

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

**AMENDMENTS TO 312 IAC 18-3-14,) Administrative Cause
GYPSY MOTH QUARANTINE) Number 11-056E
STANDARDS)
) (LSA Document #12-514(F))**

**REPORT ON RULE PROCESSING, PUBLIC HEARING, WRITTEN
COMMENT, HEARING OFFICERS ANALYSES AND RECOMMENDATION**

1. RULE PROCESSING

For consideration is the proposed rule amendment to 312 IAC 18-3-24 adding LaPorte and St. Joseph Counties to the list of counties declared to be infested with gypsy moth (*Lymantria dispar*). As a consequence, the two counties would be added to the quarantine area and subject to quarantine standards. Amendments to format as well as technical amendments would be also made to update cross-references to the horticulture product statutes.

The Commission gave preliminary adoption to the rule amendments on May 17, 2011. As reported in the pertinent portions of the September 20 minutes:

Phillip Marshall also presented this item. He reminded the Commission that Indiana has had a gypsy moth quarantine for many years. The addition of LaPorte County and St. Joseph County to the quarantine area is warranted based on biological survey information. With the proposed amendments, Indiana’s quarantine would match the Federal quarantine. “If we do not adopt the two counties..., then the USDA could remove Federal listing for the other counties. That would mean the entire State of Indiana would be subject to the Federal quarantine; and, therefore, anybody moving product or regulated items from anywhere in Indiana, even though there is no gypsy moth in that area of the State, would be subject to quarantine and subject to violations of the Federal law”. He reported the last addition to the quarantine area was in 2000, and this modest expansion was primarily because of the success of the “Slow the Spread Program”. He then recommended preliminary adoption of the proposed amendments adding St. Joseph County and LaPorte County to the gypsy moth quarantine.

Brian Blackford moved to give preliminary adoption of amendments to 312 IAC 18-3-14, adding LaPorte County and St. Joseph County to the gypsy moth quarantine. Donald Ruch seconded the motion. Upon the voice vote, the motion carried.

The “Notice of Intent” to adopt a rule was posted to the INDIANA REGISTER at 20120905-IR-312120514NIA on September 5, 2012. The notice identified Megan Abraham, Fumigation and Compliance Inspector with the Division of Entomology and Plant Pathology, as the “small business regulatory coordinator” for purposes of IC 4-22-2-28.1.

As specified by Executive Order, proposed fiscal analyses of the rule proposal were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent, to the Office of Management and Budget on September 6, 2012. In a letter dated October 1, 2012, Adam M. Horst, Director, Office of Management and Budget, recommended that the proposed rule amendments be approved.

On October 4, 2012 the Division of Hearings submitted the rule proposal to the Legislative Services Agency, along with the “Statement Concerning Rules Affecting Small Business” (also known as the “Economic Impact Statement”). The Notice of Public Hearing was submitted to the Legislative Services Agency October 9, 2012. On October 24, 2012, the following were posted to the INDIANA REGISTER: the text of the proposed rule at 20121024-IR-312120514PRA; the notice of public hearing along with the justification statement (IC 4-22-2-24(d)(3)) at 20121024-IR-312120514PHA; and the Economic Impact Statement at 20121024-IR-312120514EIA. On October 9, 2012, following receipt of an “Authorization to Proceed” from the Legislative Services Agency, the Division of Hearings requested a Notice of Public Hearing to be published by the Indianapolis Newspapers in the Indianapolis *Daily Star*, a newspaper of general circulation in Marion County Indiana. Publication occurred on October 19, 2012. In addition, the Commission’s rulemaking docket (<http://www.in.gov/nrc/2377.htm>) was updated to include links to the published rule proposal, notice of the public hearing, and other information required by IC 4-22-2-22.5.

The Statement Concerning Rules Affecting Small Businesses (the “EIS”), as required under IC 4-22-2.1-5, and submitted by the Small Business Regulatory Coordinator, indicates

Economic Impact Statement
LSA Document #12-514

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses
Estimated Number of Small Businesses Subject to this Rule:

Several small businesses in Indiana will be impacted by the proposed rule. Types of small businesses subject to this rule include: Nurseries, Sawmills (Primary), Campgrounds, Firewood Producers/Retailers, Moving Companies, Recreational Vehicle (RV) Manufacturers and Retailers, Boat Retailers, Mobile Home Manufacturers and Retailers, Mobile Home Transporters, and Certified Pesticide Applicators. There are estimated to be 121 businesses in St. Joseph County and 77 businesses in LaPorte County that may be impacted by this rule. Table B-1 lists the number of businesses by county and business type impacted by the rule.

