

Report on Invasive Species

Prepared for the Vermont House Committee on Fish, Wildlife and Water Resources, the House and Senate Committees on Agriculture and the House and Senate Committees on Natural Resources and Energy

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Introduction

Act 46 of the 2009 adjourned session of the Vermont Legislature, an act relating to aquatic nuisance control included a provision relating to invasive species of all taxa, both terrestrial and aquatic. The Agency of Natural Resources was directed in Section 10c. to prepare an invasive species report in consultation with the Vermont Invasive Exotic Plant Committee. Act 46 states:

On or before January 15, 2010, the agency of natural resource, after consultation with the invasive and noxious plants working group administered by the agency of agriculture, food and markets and the department of forests parks and recreation¹, shall submit to the house and senate committees on natural resources and energy, the house and senate committees on agriculture and the house committee on fish, wildlife and water resources a report that shall include the following:

- (1) a summary of the economic and environmental impact of invasive species in the state;*
- (2) a summary of how invasive species are currently regulated in the state;*
- (3) a summary of how state agencies and affected state industry respond to invasive species outbreaks in the state;*
- (4) Recommendations for improving state regulation of and response to the threat and spread of invasive species; and*
- (5) Recommendations for providing and coordinating public education and outreach regarding invasive species.*

To accomplish this task, the Agency of Natural Resources formed a workgroup representing Agency staff with expertise relating to invasive species. In addition, the workgroup sought expertise from the Agency of Agriculture, Food and Markets and the Agency of Transportation, and consulted with the Vermont Invasive Exotic Plant Committee. This report was prepared in response to the legislative directive given above.

Overview

Invasive species are nonindigenous plants, animals, algae, fungi or pathogens – disease causing organisms like viruses and bacteria – that threaten the diversity and survival of native species or the ecological stability of infested ecosystems, or commercial, agricultural or recreational activities dependent on these natural resources. They are a form of biological pollution.

Why do invasive species do so well? They are opportunists not historically known to our region. Most come without the natural checks and balances – predators, pests, parasites and pathogens – that keep species' reproduction and survival well balanced in their native regions. Many have the advantage of thriving in a wide variety of conditions. Native species find it hard to compete with such invaders.

¹ The “invasive and noxious plants working group” is the Vermont Invasive Exotic Plant Committee, a group comprised of representatives from state and federal government, non-profit organizations, private industry, and concerned individuals. The Agency of Agriculture, Food and Markets and the Department of Forests, Parks and Recreation have representation on but do not administer this committee.

Invasive species have caused problems in Vermont in the past, are causing problems today and pose significant threats for the future. A wide variety of invasive species are problematic across many sectors of the state from our natural and managed landscapes to our cultivated and wild food supplies. Many more invasive species are approaching Vermont from neighboring states as their spread is facilitated by increased travel and trade. A number of cold-sensitive species will be able to persist here as our winters become less severe. As our landscape becomes increasingly fragmented these invasive species are able to spread further into our forests from concentrations along roads and other disturbed areas. Foresters have increased difficulty regenerating trees in certain parts of the state after a cut because of the presence of woody, invasive plants that take advantage of the increased sunlight and quickly spread. There are also a few invasive plants that can cause skin rashes when their sap is encountered by people. Agriculture, forestry, parks, tourism, a rich, diverse abundance of natural resources in the state, and even our health are at risk from invasive species.

