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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 92-077-2]

Pink Bollworm Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the quarantine and regulations on the pink bollworm to remove restrictions on the interstate movement of okra seed. We have determined that this change is warranted because of the development of new seed-sorting technology, which allows the detection and separation of webbed seed containing the pink bollworm. This action relieves restrictions while continuing to prevent the artificial spread of the pink bollworm.

EFFECTIVE DATE: July 23, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. William G. Grefenstette, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 644, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6365.

SUPPLEMENTARY INFORMATION:

Background

The pink bollworm quarantine and regulations (contained in 7 CFR 301.52 *et seq.* and referred to below as the regulations) were established to prevent the artificial spread of the pink bollworm (*Pectinophora gossypiella* Saund.). A dangerous insect harmful to cotton, okra, and certain other plants, the pink bollworm is not widely present or distributed in the United States. The regulations quarantine States of the United States infested with pink

bollworm and restrict the interstate movement of regulated articles from quarantined States. Prior to publication of this document, § 301.52(b) of the regulations listed as a regulated article all parts of okra plants, except canned or frozen okra, and except fresh, edible fruits of okra destined for certain States during certain time periods.

On April 19, 1993, we published in the Federal Register (58 FR 21113-21114, Docket No. 92-077-1) a proposal to amend the regulations by removing the restrictions on the interstate movement of okra seed by adding it as an exception to the list of regulated articles in § 301.52(b).

We solicited comments concerning our proposal for a 30-day comment period ending May 19, 1993. We received one comment by that date. The comment, from an okra seed producer, was in favor of our proposal as written.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the Federal Register. Implementation of this rule in less than 30 days is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Planning for the shipping season for okra seed is in progress. Making this rule effective in less than 30 days will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of APHIS has determined that this rule should be effective upon publication in the Federal Register.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic

regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 603, we have performed a Final Regulatory Flexibility Analysis regarding the impact of this rule on small entities.

The Secretary of Agriculture is authorized under the Plant Quarantine Act and the Federal Plant Pest Act to promulgate regulations prohibiting or restricting the movement of plant pests or products or other articles into the United States or interstate to prevent the introduction or dissemination of such plant pests. This rule primarily affects domestic okra seed producers.

This rule removes restrictions on the interstate movement of okra seed from regulated areas in Arizona, Arkansas, California, Louisiana, Mississippi, New Mexico, Oklahoma, and Texas. Prior to publication of this rule, all okra seed produced in regulated areas in these States had to be fumigated before being moved interstate. There are 5 to 10 farmers within the regulated areas in these States who produce about 95 percent of all the okra seed in the United States. Of this okra seed, 90 to 95 percent is shipped interstate.

Based upon okra seed production only, all the farmers could be considered small businesses; however, only two or three of those farmers can be considered "small" entities based upon their total farming income. For the majority, okra seed production is only a small part of their total production.

This rule saves okra seed producers both time and money. The savings can include the cost of chemicals (for example, methyl bromide for fumigation), facility maintenance, and USDA inspection and transportation. Most of the farmers maintain fumigation facilities on site. At least one farmer transports seed to a facility for fumigation under APHIS supervision. In either case, removal of the restriction on okra seed results in time savings. Although the exact amount of time is hard to quantify, the affected farmers save the time associated with transporting seed for fumigation or waiting for a USDA representative to oversee the fumigation. Depending upon the availability of a USDA

representative, a farmer could wait an additional 3 weeks to move the okra seed interstate. The fumigation process itself takes about 3 days, with costs estimated at \$200 to \$300 per fumigation for time and equipment.

A large okra seed producer (owning 300 acres that produce between 240,000 to 360,000 pounds per year) could save several thousand dollars a year (including \$1,000 to \$1,500 per year in trucking costs). Actual cost savings will vary depending upon the size of the crop and the number of fumigations needed to cover the entire crop.

In 1991, one fumigation facility in Oklahoma treated 227,400 pounds of okra seed. The estimated direct cost to the Animal and Plant Health Inspection Service (APHIS) and the okra seed producers who used the facility was no more than \$10,000. The okra seed producers who have on-site fumigation facilities will likely save a similar amount of money. Therefore, based upon eight producers each saving a maximum of \$10,000, the total savings to the okra seed producers could be a maximum of \$80,000.

Another consideration is the risk that fumigating with methyl bromide can kill the germinating capabilities of the okra seed if it is not allowed to dry sufficiently. This happens occasionally, causing more than \$2,000 in losses per occurrence. The same losses can occur if the fumigation equipment malfunctions, possibly destroying the okra seed crop. There have been instances where the equipment has not functioned properly, and the seed was saved from destruction only by precautionary measures.

Additionally, because the farmers must delay harvesting to allow the seed to dry to a low moisture content before fumigation, some of the crop may be destroyed in the field during the harvesting process. This can amount to a loss of about \$30 to \$50 per acre, depending upon the yield per acre and the weather. The potential loss to a farmer with 300 acres can average about \$9,000 to \$15,000 annually. By removing this potential loss and the \$10,000 fumigation cost, this rule could result in a maximum possible savings of \$25,000 per farmer per year (\$200,000 per year for the entire industry).

In summary, removing the restrictions on okra seed will benefit farmers by saving them both time and money. Further, all affected entities, including seed companies, wholesalers, retailers and consumers, will benefit from the decrease in the time it takes to market the crop. Since about 95 percent of all okra seed is produced within the quarantined States, competition from

other farmers outside these States is virtually nonexistent. Thus, any adverse effects caused by the removal of the regulation will be insignificant.

Two alternatives to the provisions in this rule were considered. We considered removing restrictions on the interstate movement of only okra seed that is processed using the new technology. We rejected this alternative because nearly all okra seed is processed today using equipment that removes webbed okra seed. The amount of unprocessed okra seed moving interstate from regulated areas to nonregulated areas is insignificant and poses no significant pest risk. We also considered taking no action and continuing the restrictions on the interstate movement of okra seed from the quarantined States of Arizona, Arkansas, California, Louisiana, Mississippi, New Mexico, Oklahoma, and Texas. This alternative was rejected because it would continue an unnecessary economic burden on okra seed producers in the quarantined States. This rule allows the unrestricted interstate movement of okra seed while preventing the dissemination of the pink bollworm.

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 12778

This final rule has been reviewed under Executive Order 12778, 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 1980 (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. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.52, paragraph (b)(10)(i) is amended by removing the word "and"; paragraph (b)(10)(ii) is redesignated as paragraph (b)(10)(iii); and a new paragraph (b)(10)(ii) is added to read as follows:

§ 301.52 Quarantine; restriction on interstate movement of specified regulated articles.

(b) * * *
(10) * * *
(ii) Okra seed; and

* * *
Done in Washington, DC, this 16th day of July 1993.

Eugene Branstool,
Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–17558 Filed 7–22–93; 8:45 am]

BILLING CODE 3410–34–P

7 CFR Part 301

[Docket No. 89–165–2]

RIN 0579–AA39

Gypsy Moth

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are revising the gypsy moth quarantine and regulations to incorporate substantial changes resulting from a review of the regulations. This final rule changes certain gypsy moth program procedures, regulated areas, regulated articles, and inspection and certification requirements. These changes are necessary to help prevent the artificial spread of gypsy moth.