Table B-1: Impacted Small Businesses by County and Type of Business

County	Nursery	Sawmill	Campground	Moving Companies	RV Industry	Boat Sales	Mobile Home Industry	Mobile Home Transporters	Certified Pesticide Applicator	Firewood Dealer	Total
St. Joseph	23	1	3	40	6	5	13	4	14	12	121
LaPorte	17	1	2	30	3	3	0	4	14	3	77

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:

In order to move regulated material from these or other quarantined counties, the small business will need to apply for and have in place compliance agreements with the Department of Natural Resources Division of Entomology and Plant Pathology (DNR) or USDA Animal Plant Health Inspection Service Plant Protection and Quarantine (USDA APHIS PPQ) and may have to obtain certificates and limited permits of inspection. Though the compliance agreement will be created and processed by the DNR or USDA APHIS PPQ, the small business owner will need to initiate the process by applying for and meeting guidelines set by the compliance agreement. It is estimated that each business will incur a cost of 0.5 man days (or four hours) to complete the paperwork to initiate a compliance agreement. Assuming that the average employee earns fifteen dollars (\$15) per hour, the estimated annual cost to initiate a compliance agreement is sixty dollars (\$60) per year.

Nurseries will require a compliance agreement. They will need to send a copy of their compliance agreement with each shipment they send out of the quarantine counties. There is no anticipated cost for the nurseries to attach a copy of the compliance agreement as each nursery is inspected annually by the DNR for their nursery license per [IC 14-24-5](#) (Table B-2).

Sawmills will need to obtain a compliance agreement with USDA APHIS PPQ. This will require a two hour training session on Accurate Statements. This training will need to be completed every year. Each shipment leaving the quarantined area will need to have an Accurate Statement attached to the way bill or other shipping documents. A copy of the Accurate Statement must also be sent to the USDA APHIS PPQ for each shipment. To maintain and manage records, it is estimated that 0.5 (1/2) man hours per shipment is required. The estimated number of man days for each Sawmill to maintain all of the proper records within the business is 0.5 man days (or four hours) per month.

Assuming that the average employee earns fifteen dollars (\$15) per hour, the annual reporting, record keeping and training costs to each sawmill would be \$750 per year (Table B-2).

Certified pesticide applicators may obtain a compliance agreement with the USDA APHIS PPQ to perform inspections and prepare inspection documents for businesses and private citizens. The administrative costs associated with the compliance agreement are estimated to be the same as for sawmills. In addition, the expense for the certified pesticide applicator to obtain a compliance agreement will be offset by a means to provide services and generate business revenue (Table B-2).

Campgrounds (private and public) will not need compliance agreements. Regulated material brought in to the campgrounds will be the property of the campers and not the campground. It will be the responsibility of the campers to make sure they are not violating this quarantine. Thus, there is no anticipated record keeping or administrative cost for campgrounds (Table B-2).

Firewood Producers and Dealers, and Boat Retailers that deliver material outside the quarantined county will need a compliance agreement. The administrative costs associated with the compliance agreement are estimated to be the same as the Sawmills (Table B-2).

Mobile Home and RV Manufacturers, Retailers, and Transport companies also need to obtain a compliance agreement with USDA APHIS PPQ for Accurate Statements. However, they receive a rubber stamp with their compliance number for all of their paperwork. The estimated administrative costs are the same as for Sawmills (Table B-2).

Moving Companies will not need a compliance agreement. It is the responsibility of the customer to make sure their possessions are not harboring gypsy moth life stages. Thus, there is no anticipated record keeping or administrative cost for moving companies (Table B-2).

Table B-2: Estimated Average Annual Administrative Cost for Gypsy Moth Quarantine Compliance by Small Business Type.