At least 49 aquatic non-native species are known from Vermont. While many of these species have not become invasive, a significant number have – Eurasian watermilfoil, zebra mussels, water chestnut, purple loosestrife. Many of the state's waters, especially lakes, have a history of impacts related to these invasions. Presently 13 non-native, invasive terrestrial plants are on the State Quarantine List and an additional 25 are considered to be potentially invasive and are included on the Invasive Species Watch List for Vermont². Non-native insects and fungi have also impacted the forested areas in Vermont. The introductions of the organisms which cause Dutch elm disease and Chestnut blight have forever altered the composition of the ecosystem. Presently hemlock, ash, and many hardwood species including sugar maple are in imminent danger from a trio of non-native insects established within or just beyond Vermont's border. Defoliation from the non-native insect gypsy moth continues to cause local pockets of tree decline or death. With continued global trade there is an increased probability that more organisms will be accidentally moved to and become established in areas outside of their natural range. Many invasive species are already established in neighboring states/provinces and are poised to invade Vermont. These introductions will continue to threaten the environment in Vermont by potentially altering the structure and dynamics of our ecosystems.

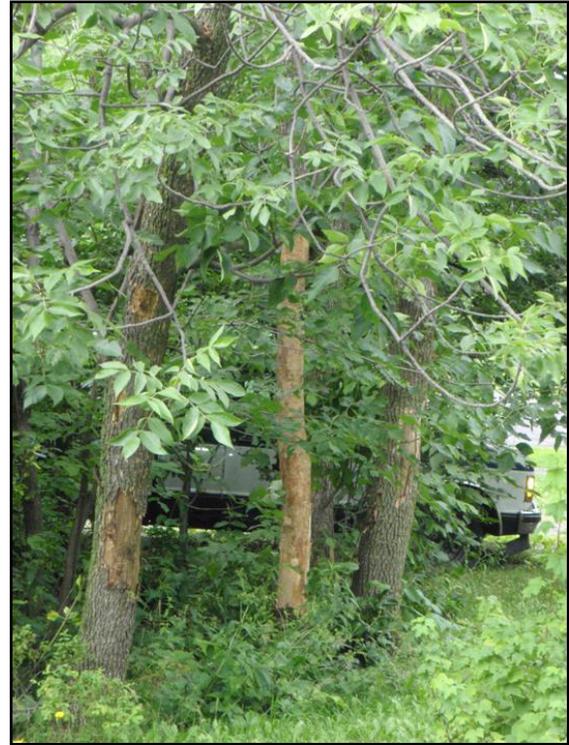


Figure 1. Many invasive species are poised to invade Vermont. The emerald ash borer is killing trees in Carignan, Quebec, just 30 miles away. (VTFPR)

² The Invasive Species Watch List for Vermont was developed by the Vermont Invasive Exotic Plant Committee, and is intended for public information and as a way to enlist volunteers to monitor potentially harmful plants in Vermont. The Watch List had no regulatory force.

Although numerous state agencies and organizations throughout the state are working collaboratively to mitigate the effects of invasive species, Vermont does not yet have a truly comprehensive state-wide effort to adequately address this serious issue.

For the purposes of this report, an **invasive species** is a species that is 1) **non-native (or alien) to the ecosystem under consideration** and 2) **whose introduction does or is likely to cause economic or environmental harm or harm to human health** (Executive Order 13112, signed in 1999)³. There are also certain native species that occur in Vermont which have similar characteristics to invasive species and they can have the same economic and environmental threats and impacts along with human health implications, as non-native invasives described in this report. The challenges to controlling these species can be similar to challenges in controlling non-native invasives.

Summary of Economic and Environmental Impacts of Invasive Species

Many invasive species have both economic and environmental impacts. To provide a complete listing and description of these would be exhaustive. Below are examples of specific organisms and their impacts and is not intended to be a complete list.

Economic Impacts

Recreational

- Japanese barberry can create an impenetrable thicket of thorns that limits or eliminates recreational use of the infested property.
- Hemlock, threatened by hemlock woolly adelgid, is the major species in many deer wintering areas, especially in central and southern Vermont. The potential decline or death of hemlock stands would affect the quality and quantity of deer wintering areas, possibly affecting the health of the State's deer population.
- Monotypic stands of aquatic invasive plants like water chestnut and Eurasian watermilfoil impede water-based recreational activities such as boating, fishing and swimming, and navigation.



