

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–2006–0002]

RIN 0579–AB91

Boll Weevil; Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish domestic boll weevil regulations that would restrict the interstate movement of regulated articles within regulated areas and from regulated areas into or through nonregulated areas in commercial cotton-producing States. The proposed regulations would help prevent the artificial spread of boll weevil into noninfested areas of the United States and the reinfestation of areas from which the boll weevil has been eradicated.

DATES: We will consider all comments that we receive on or before January 2, 2006.

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–2006–0002 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–2006–0002,

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–2006–0002.

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. William Grefenstette, National Coordinator, Boll Weevil Eradication Program, PPQ, APHIS, 4700 River Road Unit 138, Riverdale, MD 20737–1236; (301) 734–8676.

SUPPLEMENTARY INFORMATION:

Background

The boll weevil, *Anthonomus grandis*, is a very destructive pest of cotton. This pest can cause serious economic losses by lowering the yield and quality of cotton crops. All portions of the plant may be affected, but the greatest damage occurs to the fruiting structures such as the flower buds, blooms, and bolls. This damage reduces the quality and quantity of the harvested lint or seed. Heavy infestations can result in complete loss of the crop.

Cotton production is an important element of the U.S. agricultural economy. It is the fourth most valuable crop in the United States after corn, soybeans, and wheat, with cotton production in 2003 valued at \$5.5 billion, and cottonseed production at \$779 million. Cotton and cotton products exported by the United States generated \$5.2 billion. The boll weevil is the principal pest of this major industry, having caused losses to the nation’s economy estimated at \$22 billion since its introduction into the United States. Boll weevil eradication efforts have provided stability for the U.S. cotton industry and strengthened its ability to compete on the world market.

The current boll weevil eradication program is a cooperative Federal, State, and industry effort that has helped to reduce cotton losses to the boll weevil in recent years. A number of formerly infested States or portions of States are now free of this pest. Growers have benefited from significantly lower production costs and higher yields. Without effective quarantine measures, however, these higher yields would not be realized. It is also possible that, because of reinfestation, losses will again begin to mount in areas in which the boll weevil had been previously eradicated.

Because the boll weevil is a migratory pest, it is necessary for States to cooperate within regions to ensure the success of control programs. These control programs have been voluntary in the past and as a result we are very close to eradicating this pest. Although some individual growers have successfully controlled boll weevils in their fields, neighboring areas often contribute to reinfestations. The boll weevil’s movement is largely dependent on wind direction and speed, but it has been known to travel up to 169 miles, often causing reinfestations across State lines.

Officials of the Animal and Plant Health Inspection Service (APHIS), cotton grower foundations, and affected States have conducted successful eradication programs over the years, moving sequentially across the infested areas. This has been achieved in the context of zones within States that have agreed to engage in eradication activities and place restrictions on the movement of certain articles from infested suppressive areas to prevent the spread of the boll weevil throughout cotton-producing States. We believe that Federal regulations are necessary to restrict the interstate movement of certain articles from areas which may become generally infested in the future and from current suppressive areas to help prevent the artificial spread of the boll weevil to noninfested areas. This is to encourage all cotton producers to remain diligent in their participation of eradication activities.

We are proposing to amend the domestic quarantine notices in 7 CFR part 301 by adding a new subpart, “Boll Weevil” (§§ 301.54 through 301.54–9, referred to below as the regulations). The regulations would provide for the designation of regulated areas, both

generally infested and suppressive areas, within cotton-producing States because of the boll weevil. The regulations would restrict the interstate movement of regulated articles within regulated areas and from regulated areas into or through nonregulated areas in commercial cotton producing States. These proposed provisions are described in detail below.

Restrictions on Interstate Movement of Regulated Articles (Proposed § 301.54)

In § 301.54, paragraph (a) would prohibit the interstate movement of regulated articles from any regulated area into or through any commercial cotton-producing area except in accordance with the regulations. This paragraph would also contain a footnote explaining that any properly identified inspector is authorized, upon probable cause, to stop and inspect persons and means of conveyance moving in interstate commerce and to hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 414 of the Plant Protection Act (7 U.S.C. 7714, 7731). Paragraph (b) of this section would contain a list of States designated as commercial cotton-producing areas. These States are Alabama, Arizona, Arkansas, California, Florida, Georgia, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.

Definitions (Proposed § 301.54-1)

Section 301.54-1 would contain definitions of the following terms: *Administrator, Animal and Plant Health Inspection Service (APHIS), boll weevil, certificate, compliance agreement, cotton, cotton lint, cotton products, departmental permit, generally infested area, gin motes, gin trash, gin waste, infestation, inspector, interstate, limited permit, linters, moved (move, movement), oil mill waste, person, Plant Protection and Quarantine (PPQ), regulated area, regulated article, seed cotton, State, suppressive area, and used cotton equipment.* These terms and their proposed definitions are set out in the proposed regulatory text at the end of this document.

Regulated Articles (Proposed § 301.54-2)

Certain articles present a risk of spreading the boll weevil if they are moved from regulated areas without restrictions. We call these articles regulated articles, and would impose restrictions on their movement because the boll weevil can survive in these

materials if present and could possibly be transported to noninfested areas. Paragraphs (a) through (f) of § 301.54-2 list the following as regulated articles:

- The boll weevil, in any living stage of development;
- Cotton, including wild cotton and ornamental cotton, but excluding commercial bales and cottonseed;
- Seed cotton;
- Gin trash;
- Used cotton harvesting or processing equipment; and
- Any other product, article, or means of conveyance when an inspector determines that it presents a risk of spreading the boll weevil and the person in possession of the product, article, or means of conveyance has been notified in writing that it is subject to the restrictions in the regulations.

The last item listed above, which provides for the designation of “any other product, article, or means of conveyance” as a regulated article, is intended to address the risks presented by, for example, a truck that may have inadvertently picked up plant material or adult boll weevils while driving through fields, thus enabling an inspector to designate that truck as a regulated article in order to ensure that any necessary risk-mitigating measures are carried out.