EFFECTIVE DATE: Final rule effective August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Terry McGovern, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8247.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a highly destructive pest of forest trees. The gypsy moth

quarantine and regulations (set forth in 7 CFR 301.45 et seq. and referred to below as the regulations) quarantine certain States because of the gypsy moth, establish regulated areas within those States, and restrict the interstate movement from regulated areas of regulated articles and outdoor household articles (OHA's), in order to prevent the artificial spread of gypsy moth.

On December 4, 1992, the Animal and Plant Health Inspection Service (APHIS) published a proposed rule in the Federal Register (57 FR 57379-57390, Docket No. 89-165-1, referred to below as the proposed rule) that proposed to revise the gypsy moth regulations by discontinuing the classifications of high-risk and low-risk regulated areas, identifying infested areas with the term "generally infested areas," adding further restrictions on the interstate movement of outdoor household articles, and adding trees without roots (for example, Christmas trees) to the list of regulated articles. We also proposed changing certain inspection and certification requirements, including those applicable to interstate movement of logs and pulpwood.

We solicited comments concerning our proposal for a 60-day comment period ending February 2, 1993. We received 11 comments by that date. They were from producers of regulated articles, Federal and State agencies, and individuals. We carefully considered all of the comments we received. The comments and changes we made based on them are discussed below by topic. Comments and Responses

Comment: APHIS should change the part of the definition of "effectively diminishing" in proposed § 301.45-1 that reads "average number of gypsy moths caught per trap in the second delimiting survey is: (1) Less than 10, and (2) less than the average number of gypsy moths caught per trap in the first survey" to read "average number of gypsy moths caught per trap in the second delimiting survey (when comparable geographical areas and trapping densities are used) is: (1) Less than * * *

Response: We agree, and have made the requested change. To make valid comparisons of trapping results, comparable geographical areas and trapping densities are needed.

Comment: APHIS should reconsider the requirement in proposed § 301.45-4 that regulated articles moved through generally infested areas must be "in an enclosed vehicle, or completely enclosed by a covering * * *". Is there data to support fear that gypsy moth larvae attach themselves to articles in

transit? Covering loads could be an unjustified burden for shippers of logs, pulpwood, etc. Consider requiring instead that vehicles carrying regulated articles through generally infested areas must accomplish a speedy transit with minimal stops.

Response: Section 301.45-4 requires that regulated articles moving from a nonregulated area through a generally infested area must be covered only if the movement occurs during the months of April through June. Studies of gypsy moth movement patterns indicate that there is a significant risk that uncovered regulated articles may become infested with gypsy moth during these months. While direct transit without stops through a generally infested area may be nearly as effective in preventing gypsy moth attachment as covering the articles, it is much harder to enforce direct transit than it is to enforce covering of regulated articles. Therefore, we have made no change in response to this comment.

Comment: APHIS should change the requirement in proposed § 301.45-5(a)(2) that an inspector issuing a certificate must inspect the article "no more than 5 days prior to the date of movement" to "no more than 5 days prior to the date of movement during the months of April through August (14 days prior to the date of movement from September through March)." This focuses the inspection time restriction on the time of year when larvae may be actively moving. There is no need for a 5-day limit during the rest of the year when gypsy moth is in the egg stage.

Response: We agree that this change could reduce the burden of the regulations on some business activities and private individuals without increasing the risk of spreading gypsy moth. We have made the requested change.

Comment: APHIS should change proposed § 301.45-5(d), which allows qualified certified applicators (QCA's) to issue certificates for mobile homes and other outdoor household articles, to also allow QCA's to issue limited permits for mobile homes in situations where the QCA is not able to search all possible hiding places of egg masses, e.g., broken insulation on the underside of the mobile home. The limited permit could call for reinspection in the destination State at time of egg hatch.

Response: Section 301.45-5(d) allows QCA's to issue certificates for mobile homes after determining that the mobile home: (1) Has been inspected by the QCA and found to be free of any life stage of the gypsy moth; or (2) has been treated by, or treated under the direct supervision of, the QCA to destroy any

life stage of the gypsy moth in accordance with methods and procedures prescribed in section III of the Gypsy Moth Program Manual. We believe it is reasonable to limit QCA's to certifying inspections or treatments that they actually performed or supervised. We do not believe the regulations should authorize QCA's to issue limited permits, because limited permits involve a significant level of professional judgment and coordination of activities with State and Federal personnel that is more suitable for inspectors than QCA's. Mobile homes that cannot be completely inspected before movement could be treated as an alternative. In recognition of the risks presented by mobile home movements, APHIS personnel and cooperating State personnel monitor mobile homes that arrive in unregulated areas for signs of gypsy moth, particularly during hatching seasons, to the extent resources allow. No change to the regulations was made in response to this comment.

Comment: APHIS should add an exemption from regulation for "local movements"—any regulated articles moved from within a generally infested area to just outside the generally infested area (i.e., moved from a point in a generally infested area within 25 miles of the boundary, to a point no more than 15 miles outside the generally infested area). The boundary is inherently fuzzy due to natural spread, and local movements are a significant burden to people living near the boundary.

Response: It is unfortunate but necessarily true that a large part of the burden of regulatory activities falls on persons near the boundaries of generally infested areas. Since the regulations attempt to limit the spread of gypsy moth, the boundary areas are critical enforcement areas. Since most trips are local trips, movements from just inside a boundary to just outside it represent a major opportunity for gypsy moth to extend its range through incremental artificial spread. Therefore, we believe an exemption for "local movements" would significantly hamper the effectiveness of the regulations. No change was made in response to this comment.

Comment: Moving companies should not be allowed to issue OHA documents through self-inspection; only the owner of the articles. Proposed § 301.45-5(e) implies that moving companies may issue OHA documents.

Response: The intent of the proposed rule was that moving companies would not inspect OHA's or issue OHA documents; they would inform the owners of OHA's of regulatory

requirements and provide them with an OHA form, and the owner (or a QCA) would inspect the articles and issue the OHA document. The language in § 301.45-5(e) of this final rule has been revised to make this arrangement clear.

Comment: QCA's should send copies of the OHA document to the APHIS Officer in Charge in the origin State, not to the State Plant Regulatory Official.

Response: We agree, and have revised the requirement in § 301.45-8(c) concerning copies of the OHA document accordingly. The APHIS Office in Charge in each State should have primary responsibility for managing paperwork associated with this regulatory program, and for transmitting documents to State officials as necessary.

Comment: The familiar term "regulated area" should be used instead of the designation "generally infested area" when referring to areas regulated due to gypsy moth.

Response: We avoided using the term "regulated area" due to the need to distinguish areas subject to these regulations from areas subject to Federal programs for other pests, various State programs, and isolated gypsy moth infestations not subject to these regulations, all of which are sometimes called "regulated areas." No change was made in response to this comment.

Comment: Exempting "eradication areas" from being classified as generally infested areas is bad policy, since they do present risk. Such areas are so few that the regulatory effort to include them as generally infested areas would be insignificant.