Figure 2 . Water chestnut growth, south Lake Champlain (VTDEC)

³ Source: 2006. The Definitions Subcommittee of the Invasive Species Advisory Committee. Invasive species definition clarification and guidance white paper April 27, 2006. The National Invasive Species Council.

- Invertebrate invaders such as spiny and fish hook water fleas upset the delicate food web balance in lakes, ultimately translating into altered fish populations. Likewise, introduction of invasive exotic fish species such as round goby, Asian carp or snakehead dramatically alters populations of important game fish, threatening recreational fishing and related industries.
- The National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, conducted by the U.S. Fish & Wildlife Service, estimated the total fishing-related expenditures in the state by resident and non-resident anglers to be \$64 million in 2006 (the most recent year for which data is available). The introduction and spread of invasive fish species could significantly decrease the economic value of fishing in the state. The northern snakehead, for example, is a fierce predator and may directly prey upon and compete with native fish populations, reducing their numbers and impacting recreational fishing opportunities. Similarly, the alewife, recently found in Lake Champlain and now reproducing in large numbers, compete directly with rainbow smelt and may result in a decline in the recreational fishery for that species in the lake.
- The same survey estimated the total hunting-related expenditures and wildlife-watching expenditures in the state by resident and non-resident hunters and wildlife watchers to be \$190 million and \$123 million, respectively, for 2006.
- The invasive alewife is prone to massive fish kills due to their intolerance of fluctuating environmental conditions and cold water temperatures. These massive fish kills have the potential to foul Lake Champlain's shorelines and public beaches, creating a public health issue.



Figure 3. A fish kill of millions of alewives in the winter of 2008 resulted in fouled beaches and shorelines along the entire length of Lake Champlain. (NYSDEC, 2008)

Tourism

- Monocultures of invasive species degrade the scenic quality of Vermont's natural areas, cities and towns, and travel corridors. To this end, invasive species degrade the quality of visitor experiences in areas that would otherwise be aesthetically pleasing.
- Norway maple leaves do not turn color as early as most native species. They also lack the variety of color which our native sugar maple exhibits. Sugar maple leaves will turn yellow, orange and red, where Norway maple typically turns yellow late in the season. Wide establishment of Norway maple would eventually impact fall foliage tourism, as well as impacting the maple syrup industry.

Timber

- Where Japanese barberry is dominating the understory there will be limited regeneration and recruitment of the next generation of trees in that forest stand.

- In comparing sugar maple to Norway maple, Meiners (2005) found that sugar maple seeds experienced higher predation than Norway maple in field experiments. Higher predation of sugar maple would reduce the amount of seed that are available to germinate and grow into mature trees. This in turn would affect the amount of sugar maple available to be used as timber. Norway maple is a non-commercial wood species and is only utilized for firewood or biomass chips, therefore its value is very low as a timber species
- The hemlock woolly adelgid threatens hemlock. In 2005, hemlock was the 6th most important sawlog species by volume. The 2005 harvest of hemlock had a retail lumber value in excess of \$5 million.
- Emerald ash borer threatens over 100 million ash trees in Vermont. In Vermont, ash represents over 6.3 percent of the hardwood growing stock trees.

Property Values

- An hedonic analysis of the effects of variable-leaved watermilfoil in New Hampshire concluded that infestations significantly reduced lakefront property values compared with similar properties on uninfested lakes (Halstead et al., 2003, Environmental Management).
- The findings of another hedonic study – on the effects of lake water quality and aquatic plants on lakefront property prices in Vermont – indicated that that water quality and total aquatic macrophyte growth significantly influence lakefront property prices in Vermont. The study results showed that higher water clarity levels are associated with higher lakefront property prices while higher levels of aquatic macrophyte density is associated with lower lakefront property prices (Hsu, 2000).
- Hemlock woolly adelgid has been found to reduce property values not only on infested properties, but also in nearby properties in infested neighborhoods, by as much as 0.95 percent for each 1 percent reduction in hemlock cover (Holmes et al., 2005).
- Ash, threatened by emerald ash borer, has been commonly planted in many municipalities. For example, in Williston, ash trees account for 42 percent of the street trees. Loss of this species would greatly affect property values on streets highly planted with ash.