Regulated Areas (Proposed § 301.54-3)

Paragraph (a) of § 301.54-3 would provide the criteria for the inclusion of States, or portions of States, in the list of regulated areas. Under these criteria, any State or portion of a State in which the boll weevil is found by an inspector, in which the Administrator has reason to believe that the boll weevil is present, or when the Administrator considers it necessary due to the area’s inseparability for quarantine enforcement purposes from localities in which the boll weevil has been found, will be listed as a regulated area. These criteria also provide that an area will be designated as a regulated area when the Administrator determines that minimum pest surveillance and control activities are not maintained (see following paragraph for a discussion about these activities). As noted previously, eradication efforts are underway in some States or portions of States. Thus, this paragraph would also provide that the Administrator may designate a part of a regulated area as a suppressive area after determining that eradication of infestation is being undertaken as an objective in that part of the regulated area; any part of a regulated area that is not designated as a suppressive area will be designated as a generally infested area.

We are proposing that each cotton-producing State, or legally defined zone within a State, would be designated as a regulated area when growers fail to maintain minimum pest surveillance and control activities to prevent reinfestation of that area as well as surrounding areas by the boll weevil. These activities would consist of the annual installation and monitoring of boll weevil pheromone traps, and the application of effective control measures if boll weevils are detected. APHIS would work with entomological experts to determine appropriate minimum trapping densities in each particular area; trapping densities would be based on an area’s proximity to existing infestations and susceptibility to reinfestation. Effective control measures would involve the demonstrated ability to apply in a timely manner, by aircraft or ground equipment, materials that have proven effective in eradicating the boll weevil. Such applications would have to be made within 48 hours of detecting a reinfestation. Failure by cotton growers within a State or zone where boll weevil is not known to be present to maintain the prescribed minimum standards of detection and control would result in the area being listed as a regulated area. We invite comment on our proposed requirements for minimum pest surveillance and control activities.

Paragraph (a) of § 301.54-3 would also provide that we will designate less than an entire State as a regulated area only if we determine that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed on the interstate movement of regulated articles and that the designation of less than the entire State as a regulated area will prevent the interstate spread of the boll weevil. In practice, the latter determination—that the designation of less than an entire State will prevent the interstate spread of the boll weevil—would be based, at least in part, on our finding that infestations are confined to the regulated areas as a result of natural breaks between infested areas and noninfested areas, known as zones, and would eliminate the need for designating an entire State as a regulated area. APHIS would adopt existing buffer zones that have been established under the States’ current eradication programs.

Paragraph (b) of § 301.54-3 would provide that we may temporarily designate any nonregulated area in a State as a regulated area when we determine that the nonregulated area meets the criteria for designation as a

regulated area described in § 301.54–3(a). In such cases, we will give the owner or person in possession of the nonregulated area a copy of the regulations along with written notice of the area's temporary designation as a regulated area, after which time the interstate movement of any regulated article from the area will be subject to the regulations. This provision is necessary to prevent the spread of the boll weevil during the time between the detection of the pest and the time a document designating the area as a regulated area can be made effective and published in the **Federal Register**. In the event that an area's designation as a temporary regulated area is terminated, we will provide written notice of that termination to the owner or person in possession of the area as soon as is practicable.

Paragraph (c) lists the proposed regulated areas. These areas, as noted previously, would be divided into generally infested (areas that do not operate under an area-wide, APHIS-endorsed control program) and suppressive areas (areas engaged in an area-wide eradication program supported by APHIS). The proposed regulated areas, all of which are designated as suppressive areas, are listed in the rule portion of this document and include all or portions of the States of Arkansas, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, Tennessee, and Texas. The list of regulated areas was derived from information¹ provided to APHIS by State regulatory officials and cotton foundation program directors indicating evidence of boll weevil in the areas.

Conditions Governing the Interstate Movement of Regulated Articles From Regulated Areas (Proposed § 301.54–4)

This section would require most regulated articles moving interstate from regulated areas to be accompanied by a certificate or a limited permit if moved into commercial cotton-producing areas. Specifically, paragraph (a) of proposed § 301.54–4 would provide that a certificate or limited permit issued and attached in accordance with §§ 301.54–5 and 301.54–8 would have to accompany regulated articles moving interstate:

- From any regulated area into or through any nonregulated area that is located in a commercial cotton-producing area listed in § 301.54(b);

- From any generally infested area into or through any suppressive area;² or
- Between any noncontiguous suppressive areas; or
- Between contiguous suppressive areas when it is determined by the inspector that the regulated articles present a hazard of the spread of the boll weevil and the person in possession thereof has been so notified.

Under paragraph (b) of proposed § 301.54–4, a certificate or limited permit would not be required for the movement of regulated articles into areas that are not commercial cotton-producing areas. Given the host specificity of the boll weevil, there would be little, if any, risk associated with the movement of regulated articles into areas that are not commercial cotton-producing areas due to the lack of host material for the pest.

Under paragraph (c) of proposed § 301.54–4, articles that are moved into the regulated area from outside the regulated area and that are accompanied by a waybill that indicates the point of origin may be moved interstate from the regulated area to commercial cotton-producing areas without a certificate or limited permit, provided certain conditions are met. The articles would have to be moved in an enclosed vehicle or be completely enclosed by a covering adequate to prevent access by the boll weevil. The regulated articles would also have to be moved through the regulated area without stopping (except for refueling, rest stops, emergency repairs, and for traffic conditions such as traffic lights and stop signs), and the regulated articles could not be opened, unpacked, or unloaded in the regulated area.

Finally, paragraph (d) of proposed § 301.54–4 would provide that APHIS or the U.S. Department of Agriculture (the Department) may move regulated articles interstate without a certificate or limited permit if the articles are moved for experimental or scientific purposes. However, the articles would have to be moved in accordance with a departmental permit issued by the Administrator, under conditions

specified on the permit to prevent the spread of the boll weevil, and with a tag or label bearing the number of the departmental permit attached to the regulated article or to the outside of its container.