Small Business Type: Assumptions for administrative Costs.	Annual Average Administrative Costs:
Nursery Industry: Compliance Agreement set up / year.	\$60
Sawmills: Compliance agreement set up / year + Maintenance/ management of records = 0.5 man days/month.	\$810
Campgrounds: No administrative costs.	\$0
Firewood Producer / Dealers: Compliance agreement set up / year + Maintenance/ management of records = 0.5 man days/month.	\$810
Moving Companies: No administrative costs.	\$0
RV Industry: Compliance agreement set up / year + Maintenance/ management of records = 0.5 man days/month	\$810
Mobile Home Industry: Compliance agreement set up / year + Maintenance/ management of records = 0.5 man days/month	\$810
Boat Retailers: Compliance agreement set up / year + Maintenance/ management of records = 0.5 man days/month	\$810
Certified Pesticide Applicator: Compliance agreement set up / year + Maintenance/ management of records = 0.5 man days/month	\$810

Estimated Total Annual Economic Impact on Small Businesses to Comply:

Nurseries in quarantined counties will only be impacted if they ship outside of the quarantined areas. If they plan to ship outside the area, they need to contact the DNR nursery inspector for their business. The inspector will conduct a Gypsy Moth egg mass survey of the nursery and surrounding area. If no egg

masses are found, they can ship with just the compliance agreement. The inspection does not incur additional cost to the small business and attaching a copy of the compliance agreement or phytosanitary certificate will not incur additional cost to the business. State phytosanitary certificates are provided to licensed nurseries at no charge. If egg masses are found in the nursery or the surrounding area, the entire nursery needs to be treated with an appropriate insecticide prior to shipment.

The average nursery in Indiana is 13 acres. The average cost of treatment per nursery is six hundred dollars (\$600) for chemicals and one man day for applying the chemical. Assuming the average worker earns fifteen dollars (\$15) per hour, the total labor cost would be one hundred twenty dollars (\$120). The total average treatment cost for the year would be seven hundred twenty dollars (\$720).

The economic impact on Sawmills will be minimal. In order to follow the compliance agreement, they need to inspect each load before it is shipped. If any life stage of Gypsy Moth is found, it needs to be removed from the shipment. This additional inspection should average 0.25 man days per shipment. Based on compliance agreements in current Gypsy moth quarantine areas, the average sawmill will send 10 shipments per month. Assuming the average worker earns fifteen dollars (\$15) per hour, the average annual cost for sawmills would be three thousand six hundred dollars (\$3,600).

Certified Pesticide Applicators will need a compliance agreement from the USDA APHIS PPQ if they chose to provide gypsy moth inspection services. They would be required to incur the cost of the annual training of two hours per employee trained and the cost of maintaining records required by the compliance agreement. This cost would be similar to the estimated cost for sawmills, at three thousand six hundred dollars (\$3,600) per year. This cost would also be offset by the revenue generated by providing inspections for citizens and other businesses and is estimated to be a positive impact to the business. Boat Retailers, the Mobile Home Industry and the RV Industry will also see a small economic impact from this rule. They will need a USDA APHIS PPQ compliance agreement and their annual fees will be similar to sawmills, at three thousand six hundred dollars (\$3,600) per year. They will need to inspect each shipment leaving the quarantined counties for any gypsy moth life stage. After the inspection, they will need to stamp all of the paperwork with their compliance agreement number. The stamp will be provided by the USDA.

Firewood Producers and Dealers will only need a compliance agreement if they are moving firewood outside the quarantined area. A compliance agreement would require inspection of the material before it is moved out of quarantined counties. The economic impact is estimated to be minimal.

Campgrounds and Moving companies are not anticipated to have an economic impact from a loss of business due to the quarantine. There is no administrative economic impact from this rule. It is the responsibility of the campers and customers to ensure they are not moving any life stage of gypsy moth.

The total potential economic impact to small businesses in the proposed quarantined area is \$281,040, Table B-3.

Table B-3: Estimated Economic Impact to All Small Businesses in the Proposed Quarantined Area

Types of Business	Total # Small Business with Potential Impact in Counties/Townships Proposed for Quarantine	Annual Cost per Small Business	Total
Nurseries	40	\$780	\$31,200
Sawmills	2	\$4,410	\$8,820
Campgrounds (1)	5	\$0	\$0
Moving Companies (1)	70	\$0	\$0
RV Industry	9	\$4,410	\$39,690
Boat Retailer	8	\$4,410	\$35,280

Mobile Home Industry	21	\$4,410	\$92,610
Certified Pesticide Applicator (2)	14	\$4,410	\$61,740
Firewood Dealer / Producers	15	\$780	\$11,700
Total	184		\$281,040

- (1) Responsibility of the citizen and/or camper to comply with the quarantine.
- (2) This expense would be offset by revenue generated for inspection services provided to customers (businesses and citizens).