Other Values

- Sugar maple is a favored host of Asian longhorned beetle. The value of maple syrup produced in Vermont was \$2.8 million in 2008.

Cost of Control

- Eradication of a northern snakehead infestation could cost hundreds of thousands of dollars. A March 2009 northern snakehead eradication effort in the Big Piney Creek watershed in Arkansas (within the greater Mississippi River watershed) cost \$750,000. Since one treatment is unlikely to be sufficient, that cost will almost certainly be augmented in future years.
- Based upon Natural Resources Conservation Service (NRCS) figures it costs about \$500/acre to get good control of a moderate-heavy infestation of terrestrial invasive plants. This would include two applications by a commercial contractor. This practice requires long term monitoring and control as operation and maintenance. There is also the cost of surveying and identifying the plants and developing control plans. NRCS does not have good estimates of the staff time and costs associated with planning and implementing this practice but it is substantial.

- During the contract years of 2005, 2006 and 2007, the NRCS Wildlife Habitat Incentives Program (WHIP) obligated \$301,070 in contract dollars strictly to upland invasive plant practices on roughly 750 acres across the state. This is only the cost of actual on the ground control. Of this total, \$178,000 went toward projects where there was at least some if not mostly barberry as a target for control on the site. While it is difficult to have a solid breakdown of common vs. Japanese barberry in this total, the majority of the barberry control funds went toward Japanese barberry control in southern Vermont.
- In Worcester, Massachusetts, the program to eradicate Asian longhorned beetle has cost more than \$25 million. Over 25,000 trees have been removed.
- Since 1982, the total cost of non-chemical management of water chestnut in Lake Champlain and in a handful of other water bodies in Vermont now exceeds \$8.3 million. Water chestnut is now controlled in roughly 76 miles of Lake Champlain and five of 20 other infested waters. While significant progress has been made reducing this population, the continuation of annual management efforts is critical to ensure the recent gains are not lost, as occurred in the 1990's when funds were significantly reduced (see Figure 4).

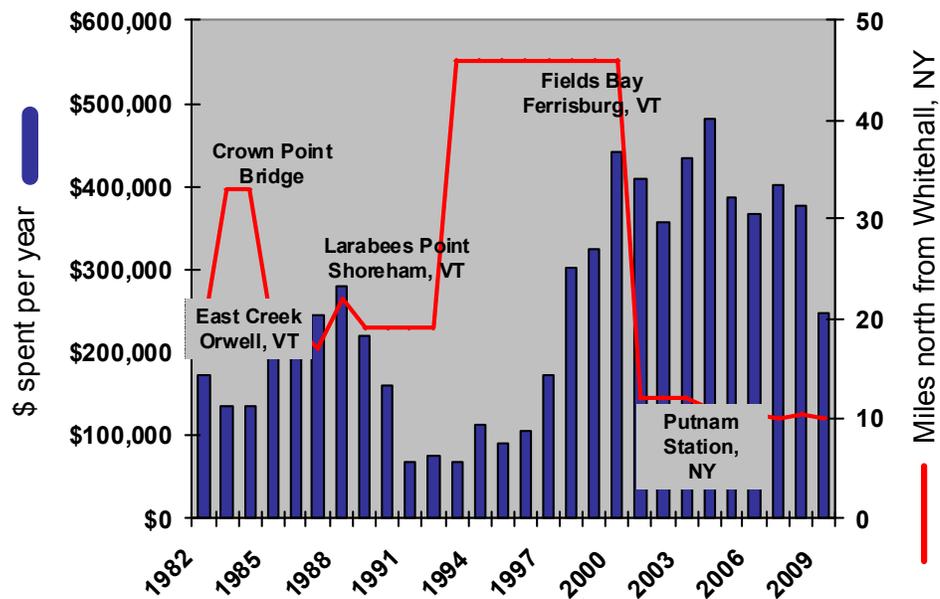


Figure 4. Annual funding vs. northernmost mechanical harvesting site of water chestnut in Lake Champlain, 1982-2009. (VTDEC)