Issuance and Cancellation of Certificates and Limited Permits (Proposed § 301.54–5)

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles when an inspector finds that, because of certain conditions (e.g., the article is free of boll weevil), there is no pest risk before movement. Regulated articles accompanied by a certificate may be moved interstate without further restrictions. Limited permits are issued for regulated articles when an inspector finds that, because of a possible pest risk, the articles may be safely moved interstate only subject to further restrictions, such as movement to limited areas and movement for limited purposes. Section 301.54–5 would explain the conditions for issuing a certificate or limited permit.

Specifically, § 301.54–5(a) would provide that a certificate may be issued by an inspector for the interstate movement of a regulated article if the inspector determines that the article: (1) Is free of the boll weevil, has been treated under the direction of an inspector in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, or comes from a premises of origin that is free of the boll weevil; (2) will be moved through the regulated area in an enclosed vehicle or will be completely covered to prevent access by the boll weevil; (3) will be moved in compliance with any additional remedial conditions deemed necessary to prevent the spread of the boll weevil under section 414 of the Plant Protection Act (7 U.S.C. 7714); and (4) is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to that article.

We have included a footnote that provides an address for securing the addresses and telephone numbers of the local Plant Protection and Quarantine (PPQ) offices at which services of inspectors may be requested. We have also included a footnote that explains that the Secretary of Agriculture may, under the Plant Protection Act, take remedial actions to hold, seize, quarantine, treat, destroy, apply other remedial measures to, or otherwise dispose of articles that he or she has

¹ This information is available from the person listed under **FOR FURTHER INFORMATION CONTACT**. It may also be reviewed in our reading room. See **ADDRESSES** above for the location and hours of the reading room.

² As defined in proposed § 301.54–1, a suppressive area is that part of a regulated area where eradication of infestation under an area-wide, APHIS-endorsed control program is undertaken as an objective. Generally infested areas (none currently exist) are those regulated areas in which the growers are not currently participating in such a program. Articles moved from a suppressive area would be more likely to qualify for movement based on premises inspection, while each consignment shipped from a generally infested area would have to be individually inspected or treated due to the unchecked presence of weevils within such an area.

reason to believe are a plant pest or are infested with a plant pest.

Paragraph (b) of § 301.54–5 would provide for the issuance of a limited permit (rather than a certificate) by an inspector for interstate movement of a regulated article if the inspector determines that the article is to be moved interstate to a specified destination for specified handling, utilization, or processing, and that the movement will not result in the spread of the boll weevil because life stages of the boll weevil will be destroyed by the specified handling, utilization, or processing. A limited permit will only be issued if the regulated article: (1) Will be moved in an enclosed vehicle or completely covered to prevent access by, and escape of, the boll weevil; (2) will be moved in compliance with any additional remedial conditions imposed by the Administrator under sections 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the boll weevil; and (3) if the regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

Paragraph (c) of § 301.54–5 would provide that any person who has entered into and is operating under a compliance agreement may issue a certificate or limited permit for the interstate movement of a regulated article after determining that the article is otherwise eligible for a certificate or limited permit under § 301.54–5(a) or (b), respectively.

Also, § 301.54–5(d) would contain provisions for the withdrawal of a certificate or limited permit by an inspector if the inspector determines that the holder of the certificate or limited permit has not complied with conditions for the use of the document. This paragraph would also contain provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact in the event that the person wishes to appeal the cancellation.

Compliance Agreements and Cancellation (Proposed § 301.54–6)

Section 301.54–6 would provide for the use of and cancellation of compliance agreements. Compliance agreements are provided for the convenience of persons who are involved in the growing, handling, or moving of regulated articles from regulated areas. A person may enter into a compliance agreement when an inspector has determined that the person requesting the compliance agreement has been made aware of the

requirements of the regulations and the person has agreed to comply with the requirements of the regulations and the provisions of the compliance agreement. This section contains a footnote that explains where compliance agreement forms may be obtained.

Section 301.54–6 would also provide that an inspector may cancel the compliance agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact in the event that the person wishes to appeal the cancellation.

Assembly and Inspection of Regulated Articles (Proposed § 301.54–7)

Section 301.54–7 would provide that any person (other than a person authorized to issue certificates or limited permits under § 301.54–5(c)) who desires a certificate or limited permit to move regulated articles interstate must request, at least 48 hours before the desired movement, that an inspector issue a certificate or limited permit. The regulated articles would have to be assembled in a place and manner directed by the inspector.

Attachment and Disposition of Certificates and Limited Permits (Proposed § 301.54–8)

Section 301.54–8 would require the certificate or limited permit issued for movement of the regulated article to be attached, during the interstate movement, to the regulated article, or to a container carrying the regulated article, or to the consignee's copy of the accompanying waybill. Further, the section would require that the carrier or the carrier's representative furnish the certificate or limited permit to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

Costs and Charges (Proposed § 301.54–9)

Section 301.54–9 explains the APHIS policy that the services of an inspector that are needed to comply with the regulations are provided without cost between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, to persons requiring those services, but that we will not be responsible for any other costs or charges (such as overtime costs for inspections conducted at times other than between 8 a.m. to 4:30 p.m., Monday through Friday, except holidays).

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We are proposing to establish domestic regulations for the boll weevil (*Anthonomus grandis*) that would restrict the interstate movement of regulated articles within regulated areas and from regulated areas into or through nonregulated areas in commercial cotton-producing States. The proposed regulations would help prevent the artificial spread of boll weevil into noninfested areas of the United States, and the reinfestation of areas from which the boll weevil has been eradicated.

For this proposed rule, we have prepared an economic analysis. The economic analysis, which is set out below, provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects of this proposed rule on small entities as required by the Regulatory Flexibility Act.

All cotton-producing areas in the United States are either free of boll weevil or in the process of eliminating the pest through State-sanctioned eradication efforts. These initiatives receive Federal support and are collectively referred to as the cooperative boll weevil eradication program. The areas where the boll weevil is still present, but where growers are participating in the eradication efforts, are categorized as suppressive areas. Suppressive areas are present in the States of Arkansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas. Previously, Texas and other States also contained areas known as generally infested, where producers had not entered into the voluntary State-sanctioned eradication programs. However, these areas have since also joined the cooperative efforts.