Response: The number and location of isolated areas where gypsy moth infestations erupt and are eradicated change frequently. We do not believe the time requirements of the rulemaking process would allow us to keep a current list of such areas in the "generally infested areas" list of the regulations, and we do not believe listing them would significantly reduce risks that are already addressed by an eradication effort. If the risks presented by an isolated infestation develop to the point where the area should be covered by these regulations, the provisions of § 301.45-2(c), "Temporary designation of areas as generally infested areas," allow APHIS to immediately designate the area as a generally infested area, and add the area to the printed regulations later. No change was made in response to this comment.

Comment: The definition of general infestation depends on finding one or more egg masses in a 10-minute walk. It should also use trapping catches in the area.

Response: We agree that a continuing pattern of trapping catches in an area is a valid indicator that an area may be generally infested. Multiple catches of adult gypsy moths at multiple trapping locations in an area may indicate the presence of a low level infestation even if a walk-through egg mass survey has negative results. We believe that if an area has positive trapping results for 2 or more years, APHIS should consult with the appropriate State regulatory officials to determine whether the area should be listed as generally infested despite negative results from the walk-through egg mass survey. Therefore, we are changing the definition of "general infestation" to include the following: "The detection of gypsy moth through multiple catches of adult gypsy moths at multiple trapping locations in the area over a period of 2 or more consecutive years, if the Administrator determines, after consulting with the State plant regulatory official, that gypsy moth is established in the area."

Comment: The areas listed as generally infested in the States of Maine and Michigan omit areas that are now infested, and should be updated.

Response: We agree, and have added areas to the listings for these two States based on the latest available data on gypsy moth infestations from APHIS and State personnel.

Comment: By listing recreational vehicles (RV's) in the definition of outdoor household article but not in the definition of regulated article (§ 301.45-1), the proposed regulation would regulate RV's only when they are being permanently relocated (moved as OHA's). Temporary movements of RV's also present risks, and we would like to see them regulated.

Response: Temporary movements of RV's undoubtedly present risks of spreading gypsy moth. However, in determining which risks the regulations will address, APHIS must make judgments that apply limited resources to a wide range of risks in a way that maximizes the effectiveness of the resources expended. Direct regulation of temporary RV movements falls below this threshold in our judgment, because regulating such movements would consume a large amount of resources that can be more effectively expended in other gypsy moth program activities. We do have an information and education program that targets RV owners to make them aware of gypsy moth risks.

Through this program we seek to encourage RV owners to take steps to control gypsy moth risks associated with their RV movements. No change was made in response to this comment.

Comment: The economic analysis in the regulation underestimates the producer cost impacts for Christmas trees moved interstate. In 1991, approximately 16,760 acres were treated at an average cost of \$10 per acre for total treatment costs of approximately \$167,600 for Michigan alone. The regulation estimated Christmas tree treatment costs of no more than \$60,000 annually.

Response: The economic analysis in the proposed rule addressed economic impacts that can be directly tied to the proposed Federal action. Christmas tree movements were not regulated under the gypsy moth regulations in 1991, and the treatments cited in Michigan were not required by APHIS. We believe that the economic analysis provides a reasonably accurate estimate of the economic impacts attributable to the proposed Federal action.

Comment: Tying the definition of "effectively diminishing" to less than 10 catches per trap is too stringent, and would exclude many areas where gypsy moth is in fact drastically declining.

Response: The definition of "effectively diminishing" is a two-part definition which states that for an area to be effectively diminishing, the average number of catches per trap must be both less than 10, and less than the average number of catches per trap in the previous survey. The commenter did not suggest an alternative standard for determining "effectively diminishing." We believe that the proposed definition, which is linked to both a small number of moths trapped and a decrease in that number over time, is an adequate standard. No change was made in response to this comment.

Comment: APHIS must increase public awareness of the gypsy moth regulations, to reach homeowners who move themselves, RV campsites, and other target populations.

Response: We agree, and intend to increase our outreach efforts through education and public information programs.

Comment: Contrary to the assumption in the regulations, commercial firewood (firewood that would not be regulated because it is not moved as an OHA) is often moved large distances in the Great Lake States, particularly to lake cabins, and such movement presents risks that should be regulated.

Response: See the earlier comment regarding regulating temporary movements of RV's, and the need to balance the level of risk against the resources expended to control them. We agree that some commercial movements of firewood present significant risks of spreading gypsy moth, but we have

found that most movements of firewood do not present such risks. No change was made in response to this comment.

Comment: The regulation assumes that the high-risk period for infestation is April through June. Some of our scientists have observed moths in Connecticut flying well into August, with caterpillars out from April through June. APHIS should reexamine the gypsy moth life cycle data that regulatory restrictions assume.

Response: The regulatory restrictions address the following characteristics of the gypsy moth life cycle. Gypsy moths artificially spread and become established in new areas through the movement of caterpillars and egg masses. Articles moving through a generally infested area present a moderate opportunity for caterpillars, which will develop into male and female adult moths, to attach themselves to the articles. This is because caterpillars are active feeders, constantly moving in search of food sources. During the first instar, the small caterpillars may "balloon" on the wind by spinning weblike fibers which help in their dispersal. Since it is possible that both sexes may alight on an uncovered truck moving regulated articles, movement of unsafeguarded regulated articles through a generally infested area at a time when gypsy moth caterpillars are active presents a significant risk of introducing a reproducing population of gypsy moth in a new area. Caterpillars are active during April through June. That is why the regulations, in § 301.45-4(b), require that regulated articles moved through a generally infested area during this period be enclosed to prevent access by gypsy moth.

There is little risk that egg masses will be deposited on regulated articles moving directly through a generally infested area as required by § 301.45-4(b). Adult female gypsy moths do not fly and are not very mobile. They usually deposit their egg masses on the last host tree they fed upon as a caterpillar or on an adjacent immobile object—not on articles in transit. If such objects are of a type that may later be moved from the generally infested area (e.g., logs at a mill, outdoor furniture, an RV, or other types of regulated or outdoor household articles), there is a risk that the egg masses may be moved to an area where they could establish a new reproducing population of gypsy moth. That is why movements of articles originating in generally infested areas require inspection or treatment and a certificate, permit or OHA document, in accordance with §§ 301.45-4(a) and (c) and 301.45-5.

We agree that the adult gypsy moth may fly well into August in the northeast, but only the male moth flies. Section 301.45-4(b) does not require regulated articles moving through a generally infested area to be enclosed during the months of July through March because caterpillars are not present during these months, and there is no significant risk if some male moths wander into a moving shipment of regulated articles, because male moths alone cannot establish a new reproducing population of gypsy moth.

Comment: We believe debarked wood chips do not pose a serious threat of transporting egg masses, moths, or caterpillars, and should not be regulated.

Response: We disagree. The process of chipping wood does not necessarily destroy eggs in gypsy moth egg masses that were present on the original trees. In addition, wood chips are often stored uncovered for long periods, both in generally infested areas where they could become infested, and in other areas where gypsy moth could spread from the chips.

Comment: The provision in § 301.45-4(c)(2) for moving logs without a certificate is too restrictive and needs reevaluation. Transporters are unlikely to completely inspect every log in a shipment. Also, logs and pulpwood are seldom moved very far outside a generally infested area, and are usually quickly treated in ways that would destroy egg masses (debarking, boiling).

