

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 97-038-3]

#### Gypsy Moth Generally Infested Areas

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

**ACTION:** Affirmation of interim rules as final rule.

**SUMMARY:** We are adopting as a final rule, without change, two interim rules that amended the gypsy moth quarantine and regulations by adding Wisconsin to the list of States quarantined because of gypsy moth and by adding areas in Ohio, Virginia, West Virginia, and Wisconsin to the list of generally infested areas. These changes affect eight areas in Ohio, eight areas in Virginia, six areas in West Virginia, and four areas in Wisconsin. The interim rules were necessary in order to impose certain restrictions on the interstate movement of regulated articles to prevent the artificial spread of gypsy moth.

**EFFECTIVE DATE:** Affirmation effective December 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** Coanne E. O'Hern, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, suite 4C10, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247, or e-mail cohern@aphis.usda.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

We recently published two interim rules amending the gypsy moth quarantine and regulations. In the first interim rule, effective and published in the **Federal Register** on May 30, 1997 (62 FR 29286-29287, Docket No. 97-

038-1), we amended § 301.45(a) of the regulations by adding Wisconsin to the list of States quarantined because of gypsy moth. We also amended § 301.45-3(a) of the regulations, which lists generally infested areas, by adding Guernsey and Ottawa Counties in Ohio; Appomattox, Brunswick, Campbell, Charlotte, Halifax, Lunenburg, Mecklenburg, and Pittsylvania Counties in Virginia; Webster County in West Virginia; and Brown, Door, Kewaunee, and Manitowoc Counties in Wisconsin to the list of generally infested areas.

In the second interim rule, effective and published in the **Federal Register** on July 9, 1997 (62 FR 36645-36646, Docket No. 97-038-2), we amended § 301.45-3(a) of the regulations by adding Belmont, Coshocton, Harrison, Holmes, Monroe, and Tuscarawas Counties in Ohio; and Doddridge, Harrison, Lewis, Tyler, and Upshur Counties in West Virginia to the list of generally infested areas.

These actions were necessary in order to impose certain restrictions on the interstate movement of regulated articles to prevent the artificial spread of gypsy moth.

Comments on the first interim rule (Docket No. 97-038-1) were required to be received on or before July 29, 1997. Comments on the second interim rule (Docket No. 97-038-2) were required to be received on or before September 8, 1997. We did not receive any comments on either interim rule. The facts presented in the interim rules still provide a basis for the rules.

This action also affirms the information contained in the interim rules concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

#### Regulatory Flexibility Act

This action affects the interstate movement of regulated articles and outdoor household articles from and through gypsy moth regulated areas in Ohio, Virginia, West Virginia, and Wisconsin. There are several types of restrictions that apply to these newly quarantined areas in these States. These restrictions will have their primary impact on persons moving outdoor household articles, nursery stock, logs and wood chips, and mobile homes

interstate from a generally infested area to any area that is not generally infested.

Under the regulations, outdoor household articles (OHA) may not be moved interstate from a generally infested area unless they are accompanied by either a certificate issued by an inspector or an OHA document issued by the owner of the articles, attesting to the absence of any life stage of the gypsy moth. Most individual homeowners moving their own articles who comply with the regulations choose to self-inspect and issue an OHA document. This takes a few minutes and involves no monetary cost. Individuals may also have State certified pesticide applicators, trained by the State or U.S. Department of Agriculture (USDA), inspect and issue certificates.

With two exceptions, regulated articles (for example, logs, pulpwood, and wood chips; mobile homes; and nursery stock) may not be moved interstate from a generally infested area to any area that is not generally infested unless they are accompanied by a certificate or limited permit issued by an inspector. The first exception is that a regulated article may be moved from a generally infested area without a certificate if it is moved by the USDA for experimental or scientific purposes and is accompanied by a permit issued by the Administrator of the Animal and Plant Health Inspection Service. The second exception is that logs, pulpwood, and wood chips may be moved without a certificate or limited permit if the person moving the articles attaches a statement to the waybill stating that he or she has inspected the articles and has found them free of any lifestage of the gypsy moth. This exception minimizes costs with regard to logs, pulpwood, and wood chips.