Therefore, all cotton-producing areas in the United States are now categorized as either pest-free or suppressive areas, and all areas where the pest is present are involved in eradication. Most areas have already eliminated the boll weevil. The remaining areas that are in the process of doing so are expected to achieve eradication over the next few years. States with suppressive areas impose controls on the intrastate movement of regulated material to pest free areas. These intrastate controls are

essentially the same as the proposed interstate regulations.

Benefits and Costs of the Rule

The primary benefits of the proposed Federal controls on the interstate movement of regulated articles are to help prevent the artificial spread of boll weevil into noninfested areas of the United States, and to strengthen the effort of the States to prevent reinfestation of areas from which the pest has been eradicated. The regulations also are expected to contribute to boll weevil eradication, over and above what would be accomplished under the voluntary cooperative eradication program.

Because the boll weevil is a migratory pest, it is necessary for States to cooperate within regions to ensure the success of control programs. Although individual growers have successfully controlled boll weevils in their fields, neighboring infested areas can contribute to reinfestations. In order to encourage all cotton producers to remain diligent in their participation in eradication activities, we believe that Federal regulations are necessary to restrict the interstate movement of certain articles from areas which may become generally infested in the future and from current suppressive areas to help prevent the artificial spread of the boll weevil to noninfested areas.

Cotton production is an important element of the U.S. agricultural economy. In 2004, cotton production was valued at \$5.3 billion, cottonseed production at \$874 million, and cotton and cotton products exported at \$6.4 billion. The boll weevil is a destructive pest of cotton, and is the principal pest of this major industry. It causes economic losses by lowering the yield and quality of cotton, and heavy infestations can result in complete loss of the crop. The boll weevil arrived in the United States from Mexico in 1892, and has since caused an estimated \$22 billion in yield losses and control costs to the U.S. cotton industry.

In those areas where the boll weevil has been eradicated, cotton growers have benefited from lower costs of production because of reduced pesticide use, and from higher yields that have led to increased land values and expanded cotton acreage. Pesticide savings of between 40 and 90 percent have been realized, and many cotton growers have been able to forgo pesticide use entirely. Yield increases of 10 to 20 percent have been achieved in areas where this pest has been eliminated. Without effective quarantine measures, however, these higher yields would not be realized. It is also possible

that, because of reinfestation, losses will again begin to mount in areas in which the boll weevil had previously been eradicated.

Boll weevil eradication efforts have provided stability for the U.S. cotton industry and strengthened its ability to compete in the world market. Various formerly infested States or portions of States are now free of this pest. As areas become boll weevil-free, eradication costs have declined. Over the 4-year period 1999–2002, national program costs totaled \$1.019 billion, compared to \$585 million spent over the following 4 years, 2003–2006. Recent yearly costs have declined rapidly, from \$245 million in 2002, to \$125 million in 2006. (All dollar amounts are unadjusted for inflation.) The major cost areas are labor, treatments (chemicals and application), trapping supplies, and vehicles and transportation. The APHIS share of these costs has been between 25 and 30 percent. But the benefits exceed even such high expenditures, and extend beyond the cotton industry to related sectors of the national economy as well as to the local economies in cotton-producing areas.

The extent of the reduction in risk that would be achieved with the regulations cannot be determined, since we do not know the likelihood of interstate movement of infested articles from the suppressive areas. However, we do know that reinfestation of areas where the pest had been eradicated can be costly.

The Southeastern Boll Weevil Eradication Foundation has tracked the costs associated with boll weevil reintroductions and reinfestations in six southeastern States between 1987 and 2004. The cost approximations are based on incomplete work unit records, but nonetheless clearly indicate the benefits of prevention and, when reinfestations occur, of limiting their size through early detection and rapid control. About half of the affected counties reported reinfestations in various years that cost less than \$10,000, with fewer than 10 weevils discovered. Other counties reported much larger reinfestations and eradication costs, ranging up to \$1.3 million spent in Orangeburg County, SC, between 1995 and 1997, where 23,899 weevils were detected and eliminated.

As with the expected benefits, the costs of the proposed regulations would derive from controls on the interstate movement of regulated articles from regulated areas. Costs are expected to be incurred primarily by entities such as custom harvester operators and other agricultural service providers who move

regulated articles from the infested areas. Specific costs would depend on the types of regulated articles moved, unit costs of disinfestation, and the frequency of interstate movement.

Methods of boll weevil disinfestation range widely, from hand removal of leaves and sweeping of foreign material with brooms, to more costly methods such as compressed air blowing, high-pressure washing, and fumigation. Unit costs also range widely, from \$4 for hand sweeping of a truck bed, to as much as \$800 for the fumigation of harvesting equipment such as pickers and strippers.

Relatively few cotton growers or gin operators are expected to be affected, since most cotton is grown and ginned within the same area, and baled cotton and cottonseed are not regulated articles. Custom harvesters and other agricultural service providers who move regulated articles from infested areas would be affected, but the impact on such entities is not expected to be large. Fumigation of a cotton harvester is estimated to cost about \$800, less than 1 percent of annual receipts for a representative operator. APHIS estimates that as many as 100 custom harvesters would be affected by this rule. With establishment of the proposed regulations, owners of such equipment could be expected to schedule harvesting contracts so as to minimize the number of interstate movements from infested areas during a season.

APHIS is proposing that each cotton-producing State, or legally defined zone within a State, would be designated as a regulated area when growers fail to maintain minimum pest surveillance and control activities to prevent reinfestation of that area as well as surrounding areas by the boll weevil. These activities would consist of the annual installation and monitoring of boll weevil pheromone traps, and the application of effective control measures if boll weevils are detected. Failure by cotton growers within a State or zone where boll weevil is not known to be present to maintain prescribed minimum standards of detection and control would result in the area being listed as a regulated area. The cost of these activities should be less than \$2 per acre, but may vary depending on proximity to regulated areas. Under the current boll weevil eradication program, surveillance and control activities are already required in areas from which the pest has been eradicated. We expect that these surveillance and control costs would continue to be incurred even without promulgation of this rule.

