

# Rules and Regulations

Federal Register

Vol. 69, No. 191

Monday, October 4, 2004

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. 04-025-2]

#### Gypsy Moth Generally Infested Areas

**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 gypsy moth regulations by adding one county in Ohio and seven 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 the interim rule, the movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of gypsy moth to noninfested areas of the United States.

**DATES:** *Effective Date:* The interim rule became effective on June 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Dr. Weyman Fussell, Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1231; (301) 734-5705.

#### 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 an interim rule effective and published in the **Federal Register** on June 7, 2004 (69 FR 31722-31723, Docket No. 04-025-1), we amended the regulations by adding one county in Ohio and seven counties in Wisconsin to the list of generally infested areas in § 301.45-3.

Comments on the interim rule were required to be received on or before August 6, 2004. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 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.

#### Regulatory Flexibility Act

This rule affirms an interim rule that amended the regulations by adding one county in Ohio and seven counties in Wisconsin to the list of generally infested areas. As a result of the interim rule, the interstate movement of certain articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of the gypsy moth to noninfested areas of the United States.

The following analysis addresses the economic effects of the interim rule on small entities, as required by the Regulatory Flexibility Act.

The interim rule placed restrictions on the movement of regulated articles and outdoor household articles (OHAs) from and through the one county in Ohio and the seven counties in Wisconsin that were designated as generally infested areas. These restrictions will have their primary effect on persons moving OHAs, nursery stock, Christmas trees, logs and wood chips, and mobile homes from a generally infested area into or through any area that is not generally infested.

Under the regulations, OHAs may not be moved from a generally infested area into or through a noninfested area unless they are accompanied by either a certificate issued by an inspector or an OHA document issued by the owner of the articles, attesting to the absence of all life stages of gypsy moth. Most individual homeowners moving their own articles who comply with the regulations choose to self-inspect and

issue an OHA document. This takes a few minutes and involves no monetary cost unless treatment is necessary. Individuals may also have State-certified pesticide applicators, trained by the State or the U.S. Department of Agriculture (USDA), inspect and issue certificates.

Generally, regulated articles (such as logs, pulpwood, wood chips, mobile homes, nursery stock, OHAs, and Christmas trees) may only be moved from a generally infested area if they are accompanied by a certificate or limited permit issued by an inspector. However, logs, wood chips, and pulpwood may be moved without a certificate or limited permit if the person moving the articles attaches a signed accurate statement to the waybill as specified in the Gypsy Moth Program Manual, stating that he or she has inspected the articles and has found them free of all life stages of the gypsy moth. This exception minimizes the costs of moving logs, pulpwood, and wood chips. Regulated articles may also be moved from a generally infested area without a certificate if they are moved by the USDA for experimental or scientific purposes and they are accompanied by a permit issued by the Administrator of the Animal and Plant Health Inspection Service (APHIS).

Persons moving regulated articles from a generally infested area may obtain a certificate or limited permit from an inspector or a qualified certified applicator. Inspectors will issue these documents at no charge, but costs may result from delaying the movement of commercial articles while waiting for the inspection. Certificates for the movement of mobile homes from a generally infested area may also be obtained from qualified certified applicators.

When inspection of regulated articles or OHAs reveals the presence of gypsy moths, treatment is often necessary in order for the articles to be eligible for movement into or through noninfested areas. The preferred treatment, scraping egg masses and spraying caterpillars, costs an average of \$10 to \$30 per shipment. Fumigation is another alternative, but it is more expensive, at \$100 to \$150 per shipment, and may damage the shipment. Treatment is done by qualified certified applicators, most of which are small businesses. These businesses might experience a

small increase in income as a result of the interim rule.

Nurseries and Christmas tree growers that move a substantial number of shipments from the generally infested areas would be able to minimize treatment costs by treating their premises for gypsy moths under a compliance agreement with APHIS. These treatments cost businesses between \$10 and \$20 per acre. This alternative allows nurseries and Christmas tree growers to issue their own certificates provided they are under a compliance agreement and is less costly than treating individual shipments. The entities most likely to choose this option are nurseries that move a substantial number of shipments from generally infested areas and that treat their premises for other pests in addition to the gypsy moth. Producers that do not operate under a compliance agreement with APHIS, but treat their premises under this option, would receive certification for each shipment from an inspector.