- Estimated impact of invasive plants in the U.S. is estimated to be \$34 billion annually (Pimentel et al., 2000). This is divided as follows: \$26.4 billion on agricultural invasives, \$6 billion on pasture invasives, \$1.5 billion on turf and garden invasives, and \$0.1 billion on aquatic invasives.
- In 2008, only 27 percent of water bodies known to support Eurasian watermilfoil were under some level of management. Management costs on individual water bodies ranged from \$4,000 to \$130,000. Total project costs exceeded \$1 million.

Environmental Impacts

Loss of Biodiversity

- Insecticides used in managing invasive forest insects impact honeybees and other non-target invertebrates.
- Hemlock-lined streams support more than 65 species of aquatic insects compared to 35 species in streambanks dominated by hardwoods.-. A loss of hemlock would also impact a number of rare species dependant on hemlock forests and hemlock-dominated swamps. In Vermont, there are a number of endangered and rare species associated with this community type, among them the federally endangered barbed-bristle bulrush, the state threatened Virginia chain fern and the rare Massachusetts fern.
- Norway maple invasion is associated with a dramatic change in community composition and local loss of species diversity. Norway maple trees suppress most native species, including the regeneration of the natural canopy dominants, but facilitate their own regeneration in the understory (Reinhart et al., 2005).
- The federally and state endangered Jessup's milk vetch is being overrun by black swallowwort at all three of the known sites for the species. The Department of Fish and Wildlife and the U.S. Fish and Wildlife Service has been spending up to \$10,000 a year to attempt to control its spread. The infestation will never be eliminated so this will remain an ongoing effort.
- Common reed and purple loosestrife are both Class B noxious weeds that rapidly displace native vegetation and create monocultures in formerly healthy wetlands. These



Figure 5. A young forest in Bennington where Norway maples have replaced sugar maples and other native species. (VTFPR)



Figure 6. Dense monotypic Eurasian watermilfoil growth breaking the surface of Fairfield Pond (VITDEC, 2008).

monocultures significantly degrade habitat for wildlife in various types of wetlands through loss of species movement and breeding habitat (amphibians and fish primarily), and loss of food sources for wildlife (deer, moose, mink, and wetland dependent bird species). The entire food chain in small wetlands can become so disrupted by infestations of invasive species that they cease to function when nutrient shifts fail to support native flora and fauna.

- The introduction of zebra mussels in Lake Champlain has decimated native freshwater mussels. Losses due to zebra mussel fouling led Vermont in 1999 to list 5 freshwater mussel species as endangered and 1 species as threatened (Hallac and Marsden, 2001).
- Uncontrolled invasive aquatic plants like Eurasian watermilfoil can significantly alter the abundance and diversity of native aquatic plant species through competition and shading. Invasive aquatic plants are extremely adaptable and more tolerant of a variety of water quality and environmental conditions than native species.
- Evidence suggests that songbird decline is linked to the increase of non-native plants (Schmidt and Whelan, 1999). The study demonstrated that birds nesting in non-native shrubs, especially buckthorn and honeysuckle lose more eggs to predators than individuals nesting in native shrubs.
- Ash mortality is close to 100 percent in the center of areas infested by emerald ash borer. This mortality rate greatly concerns the Agency's Wetlands Office because infestations damage and destroy all types of ash--including black and green ash, which are wetland tree species. Thus, the emerald ash borer will have negative impacts to black ash-red maple seepage swamps, red and/or silver maple-green ash swamps, and similar types of wetland communities having inclusions of black and/or green ash.