Response: The proposed requirement for moving logs and pulpwood without a certificate is that the person moving the article attach a signed statement to the waybill stating that he or she has inspected the article in accordance with the Gypsy Moth Program Manual no more than 5 days prior to the date of movement and has found no life stages of gypsy moth on the article. We believe this is a reasonable and effective approach that does not present an undue burden. If transporters do not conduct the required inspection, they would be subject to enforcement actions. Transporters who do not wish to use this self-inspection option may ship logs and pulpwood under a limited permit issued by an inspector in accordance with § 301.45-4(a)(1). Therefore, no change was made in response to this comment.

Comment: Persons moving regulated articles from gypsy moth infested States to California should bear the financial cost of inspection by the State at the destination.

Response: We do not have the legal authority to require such financial responsibility.

Comment: APHIS should not eliminate the useful distinction between high-risk and low-risk areas.

Response: We believe the proposed rule adequately explained why the high-risk and low-risk categories are no longer useful distinctions in the gypsy moth program.

Comment: Self-inspection relies on untrained individuals with no vested interest in pest exclusion. Inspections should be done by USDA or State officials.

Response: The regulations do not rely solely or primarily on self-inspections. Self-inspection is used chiefly for movements of outdoor household articles, where it is not practical to employ inspectors to approve thousands of movements. Some self-inspection is allowed for commercial movements, e.g., logs and pulpwood. Businesses involved in such movements have a vested interest in their continued ability to do business, and inadequate self-inspection could result in enforcement activity that jeopardizes that ability.

Comment: The proposed changes avoid placing financial responsibility for pest exclusion on the movers of household goods.

Response: The owners of outdoor household articles, not moving companies, are responsible for ensuring that regulatory requirements are met when the articles are moved interstate. We believe this is the proper location for that responsibility. Owners may meet their obligation by self-inspecting OHA's, or by hiring a QCA to inspect or treat the OHA's. If a QCA is involved, he or she is responsible for inspecting or treating the OHA's in accordance with the regulations. If the QCA does not comply with the regulations, he or she faces penalties that may include loss of QCA certification or civil or criminal penalties.

We are also adding two definitions that were inadvertently omitted from the proposed rule. The first of these defines "APHIS" as the Animal and Plant Health Inspection Service, United States Department of Agriculture. The second definition describes an "eradication program" as a program that uses pesticide application, biological controls, or other methods with the goal of eliminating gypsy moth from a particular area.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

Review of Existing Regulations

This final rule is part of the scheduled review of Subpart—Gypsy Moth, to meet regulatory review requirements. Executive Order 12291 and Department Regulation 1512-1 require that agencies initiate reviews of currently effective rules to bring about the goal of reduction of regulatory burdens and to minimize impacts on small entities.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The amendment to designate all high-risk regulated areas and certain low-risk regulated areas as generally infested areas will result in additional costs for persons moving regulated articles and outdoor household articles interstate from what are now low-risk areas. With certain exceptions, certification, inspection, and treatment (if gypsy moth is found) will be required for articles moving interstate from areas previously designated as low-risk areas. The majority of such movements will be from establishments moving trees or shrubs with roots, such as nurseries. We estimate that approximately 300 such establishments in current low-risk areas (including approximately 250 small entities) move approximately 7,000 shipments of trees and shrubs each year to areas outside the generally infested areas. These establishments would need to be inspected by an inspector, a service provided without charge. If the inspection reveals signs of gypsy moth, the establishment would have to be treated in order to ship regulated articles outside the generally infested area. We estimate that approximately 3 to 5 percent of these establishments will be required to treat the establishment, and that the average area to be treated will be 500 acres. At an average treatment cost of \$10 per acre, we anticipate that a total of 9 to 15 establishments will have to treat each

year, at an average cost to each of \$5,000. While most of these establishments are probably small entities, we do not consider that 9 to 15 establishments out of 300 establishments in the current low-risk areas constitutes a substantial number of small entities.

The reclassification of low-risk areas as generally infested areas means that movements to outside the generally infested area of other regulated articles, such as logs, pulpwood, wood chips, and mobile homes, and outdoor household articles such as firewood and outdoor furniture, will have to comply with the regulations. Most movements of these regulated articles would not be subject to the regulations because the articles are moved to other points within the generally infested area, and we do not expect significant economic impacts in this area.

The designation of trees without roots as regulated articles will primarily affect the Christmas tree industry, since Christmas trees moved interstate from generally infested areas to areas not generally infested would have to be moved under a certificate or permit. We estimate that there are between 100 and 250 Christmas tree producers in the generally infested areas who ship trees to nonregulated areas. Services of an inspector will be available without charge to inspect the premises and issue certificates and permits. However, we estimate that 3 to 5 percent of these premises will be found to contain gypsy moth, and will require treatment in order to ship trees. The average area to be treated is estimated to be 500 acres, and treatment costs average \$10 per acre. Therefore, total treatment costs for Christmas tree producers are estimated at approximately \$5,000 per year for each of approximately 3 to 12 producers in generally infested areas. While we do not have direct data regarding how many of these establishments are small business entities, the 1987 Census of Agriculture reports that 53 percent of the farms selling forest products have annual sales of less than \$50,000.

Using this figure as a basis for identifying small entities, we estimate that 2 to 6 small entities would be affected by the requirements concerning Christmas trees. An added treatment cost of \$5,000 per year would be a significant economic impact on a small business entity with annual sales of less than \$50,000 per year. However, we do not consider that the 2 to 6 small entities that may incur this cost constitute a substantial number of small entities.

It is expected that, in most cases, Christmas tree growers will meet the

requirements for certification by having inspectors determine that the plantations where the trees are grown are free from gypsy moth. This alternative would be less costly than inspecting or treating individual shipments of trees and would minimize the economic impacts of the change to the regulations.

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 12778

This final rule has been reviewed under Executive Order 12778, 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) will require administrative proceedings before parties may file suit in court challenging certain of its provisions. Administrative proceedings are required to challenge the withdrawal of a permit or certificate (see § 301.45-5(f)), the cancellation of a compliance agreement (§ 301.45-6(b)), and the disqualification of a qualified certified applicator (§ 301.45-12(b)).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0108.

List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301, is amended as follows:

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

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Subpart—Gypsy Moth of part 301 is revised to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES**Subpart—Gypsy Moth**

Sec.

- 301.45 Notice of quarantine; restriction on interstate movement of specified regulated articles.
- 301.45-1 Definitions.
- 301.45-2 Authorization to designate and terminate designation of generally infested areas.
- 301.45-3 Generally infested areas.
- 301.45-4 Conditions governing the interstate movement of regulated articles and outdoor household articles from generally infested areas.
- 301.45-5 Issuance and cancellation of certificates, limited permits, and outdoor household article documents.
- 301.45-6 Compliance agreement and cancellation thereof.
- 301.45-7 Assembly and inspection of regulated articles and outdoor household articles.
- 301.45-8 Attachment and disposition of certificates, limited permits, and outdoor household article documents.
- 301.45-9 Inspection and disposal of regulated articles and pests.
- 301.45-10 Movement of live gypsy moths.
- 301.45-11 Costs and charges.
- 301.45-12 Disqualification of qualified certified applicator to issue certificates.