Justification Statement of Requirement or Cost:

There are currently seven counties quarantined for gypsy moth in Indiana. In 2008, the value of shipments from the timber industry in Indiana was eight billion dollars. Gypsy moth will feed on 80% of trees in Indiana's forest. By imposing this rule, the artificial spread of this pest can be slowed. Counties that do not currently have a heavy infestation of gypsy moth can be saved from the potential damage to their forest resources. By managing the artificial spread to nonquarantined counties, the existing stands of trees will continue to be utilized and the timber industry will be allowed to continue to support this faction of the economy in Indiana.

Regulatory Flexibility Analysis of Alternative Methods:

- (A) Less stringent compliance or reporting requirements: The compliance agreements are developed for each business with the intent to fit the requirements to each business operation to have minimal operational and economic impact but at the same time meet the biological needs of the rule. Thus, compliance agreements are made as flexible as biologically possible.
- (B) Less stringent schedules or deadlines for compliance or reporting requirements: The schedules and deadlines for compliance and reporting are set at the least stringent schedule for small businesses and regulatory needs.
- (C) The consolidation or simplification of compliance or reporting requirements: The state quarantine area is also the boundary of the federal quarantine. Without implementing this rule the federal quarantine boundary would encompass the entire state. The adoption of the federal quarantine within the few counties that are generally infested by DNR prevents the impact of the federal quarantine to businesses in counties without gypsy moth. The USDA APHIS PPQ and DNR work together to administer the quarantine. USDA APHIS PPQ will take the lead for all compliance and reporting requirements. The DNR recognizes compliance agreements issued by USDA APHIS PPQ and does not duplicate this effort.
- (D) Establishment of performance standards: The quarantine establishes performance standards to meet biological needs to manage gypsy moth. The standards are adapted to each small business' operational aspects to minimize impact to business but at the same time meet biological needs.
- (E) Exemption of small businesses from part or all of the requirements or costs: Each business operation is analyzed for the need to comply. Through analysis, it may be determined that a particular small business does not move regulated material outside the quarantine area. In this situation, the business does not need to meet the requirements of the quarantine and thus has no impact. Analysis of the business is conducted upon request by DNR or USDA APHIS PPQ at no cost to the business.

On October 9, 2012, the Economic Impact Statement was forwarded to the Indiana Economic Development Corporation (the “IEDC”). The IEDC forwarded its comments on November 8, 2012.

2. PUBLIC HEARING

The public hearing was held as scheduled on October 29, 2012. Phil Marshall, State Entomologist, attended the public hearing. No member of the public attended. The comment period was extended to and closed October 31, 2012. No comments were received.

3. HEARING OFFICERS ANALYSES AND RECOMMENDATION REGARDING FINAL ADOPTION

Indiana and other States participate in national efforts to implement quarantines of pests or pathogens, including gypsy moths. Through the pest control compact, Indiana pledged “to each other party [S]tate... [to] employ its best efforts to eradicate, or control within the strictest practicable limits, all pests or pathogens.” IC 14-24-4.5-6.

By Federal law, the Administrator of the Animal and Plant Health Inspection Service (“APHIS”) of the U.S. Department of Agriculture is authorized to declare a State or portion of a State to be generally infested with gypsy moth for quarantine purposes. 7 CFR § 301.45-2 (January 1, 2012 Edition). 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.

7 CFR § 301.45-2(b)

The Administrator designated the following Indiana Counties as generally infested: Allen, Dekalb, Elkhart, LaGrange, LaPorte, Noble, Porter, St. Joseph, and Steuben. 7 CFR § 301.45.2. For consistency with the Federal quarantine and to employ Indiana’s best efforts to control the spread of gypsy moths, LaPorte County and St. Joseph County were added to the Indiana quarantine area through a temporary rule. The temporary rule became effective November 15, 2011. LSA Document #11-679(E), posted at 20111109-IR-312110679ERA. The proposed amendments to 312 IAC 18-3-14(e), if given final adoption, would make these two counties subject to quarantine standards through permanent rule. If application of the gypsy moth quarantine is not

continued by permanent rule for LaPorte County and St. Joseph County, the entirety of Indiana would become vulnerable to an APHIS-quarantine.

Throughout the proposed rule are formatting amendments to improve readability and comply with Publisher's format style. At 312 IAC 18-3-14(b)(1), cross references to statutes that govern control of horticulture products would also be updated.