Persons moving mobile homes and nursery stock interstate from a generally infested area to any area that is not generally infested may obtain a certificate or limited permit from an inspector or a qualified certified applicator. Inspectors will issue these documents at no charge, but costs may result from delaying the movement of commercial articles while waiting for the inspection. Documents self-issued under a compliance agreement avoid these delay costs but result in costs associated with salary and recordkeeping for the self-inspections.

When inspection of regulated articles or outdoor household articles reveals gypsy moth, treatment is often necessary. Treatment is done by qualified certified applicators, which are private businesses that charge, on the average, \$50 to \$100 to treat a shipment of articles. Most qualified certified applicators are small businesses. By declaring an area as a generally infested area, the regulations may increase business for qualified certified applicators located in generally infested areas. It is estimated that these businesses will average \$50 to \$150 per month in additional income per business. A few of the newly quarantined counties contain large urban areas that may have several hundred shipments annually containing outdoor household articles that will require inspection to move interstate from the generally infested area. Thus, there will likely be a need to train additional qualified certified applicators in those areas.

Entities in the newly quarantined areas that will incur the most costs from the interim rules will be establishments moving trees or shrubs with roots, such as nurseries. We estimate that approximately 60 such establishments move approximately 165 shipments of trees and shrubs each year from the newly quarantined areas. All of these establishments are believed to be small entities. These establishments will need to be inspected, either by an inspector or through self-inspection under a compliance agreement. If the inspection reveals signs of gypsy moth, the establishment will have to be treated in order to ship regulated articles outside the generally infested area. We estimate that annually, approximately 5 of these establishments will require treatment, and that the average area to be treated will be 20 acres. At an average treatment cost of \$10 to \$20 per acre, the average total annual cost to each establishment would be \$200 to \$400.

The Christmas tree industry and establishments that sell other forest products and that move their products interstate will also bear direct costs from the interim rules. There are approximately 689 farms that sell forest products and Christmas trees in the newly quarantined areas. These account for 9.4 percent of the total number of such farms in Ohio, Virginia, West Virginia, and Wisconsin. All of these establishments are believed to be small entities. Services of an inspector will be available without charge to inspect these farms and issue certificates and permits. We estimate that less than four percent of all these farms will be found to contain gypsy moth and, therefore,

require treatment in order to ship trees. It is expected that, in most cases, Christmas tree farms will be free of gypsy moth and Christmas tree growers will meet the requirements for certification by having inspectors certify that the tree farms are free from gypsy moth. This alternative is less costly than inspecting or treating each individual shipment of trees and will thus minimize the economic impact of the change to the regulations for the newly quarantined areas.

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

#### List of Subjects in 7 CFR Part 301

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

#### PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, two interim rules that amended 7 CFR part 301 and that were published at 62 FR 29286–29287 on May 30, 1997, and 62 FR 36645–36646 on July 9, 1997.

**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).

Done in Washington, DC, this 26th day of November 1997.

**Craig A. Reed,**

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

[FR Doc. 97–31755 Filed 12–3–97; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

##### Animal and Plant Health Inspection Service

##### 9 CFR Part 78

[Docket No. 97–108–1]

##### Brucellosis in Cattle; State and Area Classifications; Arkansas

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

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Arkansas from Class A to Class Free. We have determined that Arkansas meets the

standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Arkansas.

**DATES:** Interim rule effective on December 3, 1997. Consideration will be given only to comments received on or before February 2, 1998.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 97–108–1, 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. 97–108–1. 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:** Dr. R.T. Rollo, Jr., Staff Veterinarian, National Animal Health Programs, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–7709; or e-mail: rrollo@aphis.usda.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during