Subpart—Gypsy Moth**§ 301.45 Notice of quarantine; restriction on interstate movement of specified regulated articles.**

(a) *Notice of quarantine.* Pursuant to the provisions of sections 8 and 9 of the Plant Quarantine Act of August 20, 1912, as amended, and sections 105 and 106 of the Federal Plant Pest Act (7 U.S.C. 161, 162, 150dd, 150ee), the Secretary of Agriculture hereby quarantines the States of Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia, in order to prevent the spread of the gypsy moth, *Lymantria dispar* (Linnaeus), a dangerous insect injurious to forests and shade trees and not theretofore widely prevalent or distributed within or throughout the United States; and establishes regulations governing the interstate movement from generally infested areas of the quarantined States of regulated articles and outdoor household articles defined in § 301.45-1.

(b) *Restrictions on the interstate movement of regulated articles and outdoor household articles.* No common carrier or other person may move

interstate from any generally infested area any regulated article or outdoor household article except in accordance with the conditions prescribed in this subpart.

§ 301.45-1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural, and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture (APHIS).

Associated equipment. Articles associated and moved with mobile homes and recreational vehicles, such as, but not limited to, awnings, tents, outdoor furniture, trailer blocks, and trailer skirts.

Certificate. A document issued by an inspector, or by a qualified certified applicator or any other person operating in accordance with a compliance agreement, to allow the movement of regulated articles to any destination.

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

Effectively diminishing. An eradication program is considered to be effectively diminishing the gypsy moth population of an area if the results of two successive annual Federal or State delimiting trapping surveys of the area conducted in accordance with Section II, "Survey Procedures—Gypsy Moth," of the Gypsy Moth Treatment Manual show that the average number of gypsy moths caught per trap in the second delimiting survey (when comparable geographical areas and trapping densities are used) is: (1) Less than 10, and (2) less than the average number of gypsy moths caught per trap in the first survey.

Eradication program. A program that uses pesticide application, biological controls, or other methods with the goal of eliminating gypsy moth from a particular area.

General infestation. (1) The detection of gypsy moth egg masses through visual inspection by an inspector during a 10-minute walk through the area; however, it does not include the presence of gypsy moth egg masses which are found as a result of

hitchhiking on transitory means of conveyance; or

(2) The detection of gypsy moth through multiple catches of adult gypsy moths at multiple trapping locations in the area over a period of 2 or more consecutive years, if the Administrator determines, after consulting with the State plant regulatory official, that gypsy moth is established in the area.

Generally infested area. Any State, or portion thereof, listed as a generally infested area in § 301.45-3 or temporarily designated as a generally infested area in accordance with § 301.45-2(c).

Gypsy moth. The live insect known as the gypsy moth, *Lymantria dispar* (Linnaeus), in any life stage (egg, larva, pupa, adult).

Inspector. Any employee of APHIS, a State government, or any other person, authorized by the Administrator in accordance with law to enforce the provisions of the quarantine and regulations in this subpart.

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

Limited permit. A document issued by an inspector to allow the interstate movement of regulated articles to a specified destination.

Mobile home. Any vehicle, other than a recreational vehicle, designed to serve, when parked, as a dwelling or place of business.

Move (movement, moved). Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means. "Movement" and "moved" shall be construed in accordance with this definition.

Outdoor household articles. Articles associated with a household that have been kept outside the home such as awnings, barbecue grills, bicycles, boats, dog houses, firewood, garden tools, hauling trailers, outdoor furniture and toys, recreational vehicles and associated equipment, and tents.

Person. Any individual, partnership, corporation, company, society, association, or other organized group.

Qualified certified applicator. Any individual (1) certified pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (86 Stat. 983; 7 U.S.C. 136b) as a certified commercial applicator in a category allowing use of the restricted pesticides Spray N Kill (EPA Registration No. 8730-30), Ficam W (EPA Registration No. 45639-1), and acephate (Orthene®); (2) who has attended and completed a workshop approved by the Administrator on the identification and treatment of gypsy

moth life stages on outdoor household articles and mobile homes; and (3) who has entered into a compliance agreement in accordance with § 301.45-6 of this part for the purpose of inspecting, treating, and issuing certificates for the movement of outdoor household articles and mobile homes.¹

Recreational vehicles. Highway vehicles, including pickup truck campers, one-piece motor homes, and travel trailers, designed to serve as temporary places of dwelling.

Regulated articles. (1) Trees without roots (e.g., Christmas trees), trees with roots, and shrubs with roots and persistent woody stems, unless they are greenhouse grown throughout the year.

(2) Logs, pulpwood, and wood chips.

(3) Mobile homes and associated equipment.

(4) Any other products, articles, or means of conveyance, of any character whatsoever, when it is determined by an inspector that any life stage of gypsy moth is in proximity to such articles and the articles present a high risk of artificial spread of gypsy moth infestation and the person in possession thereof has been so notified.

State. Any State, Territory, or District of the United States including Puerto Rico.

Treatment manual. The provisions currently contained in the Gypsy Moth Program Manual² and the Plant Protection and Quarantine Treatment Manual.³

Under the direction of. Monitoring treatments to assure compliance with the requirements in this subpart.

Under the direct supervision of a qualified certified applicator. An inspection or treatment is considered to be applied under the direct supervision of a qualified certified applicator if the inspection or treatment is performed by a person acting under the instructions of a qualified certified applicator who is available if and when needed, even though such qualified certified applicator is not physically present at

the time and place the inspection or treatment occurred.

§ 301.45-2 Authorization to designate and terminate designation of generally infested areas.

(a) Generally infested areas. The Administrator shall list as generally infested areas in § 301.45-3 each State or each portion thereof 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; Except that, an area shall not be listed as a generally infested area if the Administrator has determined that:

(1) The area is subject to a gypsy moth eradication program conducted by the Federal government or a State government in accordance with the Integrated Pest Management (IPM) alternative of the Final Environmental Impact Statement (FEIS) on Gypsy Moth Suppression and Eradication Projects that was filed with the United States Environmental Protection Agency on March 18, 1985; and

(2) State or Federal delimiting trapping surveys conducted in accordance with Section II, "Survey Procedures—Gypsy Moth" of the Gypsy Moth Treatment Manual show that the average number of gypsy moths caught per trap is less than 10 and that the trapping surveys show that the eradication program is effectively diminishing the gypsy moth population of the area.

(b) Less than an entire State will be designated as a generally infested area only if the Administrator has determined that:

(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 under this subpart; 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.

(c) Temporary designation of areas as generally infested areas. The Administrator or an inspector may temporarily designate any area in any State as a generally infested area in accordance with the criteria specified in paragraph (a) of this section. An inspector will give written notice of the designation to the owner or person in possession of the area and thereafter, the

interstate movement of any regulated article from such areas is subject to the applicable provisions of this subpart. As soon as practicable, each generally infested area will be added to the list in § 301.45-3 or the designation will be terminated by the Administrator or an authorized inspector, and notice thereof shall be given to the owner or person in possession of the areas.

(d) Termination of designation as a generally infested area. The Administrator shall terminate the designation of any area as a generally infested area whenever the Administrator determines that the area no longer requires designation under the criteria specified in paragraph (a) of this section.

