

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.

[58 FR 39423, July 23, 1993, as amended at 62 FR 29287, May 30, 1997; 63 FR 38280, July 16, 1998; 66 FR 21050, Apr. 27, 2001; 66 FR 37114, July 17, 2001]

#### § 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.

*Bark.* The tough outer covering of the woody stems of trees, shrubs, and other woody plants as distinguished from the cambium and inner wood.

*Bark products.* Products containing pieces of bark including bark chips, bark nuggets, bark mulch, and bark compost.

*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.<sup>1</sup>

*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 per-

sistent woody stems, unless they are greenhouse grown throughout the year.

(2) Logs, pulpwood, and bark and bark products.

(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 Manual.<sup>2</sup>

*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.

[58 FR 39423, July 23, 1993, as amended at 59 FR 67608, Dec. 30, 1994; 67 FR 8464, Feb. 25, 2002; 70 FR 33268, June 7, 2005; 71 FR 40878, July 19, 2006]

EFFECTIVE DATE NOTE: At 72 FR 70764, Dec. 13, 2007, §301.45-1 was amended, effective Jan. 14, 2008, by:

a. By adding a definition of *OHA document*, and by revising the definitions of *certificate*, *compliance agreement*, and *limited permit*.

b. In the definition of *inspector*, by adding a new second sentence.

c. In the definition of *qualified certified applicator*, by removing the citation “86 Stat.

<sup>1</sup>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 the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

<sup>2</sup>Pamphlets containing such provisions are available upon request to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236. Relevant portions of the Gypsy Moth Program Manual are published as an appendix to these regulations.

§ 301.45-2

7 CFR Ch. III (1-1-08 Edition)

983; 7 U.S.C. 136b” and adding the citation “7 U.S.C. 136i” in its place, by adding the word “use” before the word “pesticides”, and by revising footnote 1.

d. In the definition of *treatment manual*, by revising footnote 2.

For the convenience of the user, the added and revised text is set forth as follows:

§ 301.45-1 Definitions.

\* \* \* \* \*

*Certificate.* A Plant Protection and Quarantine-approved form, stamp, or document issued and signed by an inspector, or by a qualified certified applicator or by any other person operating in accordance with a compliance agreement, affirming that a specified regulated article is eligible for interstate movement in accordance with this subpart.

*Compliance agreement.* A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, in which the person agrees to comply with the provisions of this subpart.

\* \* \* \* \*

*Inspector.* \* \* \* A person operating under a compliance agreement is not an inspector.

\* \* \* \* \*

*Limited permit.* A document in which an inspector or a person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.45-5 only to the specified destination and only in accordance with the specified conditions.

\* \* \* \* \*

*OHA document.* The self-inspection checklist portion of USDA-APHIS Program Aid Number 1329, “Don’t Move Gypsy Moth,” completed and signed by the owner of an outdoor household article (OHA) affirming that the owner has inspected the OHA for life stages of gypsy moth in accordance with the procedures in the program aid.

\* \* \* \* \*

*Qualified certified applicator.* \* \* \*<sup>1</sup>

<sup>1</sup>Names of qualified certified applicators may be obtained from State departments of agriculture.

\* \* \* \* \*

*Treatment manual.* \* \* \*<sup>2</sup>

<sup>2</sup>The Gypsy Moth Program Manual may be viewed on the Internet at [http://www.aphis.usda.gov/ppq/manuals/online\\_manuals.html](http://www.aphis.usda.gov/ppq/manuals/online_manuals.html).

\* \* \* \* \*

§ 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