To help employ Indiana's best efforts to control the spread of gypsy moths, for consistency with the existing quarantine established by Federal regulation, and to avoid an unnecessary statewide quarantine, the hearing officers recommend the amendments set forth in Exhibit A as published in the *Indiana Register*, be given final adoption:

Dated: December 14, 2012

Jennifer M. Kane
Hearing Officer

Stephen L. Lucas
Hearing Officer

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule
LSA Document #12-514(F)

DIGEST

Amends 312 IAC 18-3-14 to add LaPorte County and St. Joseph County to the listing of counties declared to be infested with and subject to the gypsy moth quarantine and to update cross-references to statutes governing horticulture products. Effective 30 days after filing with the Publisher.

312 IAC 18-3-14

SECTION 1. 312 IAC 18-3-14 IS AMENDED TO READ AS FOLLOWS:

312 IAC 18-3-14 Control (quarantine) of gypsy moth

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-8-2-202; IC 14-24; IC 15-16-4-37; IC 15-16-5

Sec. 14. (a) The gypsy moth (*Lymantria dispar*) is a pest or pathogen. This section governs standards for the control of gypsy moth in Indiana.

(b) In addition to the definitions ~~contained~~ in 312 IAC 1-1 and 312 IAC 18-1, the following definitions apply throughout this section:

(1) "Associated equipment" means any article associated with mobile homes and recreational vehicles and includes the following:

- (A) Awnings.
- (B) Tents.
- (C) Outdoor furniture.
- (D) Trailer blocks and hitches.
- (E) Trailer skirts.

(2) "Certificate" means a document issued by an inspector, a qualified certified applicator, or any other person operating under a compliance agreement to allow the movement of regulated articles to any destination.

(3) "Compliance agreement" means a written agreement between the department and a person engaged in:

- (A) growing;
- (B) selling;
- (C) processing;
- (D) handling; or
- (E) moving;

regulated articles.

(4) "Effectively diminishing" means the results of two (2) successive annual federal or state delimiting trapping surveys of an area conducted under section 2, "Gypsy Moth Survey", of the program 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:

- (A) less than ten (10); and

- (B) less than the average number of gypsy moths; caught per trap in the first survey.
- (5) "Eradication program" means a program that uses pesticide application, biological controls, or other methods with the goal of eliminating gypsy moth from an infested area.
- (6) "General infestation" means either of the following:
- (A) The detection of gypsy moth egg masses through visual inspection by an inspector during a ten (10) minute walk through the area, but it does not include the presence of gypsy moth egg masses that are found as a result of hitchhiking on transitory means of conveyance.
 - (B) The detection of gypsy moth through multiple catches of adult gypsy moths at multiple trapping locations in the area for two (2) or more consecutive years if the state entomologist determines the gypsy moth is established in the area.
- (7) "Generally infested area" means an area that is listed or designated as set forth under either of the following:
- (A) A state or portion of a state listed in 7 CFR 301.45-3 or temporarily designated as a generally infested area under 7 CFR 301.45-2(c).
 - (B) An Indiana county or portion of a county listed as generally infested in this rule.
- (8) "Gypsy moth" means any race or strain of the live insect, *Lymantria dispar*, in any life stage (egg, larva, pupa, or adult).
- (9) "Infested area" means any of the following:
- (A) An area in Indiana where the gypsy moth has been found and is known to have two (2) or more life stages present.
 - (B) An area for which it is determined by the state entomologist as necessary to regulate because of the proximity of the infested area to a generally infested area or another infested area.
 - (C) An area where a life stage of the Asian strain or another related strain of gypsy moth has been found.
- (10) "Inspector" means a person designated to assist in the implementation of this section and includes each of the following:
- (A) An authorized employee of the division as defined in 312 IAC 18-1-6.
 - (B) A federal employee authorized by the United States Department of Agriculture who is also authorized by the state entomologist.
 - (C) Another person trained and authorized by the state entomologist.
- (11) "Interstate" means from any state into or through any other state.
- (12) "Intrastate" means within Indiana.
- (13) "Limited permit" means a document issued by a federal inspector or an authorized state cooperator under 7 CFR 301.45 to allow the interstate movement of regulated articles to a specified destination.
- (14) "Mobile home" means a vehicle, other than a recreational vehicle, designed to serve, when parked, as a dwelling or place of business.
- (15) "Move" means any of the following:
- (A) Ship.
 - (B) Offer for shipment to a common carrier.
 - (C) Receive for transportation or transported by a common carrier.
 - (D) Carry, transport, move, or allow to be moved by a person by any means.
- "Movement" and "moved" shall be construed under this subdivision.
- (16) "Outdoor household articles" or "OHA" means articles associated with a household that are kept outside the home. The term includes the following:
- (A) Awnings.
 - (B) Benches.
 - (C) Birdhouses.
 - (D) Bird feeders or other feeders.