§ 301.45-3 Generally infested areas.

(a) The areas described below are designated as generally infested areas:

Connecticut

The entire State.

Delaware

The entire State.

District of Columbia

The entire district.

Maine

Androscoggin County. The entire county.

Aroostook County. The townships of Bancroft, Benedicta, Crystal, Island Falls, Macwahoc Plantation, Molunkus, North Yarmouth Academy Grant, Reed Plantation, Sherman, Silver Ridge, Upper Molunkus, Weston, and 1 R5 WELS.

Cumberland County. The entire county.

Franklin County. The townships of Avon, Carthage, Chesterville, Coplin Plantation, Crockertown, Dallas Plantation, Davis, Lang, Farmington, Freeman, Industry, Jay, Jerusalem, Kingfield, Madrid, Mount Abraham, New Sharon, New Vineyard, Perkins, Phillips, Rangeley, Rangeley Plantation, Redington, Salem, Sandy River Plantation, Strong, Temple, Washington, Weld, Wilton, Wyman, 6, D and E.

Hancock County. The entire county.

Kennebec County. The entire county.

Knox County. The entire county.

Lincoln County. The entire county.

Oxford County. The townships of Adamstown, Albany, Andover, Andover North, Andover West, Batchelders Grant, Bethel, Brownfield, Buckfield, Byron, Canton, Denmark, Dixfield, Fryeburg, Gilead, Grafton, Greenwood, Hanover, Hartford, Hebron, Hiram, Lincoln Plantation, Lovell, Lower Cupsuptic, Magalloway Plantation,

¹ Names of qualified certified applicators and plant regulatory officials for the States and Territories of the United States are available upon request from the regional offices of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, or from APHIS, PPQ, Domestic and Emergency Operations, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

² Pamphlets containing such provisions are available upon request to USDA, APHIS, PPQ, Domestic and Emergency Operations, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Relevant portions of the Gypsy Moth Program Manual are published as an appendix to these regulations.

³ The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter. "Materials incorporated by reference."

Mason Plantation, Mexico, Milton Plantation, Newry, Norway, Oxford, Paris, Parkerstown, Peru, Porter, Richardsontown, Riley, Roxbury, Rumford, Stoneham, Stow, Sumner, Sweden, Upton, Waterford, Woodstock, C, and C Surplus.

Penobscot County. The townships of Alton, Argyle, Bangor City, Bradford, Bradley, Brewer City, Burlington, Carmel, Carroll Plantation, Charleston, Chester, Clifton, Corinna, Corinth, Dexter, Dixmont, Drew Plantation, E. Millinocket, Eddington, Edinburg, Enfield, Etna, Exeter, Garland, Glenburn, Grand Falls Plantation, Greenbush, Greenfield, Grindstone, Hampden, Hermon, Hersey Town, Holden, Hopkins Academy Grant, Howland, Hudson, Indian Purchase, Kenduskeag, Kingman, LaGrange, Lakeville, Lee, Levant, Lincoln, Long A, Lowell, Mattamiscontis, Mattawamkeag, Maxfield, Medway, Milford, Millinocket, Newburgh, Newport, Old Town City, Orono, Orrington, Passadumkeag, Plymouth, Prentiss Plantation, Seboesis Plantation, Soldiertown, Springfield, Stacyville, Stetson, Summit, Veazie, Webster Plantation, Winn, Woodville, AR 7, AR 8, AR 9, 1 ND, 3 R1 NBPP, 1 R6 WELS, 1 R8 WELS, 2 R8 NWP, 2 R9 NWP, 3 R9 NWP, 5 R1 NBPP, and 2 R8 WELS.

Piscataquis County. The townships of Abbott, Atkinson, Barnard, Blanchard Plantation, Bowerbank, Brownville, Dover-Foxcroft, Guilford, Kingsbury Plantation, Lakeview Plantation, Medford, Milo, Monson, Orneville, Parkman, Sangerville, Sebec, Williamsburg, Willimantic, Willington, 1 R9, 2 R9 WELS, 4 R9 NWP, and 5 R9 NWP.

Sagadahoc County. The entire county.

Somerset County. The townships of Anson, Athens, Bald Mountain, Bingham, Bowtown, Brighton Plantation, Cambridge, Canaan, Caratunk, Carrying Place, Carrying Place Town, Concord Plantation, Cornville, Dead River, Detroit, Embden, Fairfield, Harmony, Hartland, Highland Plantation, Lexington Plantation, Madison, Mayfield, Mercer, Moscow, Moxie Gore, New Portland, Norridgewock, Palmyra, Pittsfield, Pleasant Ridge Plantation, Ripley, Skowhegan, Smithfield, Solon, St. Albans, Starks, The Forks Plantation, and West Forks Plantation.

Waldo County. The entire county.

Washington County. The entire county.

York County. The entire county.

Maryland

The entire State

Massachusetts

The entire State.

Michigan

Alcona County. The entire county.
Allegan County. The entire county.
Alpena County. The entire county.
Antrim County. The entire county.
Arenac County. The entire county.
Barry County. The entire county.
Bay County. The entire county.
Benzie County. The entire county.
Berrien County. The entire county.
Branch County. The entire county.
Calhoun County. The entire county.
Cass County. The entire county.
Charlevoix County. The entire county.
Cheboygan County. The entire county.
Chippewa County. The entire county.
Clare County. The entire county.
Clinton County. The entire county.
Crawford County. The entire county.
Eaton County. The entire county.
Emmet County. The entire county.
Genesee County. The entire county.
Gladwin County. The entire county.
Grand Traverse County. The entire county.

Gratiot County. The entire county.
Hillsdale County. The entire county.
Huron County. The entire county.
Ingham County. The entire county.
Ionia County. The entire county.
Iosco County. The entire county.
Isabella County. The entire county.
Jackson County. The entire county.
Kalamazoo County. The entire county.

Kalkaska County. The entire county.
Kent County. The entire county.
Lake County. The entire county.
Lapeer County. The entire county.
Leelanau County. The entire county.
Lenawee County. The entire county.
Livingston County. The entire county.
Luce County. The entire county.
Mackinaw County. The entire county.
Macomb County. The entire county.
Manistee County. The entire county.
Mason County. The entire county.
Mecosta County. The entire county.
Midland County. The entire county.
Missaukee County. The entire county.
Monroe County. The entire county.
Montcalm County. The entire county.
Montmorency County. The entire county.

Muskegon County. The entire county.
Newaygo County. The entire county.
Oakland County. The entire county.
Oceana County. The entire county.
Ogemaw County. The entire county.
Osceola County. The entire county.
Oscoda County. The entire county.
Otsego County. The entire county.
Ottawa County. The entire county.
Presque Isle County. The entire county.

Roscommon County. The entire county.

Saginaw County. The entire county.

St. Clair County. The entire county.

St. Joseph County. The entire county.

Sanilac County. The entire county.

Shiawassee County. The entire county.

Tuscola County. The entire county.

Van Buren County. The entire county.

Washtenaw County. The entire county.

Wayne County. The entire county.

Wexford County. The entire county.

New Hampshire

The entire State.

New Jersey

The entire State.

New York

The entire State.

