

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## 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:** Proposed rule.

**SUMMARY:** We are proposing to amend the gypsy moth regulations by making editorial and nonsubstantive changes to several terms and providing necessary updates throughout the regulations. These actions would 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.

**DATES:** We will consider all comments that we receive on or before September 17, 2007.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click “Submit.” In the Docket ID column, select APHIS–2006–0075 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link.

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0075, 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–2006–0075.

*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:** 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.

The gypsy moth, *Lymantria dispar* (Linnaeus), is an introduced, highly destructive pest of trees that, during its caterpillar stage, poses a serious threat to hundreds of species of trees and shrubs. A female gypsy moth lays a cluster of eggs (called an egg mass) on and near trees. Up to a thousand caterpillars can hatch from a single egg mass. The caterpillars feed on nearby trees and shrubs, removing much, if not all, foliage. This defoliation, when combined with other forms of stress such as drought and soil compaction, may ultimately result in the death of the tree.

The first major outbreak of gypsy moth in the United States occurred in Massachusetts in 1889. Since then, the gypsy moth has infested 19 States and the District of Columbia and has defoliated thousands of acres of hardwood forests across the northeastern United States. The infestation continues to move south and

west despite ongoing eradication and control efforts.

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

#### Definitions

Section 301.45–1 defines certain terms used in the regulations. We are proposing to make nonsubstantive changes to several of these definitions to improve the clarity and consistency of the regulations. These proposed change are described below.

The current definition of *certificate* describes a document issued to allow the movement of regulated articles to any destination. We would amend this definition to clarify that a certificate can be a form, stamp, or document approved by Plant Protection and Quarantine (PPQ) and that the purpose of a certificate is to affirm that a regulated article is eligible for interstate movement under the regulations, rather than the current “to allow the movement” description in the definition. We believe this definition would more accurately convey what constitutes a certificate.

The current definition of *compliance agreement* is rather circular, i.e., it describes a compliance agreement as a written agreement in which a person agrees to comply with the requirements of the compliance agreement. In actuality, a compliance agreement in the context of our domestic quarantines is an agreement in which a person engaged in growing, moving, or handling regulated articles agrees to comply with the requirements of the regulations. We would amend the definition of *compliance agreement* in § 301.45–1 to reflect this.

*Inspector* is currently defined as “Any employee of APHIS, a State government, or any other person, authorized by the Administrator in accordance with the law to enforce the provisions of the quarantine and regulations in this subpart.” To eliminate any possible confusion, we would add a sentence to that definition stating that a person operating under a compliance agreement is not an inspector. While

persons operating under a compliance agreement are authorized to take certain actions, e.g., issuing certificates, they are not authorized to enforce the regulations.

*Limited permit* is currently defined as "A document issued by an inspector to allow the interstate movement of regulated articles to a specified destination." In actuality, persons operating under a compliance agreement may also issue limited permits. Further, the regulated articles moving under a limited permit must be moved in accordance with conditions specified on the permit to a specified destination, rather than simply "to a specified destination," as mentioned in the current definition. We would amend the definition of *limited permit* in § 301.45–1 to more accurately convey what constitutes a limited permit.

The definition of *qualified certified applicator* refers to "restricted pesticides." The correct term is "restricted use pesticides." We would amend the definition accordingly. We would also update the definition's citation to provisions of the Federal Insecticide, Fungicide, and Rodenticide Act.

We are also proposing to revise footnote 1 in the definition of *qualified certified applicator*. Because PPQ no longer maintains a list of qualified certified applicators as stated in the footnote, we would revise the footnote to refer the reader to officials of the various State departments of agriculture for the names of qualified certified applicators.

Similarly, footnote 2 in the definition of *treatment manual* is outdated. We no longer provide pamphlets describing methods from the Gypsy Moth Program Manual, and the appendix to the regulations mentioned in the footnote no longer exists. We would remove these outdated references and instead provide a Web site address for viewing the Gypsy Moth Program Manual on the Internet.

We are also proposing to add a definition for *OHA document*. We mention throughout the regulations that an OHA document may be issued by the owner of an outdoor household article (OHA) for the interstate movement of the article, but we do not provide a definition for OHA document anywhere in the regulations. To improve the clarity and consistency of the regulations, we would add a definition of *OHA document*.

#### **Safeguarding Methods for Interstate Movement**

Section 301.45–4, paragraph (b), specifies that any regulated article

moved interstate from a noninfested area through a generally infested area during certain months of the year "must be in an enclosed vehicle, or completely enclosed by a covering adequate to prevent access by gypsy moths, such as canvas, plastic, or closely woven cloth." We are proposing to revise this paragraph by removing the references to specific types of enclosures and coverings, and put in its place a more general requirement that the regulated articles "must be safeguarded by a covering adequate to prevent access by any gypsy moth life stages." We believe that moving to a more performance-based standard would offer more flexibility in meeting the requirements for the interstate movement of regulated articles, while continuing to provide protection against the artificial spread of gypsy moth into noninfested areas of the United States.