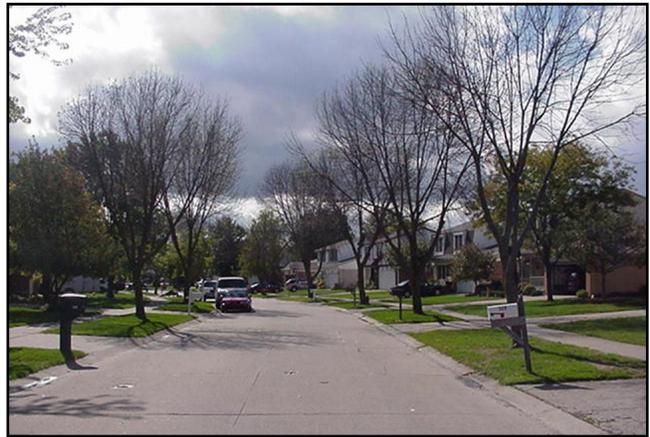


Figure 7. Ash mortality is close to 100% in areas infested by emerald ash borer. (MI Dept. of Agriculture)

Habitat Degradation

- In aquatic environments optimal habitat for fish community health, as well as for important game species (e.g., largemouth bass), is composed of a diverse assemblage of plant species (Valley and Bremigan 2002a; Valley et al. 2004; Schneider 2000; Weaver et al. cited in Schneider 2000). In contrast, dense stands of invasive aquatic plants often support a low diversity of aquatic plants (Nichols and Shaw, 1986; Madsen et al., 1991) and fewer macroinvertebrates and fish (Keast, 1984); may impair spawning for some fish species (Newroth, 1985); and lower dissolved oxygen levels (Dibble, 2009).
- Common and glossy buckthorn reduce the herbaceous layer where they are growing. As a result the moisture, temperature, humidity, and light near the ground are altered, diminishing habitat for species such as grasshoppers, mice, voles, rabbits, and snakes. Dense thickets of buckthorn also prevent blackberry, viburnum, winterberry, and dogwood from growing, reducing the diversity of food local birds need.
- Replacement of native plants with alien species was shown to reduce the amount of herbivorous insects that feed upon them (Tallamy, 2004). The authors explain that 96 percent of all terrestrial birds in North America rear their young on insects so this has a detrimental impact on native songbirds.

Water Quality Degradation

- Loss of hemlock from hemlock woolly adelgid reduces stream insect diversity and flow stability, and increases stream temperatures which in turn could have an impact on brook trout populations.
- The decomposition of dense stands of invasive aquatic plants like Eurasian watermilfoil at the end of a growing season can increase internal phosphorus and nitrogen loading (Newroth, 1985; Nichols and Shaw, 1986).

Negatively Impact Human Health

- Various authors have found from two times (Elias et al., 2006) to over seven times (Williams et al., 2008) more ticks in Japanese barberry infested areas compared with areas in natural vegetation. This presents an elevated risk of human exposure to the vector tick of Lyme disease.
- Both giant hogweed and wild parsnip can cause severe burns on the skin when contact is made with juice from the plant in the presence of sunlight.

Summary of How Invasive Species are Currently Regulated in Vermont

The following state and federal statutes, rules and regulations relate to invasive species. The full text of each can be found in Appendix 1 unless otherwise noted. An “*” denotes statutes that as of July 1, 2010, per Act 46 (2009 Legislative session) will be codified under one location, 10 V.S.A. Chapter 50.

State Regulations

Apiary inspection and honeybee pest control – Title 6, Chapter 172, § 3024 et seq.

Authorizes inspection of private apiaries by the secretary of Agriculture, and to order treatment or destruction of infected honeybee colonies, regulates movement of colonies intra and interstate. Also establishes minimum distances between colonies. (See Appendix 3.)

Aquatic Nuisance Control Permits – Title 10, Chapter 47 § 1263a*

Establishes a permit program for activities used to control nuisance aquatic plants, insects or other aquatic life including lamprey in waters of the state.