The economic impact of the interim rule will vary depending on the size of the entities affected, the levels of infestation, and the size and number of shipments to noninfested areas. Within the one Ohio county and seven Wisconsin counties added to the list of generally infested areas, there are approximately 450 Christmas tree growers, nurseries, loggers, sawmills, and individuals involved in the movement of regulated articles that may incur costs from the interim rule. According to the size standards established by the Small Business Administration, all of these businesses are considered small entities.

In Hocking County, the newly regulated county in Ohio, there are 25 potentially affected establishments. The value of Christmas tree and greenhouse/nursery products sold by these establishments in 2002 was \$541,000, which represents 0.12 percent of the total value of sales of these products in Ohio. These businesses annually ship about 400 shipments, of which approximately half, or 200 shipments, leave the regulated area. Approximately 58 percent of the shipments leaving the regulated area would require treatment, creating an approximate cost range of \$11,600 to \$17,400 annually. Given these estimates, the cost of additional treatments would be small relative to the total value of sales in Hocking County.

There are 425 potentially affected establishments in the seven Wisconsin counties. The value of Christmas tree and greenhouse/nursery products sold by these establishments in 2002 was

\$25.546 million, which represents approximately 11.57 percent of the total value of sales of these products in Wisconsin. These businesses annually ship about 2,150 shipments, of which approximately 34 percent, or 723 shipments, leave the regulated area. Only about 16 percent of the shipments from these areas would require treatment, with costs of approximately \$11,568 to \$17,352 annually. With these estimates, the cost of additional treatments would be very small relative to the total value of sales in the newly affected Wisconsin counties.

The regulatory requirements imposed by the interim rule are expected to cause a slight increase in costs for the affected entities. The relative negative impact that may result from the interim rule is very small when compared with the potential for harm to related industry and the U.S. economy as a whole resulting from the further spread of the pest. Since the total value of the regulated articles moved from infested to noninfested areas is a small fraction of the national total, the effect on national prices is expected to be slight. Additionally, since the rule is not prohibitive, articles that meet the requirements of the regulations would continue to enter the market. Therefore, the overall impact upon price and competitiveness is expected to be relatively insignificant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

#### 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 69 FR 31722–31723 on June 7, 2004.

**Authority:** 7 U.S.C. 7701–7772; 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).

Done in Washington, DC, this 28th day of September 2004.

**Elizabeth E. Gaston,**

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

[FR Doc. 04–22221 Filed 10–1–04; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1206

[Doc. No. FV–02–707–FR]

**RIN 0581–AC05**

#### Mango Promotion, Research, and Information Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes the Mango Promotion, Research, and Information Order (Order) under the Commodity Promotion, Research, and Information Act of 1996. Under the Order, first handlers and importers of 500,000 or more pounds of mangos will pay an initial assessment of ½ cent per pound on domestic and imported mangos to the National Mango Promotion Board (Board). The Board will be appointed by the Secretary of Agriculture (Secretary) to conduct a generic program of research and promotion, industry information, and consumer information needed for the maintenance, expansion, and development of domestic markets for fresh mangos.

**DATES:** Effective November 3, 2004. Collection and remittance of assessments and applicable reporting will begin January 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** Jeanette A. Palmer, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535–S, Washington, DC 20250–0244, telephone (202) 720–9915, fax (202) 205–2800, e-mail [Jeanette.Palmer@usda.gov](mailto:Jeanette.Palmer@usda.gov).

**SUPPLEMENTARY INFORMATION:** This Order is issued under the Commodity Promotion, Research, and Information Act of 1996 (Act) (7 U.S.C. 7411–7425; Public Law 104–127; 110 Stat. 1029), or any amendments thereto.

**Prior Documents:** Proposed rules on both the Order [67 FR 54908] and the referendum procedures [67 FR 54920] were published in the **Federal Register** on August 26, 2002, each with a 60-day comment period. A final rule on the referendum procedures [68 FR 58552]