#### **Disqualification of Qualified Certified Applicators**

Section 301.45–12 pertains to the disqualification of qualified certified applicators. In the regulations, a qualified certified applicator may be disqualified if he or she is not certified by a State and/or Federal government to use specific pesticides, fails to comply with the provisions in the regulations, or fails to attend and complete a recertification workshop approved by the Administrator on the identification and treatment of life stages of gypsy moth on outdoor household articles and mobile homes. We are proposing to amend § 301.45–12, paragraph (a)(1), by removing the references to specific pesticides. What would remain would be the simple requirement that a person be certified as a qualified certified applicator under the Federal Insecticide, Fungicide, and Rodenticide Act in a category allowing the use of restricted use pesticides. That basic requirement renders the citing of specific pesticides by name unnecessary. For consistency, we are also proposing to amend paragraph (a)(2) of § 301.45–12 by adding the requirement that qualified certified applicators must also comply " \* \* \* with stipulations agreed on in the compliance agreement between the certified applicator and the Administrator." We are also proposing to remove paragraph (a)(3) of this section, which states that qualified certified applicators may be disqualified from issuing certificates if they fail to attend and complete a recertification workshop approved by the Administrator on the identification and treatment of life stages of gypsy moth on outdoor household articles and mobile homes. We would remove this

paragraph in its entirety because we have not offered, or approved, the referenced recertification workshops for several years.

#### **Other Miscellaneous Updates**

The regulations in § 301.45–2(a)(1) refer to the Integrated Pest Management (IPM) alternative of the March 1985 Final Environmental Impact Statement (FEIS) on Gypsy Moth Suppression and Eradication Projects. The March 1985 FEIS has been superseded by an updated FEIS that was filed February 15, 1996. In the 1996 FEIS, the IPM alternative was replaced by the Eradication, Suppression, and Slow the Spread alternative. We would update this paragraph so that it refers to the most recent FEIS and alternative.

Section 301.45–7 addresses the assembly and inspection of regulated articles and outdoor household articles prior to interstate movement. The section refers to inspectors and qualified certified applicators examining regulated articles. However, § 301.45–5(e) authorizes an individual to self-certify outdoor household articles for interstate movement if that person has inspected the outdoor household article and has found it to be free of any life stage of gypsy moth. To ensure that § 301.45–7 includes references to all the possible certification options, we would amend the section to included a reference to the self-certification provisions of § 301.45–5(e).

Finally, because the APHIS "officer in charge" position title has been changed to "State Plant Health Director," we would update § 301.45–8 to reflect the position name change.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This proposed 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 proposing to amend the gypsy moth regulations by making editorial and nonsubstantive changes to several terms and providing necessary updates throughout the regulations. These actions would 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>1</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 nurseries 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. The effects on all these entities of the proposed updates to the regulations would be positive.

The SBA classifies nursery and tree production (floriculture, nursery, Christmas trees, etc.) farms (NAICS code 111421) small if their annual receipts are not more than \$750,000.<sup>2</sup> Sawmills (NAICS code 321113) are regarded 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>3</sup>

<sup>1</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.

<sup>2</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>3</sup> U.S. Census Bureau, 2002 Economic Census Geographic Area Series: Manufacturing and Wholesale Trade, Revised January 2006 (<http://www.census.gov/prod/ec02/ec231sq1t.pdf>). Information on the number of sawmills, pulp mills, 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

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, the economic effect of the proposed changes would be negligible. The proposed changes would not impose additional restrictions or requirements; rather, they would 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 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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

This proposed 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 propose to amend 7 CFR part 301 as follows:

#### PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue 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).

affected entities because not all counties within quarantined States are in generally infested areas.

2. Section 301.45–1 would be 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) would be 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) would be 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 would be 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) would be amended by removing the words “officer in charge” and adding the words “State Plant Health Director” in their place.

7. Section 301.45–12 would be 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 11th day of July 2007.

**Kevin Shea,**

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

[FR Doc. E7–13774 Filed 7–16–07; 8:45 am]

**BILLING CODE 3410–34–P**

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 340**

[Docket No. APHIS–2006–0112]

**RIN 0579–AC31**

**Introduction of Organisms and Products Altered or Produced Through Genetic Engineering**

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

**ACTION:** Notice of availability of draft environmental impact statement and request for comments.

**SUMMARY:** We are evaluating our regulatory program to determine whether we should revise our regulations regarding the importation, interstate movement, and environmental release of genetically engineered organisms. We are seeking public comment on the draft environmental impact statement (DEIS) we have prepared relative to the regulatory revisions we are considering. The DEIS evaluates the alternatives we have identified in terms of their potential effects on the human environment compared to the effects of our current regulatory program. We believe our ongoing evaluation of these alternatives would benefit from the submission of additional views and data from the public, and we are especially interested in receiving comments on the subset of DEIS alternatives described in this notice.

**DATES:** We will consider all comments that we receive on or before September 17, 2007.

**ADDRESSES:** You may submit comments addressing the draft environmental impact statement by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click “Submit.” In the Docket ID column, select APHIS–2006–0112 to submit or view public comments and to view supporting and related materials, including the DEIS, that are available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link.

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0112, 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–2006–0112.

Issues in the DEIS are organized using 10 numbered issue areas developed through the scoping process. When possible, please relate each point in your comment to one of these 10 issue areas.

*Public Meetings:* APHIS intends to hold public meetings to encourage additional public comment on the DEIS. The locations and dates of the public meetings will be announced on the APHIS Web site ([http://www.aphis.usda.gov/brs/brs\\_meetings.html](http://www.aphis.usda.gov/brs/brs_meetings.html)) and in a future **Federal Register** notice.

*Reading Room:* You may read any comments that we receive on this notice and the DEIS 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:** Dr. Michael Wach, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0485.