- (E) Boats.
- (F) Chairs.
- (G) Children's playhouses.
- (H) Children's playthings.
- (I) Doghouses.
- (J) Firewood.
- (K) Garden equipment.
- (L) Garden machinery.
- (M) Grills.
- (N) Hauling trailers.
- (O) Outdoor furniture.
- (P) Planters.
- (Q) Sandboxes.
- (R) Tables.
- (S) Utility sheds.
- (T) Tents.
- (U) Similar articles.

(17) "Person" has the meaning as set forth in IC 14-8-2-202(c).

(18) "Program manual" means the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Gypsy Moth Program Manual, 1994 edition.

(19) "Qualified certified applicator" or "QCA" means an individual who is not an inspector but:

(A) is certified in Indiana under ~~IC 15-3-3.6~~ **IC 15-16-5** under the portions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) found at 7 U.S.C. 136i(a) through 7 U.S.C. 136i(c) as a certified commercial applicator in a category allowing use of a "restricted use pesticide" as defined at ~~IC 15-3-3.5-2(27)~~; **IC 15-16-4-37**;

(B) has attended and completed a workshop approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine on the identification and treatment of gypsy moth life stages on outdoor household articles and mobile homes; and

(C) has entered into a compliance agreement under 7 CFR 301.45-6 for the purpose of inspecting, treating, and issuing certificates for the movement of outdoor household articles and mobile homes.

(20) "Recreational vehicle" means any highway vehicle designed to serve as a temporary place of dwelling or business. The term includes pickup truck campers, one-piece motor homes, travel trailers, and similar vehicles.

(21) "Regulated article" includes each of the following:

(A) Trees without roots, for example, Christmas trees, trees with roots, and shrubs with roots and persistent woody stems (unless greenhouse-grown throughout the year).

(B) Logs, pulpwood, and wood chips.

(C) Mobile homes and associated equipment.

(D) Any other products, articles, or means of conveyance if an inspector determines:

(i) a life stage of gypsy moth is in proximity to the articles; and

(ii) the articles present a high risk of artificial spread of gypsy moth infestation;

and the person in possession of the articles is so notified.

(c) The following items are regulated under this section:

(1) Gypsy moths.

(2) Trees and woody shrubs, including cut Christmas trees, and nursery stock, not grown in a greenhouse throughout the year.

- (3) Logs, slab wood, wood chips, and pulpwood unless moved to a mill operating under a compliance agreement.
- (4) Recreational vehicles, boats, trailers, tents, and associated equipment.
- (5) Mobile homes and associated equipment.
- (6) Outdoor household articles.
- (7) Any other products, articles, or means of conveyance if it is determined by an inspector that a life stage of the gypsy moth is in proximity to such articles, presenting a risk of artificial spread of the gypsy moth, and the person in possession of those articles is so notified.

(d) The designation of a generally infested area becomes effective immediately upon publication of a notice caused to be placed by the state entomologist in a newspaper of general circulation in the affected county. The notice shall include the process by which an affected person may take administrative review under 312 IAC 3-1.

(e) The Indiana counties declared to be generally infested areas and subject to quarantine under this rule are as follows:

- (1) Allen County.
- (2) DeKalb County.
- (3) Elkhart County.
- (4) LaGrange County.
- (5) LaPorte County.**
- ~~(6)~~ (6) Noble County.
- ~~(7)~~ (7) Porter County.
- (8) St. Joseph County.**
- ~~(9)~~ (9) Steuben County.

(f) The movement of regulated articles is governed by the following standards:

(1) No common carrier or other person shall move from a generally infested area any regulated article into or out of Indiana except under the conditions set forth in this subsection.

