ 750 or fewer employees. Nursery and garden centers (NAICS code 444220) are considered small if their annual sales are less than \$6.5 million. In 2002, the most recent year for which data are available, there were 17,300 nursery and tree production farms, 1,215 sawmills, 7 pulp mills, and 4,093 nursery and garden centers in generally infested areas of the United States.<sup>4</sup> Approximately 93 percent of all these entities are considered to be small under the SBA's standards. Although the majority of these establishments are small entities, any economic effect resulting from the changes in this rule would be negligible. The changes in this final rule will not impose additional restrictions or requirements; rather, they will help ensure that the existing regulations are as up to date, clear, consistent, and as flexible as possible.

Under these circumstances, the Administrator of the Animal and Plant

<sup>3</sup> SBA, Small Business Size Standards matched to North American Industry Classification System 2002, Effective January 2006 (<http://www.sba.gov/size/sizetable2002.html>).

<sup>4</sup> U.S. Census Bureau, 2002 Economic Census Geographic Area Series: Manufacturing and Wholesale Trade, Revised January 2006 (<http://www.census.gov/prod/ec02/ec0231sq1t.pdf>). Information on the number of sawmills, pulp mills, and nursery and garden centers is available at the State level only. County information is withheld to avoid disclosing data for individual establishments. This may result in an overestimate of the number of affected entities because not all counties within quarantined States are in generally infested areas.

<sup>1</sup> To view the proposed rule, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0075>.

<sup>2</sup> David Pimentel, Lori Latch, Rodolfo Zuniga, and Doug Morrison, “Environmental and Economic Costs Associated with Non-indigenous Species in the United States,” College of Agriculture and Life Sciences, Cornell University, Ithaca, NY 14850-0901, June 12, 1999.

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 final 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 final 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. Section 301.45–1 is amended as follows:

■ a. By adding a definition of *OHA document*, and by revising the definitions of *certificate*, *compliance agreement*, and *limited permit* to read as set forth below.

■ b. In the definition of *inspector*, by adding a new second sentence to read as set forth below.

■ c. In the definition of *qualified certified applicator*, by removing the citation “86 Stat. 983; 7 U.S.C. 136b” and adding the citation “7 U.S.C. 136i” in its place, by adding the word “use” before the word “pesticides”, and by revising footnote 1 to read as set forth below.

■ d. In the definition of *treatment manual*, by revising footnote 2 to read as set forth below.

#### § 301.45–1 Definitions.

\* \* \* \* \*

*Certificate.* A Plant Protection and Quarantine-approved form, stamp, or document issued and signed by an inspector, or by a qualified certified applicator or by any other person operating in accordance with a compliance agreement, affirming that a specified regulated article is eligible for interstate movement in accordance with this subpart.

*Compliance agreement.* A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, in which the person agrees to comply with the provisions of this subpart.

\* \* \* \* \*

*Inspector.* \* \* \* A person operating under a compliance agreement is not an inspector.

\* \* \* \* \*

*Limited permit.* A document in which an inspector or a person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.45–5 only to the specified destination and only in accordance with the specified conditions.

\* \* \* \* \*

*OHA document.* The self-inspection checklist portion of USDA–APHIS Program Aid Number 1329, “Don’t Move Gypsy Moth,” completed and signed by the owner of an outdoor household article (OHA) affirming that the owner has inspected the OHA for life stages of gypsy moth in accordance with the procedures in the program aid.

\* \* \* \* \*

*Qualified certified applicator.* \* \* \* 1

<sup>1</sup> Names of qualified certified applicators may be obtained from State departments of agriculture.

\* \* \* \* \*

*Treatment manual.* \* \* \* 2

<sup>2</sup> The Gypsy Moth Program Manual may be viewed on the Internet at [http://www.aphis.usda.gov/ppq/manuals/online\\_manuals.html](http://www.aphis.usda.gov/ppq/manuals/online_manuals.html).

\* \* \* \* \*

■ 3. In § 301.45–2, paragraph (a)(1) is revised to read as follows:

**§ 301.45–2 Authorization to designate and terminate designation of generally infested areas.**

(a) \* \* \*

(1) The area is subject to a gypsy moth eradication program conducted by the

Federal government or a State government in accordance with the Eradication, Suppression, and Slow the Spread alternative of the Final Environmental Impact Statement (FEIS) on Gypsy Moth Suppression and Eradication Projects that was filed with the United States Environmental Protection Agency on January 16, 1996; and,

\* \* \* \* \*

■ 4. In § 301.45–4, paragraph (b) is amended by revising the last sentence to read as follows:

**§ 301.45–4 Conditions governing the interstate movement of regulated articles and outdoor household articles from generally infested areas.**

\* \* \* \* \*

(b) \* \* \* The articles must be safeguarded by a covering adequate to prevent access by any gypsy moth life stages.

