

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 98-072-2]

#### Gypsy Moth Generally Infested Areas

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

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

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the gypsy moth quarantine and regulations by adding Indiana to the list of States quarantined because of gypsy moth and by adding Steuben County in Indiana to the list of generally infested areas. The interim rule was necessary in order to impose certain restrictions on the interstate movement from Steuben County of regulated articles to prevent the artificial spread of gypsy moth to noninfested areas of the United States.

**EFFECTIVE DATE:** The interim rule was effective on July 16, 1998.

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

#### SUPPLEMENTARY INFORMATION:

#### Background

In an interim rule effective and published in the *Federal Register* on July 16, 1998 (63 FR 38279-38280, Docket No. 98-072-2), we amended the gypsy moth quarantine and regulations in 7 CFR part 301 by adding Indiana to the list in § 301.45(a) of States quarantined because of gypsy moth, and by adding Steuben County, IN, to the

list in § 301.45-3(a) of generally infested areas.

Comments on the interim rule were required to be received on or before September 14, 1998. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

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

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

#### Regulatory Flexibility Act

This document affirms an interim rule that amended the gypsy moth quarantine and regulations by adding Steuben County, IN, to the list of generally infested areas. This action was necessary to prevent the artificial spread of gypsy moth to noninfested areas of the United States.

This action affects the interstate movement of regulated articles and outdoor household articles (OHA's) from and through Steuben County, IN. There are several types of restrictions that apply to this newly quarantined area. These restrictions will have their primary impact on persons moving OHA's, nursery stock, logs and wood chips, and mobile homes interstate from Steuben County, IN, to any area that is not generally infested.

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

With two exceptions, regulated articles (for example, logs, pulpwood, and wood chips; mobile homes; and nursery stock) may not be moved interstate from a generally infested area to any area that is not generally infested

unless they are accompanied by a certificate or limited permit issued by an inspector. The first exception is that a regulated article may be moved from a generally infested area without a certificate if it is moved by the USDA for experimental or scientific purposes and is accompanied by a permit issued by the Administrator of the Animal and Plant Health Inspection Service. The second exception is that logs, pulpwood, and wood chips may be moved without a certificate or limited permit if the person moving the articles attaches a statement to the waybill stating that he or she has inspected the articles and has found them free of any lifestage of the gypsy moth. This exception minimizes costs with regard to logs, pulpwood, and wood chips.

Persons moving regulated articles interstate from a generally infested area to any area that is not generally infested may obtain a certificate or limited permit from an inspector or a qualified certified applicator. Inspectors will issue these documents at no charge, but costs may result from delaying the movement of commercial articles while waiting for the inspection. These documents may also be self-issued under a compliance agreement. Certificates for interstate movement of mobile homes from a generally infested area may also be obtained from qualified certified applicators.

When inspection of regulated articles or OHA's reveals gypsy moth, treatment is often necessary. Treatment is done by qualified certified applicators, which are private businesses that charge, on the average, \$75 to \$100 to treat a shipment of articles. Most qualified certified applicators are small businesses. By declaring an area as a generally infested area, the regulations may increase business for qualified certified applicators located in Steuben County, Indiana. It is estimated that these businesses will average \$75 to \$150 per month in additional income per business.

Entities in the newly quarantined areas that will incur the most costs from the interim rule will be establishments moving trees or shrubs with roots, such as nurseries. We estimate that approximately 2 such establishments move approximately 10 shipments of trees and shrubs each year from the newly quarantined area. Both of these establishments are believed to be small

entities. These establishments will need to be inspected by a State or Federal inspector. If the inspection reveals signs of gypsy moth, the establishment will have to be treated in order to ship regulated articles outside the generally infested area. We estimate that annually, one of these establishments may require treatment, and that the average area to be treated will be 20 acres. At an average treatment cost of \$10 to \$20 per acre, the average total annual cost to each establishment will be \$200 to \$400.

The Christmas tree industry and establishments that sell other forest products and that move their products interstate from the newly quarantined area will also bear direct costs from the interim rule. There are approximately two farms that sell forest products and Christmas trees in the newly quarantined area. These account for less than one percent of the total number of such farms in Indiana. Both of these establishments are believed to be small entities. Services of an inspector will be available without charge to inspect these farms and issue certificates and permits. We anticipate that both of these farms will be free of gypsy moth and will meet the requirements for certification by having inspectors certify that the tree farms are free from gypsy moth. This alternative is less costly than inspecting or treating each individual shipment of trees and will thus minimize the economic impact of the change to the regulations for the newly quarantined area.

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

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

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

#### PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 63 FR 38279–38280 on July 16, 1998.

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

Done in Washington, DC, this 21st day of January 1999.

**Craig A. Reed,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 99–1919 Filed 1–27–99; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 932

[Docket No. FV99–932–2 IFR]

#### Olives Grown in California; Modification to Handler Membership on the California Olive Committee

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule invites comments on modifications to the handler membership on the California Olive Committee (Committee). The Committee locally administers the California olive marketing order (order) which regulates the handling of olives grown in California. The Committee is composed of 16 industry members of which 8 are producers and 8 are handlers. Current handler membership is allocated between cooperative marketing organizations and independent handlers (handlers not affiliated with cooperatives), and the number of handler members that may be affiliated with any one handler is limited to two. This rule removes the distinction between cooperative and independent handlers, removes the limitation on handler affiliation, and reallocates handler membership on the basis of the total quantity of olives handled. These modifications will allow two vacant handler member positions on the Committee to be filled. This rule was unanimously recommended by the Committee.

**DATES:** Effective January 29, 1999; comments received by March 29, 1999 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moabdocket\_clerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for

public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Mary Kate Nelson, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–9921; Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698; or E-mail:

Jay\_N\_Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the “order.” The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for