A numerical comparison of expected benefits and costs of the regulations is not possible, since we cannot estimate the reduction in the risk of spread that would be attributable to the proposed regulations, nor can we predict aggregate expenditures by directly affected entities. However, given the sizable benefits that boll weevil eradication has afforded cotton growers and others in areas where this pest has been eliminated and the relatively small cost of disinfestation of regulated articles moved interstate, APHIS believes the net benefit of the regulations would be positive.

Costs to APHIS of administering the rule would differ little from the Agency's current costs of participating with producers and States in the National Boll Weevil Cooperative Control Program, whereby APHIS is contributing about 25 to 30 percent of total eradication expenditures. Federal appropriations for the program have fallen from about \$77 million in 2002, to less than \$39 million in 2006. Once nationwide eradication has been accomplished, APHIS participation in funding post-eradication annual surveys, expected to cost between \$5 million and \$7 million per year, would depend on Congressional direction. The cost to APHIS of funding eradication activities in areas that become reinfested depends on the size of the outbreak, and has ranged from tens of thousands to hundreds of thousands of dollars.

Alternative to the Rule

An alternative to the regulations would be to take no action, that is, not establish Federal controls on the interstate movement of regulated articles. If this alternative were selected, nationwide eradication could be delayed. There would be increased risk of reinfestation and production losses in cotton-producing areas where the pest has been eliminated. Current State regulations have been fairly effective in preventing the artificial movement of boll weevils from infested areas into noninfested areas. However, the long-term protection of these areas can be

significantly enhanced by the proposed Federal regulations.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires agencies to evaluate the potential effects of their proposed rules on small entities. We address here the requirements of an initial regulatory flexibility analysis, and welcome public comment on expected small entity effects of this rule.

Reasons Why Action by APHIS is Being Considered

APHIS is proposing Federal controls on the interstate movement of regulated articles to help prevent the artificial spread of the boll weevil into noninfested areas of the United States. Most commercial cotton-producing areas of the United States have already eliminated the boll weevil. Complete elimination of this pest is expected to be achieved over the next few years, as long as reinfestation of areas from which the pest has been eradicated is prevented. Through the cooperative boll weevil eradication program, States with suppressive areas, that is, areas in the process of eliminating the pest through APHIS-endorsed, area-wide control programs, impose controls on the intrastate movement of regulated material to pest-free areas. The proposed interstate movement restrictions would complement these intrastate controls. The rule is expected to contribute to boll weevil eradication, over and above what would be accomplished under the voluntary cooperative eradication program.

Objective and Legal Basis

The objective of the proposed rule is to minimize risks of infestation or reinfestation of boll weevil-free areas through the interstate movement of regulated articles and thereby hasten the Nation's eradication of this pest. Current State regulations have been fairly effective in preventing the artificial movement of the boll weevil from infested areas into noninfested areas. The long-term protection of noninfested areas can be significantly enhanced by the proposed regulations.

In accordance with the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the spread of plant pests within the United States, which includes regulating the interstate movement of any product, article, or means of conveyance that presents a risk of spreading the boll weevil.

Potentially Affected Small Entities

The principal entities engaged in cotton production—growers, gin operators, and agricultural service providers such as custom harvesters—are mainly small entities, and the economic effects for them would be the same as has been described generally. Small entities in nonregulated areas would benefit from a reduced risk of boll weevil infestation. Entities that move regulated articles from infested areas into noninfested areas would bear certain costs of complying with the regulations.

As indicated in table 1, more than 81 percent of cotton farms and more than 76 percent of ginning establishments are small entities, based on small-entity definitions of annual receipts of not more than \$750,000 and not more than \$6.5 million, respectively. Small entity cotton farms and ginning establishments in areas free of the boll weevil would benefit from the reduction in risk of infestation or reinfestation provided by the rule.

The soil preparation, planting, and cultivation industry includes businesses that provide fertilizer and cultivation services; soil treatments; crop spraying; and disease, insect, or weed control services. Small entities in this industry are establishments that have annual receipts of not more than \$6.5 million. Information is not available on the percentage of these establishments that are small, but we expect that they represent the majority, since 96 percent of these businesses have fewer than 20 employees. We are unable to estimate the number of small entity agricultural service providers that may be affected by this rule.

TABLE 1.—SMALL ENTITY REPRESENTATION IN INDUSTRIES THAT MAY BE AFFECTED BY THE PROPOSED RULE

Industry (NAICS code) ¹	Small entity definition ²	Number of establishments	Number of small entities	Percentage of establishments that are small entities
Cotton farming ³ (111920)	Less than or equal to \$0.75 million annual receipts.	24,721	Fewer than 20,042	Less than 81.
Cotton ginning ⁴ (115111)	Less than or equal to \$6.5 million annual receipts.	887	Fewer than 671	Less than 76.
Soil preparation, planting, and cultivating ⁵ (115112).	Less than or equal to \$6.5 million annual receipts.	2,394	Not known	Not known.

TABLE 1.—SMALL ENTITY REPRESENTATION IN INDUSTRIES THAT MAY BE AFFECTED BY THE PROPOSED RULE—
Continued

Industry (NAICS code) ¹	Small entity definition ²	Number of establishments	Number of small entities	Percentage of establishments that are small entities
Crop harvesting, primarily by machine ⁵ (115113).	Less than or equal to \$6.5 million annual receipts.	368	Not known	Not known.

¹ North American Industry Classification System.

² <http://www.sba.gov/size/sizetable2002.html>.

³ NASS, 2002 Census of Agriculture, Volume 1, Table 56. The 20,042 cotton and cottonseed farms sold agricultural products valued at less than \$500,000 in 2002.

