

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS–2006–0029]

#### Gypsy Moth Generally Infested Areas; Ohio, West Virginia, and Wisconsin

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

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

**SUMMARY:** We are amending the gypsy moth regulations by adding one county in Ohio, one county in West Virginia, and two counties in Wisconsin to the list of generally infested areas based on the detection of infestations of gypsy moth in those counties. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the gypsy moth to noninfested States.

**DATES:** This interim rule is effective April 28, 2006. We will consider all comments that we receive on or before June 27, 2006.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and, in the lower “Search Regulations and Federal Actions” box, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click on “Submit.” In the Docket ID column, select APHIS–2006–0029 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 APHIS–2006–0029, 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 APHIS–2006–0029.

*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:** Dr. Weyman Fussell, Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5705.

#### SUPPLEMENTARY INFORMATION:

##### Background

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

In accordance with § 301.45–2 of the regulations, generally infested areas are, with certain exceptions, those States or portions of States in which a gypsy moth general infestation has been found by an inspector, or each portion of a State that 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 that imposes restrictions on the intrastate movement of regulated articles that are substantially the same

as those that 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

Section 301.45–3 of the regulations lists generally infested areas. In this rule, we are amending § 301.45–3(a) by adding one county in Ohio, one county in West Virginia, and two counties in Wisconsin to the list of generally infested areas. As a result of this rule, the interstate movement of regulated articles from these areas will be restricted.

We are taking this action because, in cooperation with the States of Ohio, West Virginia, and Wisconsin, the United States Department of Agriculture conducted surveys that detected multiple life stages of the gypsy moth in Seneca County, OH, in Jackson County, WV, and in Juneau and Sauk Counties, WI. 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 as generally infested and are, therefore, subject to reinfestation.

#### Emergency Action

This rulemaking is necessary on an emergency basis because of the possibility that the gypsy moth could be artificially spread to noninfested areas of the United States, where it could cause economic losses due to the defoliation of susceptible forest and shade trees. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

**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 under Executive Order 12866.

We are amending the gypsy moth regulations by adding one county in Ohio, one county in West Virginia, and two counties in Wisconsin to the list of generally infested areas based on the detection of infestations of gypsy moth in those counties. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the gypsy moth to noninfested States.

The following analysis addresses the economic effects of the interim rule on small entities, as required by the Regulatory Flexibility Act. The interim rule will affect the interstate movement of regulated articles, including forest products (logs, pulpwood, wood chips) and Christmas trees, nursery stock, and mobile homes and outdoor household articles from and through the newly regulated areas. The value of sales of Christmas trees and nursery in the affected counties was \$1.8 million, representing much less than 1 percent of the total value of such sales in the three States. All four counties are located on the fringe of generally infested areas. Many of the establishments are far from currently infested areas, where there is no infestation or where infestation is negligible.

Treatment costs for growing areas range between \$10 and \$20 per acre. Fumigation costs, if infestation is found in a shipment, will range between \$100 and \$150 per truck load. There are at least 89 establishments in the newly regulated counties that produce and ship the regulated articles. Of those, 37 are Christmas tree growers and 52 are nurseries. We do not know the number of loggers/sawmills or movers. All of the establishments are considered to be small businesses.

The regulatory requirements resulting from this rule are expected to cause a slight increase in the costs of business for some of the affected entities, but those additional costs are small when compared to the potential for harm to related industry and the U.S. economy as a whole that would result from the spread of the pest. Since the total value of regulated articles moved from regulated areas to non-regulated areas is a small fraction of the State total, the regulatory effect on State and national prices is expected to be very small. Additionally, since the regulations

restrict, but do not prohibit, the movement of regulated articles, articles that meet the requirements of the regulations would continue to enter the market. The overall impact upon price and competitiveness is expected to be minor.

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.

**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 new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

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

■ Accordingly, we are amending 7 CFR part 301 as follows:

**PART 301—DOMESTIC QUARANTINE NOTICES**

■ 1. The authority citation for part 301 continues 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 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; §§ 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.45–3, paragraph (a), the entries for Ohio, West Virginia, and Wisconsin are amended by adding new counties in alphabetical order to read as follows:

**§ 301.45–3 Generally infested areas.**

(a) \* \* \*  
\* \* \* \* \*

Ohio

\* \* \* \* \*

*Seneca County.* The entire county.

\* \* \* \* \*

West Virginia

\* \* \* \* \*

*Jackson County.* The entire county.

\* \* \* \* \*

Wisconsin

\* \* \* \* \*

*Juneau County.* The entire county.

\* \* \* \* \*

*Sauk County.* The entire county.

\* \* \* \* \*

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

**Elizabeth E. Gaston,**

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

[FR Doc. 06–4018 Filed 4–27–06; 8:45 am]

**BILLING CODE 3410–34–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[CGD13–05–040]

RIN 1625–AA09

**Drawbridge Operation Regulations; Wishkah River, WA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is temporarily revising the drawbridge operation regulations for the Heron Street Bridge on the Wishkah River, mile 0.2, at Aberdeen, Washington. The change will enable the bridge owner to provide delayed openings during major structural and mechanical rehabilitation of the bridge from April 2006 through March 2007.

**DATES:** This temporary rule is effective from May 30, 2006 to April 1, 2007.

**ADDRESSES:** Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD13–05–040] and are available for inspection or copying at the 13th Coast Guard District, Waterways Management Branch, 915 Second Avenue, Seattle, WA 98104–1067 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Austin Pratt, Chief, Bridge Section, (206) 220–7282.