Aquatic Nuisance Control Program – Title 10, Chapter 37 § 921*

Authorizes the Department of Environmental Conservation to establish and maintain an aquatic nuisance (native and non-native) control program.

Aquatic Nuisance Control Sticker – Title 10, Chapter 37 § 924*

Authorizes the Department of Environmental Conservation to develop a voluntary aquatic nuisance control sticker.

Captive Cervidae Rule

Describes a process for importation, possession, and slaughter of captive cervids for agricultural purposes. There are requirements for marking, feeding, fencing, and disease testing among other things to be part of the necessary chronic wasting disease (CWD) Certified herd program.

Conditional Use Determination, Wetlands – Title 10, Chapter 37 § 6025 (d) (7), § 903, Act 31
Enables the Vermont Wetlands Office to prevent potential infestations and manage newly identified infestations of common reed and purple loosestrife through its Conditional Use Program. The Wetlands Office places a condition on all Wetland Conditional Use Permits requiring the permit holder to control invasive species within the wetland, and its buffer, on their property.

Control of contagious livestock diseases – Title 6, Chapter 102, § 1152 et seq.
Authorizes the secretary of Agriculture to develop and enforce the livestock disease program, including enforcement of quarantines and destruction of infected animals, and to designate of disease, including introduced or non-indigenous diseases and other pests of livestock. (See Appendix 3.)

Control measures – Title 10, Chapter 83 § 2662
Directs the Department of Forests, Parks and Recreation to determine whether and where forest pest control is needed.

Control of contagious livestock diseases – Title 6, Chapter 102, § 1152 et seq.
Authorizes the secretary of Agriculture to develop and enforce the livestock disease program, including enforcement of quarantines and destruction of infected animals, and to designate of disease, including introduced or non-indigenous diseases and other pests of livestock. (See Appendix 3.)

Dairy herd tracking – Title 6, Chapter 109
Authorizes the use of ear tags to track movement and for official disease control programs of cattle within Vermont's statewide dairy herd, provides penalties for unauthorized removal of tags. (See Appendix 3.)

Declaration of pests – Title 6, Chapter 81, § 913
Authorizes secretary of Agriculture to declare as a pest any form of plant or animal life or virus which is injurious to plants, men, domestic animals, articles, or substances. (See Appendix 3.)

Fees Collected; Special Fund – Title 23, Chapter 29 § 3319
Establishes the motorboat registration fund to ensure that the fees and penalties collected are utilized in the protection and maintenance of the state's water resources. 25percent of the fees and penalties collected go to the Department of Environmental Conservation for the purpose of aquatic nuisance (native and non-native) control.

Fish Importation – Title 10 Appendix, § 139
The importation of fish into Vermont has the potential to introduce invasive fish species and fish pathogens to state waters, thereby jeopardizing the health and biodiversity of native fish populations. This regulation, adopted in 2006, establishes a permit process for importing fish for the purposes of introduction to state waters. The regulation requires fish health inspections of all shipments of imported fish, including baitfish, prior to an importation permit being issued.

Fish Regulation – Title 10 Appendix, § 122. Section 10.1.1.
Section 10 of §122 was amended in 2006 to reduce the risk of fish species being spread from one state water body to another. Section 10.1.1 of the regulation prohibits a person having live fish in

their possession when leaving waters of the state. In addition to the potential introduction of non-native and invasive fish species, fish may harbor diseases that could threaten fish populations in new waters if infected fish were introduced.

Fish Propagation – Title 10 Appendix, § 117

Regulates private fish growers. Requires permits be applied for and issued for private fish growers that raise fish for sale to the public. Also requires private fish growers to conduct annual fish health inspections for a variety of fish pathogens and diseases, and gives the Commissioner of Fish & Wildlife authority to require the destruction of fish and decontamination of the facility if certain fish diseases are found.