⁴ NASS, Cotton Ginnings 2005 Summary, May 2006, and 2005 Agricultural Statistics. In the 2005 crop year, there were 671 active gins that ginned fewer than 20,000 running bales. (A running bale is approximately equal to 1.03 ginned bales.) The average value of a ginned bale in 2004 was \$230. Thus, annual receipts per establishment for the 671 gins were less than \$4.6 million.

⁵ Census Bureau, 2003 County Business Patterns for the United States, <http://www.census.gov/epcd/cbp/view/us03.txt>. Size distributions for industries are described by the Census Bureau in terms of number of employees, not annual receipts. The employment patterns for these industries suggest that they are primarily composed of small entities. For the soil preparation, planting, and cultivating industry, 96 percent of establishments (2,294) had fewer than 20 employees in 2003. For the crop harvesting, primarily by machine, industry, 92 percent of establishments (337) had fewer than 20 employees in 2003.

Similarly, the small entity definition for harvesting operations is annual receipts of not more than \$6.5 million. While we do not know the percentage of these establishments with receipts that fall below this threshold, we note that 92 percent of harvesting businesses have fewer than 20 employees. Custom harvesters and other agricultural service providers are types of firms that may be affected by the proposed rule because of their movement from regulated areas to or through nonregulated areas. APHIS estimates that as many as 100 small entity cotton harvester operators may be affected by this rule.

The information shown in table 1 on numbers of establishments in the soil preparation, planting, and cultivating industry and in the crop harvesting industry is for all crops. We believe the predominance of small entities in these industries overall holds as well for the cotton sector.

APHIS welcomes information that the public may provide on the number of small entities in the identified industries that may be affected by the proposed rule, as well as information on small entities in other industries that the public believes may be affected.

Projected Reporting, Recordkeeping and Other Compliance Requirements

Regulated articles moving interstate from regulated areas would be required to be accompanied by a certificate or a limited permit if moved into nonregulated, commercial cotton-producing areas. The proposed rule would also provide for the use of compliance agreements, for the convenience of persons who are involved in the growing, handling, or moving of regulated articles from regulated areas. The reporting and recordkeeping requirements associated with this proposed rule are described

below under “Paperwork Reduction Act.”

Relatively few cotton growers or gin operators are expected to be affected by the proposed rule, since most cotton is grown and ginned within the same area, and baled cotton and cottonseed are not regulated articles. The largest treatment cost may be borne by operators of harvesters and other major machinery. Based on a unit fumigation cost for harvesting equipment of \$800, and a single movement per season from a regulated to a nonregulated area, the cost per harvester would be \$800, and industry-wide, \$80,000, assuming 100 harvesting equipment operators would be affected.³ The fumigation cost per harvester and the single movement per season requiring fumigation are APHIS estimates based on information provided by industry. This annual cost of \$800 is estimated to be less than 1 percent of annual receipts for a representative operator. APHIS welcomes public comment that would enable us to more fully understand possible costs associated with the proposed rule’s compliance requirements.

Growers in areas from which the boll weevil has been eradicated would be required to maintain minimum weevil surveillance and control activities to prevent reinfestation, whether or not they move regulated articles interstate. Since these surveillance and control activities are already required under the current boll weevil eradication program in areas from which the pest has been eradicated, their cost (estimated by APHIS to average about \$2 per acre per year) would continue to be incurred without this rule. Therefore, the cost of

³ The fumigation cost per harvester and the single movement per season requiring fumigation are APHIS estimates based on information provided by industry.

these activities for small-entity cotton producers is not attributable to the proposed rule.

Alternatives to Minimize Any Significant Economic Impact

We do not expect the rule to have a significant impact on entities, large or small, and therefore have not set forth alternatives intended to minimize significant impacts on 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.

National Environmental Policy Act

To provide the public with documentation of APHIS’ review and analysis of any potential environmental impacts associated with the proposed domestic boll weevil quarantine program, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3)

USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the *Regulations.gov* Web site or in our reading room. (Instructions for accessing *Regulations.gov* and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule). In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2006-0002. Please send a copy of your comments to: (1) Docket No. APHIS-2006-0002, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, Room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to establish domestic boll weevil regulations that would restrict the interstate movement of regulated articles within regulated areas and from regulated areas into or through nonregulated areas in commercial cotton-producing States. The proposed regulations would help prevent the artificial spread of boll weevil into noninfested areas of the United States and the reinfestation of areas from which the boll weevil has been eradicated. Because the boll weevil is a migratory pest, it is necessary for States to cooperate within regions to ensure the success of the eradication program.

Implementation of this regulation would require us to engage in certain information collection activities, which in turn necessitates the use of forms. Forms we plan to use to implement and enforce the program include compliance agreements, limited permits, and certificates. We described these documents in greater detail previously in this document.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Cotton growers, cotton gin operators, custom harvesters.

Estimated annual number of respondents: 1,025

Estimated annual number of responses per respondent: 1.

Estimated annual number of respondents: 1,025.

Estimated total annual burden on respondents: 1,025 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

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).

2. Part 301 would be amended by adding a new Subpart—Boll Weevil, §§ 301.54 through 301.54-9, to read as follows:

Subpart—Boll Weevil

Sec.

301.54 Restrictions on interstate movement of regulated articles.

301.54-1 Definitions.

301.54-2 Regulated articles.

301.54-3 Regulated areas.

301.54-4 Conditions governing the interstate movement of regulated articles from regulated areas.

301.54-5 Issuance and cancellation of certificates and limited permits.

301.54-6 Compliance agreements and cancellation.

301.54-7 Assembly and inspection of regulated articles.

301.54-8 Attachment and disposition of certificates and limited permits.

301.54-9 Costs and charges.

Subpart—Boll Weevil

§ 301.54 Restrictions on interstate movement of regulated articles.

(a) No person may move any regulated article interstate from any regulated area into or through any commercial cotton-producing area except in accordance with this subpart.¹

(b) The following States are designated as commercial cotton-producing areas: Alabama, Arizona, Arkansas, California, Florida, Georgia, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia.