North Carolina

Currituck County. The entire county.

Dare County. The area bounded by a line beginning at the intersection of State Road 1208 and Roanoke Sound; then easterly along this road to its junction with State Road 1206; then southerly along this road to its intersection with U.S. Highway Business 158; then easterly along an imaginary line to its intersection with the Atlantic Ocean; then northwesterly along the coastline to its intersection with the Dare-Currituck County line; then westerly along this county line to its intersection with the Currituck Sound; then southeasterly along this sound to the point of beginning.

Ohio

Ashtabula County. The entire county.

Columbiana County. The entire county.

Geauga County. The entire county.

Lake County. The entire county.

Mahoning County. The entire county.

Trumbull County. The entire county.

Pennsylvania

The entire State.

Rhode Island

The entire State.

Vermont

The entire State.

Virginia

City of Alexandria. The entire city.

City of Buena Vista. The entire city.

City of Charlottesville. The entire city.

City of Chesapeake. The entire city.

City of Colonial Heights. The entire city.

City of Fairfax. The entire city.

City of Falls Church. The entire city.

City of Franklin. The entire city.
 City of Fredericksburg. The entire city.
 City of Hampton. The entire city.
 City of Harrisonburg. The entire city.
 City of Hopewell. The entire city.
 City of Lexington. The entire city.
 City of Manassas. The entire city.
 City of Manassas Park. The entire city.

City of Newport News. The entire city.
 City of Norfolk. The entire city.
 City of Petersburg. The entire city.
 City of Poquoson. The entire city.
 City of Portsmouth. The entire city.
 City of Richmond. The entire city.
 City of Staunton. The entire city.
 City of Suffolk. The entire city.
 City of Virginia Beach. The entire city.
 City of Waynesboro. The entire city.
 City of Williamsburg. The entire city.
 City of Winchester. The entire city.
 Accomack County. The entire county.
 Albemarle County. The entire county.
 Amelia County. The entire county.
 Amherst County. The entire county.
 Arlington County. The entire county.
 Augusta County. The entire county.
 Buckingham County. The entire county.

Caroline County. The entire county.
 Charles City County. The entire county.

Chesterfield County. The entire county.

Clarke County. The entire county.
 Culpeper County. The entire county.
 Cumberland County. The entire county.

Dinwiddie County. The entire county.
 Essex County. The entire county.
 Fairfax County. The entire county.
 Fauquier County. The entire county.
 Fluvanna County. The entire county.
 Franklin County. The entire county.
 Frederick County. The entire county.
 Gloucester County. The entire county.
 Goochland County. The entire county.
 Greene County. The entire county.
 Hanover County. The entire county.
 Henrico County. The entire county.
 Isle of Wight County. The entire county.

James City County. The entire county.
 King and Queen County. The entire county.

King George County. The entire county.

King William County. The entire county.

Lancaster County. The entire county.
 Loudoun County. The entire county.
 Louisa County. The entire county.
 Madison County. The entire county.
 Mathews County. The entire county.
 Middlesex County. The entire county.
 Nelson County. The entire county.
 New Kent County. The entire county.
 Northampton County. The entire county.

Northumberland County. The entire county.

Nottoway County. The entire county.

Orange County. The entire county.

Page County. The entire county.

Powhatan County. The entire county.

Prince Edward County. The entire county.

Prince George County. The entire county.

Prince William County. The entire county.

Rappahannock County. The entire county.

Richmond County. The entire county.

Rockbridge County. The entire county.

Rockingham County. The entire county.

Shenandoah County. The entire county.

Southampton County. The entire county.

Spotsylvania County. The entire county.

Stafford County. The entire county.

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through any area that is not generally infested unless a certificate or permit has been issued and attached to such regulated article in accordance with §§ 301.45-5 and 301.45-8.4

(2) An outdoor household article shall not be moved interstate from any generally infested area into or through any area that is not generally infested unless a certificate or OHA document has been issued and attached to such outdoor household article in accordance with §§ 301.45-5 and 301.45-8.

(b) A regulated article originating outside of any generally infested area may be moved interstate directly through any generally infested area without a certificate or permit if the point of origin of the article is clearly indicated by shipping documents, its identity has been maintained, and it has been safeguarded against infestation while in any generally infested area during the months of April through June. To be safeguarded, the article must be in an enclosed vehicle, or completely enclosed by a covering adequate to prevent access by gypsy moths, such as canvas, plastic, or closely woven cloth.

(c) A regulated article originating in a generally infested area may be moved interstate from a generally infested area without a certificate if it complies with (1) or (2) of this paragraph:

(1) The article is moved by the U.S. Department of Agriculture for experimental or scientific purposes, and:

(i) Is moved pursuant to a permit issued for each article by the Administrator;

(ii) Is moved in accordance with conditions specified on the permit and found by the Administrator to be adequate to prevent the dissemination of the gypsy moth, i.e., conditions of treatment, processing, shipment, and disposal; and

(iii) Is moved with a tag or label securely attached to the outside of the container containing the article or securely attached to the article itself if not in a container, and with such tag or label bearing a permit number corresponding to the number of the permit issued for such article.

(2) The article is logs, pulpwood, or wood chips, and the person moving the article has attached a signed accurate statement to the waybill or other shipping documents accompanying the article stating that he or she has inspected the article in accordance with the Gypsy Moth Program Manual no more than 5 days prior to the date of

§ 301.45-4 Conditions governing the interstate movement of regulated articles and outdoor household articles from generally infested areas.

(a) Regulated articles and outdoor household articles from generally infested areas. (1) A regulated article, except for an article moved in accordance with paragraph (c) of this section, shall not be moved interstate from any generally infested area into or

⁴ Requirements under all other applicable Federal domestic plant quarantines must also be met.

movement and has found no life stages of gypsy moth on the article.

§ 301.45-5 Issuance and cancellation of certificates, limited permits, and outdoor household article documents.

(a) A certificate may be issued by an inspector for the movement of a regulated article or an outdoor household article (OHA) if the inspector determines that it is eligible for certification for movement to any destination under all Federal domestic plant quarantines applicable to such article and:

(1) It has originated in noninfested premises in a generally infested area and has not been exposed to the gypsy moth while within the generally infested area; or

(2) The inspector inspects the article no more than 5 days prior to the date of movement during the months of April through August (14 days prior to the date of movement from September through March) and finds it to be free of the gypsy moth; or

(3) It has been treated under the direction of an inspector to destroy the gypsy moth in accordance with the treatment manual; or

(4) It has been grown, produced, manufactured, stored, or handled in such a manner that no infestation would be transmitted thereby as determined by an inspector.

(b) Limited permits may be issued by an inspector to allow interstate movement of any regulated article under this subpart to specified destinations for specified handling, utilization, processing, or treatment in accordance with the treatment manual, when, upon evaluation of all of the circumstances involved in each case, the Administrator determines that such movement will not result in the spread of the gypsy moth because life stages of the moths will be destroyed by such specified handling, utilization, processing or treatment, or the pest will not survive in areas to which shipped, and the requirements of all other applicable Federal domestic plant quarantines have been met.