(2) A certificate must accompany the movement of regulated articles from a generally infested area into or through any area that is not a generally infested area. A copy of the certificate must be forwarded to the Indiana Department of Natural Resources, Division of Entomology and Plant Pathology, within seven (7) days of movement. Certificates may be issued by an inspector if the regulated articles:

(A) originated in a not generally infested area and are not exposed to infestation while within the generally infested area;

(B) are found by an inspector to be free of infestation;

(C) are treated under procedures approved by the state entomologist to destroy any infestation;

(D) are:

(i) grown;

(ii) produced;

(iii) manufactured;

(iv) stored; or

(v) handled;

so no infestation is transmitted; or

(E) are:

(i) handled;

(ii) used;

(iii) processed; or

(iv) treated;

at the destination so the movement will not spread the gypsy moth.

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(3) There are no restrictions imposed on the movement of regulated articles exclusively within a generally infested area.

(4) A certificate for the movement of regulated articles may be conditioned by an inspector to assure compliance with this rule and may be canceled for failure to comply with this rule or any term of the conditions.

(g) An inspector may, under IC 14-24-4-1, stop and inspect, without a warrant, any person or means of conveyance moving within Indiana upon probable cause to believe the person or means of conveyance is carrying infested articles. The inspector may by order seize, treat, destroy, or otherwise dispose of articles found to be moving in violation of this subsection. Items will be destroyed only if it is determined by the inspector that destruction is the only feasible method to avoid transportation of the life stages of gypsy moth. The order shall specify that an aggrieved person may request administrative review in the same manner as is provided under IC 14-24-5-7(d).

(h) The division may at any time treat campgrounds, roadside rests, and similar sites to eradicate or suppress a gypsy moth infestation.

(i) The following conditions govern the intrastate movement of regulated articles and household articles from generally infested areas:

(1) Except as provided in subdivision (3) or (4), a regulated article must not be moved from an infested area or a generally infested area within Indiana or moved outside Indiana unless a certificate or permit is issued and attached to the regulated article under 7 CFR 301.45-5, 7 CFR 301.45-8, and this section.

(2) An outdoor household article must not be moved within Indiana or moved outside Indiana from a generally infested area into or through an area that is not generally infested unless a certificate of OHA document is issued and attached to the outdoor household article under 7 CFR 301.45-5, 7 CFR 301.45-8, and this section.

(3) A regulated article originating outside a generally infested area may be moved interstate and intrastate directly through a generally infested area without a certificate or permit if the point of origin for the article is clearly indicated by shipping documents, its identity is maintained, and the article is safeguarded against infestation while in a 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. Examples of an appropriate covering include canvas, plastic, or closely woven cloth.

(4) A regulated article originating in a generally infested area may be moved interstate from a generally infested area without a certificate if one (1) of the following is satisfied:

(A) The article is moved by the United States Department of Agriculture or by authorized personnel of the department for experimental or scientific purposes under a permit issued by the United States Department of Agriculture for interstate movement or by the department for intrastate movement. An article or the container must have securely attached a tag or label bearing the permit number.

(B) 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, indicating the person inspected the article under the program manual ~~no~~ **not** more than five (5) days before movement and found no life stages of gypsy moth on the article.

(j) The following are requirements concerning the issuance and cancellation of certificates, limited permits, and outdoor household article documents:

(1) A certificate may be issued by an inspector for the movement of a regulated article or an outdoor household article if the inspector determines the article is eligible for certification for movement to a destination under any federal domestic plant quarantines applicable to the article and at least one (1) of the following conditions is met:

- (A) The article:
 - (i) originated in noninfested premises in a generally infested area; and
 - (ii) has not been exposed to the gypsy moth while within the generally infested area.
- (B) An inspector:
 - (i) inspects the article ~~no~~ **not** more than five (5) days before movement during the months of April through August (fourteen (14) days before movement from September through March); and
 - (ii) finds it to be free of gypsy moth.
- (C) The article is treated under the direction of an inspector to destroy the gypsy moth under the program manual.
- (D) An inspector determines the article is:
 - (i) grown;
 - (ii) produced;
 - (iii) manufactured;
 - (iv) stored; or
 - (v) handled;

so no infestation would be transmitted.
- (2) Limited permits may be issued by an inspector to allow interstate movement of a regulated article to specified destinations for handling, use, processing, or treatment under the program manual, if the inspector determines other federal domestic plant quarantines are met and either **the**:
 - (A) ~~the~~ movement will not result in the spread of the gypsy moth because life stages of the moths will be destroyed by the specific handling, use, processing, or treatment; or
 - (B) ~~the~~ gypsy moth will not survive in areas to which the regulated article is to be shipped.
- (3) A certificate and limited permit form may be issued by an inspector to a person for use for subsequent shipments of regulated articles if the person is operating under a compliance agreement. A person operating under a compliance agreement may execute and issue the certificate forms, or reproduction of the forms, for the interstate movement of regulated articles from the person's premises, if **the**:
 - (A) ~~the~~ person treats the articles as specified in the compliance agreement; and
 - (B) ~~the~~ regulated articles are eligible for certification for movement under any applicable federal domestic plant quarantines.