§ 301.54-1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection

¹ Any properly identified inspector is authorized, upon probable cause, to stop and inspect persons and means of conveyance moving in interstate commerce and to hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in sections 414 and 421 of the Plant Protection Act (7 U.S.C. 7714, 7731).

Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Boll weevil. The insect known as the boll weevil, *Anthonomus grandis*, in any stage of development.

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of boll weevil and may be moved interstate to any destination.

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

Cotton. All parts of cotton and wild cotton plants of the genera *Gossypium* and *Thurberia*, except baled cotton and cotton products.

Cotton lint. All forms of raw ginned cotton except linters and gin waste.

Cotton products. Seed cotton, cotton lint, linters, oil mill waste, gin waste, gin trash, cottonseed, cottonseed hulls, and all other forms of unmanufactured cotton fiber.

Departmental permit. A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.54–4(d) of this subpart.

Generally infested area. Any part of a regulated area not designated as a suppressive area.

Gin motes. Short fragments of unmanufactured cotton fiber removed from lint cleaners after ginning cotton.

Gin trash. All materials produced during the cleaning and ginning of seed cotton, bollies, or snapped cotton. It does not include the lint, cottonseed, or gin waste.

Gin waste. All forms of unmanufactured waste cotton fiber, including gin motes, resulting from the ginning of seed cotton, other than baled cotton lint.

Infestation. The presence of the boll weevil or the existence of circumstances that makes it reasonable to believe that the boll weevil may be present.

Inspector. Any employee of APHIS or other person authorized by the Administrator to perform the duties required under this subpart.

Interstate. From any State into or through any other State.

Limited permit. A document in which an inspector or person operating under

a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.54–5(b) only to a specified destination and only in accordance with specified conditions.

Linters. Residual unmanufactured cotton fiber separated from cottonseed after the lint has been removed.

Moved (move, movement). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

Oil mill waste. Waste product, including linters, derived from the milling of cottonseed.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

Plant Protection and Quarantine (PPQ). The Plant Protection and Quarantine program of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

Regulated area. Any State, or any portion of a State, listed in § 301.54–3(c) or otherwise designated as a regulated area in accordance with § 301.54–3(b).

Regulated article. Any article listed in § 301.54–2(a) through (e), or otherwise designated as a regulated article in accordance with § 301.54–2(f).

Seed cotton. All forms of unginned cotton from which the seed has not been separated.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

Suppressive area. That part of a regulated area where an APHIS-endorsed area-wide control program is operating, with the objective of eradicating the boll weevil.

Used cotton equipment. Any cotton equipment previously used to harvest, strip, transport, destroy, or process cotton.

§ 301.54–2 Regulated articles.

The following are regulated articles:

- (a) The boll weevil, in any living stage of development.²
- (b) Cotton, including wild cotton and ornamental cotton, but excluding commercial bales and cottonseed;
- (c) Seed cotton;
- (d) Gin trash;
- (e) Used cotton harvesting or processing equipment; and
- (f) Any other product, article, or means of conveyance not listed in

² Permit and other requirements for the interstate movement of boll weevils are contained in part 330 of this chapter.

paragraphs (a) through (e) of this section that an inspector determines presents a risk of spreading the boll weevil, after the inspector provides written notification to the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

§ 301.54–3 Regulated areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a regulated area in paragraph (c) of this section each State, or each portion of a State, in which the boll weevil has been found by an inspector, in which the Administrator has reason to believe that the boll weevil is present, in which minimum pest surveillance and control activities are not maintained, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the boll weevil has been found. The Administrator may designate any part of a regulated area as a suppressive area after determining that eradication of infestation is being undertaken as an objective in that part of the regulated area; any part of a regulated area that is not designated as a suppressive area will be designated as a generally infested area. Less than an entire State will be designated as a regulated area only if the Administrator determines that:

- (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and
- (2) The designation of less than the entire State as a regulated area will prevent the interstate spread of the boll weevil.

(b) The Administrator or an inspector may temporarily designate any nonregulated area in a State as a regulated area in accordance with paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice for the temporary designation to the owner or person in possession of the nonregulated area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a regulated area will be subject to this subpart. As soon as practicable, the area will be added to the list in paragraph (c) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The following areas are designated as regulated areas and are divided into generally infested areas and suppressive areas as indicated below:

Arkansas

(1) *Generally infested areas.* None.

(2) *Suppressive areas.* Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Greene, Independence, Jackson, Jefferson, Lee, Lincoln, Little River, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, St. Francis, and Woodruff Counties.

Louisiana

(1) *Generally infested areas.* None.

(2) *Suppressive areas.* Adams, Attala, Benton, Bolivar, Calhoun, Carroll, Claiborne, Coahoma, De Soto, Grenada, Hinds, Holmes, Humphreys, Issaquena, Jefferson, Lafayette, Leflore, Madison, Marshall, Monroe, Montgomery, Panola, Pontotoc, Quitman, Sharkey, Sunflower, Tallahatchie, Tate, Tippah, Tunica, Warren, Washington, Yalobusha, and Yazoo Counties.

Mississippi

(1) *Generally infested areas.* None.

(2) *Suppressive areas.* Adams, Attala, Benton, Bolivar, Calhoun, Carroll, Claiborne, Coahoma, De Soto, Grenada, Hinds, Holmes, Humphreys, Issaquena, Jefferson, Lafayette, Leflore, Madison, Marshall, Monroe, Montgomery, Panola, Pontotoc, Quitman, Sharkey, Sunflower, Tallahatchie, Tate, Tippah, Tunica, Warren, Washington, Yalobusha, and Yazoo Counties.

Missouri

(1) *Generally infested areas.* None.

(2) *Suppressive areas.* Dunklin, Mississippi, New Madrid, Pemiscot, Scott, and Stoddard Counties.

New Mexico

(1) *Generally infested areas.* None.

(2) *Suppressive areas.* Chaves, Eddy, and Lea Counties.

Oklahoma

(1) *Generally infested areas.* None.

(2) *Suppressive areas.* Atoka, Beckham, Cotton, Greer, Harmon, Jackson, McCurtain, Roger Mills, and Tillman Counties.