(c) Certificate and limited permit forms may be issued by an inspector to any person for use for subsequent shipments of regulated articles provided the person is operating under a compliance agreement. Any person operating under a compliance agreement may reproduce the forms as needed to attach them to regulated articles moved under a compliance agreement. Any person operating under a compliance agreement may execute and issue the certificate forms or reproduction of such forms, for the interstate movement of regulated

articles from the premises of such person identified in the compliance agreement, if the person has treated such regulated articles as specified in the compliance agreement, and if the regulated articles are eligible for certification for movement to any destination under all applicable Federal domestic plant quarantines. Any person operating under a compliance agreement may execute and issue the limited permit forms, or reproductions of such forms, for the interstate movement of regulated articles to specified destinations when an inspector has made the determinations specified in paragraph (b) of this section.

(d) A certificate may be issued by a qualified certified applicator for the interstate movement of any outdoor household article or mobile home if such qualified certified applicator determines the following:

(1) That the article has been inspected by the qualified certified applicator and found to be free of any life stage of the gypsy moth; or

(2) That the article has been treated by, or treated under the direct supervision of, the qualified certified applicator to destroy any life stage of the gypsy moth in accordance with methods and procedures prescribed in section III of the Gypsy Moth Program Manual.

(e) An OHA document may be issued by the owner of an outdoor household article for the interstate movement of the article if such person has inspected the outdoor household article and has found it to be free of any life stage of gypsy moth.

(f) Any certificate or permit which has been issued or authorized may be withdrawn by an inspector if he determines that the holder thereof has not complied with any condition for the use of such document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances permit. Any person whose certificate or permit has been withdrawn may appeal the decision in writing to the Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate or permit was wrongfully withdrawn. The Administrator shall grant or deny the appeal, in writing, stating the reasons for his decision as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Administrator. (Approved by the Office

of Management and Budget under control number 0579-0108.)

§ 301.45-6 Compliance agreement and cancellation thereof.

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of such articles under this subpart. Qualified certified applicators must enter into compliance agreements, in accordance with the definition of qualified certified applicator in § 301.45-1. A compliance agreement shall specify safeguards necessary to prevent spread of the gypsy moth, such as disinfection practices or application of chemical materials in accordance with the treatment manual. Compliance agreement forms may be obtained from the Administrator or an inspector.

(b) Any compliance agreement may be canceled by the inspector who is supervising its enforcement, orally or in writing, whenever the inspector finds that such person has failed to comply with the conditions of the agreement. If the cancellation is oral, the decision and the reasons therefore shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been canceled may appeal the decision in writing to the Administrator within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. The Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Administrator. (Approved by the Office of Management and Budget under control number 0579-0108.)

§ 301.45-7 Assembly and inspection of regulated articles and outdoor household articles.

Persons (other than those authorized to use certificates or limited permits, or reproductions thereof, under § 301.45-5(c)) who desire to move interstate a regulated article which must be accompanied by a certificate or permit shall, at least 7 days before the desired movement, request an inspector to examine the article prior to movement. Persons who desire to move interstate an outdoor household article accompanied by a certificate issued in accordance with § 301.45-5 shall, at least 14 days before the desired

movement, request an inspector to examine the article prior to movement. Persons who desire to move interstate an outdoor household article or a mobile home accompanied by a certificate issued by a qualified certified applicator in accordance with § 301.45-5(d) shall request a qualified certified applicator to examine the article prior to movement. Such articles shall be assembled at such point and in such manner as the inspector or qualified certified applicator designates to facilitate inspection.

§ 301.45-8 Attachment and disposition of certificates, limited permits, and outdoor household article documents.

(a) A certificate, limited permit, or OHA document required for the interstate movement of a regulated article or outdoor household article must at all times during such movement be securely attached to the outside of the container containing the regulated article or outdoor household article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the waybill or other shipping document: Provided, however, That the requirements of this section may be met by attaching the certificate, limited permit, or OHA document to the consignee's copy of the waybill or other shipping document only if the regulated article or outdoor household article is sufficiently described on the certificate, limited permit, OHA document or shipping document to identify such article.

(b) The certificate, limited permit, or OHA document for the movement of a regulated article or outdoor household article shall be furnished by the carrier to the consignee at the destination of the shipment.

(c) Any qualified certified applicator who issues a certificate or OHA document shall at the time of issuance send a copy of the certificate or OHA document to the APHIS officer in charge for the State in which the document is issued.

(Approved by the Office of Management and Budget under control number 0579-0108)

§ 301.45-9 Inspection and disposal of regulated articles and pests.

Any properly identified inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of, or require disposal of regulated articles, outdoor household articles, and gypsy moths as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd).

§ 301.45-10 Movement of live gypsy moths.

Regulations requiring a permit for, and otherwise governing the movement of, live gypsy moths in interstate or foreign commerce are contained in the Federal Plant Pest Regulations in part 330 of this chapter.

§ 301.45-11 Costs and charges.

The services of the inspector shall be furnished without cost. The U.S. Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

§ 301.45-12 Disqualification of qualified certified applicator to issue certificates.

(a) Any qualified certified applicator may be disqualified from issuing certificates by the Administrator if he determines that one of the following has occurred:

(1) Such person is not certified by a State and/or Federal Government as a commercial certified applicator under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (86 Stat. 983; 7 U.S.C. 136b) in a category allowing use of the restricted pesticides Spray N Kill (EPA Registration No. 8730-30), Ficam W (EPA Registration No. 45639-1), and acephate (Orthene®); or

(2) Noncompliance with any of the provisions of this subpart; or,

(3) Failure to attend and complete, each time such person is recertified as a certified commercial applicator under FIFRA, a workshop approved by the Administrator on the identification and treatment of life stages of gypsy moth on outdoor household articles and mobile homes.

(b) The disqualification is effective upon oral or written notification, whichever is earlier. The reasons for the disqualification shall be confirmed in writing as promptly as circumstances permit, unless contained in the written notification. Any qualified certified applicator who is disqualified from issuing certificates may appeal the decision in writing to the Administrator within ten (10) days after receiving written notification of the disqualification. The appeal shall state all of the facts and reasons upon which the person relies to show that the disqualification was a wrongful action. The Administrator shall grant or deny the appeal, in writing, stating the reasons for his decision as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning such a

hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0108)

Done in Washington, DC, this 16th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-17555 Filed 7-22-93; 8:45 am]

BILLING CODE 3410-34-P

Agricultural Marketing Service

7 CFR Part 944

[Docket No. FV-91-245 FR]

Fruits; Import Regulations (Grapefruit); Reinstatement of Grapefruit Import Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule reinstates, with minor revisions, the temporarily suspended minimum grade and size requirements for grapefruit imported into the United States. These requirements were temporarily suspended on March 11, 1991, to provide the United States Trade Representative (USTR) adequate time to review contemplated changes in the import requirements. This action is needed so that imported grapefruit meet the same minimum grade and size requirements as those established for grapefruit under the marketing order covering Florida grapefruit, consistent with section 8e of the Agricultural Marketing Agreement Act of 1937, as amended.

EFFECTIVE DATE: July 26, 1993.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: (202) 720-5331.

SUPPLEMENTARY INFORMATION: This final rule is issued under section 8e (7 U.S.C. 608e-1) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act. Section 8e of the Act provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced