

Manager, Emergency and Domestic Programs, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737; (301) 734-5332.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest, shade, and commercial trees such as nursery stock and Christmas trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45-12 and referred to below as the regulations) restrict the interstate movement of regulated articles from generally infested areas to prevent the artificial spread of the gypsy moth. Section 301.45-3 of the regulations lists generally infested areas.

In an interim rule¹ effective and published in the **Federal Register** on April 18, 2011 (76 FR 21613-21615, Docket No. APHIS-2010-0075), we amended § 301.45-3(a) by adding portions of Indiana, Maine, Ohio, Virginia, West Virginia, and Wisconsin to the list of generally infested areas.

Comments on the interim rule were required to be received on or before June 17, 2011. We received one comment from a State agricultural agency that was in favor of this action. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

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

Further, for this action the Office of Management and Budget has waived its review under Executive Order 12866.

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 76 FR 21613-21615 on April 18, 2011.

¹ To view the interim rule and its supporting economic analysis, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0075>.

Done in Washington, DC, this 23rd day of September 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011-25089 Filed 9-28-11; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 305

[Docket No. APHIS-2008-0022]

RIN 0579-AC94

Phytosanitary Treatments; Location of and Process for Updating Treatment Schedules; Technical Amendment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: In a final rule that was published in the **Federal Register** on January 26, 2010, and effective on February 25, 2010, we amended the phytosanitary treatment regulations by removing the lists of approved treatments and treatment schedules from the regulations, while retaining the general requirements for performing treatments and certifying or approving treatment facilities. The final rule also removed treatment schedules from other places where they had been found in APHIS regulations and provided that approved treatment schedules will instead be found in the Plant Protection and Quarantine Treatment Manual, which is available on the Internet. In the final rule, we neglected to provide for the Administrator of the Animal and Plant Health Inspection Service to approve treatments that are not found in the Treatment Manual, and we did not retain text explaining that irradiation can be used as a substitute for other treatments. In this amendment, we are amending the regulation to provide for such approval of treatments and to restore the text we removed.

DATES: *Effective Date:* September 29, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. S. Gadh, Senior Risk Manager—Treatments, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 734-0627.

SUPPLEMENTARY INFORMATION:

Background

In a final rule that was published in the **Federal Register** on January 26, 2010 (75 FR 4228-4253, Docket No. APHIS-2008-0022), and effective on February 25, 2010, we amended the phytosanitary treatment regulations in 7 CFR part 305 by removing the lists of approved treatments and treatment schedules from the regulations, while retaining the general requirements for performing treatments and certifying or approving treatment facilities. The final rule also removed treatment schedules from other places where they had been found in 7 CFR chapter III.

We replaced the lists of approved treatments that had been in § 305.2 with a general statement in paragraph (b) of that section that approved treatment schedules are set out in the Plant Protection and Quarantine (PPQ) Treatment Manual. Paragraph (b) went on to state that treatments may only be administered in accordance with the treatment requirements of part 305 and in accordance with treatment schedules found in the PPQ Treatment Manual. We also amended the general requirements for performing treatments and certifying or approving treatment facilities to indicate that such facilities need to be able to conduct the treatments in the PPQ Treatment Manual.

However, while the PPQ Treatment Manual contains only approved treatment schedules, it is inappropriate to refer to the PPQ Treatment Manual as the sole place where approved treatment schedules may be found and to set requirements for treatment facilities based only on the treatments in the PPQ Treatment Manual. A treatment schedule is ultimately approved for use not by dint of its inclusion in the PPQ Treatment Manual but because the Administrator of the Animal and Plant Health Inspection Service has decided that the treatment schedule is effective at neutralizing the targeted plant pest. Ultimately, the regulations should refer to approval by the Administrator as the standard for use of a treatment schedule.

Therefore, we are amending paragraph (b) of § 305.2 to indicate that treatments may only be administered in accordance with the requirements of part 305 and in accordance with treatment schedules approved by the Administrator as effective at neutralizing quarantine pests. We are also amending paragraph (b) to explicitly indicate that the treatment schedules found in the PPQ Treatment Manual have been approved by the Administrator.

As the regulations in part 305 now indicate that treatment must be administered in accordance with treatment schedules approved by the Administrator, it is appropriate to provide a means by which persons can request that the Administrator approve other treatment schedules. Therefore, we are adding a new paragraph (c) to § 305.2. This paragraph indicates that persons who wish to have a treatment schedule approved by the Administrator as effective at neutralizing a quarantine pest or pests may apply for approval by submitting the treatment schedule, along with any supporting information and data, to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Center for Plant Health Science and Technology, 1730 Varsity Drive, Suite 400, Raleigh, NC 27606-5202. Upon receipt of such an application, the Administrator will review the schedule and the supporting information and data and respond with approval or denial of the treatment schedule. If the Administrator determines the treatment schedule to be of potential general use, the Administrator may add the new treatment schedule to the PPQ Treatment Manual or revise an existing schedule, as appropriate, in accordance with the process described in § 305.3.

To accommodate this change, we are redesignating current paragraph (c) of § 305.2 as paragraph (d). We are also amending the definition of *PPQ Treatment Manual* in § 305.1 to make it clear that all treatment schedules in the manual are approved by the Administrator, and we are amending the heading of § 305.3, which describes the process for adding, revising, or removing treatment schedules, to indicate that it specifically applies to the PPQ Treatment Manual.

These changes also necessitate changes in §§ 305.5 through 305.9, which set out the requirements for administering chemical treatment, cold treatment, quick freeze treatment, heat treatment, and irradiation treatment, respectively. Where these sections have referred to facilities capable of performing treatments in accordance with treatment schedules in the PPQ Treatment Manual, they now also refer to performing treatments in accordance with treatment schedules approved in accordance with § 305.2. For other references to the PPQ Treatment Manual in those sections, we have added references to treatment schedules approved in accordance with § 305.2 as well. A complete list of these changes can be found in the regulatory text at the end of this document.

As noted earlier, before the publication of the January 2010 final rule, § 305.2 listed approved treatments for various articles. Paragraph (h) of § 305.2 listed approved treatments for fruits and vegetables. At the beginning of the list, paragraph (h)(1) stated that irradiation treatment in accordance with part 305 could be substituted for other approved treatments for any pests for which irradiation was an approved treatment. For example, several fruits and vegetables may be treated with cold treatment to neutralize certain fruit flies; as irradiation is an approved treatment for fruit flies, irradiation for fruit flies in accordance with part 305 may be substituted for cold treatment for those fruits and vegetables.

We did not include this text in the revised part 305; it is contained in the PPQ Treatment Manual, thus confirming that substitution of irradiation for other approved treatments has been approved by the Administrator. However, since the publication of the January 2010 final rule, there has been some confusion among the regulated community regarding our policy on substituting irradiation for other approved treatments.

To address this confusion, we are adding a new paragraph (o) to § 305.9, which contains requirements for performing irradiation treatment, that describes our policy on substituting irradiation for other approved treatments. The new paragraph reads: "Treatment of fruits and vegetables that are from foreign localities, from Hawaii, Puerto Rico, and the U.S. Virgin Islands, or from domestic areas under quarantine with irradiation in accordance with this section may be substituted for other approved treatments if the target pests of the other approved treatments are approved for treatment with irradiation in the PPQ Treatment Manual or approved for treatment with irradiation in accordance with § 305.2."

List of Subjects in 7 CFR Part 305

Agricultural commodities, Chemical treatment, Cold treatment, Heat treatment, Imports, Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Quick freeze, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 305 as follows:

PART 305—PHYTOSANITARY TREATMENTS

- 1. The authority citation for part 305 continues to read as follows:

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

- 2. In § 305.1, in the definition of *PPQ Treatment Manual*, the first sentence is revised to read as follows:

§ 305.1 Definitions.

* * * * *

PPQ Treatment Manual. A document that contains treatment schedules that are approved by the Administrator for use under this part. * * *

* * * * *

- 3. Section 305.2 is amended as follows:

- a. By revising paragraph (b) to read as set forth below.
- b. By redesignating paragraph (c) as paragraph (d).
- c. By adding a new paragraph (c) to read as set forth below.

§ 305.2 Approved treatments.

* * * * *

(b) Treatments may only be administered in accordance with the requirements of this part and in accordance with treatment schedules approved by the Administrator as effective at neutralizing quarantine pests. The treatment schedules found in the PPQ Treatment Manual have been approved by the Administrator. Treatment schedules may be added to the PPQ Treatment Manual in accordance with § 305.3. Treatment schedules may also be approved by the Administrator in accordance with paragraph (c) of this section.

(c) Persons who wish to have a treatment schedule approved by the Administrator as effective at neutralizing a quarantine pest or pests may apply for approval by submitting the treatment schedule, along with any supporting information and data, to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Center for Plant Health Science and Technology, 1730 Varsity Drive, Suite 400, Raleigh, NC 27606-5202. Upon receipt of such an application, the Administrator will review the schedule and the supporting information and data and respond with approval or denial of the treatment schedule. If the Administrator determines the treatment schedule to be of potential general use, the Administrator may add the new treatment schedule to the PPQ Treatment Manual or revise an existing schedule, as appropriate, in accordance with § 305.3.

* * * * *

- 4. In § 305.3, the section heading is revised to read as follows:

§ 305.3 Processes for adding, revising, or removing treatment schedules in the PPQ Treatment Manual.

* * * * *

§ 305.5 [Amended]

- 5. Section 305.5 is amended as follows:
 - a. In paragraph (a)(1), by adding the words “or in another treatment schedule approved in accordance with § 305.2” after the word “Manual”.
 - b. In paragraph (c)(1), in the first sentence, by adding the words “or in another treatment schedule approved in accordance with § 305.2” after the word “Manual”; and, in the second sentence, by adding the words “or approved in accordance with § 305.2” after the word “Manual”.
 - c. In paragraph (c)(3), in the first sentence, by adding the words “or in another approved treatment schedule” after the word “Manual”.

§ 305.6 [Amended]

- 6. Section 305.6 is amended as follows:
 - a. In paragraph (a) introductory text, by adding the words “or in another treatment schedule approved in accordance with § 305.2” after the word “Manual”.
 - b. In paragraph (c)(1), by adding the words “or in another approved treatment schedule” after the word “Manual”.
 - c. In paragraph (d)(14), by adding the words “or in accordance with another approved treatment schedule” after the word “Manual”.

- 7. Section 305.7 is amended as follows:
 - a. In the second sentence, by removing the word “the” before the word “fruits”.
 - b. By adding a new sentence at the end of the section to read as set forth below.

§ 305.7 Quick freeze treatment requirements.

* * * Requests to authorize quick freeze as a treatment for other fruits and vegetables may be made in accordance with § 305.2(c).

§ 305.8 [Amended]

- 8. In § 305.8, paragraph (a)(1) is amended by adding the words “or in another treatment schedule approved in accordance with § 305.2” after the word “Manual”.
- 9. Section 305.9 is amended as follows:
 - a. In paragraph (d)(1), by adding the words “or in another treatment schedule approved in accordance with § 305.2” after the word “Manual”.
 - b. In paragraph (i), by adding the words “or in another approved

treatment schedule” after the word “Manual”.

- c. In paragraph (j)(2), by adding the words “or by another approved treatment schedule” after the word “Manual”.
- d. In paragraph (n), by adding the words “or the plant pests for which another treatment schedule is approved in accordance with § 305.2” after the word “Manual”.
- e. By adding a new paragraph (o) to read as set forth below.

§ 305.9 Irradiation treatment requirements.

* * * * *

(o) *Substitution of irradiation for other treatments.* Treatment of fruits and vegetables that are from foreign localities, from Hawaii, Puerto Rico, and the U.S. Virgin Islands, or from domestic areas under quarantine with irradiation in accordance with this section may be substituted for other approved treatments if the target pests of the other approved treatments are approved for treatment with irradiation in the PPQ Treatment Manual or approved for treatment with irradiation in accordance with § 305.2.

* * * * *

Done in Washington, DC, this 23rd day of September 2011.

Kevin Shea,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011-25097 Filed 9-28-11; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Doc. No. AMS-FV-11-0077; FV-983-2 IR]

Pistachios Grown in California, Arizona, and New Mexico; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Administrative Committee for Pistachios (Committee) for the 2011-12 and subsequent production years from \$0.0007 to \$0.0005 per pound of assessed weight pistachios. The Committee locally administers the marketing order which regulates the handling of pistachios grown in California, Arizona, and New Mexico. Assessments upon pistachio handlers are used by the Committee to fund

reasonable and necessary expenses of the program. The production year begins September 1 and ends August 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective September 30, 2011. Comments received by November 28, 2011, 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, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Andrea Ricci, Marketing Specialist or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: Andrea.Ricci@ams.usda.gov or Kurt.Kimmel@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Laurel.May@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 983, both as amended (7 CFR part 983), regulating the handling of pistachios grown in California, Arizona, and New Mexico hereinafter referred to as the “order.” The order is 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 (USDA) is issuing this rule in