Tennessee

(1) *Generally infested areas.* None.

(2) *Suppressive areas.* Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, Obion, Shelby, and Tipton Counties.

Texas

(1) *Generally infested areas.* None.

(2) *Suppressive areas.* Anderson, Andrews, Aransas, Archer, Atascosa, Austin, Bastrop, Baylor, Bee, Bell, Bexar, Borden, Brazoria, Brazos, Briscoe, Brooks, Brown, Burleson, Caldwell, Calhoun, Callahan, Cameron, Carson, Childress, Clay, Cochran, Coke, Collin, Collingsworth, Colorado, Comanche, Coryell, Cottle, Crosby, Dawson, Delta, Denton, De Witt, Dickens, Dimmit, Duval, Eastland, Ellis, Falls, Fannin, Fisher, Floyd, Foard, Fort Bend, Frio, Gaines, Garza, Glasscock, Goliad, Grayson, Grimes, Guadalupe, Hale, Hall, Hardeman, Haskell, Hays, Hildalgo, Hill, Hockley, Hopkins, Houston, Howard, Hunt, Jackson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kenedy, Kent, King, Kinney, Kleberg, Knox, Lamar, La Salle, Lavaca, Limestone, Live Oak, Lubbock, Lynn, McLennan, Martin, Matagorda, Maverick, Medina, Midland, Milam, Mitchell, Motley, Navarro, Nolan, Nueces, Rains, Reagan, Red River, Reeves, Refugio, Robertson, Rockwall, San Patricio, Scurry, Shackelford, Starr, Stephens, Stonewall, Sutton, Swisher, Tarrant, Taylor, Throckmorton, Travis, Upton, Uvalde, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Wichita, Wilbarger, Willacy, Williamson, Wilson, Yoakum, Young, Zapata, and Zavala Counties.

§ 301.54-4 Conditions governing the interstate movement of regulated articles from regulated areas.

Any regulated article may be moved interstate from a regulated area³ only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.54-5 and 301.54-8 if the regulated article is moved:

(1) From any regulated area into or through any nonregulated area that is located in a commercial cotton-producing area listed in § 301.54(b); or

(2) From any generally infested area into or through any suppressive area; or

(3) Between any noncontiguous suppressive areas; or

(4) Between contiguous suppressive areas when it is determined by the inspector that the regulated articles present a hazard of the spread of the boll weevil and the person in possession thereof has been so notified.

(b) Without a certificate or limited permit if the regulated article is moved into an area that is not listed in § 301.54(b).

(c) Without a certificate or limited permit if the regulated article originated outside the regulated area and:

(1) Is either moved in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by boll weevils (such as canvas, plastic, or other closely woven cloth) while moving through the regulated area; and

(2) The point of origin of the regulated article is indicated on the waybill, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the regulated area; and

(3) The regulated article is moved through the regulated area without stopping except for refueling, rest stops, emergency repairs, or for traffic conditions, such as traffic lights or stop signs.

(d) Without a certificate or limited permit if:

(1) The regulated article is moved by the United States Department of Agriculture for experimental or scientific purposes; and

(2) Pursuant to a departmental permit issued by the Administrator for the regulated article; and

(3) Under conditions specified on the departmental permit and found by the Administrator to be adequate to prevent the spread of the boll weevil; and

(4) With a tag or label bearing the number of the departmental permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container.

§ 301.54-5 Issuance and cancellation of certificates and limited permits.

(a) A certificate may be issued by an inspector⁴ for the interstate movement of a regulated article if the inspector determines that:

(1)(i) In accordance with part 305 of this chapter; or

(ii) Based on inspection of the premises of origin, the premises are free from the boll weevil; or

(iii) Based on inspection of the regulated article, the regulated article is free of boll weevils; and

(2) The regulated article will be moved through the regulated area in an enclosed vehicle or will be completely enclosed by a covering adequate to prevent access by the boll weevil; and

(3) The regulated article is to be moved in compliance with any additional remedial conditions the Administrator may impose under section 414 of the Plant Protection Act

³ Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

⁴ Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories.

(7 U.S.C. 7714) ⁵ to prevent the spread of the boll weevil; and

(4) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) An inspector ⁶ will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) The regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the boll weevil because life stages of the boll weevil will be destroyed by the specified handling, processing, or utilization;

(2) The regulated article will be moved in an enclosed vehicle or completely covered to prevent access by, and escape of, the boll weevil;

(3) The regulated article is to be moved in compliance with any additional remedial conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the boll weevil; and

(4) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for the interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article after determining that the regulated article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article after determining that the regulated article is otherwise eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn, either orally or in writing, by an

inspector if he or she determines that the holder of the certificate or limited permit has not complied with all conditions in this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

§ 301.54-6 Compliance agreements and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person is aware of this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.⁷

(b) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, to the Administrator, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

⁷ Compliance agreement forms are available without charge from local Plant Protection and Quarantine offices, which are listed in telephone directories.

§ 301.54-7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.54-5(c)) who desires a certificate or limited permit to move a regulated article interstate must notify an inspector ⁸ as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

§ 301.54-8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article must, at all times during the interstate movement, be:

(1) Attached to the outside of the container containing the regulated article; or

(2) Attached to the regulated article itself if not in a container; or

(3) Attached to the consignee's copy of the accompanying waybill. If the certificate or limited permit is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier or the carrier's representative to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

§ 301.54-9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside normal business hours.

Done in Washington, DC, this 24th day of October 2006.

Bruce Knight,

Under Secretary for Marketing and Regulatory Programs.

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⁵ Section 414 of the Plant Protection Act (7 U.S.C. 7714) provides that the Secretary of Agriculture may, under certain conditions, hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of any plant, plant pest, plant product, article, or means of conveyance that is moving, or has moved, into or through the United States or interstate if the Secretary has reason to believe the article is a plant pest or is infested with a plant pest at the time of movement.

⁶ See footnote 4 to § 301.54-5(a).

⁸ See footnote 4 to § 301.54-5(a).