\* \* \* \* \*

■ 5. In § 301.45–7, a new sentence is added after the last sentence to read as follows:

**§ 301.45–7 Assembly and inspection of regulated articles and outdoor household articles.**

\* \* \* An owner who wants to move outdoor household articles interstate may self-inspect the articles and issue an OHA document in accordance with § 301.45–5(e).

#### § 301.45–8 [Amended]

■ 6. In § 301.45–8, paragraph (c) is amended by removing the words “officer in charge” and adding the words “State Plant Health Director” in their place.

■ 7. Section 301.45–12 is amended as follows:

■ a. By revising paragraph (a)(1) to read as set forth below.

■ b. In paragraph (a)(2), by removing the word “; or,” from the end of the sentence and adding the words “or with stipulations agreed on in the compliance agreement between the certified applicator and the Administrator.” in its place.

■ c. By removing paragraph (a)(3).

**§ 301.45–12 Disqualification of qualified certified applicator to issue certificates.**

(a) \* \* \*

(1) Such person is not certified by a State and/or the Federal government as a commercial certified applicator under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136i) in a category allowing the application of restricted use pesticides.

\* \* \* \* \*

Done in Washington, DC, this 7th day of December 2007.

**Kevin Shea,**

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

[FR Doc. E7-24176 Filed 12-12-07; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 354

#### 9 CFR Parts 130 and 156

[Docket No. APHIS-2006-0028]

RIN 0579-AC44

#### User Fees; Updates and Clarifications

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

**ACTION:** Final rule.

**SUMMARY:** We are amending our Agricultural Quarantine and Inspection Services user fee regulations to update an address that appears in several places. We are also making several nonsubstantive changes to the Veterinary Services user fee regulations to correct errors and to clarify the services covered by certain existing user fees. These changes, which do not affect any existing fees, are necessary to ensure that the user fee regulations are up to date and to ensure their clarity.

**EFFECTIVE DATE:** January 14, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Kris Caraher, User Fees Section Head, Financial Services Branch, Financial Management Division, MRBPS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737-1232; (301) 734-5901.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 17, 2007, we published in the *Federal Register* (72 FR 39025-39028, Docket No. APHIS-2006-0028) a proposal<sup>1</sup> to amend our Agricultural Quarantine and Inspection (AQI) Services user fee regulations contained in 7 CFR part 354 to update an address that appears in several places. We also proposed several nonsubstantive changes to the Veterinary Services user fee regulations contained in 9 CFR part 130 to correct errors and to clarify the services covered by certain existing user fees. Finally, we proposed to remove all references to cooperative agreements in

9 CFR part 156 because the export product endorsement and inspection services formerly covered by those agreements are now covered by user fees in 9 CFR part 130. These changes, which do not affect any existing fees, are necessary to ensure that the user fee regulations are up to date and to ensure their clarity.

We solicited comments concerning our proposal for 60 days ending September 17, 2007. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

#### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule amends our AQI user fee regulations by updating an address that appears in several places. We also make several nonsubstantive changes to the Veterinary Services user fee regulations to correct errors and to clarify existing user fee services. The changes to the regulations are administrative in nature and do not result in any new fees being charged or any additional entities becoming subject to user fees.

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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict 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 final 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

### 7 CFR Part 354

Animal diseases, Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

### 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

### 9 CFR Part 156

Exports, Livestock, Poultry and poultry products, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 7 CFR part 354 and 9 CFR parts 130 and 156 as follows:

#### TITLE 7—[AMENDED]

### PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

■ 1. The authority citation for part 354 continues to read as follows:

**Authority:** 7 U.S.C. 7701-7772, 7781-7786, and 8301-8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

#### § 354.3 [Amended]

■ 2. In § 354.3, paragraphs (d)(4) introductory text, (d)(5), (d)(6), (e)(3)(i), (e)(3)(ii), (e)(4), (f)(5)(i), (f)(5)(ii), (f)(5)(iii), (f)(6), and (f)(7), the words “Box 952181, St. Louis, MO 63195-2181” are removed and the words “Box 979044, St. Louis, MO 63197-9000” are added in their place.

#### TITLE 9—[AMENDED]

### PART 130—USER FEES

■ 3. The authority citation for part 130 continues to read as follows:

**Authority:** 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301-8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

#### § 130.2 [Amended]

■ 4. In § 130.2, paragraph (a), the first sentence is amended by adding the words “for any service rendered by an APHIS representative” after the word “fees”.

#### § 130.3 [Amended]

■ 5. In § 130.3, paragraph (c)(3) is amended by removing the words “for those services” and adding the words “for any service rendered by an APHIS representative” in their place.

<sup>1</sup> To view the proposed rule, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0028>.