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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98-025-1]

Gypsy Moth Generally Infested Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the gypsy moth quarantine and regulations by adding areas in Ohio and Wisconsin. These changes affect 3 areas in Ohio and 14 areas in Wisconsin. This action is necessary to prevent the artificial spread of gypsy moth to noninfested States.

DATES: Interim rule effective May 11, 1998. Consideration will be given only to comments received on or before July 10, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98-025-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 98-025-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Coanne E. O'Hern, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247; or e-mail: cohern@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest and shade trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45-12 and referred to below as the regulations) quarantine certain States because of the gypsy moth and restrict the interstate movement of certain articles from generally infested areas in the quarantined States to prevent the artificial spread of the gypsy moth.

In accordance with § 301.45-2 of the regulations, generally infested areas are, with certain exceptions, those areas in which a gypsy moth general infestation has been found by an inspector, or each portion of a State which the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Less than an entire State will be designated as a generally infested area only if: (1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles; and (2) the designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth.

Designation of Areas as Generally Infested Areas

We are amending § 301.45-3(a) of the regulations, which lists generally infested areas, by adding Lorain, Medina, and Wayne Counties in Ohio; and Calumet, Kenosha, Marinette, Menominee, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Shawano, Sheboygan, Washington, Waukesha, and Winnebago Counties in Wisconsin.

We are taking this action because, in cooperation with the States, the United States Department of Agriculture conducted surveys that detected all life stages of the gypsy moth in these areas. Based on these surveys, we determined that reproducing populations exist at significant levels in these areas. Eradication of these populations is not considered feasible because these areas are immediately adjacent to areas currently recognized to be generally

infested and therefore subject to continued reinfestation.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary because of the possibility that the gypsy moth could be spread artificially to noninfested areas of the United States, where it could cause economic loss due to defoliation of susceptible forest and shade trees.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action amends the list of generally infested areas under the gypsy moth quarantine and regulations by adding areas in Ohio and Wisconsin. Immediate action is necessary in order to prevent the artificial spread of gypsy moth to noninfested areas of the United States.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance

under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.45–3, paragraph (a) is amended by adding entries for Ohio and Wisconsin, in alphabetical order, to read as follows:

§ 301.45–3 Generally infested areas.

(a) * * *

* * *	* * *
Ohio	
* * *	* * *
Lorain County.	The entire county.
* * *	* * *
Medina County.	The entire county.
* * *	* * *
Wayne County.	The entire county.
* * *	* * *
Wisconsin	
* * *	* * *
Calumet County.	The entire county.
* * *	* * *
Kenosha County.	The entire county.
* * *	* * *
Marinette County.	The entire county.
Menominee County.	The entire county.
Milwaukee County.	The entire county.
Oconto County.	The entire county.
Outagamie County.	The entire county.

Ozaukee County. The entire county.
 Racine County. The entire county.
 Shawano County. The entire county.
 Sheboygan County. The entire county.
 Washington County. The entire county.
 Waukesha County. The entire county.
 Winnebago County. The entire county.

Done in Washington, DC, this 5th day of May 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–12396 Filed 5–8–98; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–056–11]

Mediterranean Fruit Fly; Addition to the Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by expanding the current quarantined area in Dade County, FL. The regulations restrict the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the continental United States.

DATES: Interim rule effective May 5, 1998. Consideration will be given only to comments received on or before July 10, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–056–11, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–056–11. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–

8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78–10; referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States.

In an interim rule effective on June 16, 1997, and published in the **Federal Register** on June 20, 1997 (62 FR 33537–33539, Docket No. 97–056–2), we added a portion of Hillsborough County, FL, to the list of quarantined areas and restricted the interstate movement of regulated articles from that quarantined area. In a second interim rule effective on July 3, 1997, and published in the **Federal Register** on July 10, 1997 (62 FR 36976–36978, Docket No. 97–056–3), we expanded the quarantined area in Hillsborough County, FL, and added areas in Manatee and Polk Counties, FL, to the list of quarantined areas. In a third interim rule effective on August 7, 1997, and published in the **Federal Register** on August 13, 1997 (62 FR 43269–43272, Docket No. 97–056–4), we further expanded the quarantined area by adding new areas in Hillsborough County, FL, and an area in Orange County, FL, to the list of quarantined areas. In that third interim rule, we also revised the entry for Manatee County, FL, to make the boundary lines of the quarantined area more accurate. In a fourth interim rule effective on September 4, 1997, and published in the **Federal Register** on September 10, 1997 (62 FR 47553–47558, Docket No. 97–056–5), we quarantined a new area in Polk County, FL, and an area in Sarasota County, FL. In a fifth interim rule effective on October 15, 1997, and published in the **Federal Register** on October 21, 1997 (62 FR 54571–54572, Docket No. 97–056–7), we removed all or portions of the quarantined areas in Hillsborough, Manatee, Orange, Polk, and Sarasota Counties, FL, from the list of quarantined areas. In a sixth interim rule effective on November 14, 1997, and published in the **Federal Register**