A person operating under a compliance agreement may execute and issue the limited permit forms, or reproductions of the forms, for the interstate movement of regulated articles to specified destinations if an inspector complies with subdivision (2).
- (4) A certificate may be issued by a qualified certified applicator for the interstate movement of an outdoor household article or mobile home if the qualified certified applicator determines **the article**:
 - (A) ~~the article~~ was inspected by the qualified certified applicator and found to be free of any life stage of the gypsy moth; or
 - (B) ~~the article~~ has been treated to destroy the gypsy moth under section 3 of the program manual by, or under the direction of, a qualified certified applicator.
- (5) An OHA document may be issued by the owner of an outdoor household article for the interstate movement of the article if the person:
 - (A) inspects the outdoor household article; and
 - (B) finds it to be free of the gypsy moth.
- (6) A certificate or permit issued or authorized under this subsection may be suspended by an inspector upon a determination that a condition of the certificate or permit has been violated. The reasons for the suspension:
 - (A) shall be set forth in a written notice under IC 14-24-5-7(d); and
 - (B) may include an order to destroy or control any article to prevent the spread of the gypsy moth.

(k) This subsection governs compliance agreements as follows:

(1) A person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of the articles. A compliance agreement shall specify safeguards necessary to prevent spread of the gypsy moth, including disinfestation practices and the appropriate application of chemical materials. Compliance agreement forms may be obtained from an inspector.

(2) A compliance agreement may be suspended in writing by an inspector if the inspector determines the agreement has been violated. The reasons for the suspension:

(A) shall be set forth in a written notice; and

(B) may include an order to destroy or control any article so as to prevent the spread of the gypsy moth.

The notice shall specify that an aggrieved person may request administrative review in the same manner as is provided under IC 14-24-5-7(d).

(l) The following governs the assembly, inspection, and certification of regulated articles and outdoor household articles where a person does not possess a certificate or limited permit issued under subsection (j):

(1) A person who wishes to apply for a certificate under this subsection must request an examination according to the following schedule:

(A) At least seven (7) days before the intended movement of the regulated article if the examination is to be performed by an inspector.

(B) At least fourteen (14) days before the intended movement of an outdoor household article if a certificate is to be issued under 7 CFR 301.45.

(C) As required by a qualified certified applicator if a certificate is to be issued for an outdoor household article or mobile home under 7 CFR 301.45-5d.

(2) The inspector or qualified certified applicator may specify any reasonable location or manner for the assembly of articles to be examined.

(m) The following governs the attachment of documentation to evidence a certificate or limited permit issued under this section:

(1) A certificate, limited permit, or OHA document required for the intrastate or interstate movement of a regulated article or outdoor household article must, during movement, be securely attached to **the**:

(A) ~~the~~ outside of the container containing the regulated article or outdoor household article;

(B) ~~the~~ article itself if not in a container; or

(C) ~~the~~ consignee's copy of the waybill or other shipping document.

(2) The requirements of subdivision (1) are 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:

(A) certificate;

(B) limited permit;

(C) OHA document; or

(D) shipping document;

to identify ~~such~~ **the** article.

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

(4) A 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 United States Department of Agriculture, Animal and Plant Health Inspection Service for Indiana.

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(5) An inspector may, under IC 14-24-4-1, stop and inspect a shipment to determine if the gypsy moth is present. A regulated article may be destroyed, treated, or otherwise disposed as directed by the department under IC 14-24-4-4.

(n) This section does not preclude the state entomologist from issuing a permit under this rule for the movement of live gypsy moths.

(o) A person who violates this section is subject to applicable federal penalties and to applicable state penalties under IC 14-24 and this article. (*Natural Resources Commission; 312 IAC 18-3-14; filed Apr 17, 1998, 2:45 p.m.: 21 IR 3336; filed Feb 9, 1999, 5:05 p.m.: 22 IR 1947; filed Mar 23, 2001, 2:47 p.m.: 24 IR 2399; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; readopted filed Sep 19, 2008, 10:23 a.m.: 20081008-IR-312080076RFA*)