Functions of secretary of agriculture, food and markets and commissioner of forests, parks and recreation, survey activities – Title 6, Chapter 84 § 1031, 1033

Gives the Agency of Agriculture, Food and Markets jurisdiction over agricultural plant pests and the Department of Forest, Parks and Recreation over forest pests. Directs the agencies to cooperate. Authorizes the secretary or commissioner to conduct detection, delineation, and abundance surveys, and to develop and implement control and suppression measures. (See Appendix 3.)

Grant-in-aid to Municipalities and Agencies of the State; Joint Municipal Participation – Title 10, Chapter 37 § 922, 923*

Establishes a grant program, overseen by the Department of Environmental Conservation to assist municipalities in the control of aquatic nuisances (native and non-native).

Importation and possession of animals for hunting – Title 10, § 4714

This rule would ban new captive hunt facilities from becoming established in Vermont so as to prevent the spread of chronic wasting disease (CWD).

Importation and possession of deer or elk from chronic wasting disease areas – Title 10, Appendix 1 § 17

Makes it illegal to import whole carcasses of such animals into Vermont.

Importation, Stocking Wild Animal – 10 V.S.A., Chapter 113 § 4709

Regulates the importation and possession of wild birds and animals

Infestation control; agreements with owners – Title 10, Chapter 83 § 2663; **Cost prorated; agreements** – Title 10, Chapter 83 § 2664

Authorize the Department of Forest, Parks and Recreation to apply control measures on any forestland, and allows the department to enter into agreements to share the cost of control measures.

Interstate Pest Control Compact -Title 6, Chapter 83, § 981

Authorizes Vermont to participate in an interstate insurance program to help fund any activities not undertaken as part of normal state operations to control crop and other plant pests. (See Appendix 3.)

Nursery inspection and regulation of nursery stock – Title 6, Chapter 206

Authorizes inspection of native and foreign nursery stock by the secretary of Agriculture, and for stop-sale, treatment, or seizure/destruction of infested or diseased nursery stock. Requires all

importing nurseries to obtain certification from originating nurseries for pest-free status of imported nursery stock. Authorizes rule making for nursery stock inspection and licensing of nursery dealers, growers, and installers. (See Appendix 3.)

Pest control administrative orders, penalties - Title 6, Chapter 84, § 1037 et seq.

Authorizes the secretary of agriculture to proceed with administrative orders and penalties for violations of rules promulgated under Chapter 84, and to provide compensation for destroyed materials as deemed appropriate. (See Appendix 3.)

Pest Survey, Permits – Title 6, Chapter 84 § 1035

Requires persons intending to import potential plant pests to obtain a permit from USDA and the State of Vermont prior to importation. (See Appendix 3.)

Pest Survey, Quarantines – Title 6, Chapter 84 § 1034

Authorizes the secretary of agriculture and commissioner of forests, parks and recreation to develop and promulgate rules restricting the movement, sale, and distribution of designated plant pests and regulated articles. (See Appendix 3.)

There are four rules extant under this statute:

Scleroderma Canker Quarantine, VTAAF and VTFPR Joint Quarantine Number 1

Describes the nature of the pest, the threat(s), infested and regulated areas within Vermont, inspection, certification, notification, and survey activities.

Hemlock Woolly Adelgid External Quarantine, VTAAF/VTFPR Joint Quarantine Number 2

Describes the nature of the pest, the threat(s), infested and regulated areas outside of Vermont, inspection, certification, notification processes required to bring hemlock material into Vermont (including nursery stock and timber products), compliance agreements for lumber movement into Vermont.



Figure 8. The Hemlock Woolly Adelgid External Quarantine describes requirements for bringing hemlock nursery stock and timber products into Vermont. (VTFPR)

Noxious Weeds AAFM Quarantine Rule Number 3

Defines two classes of invasive plants and outlines restrictions on their possession, sale, cultivation, movement, and distribution, and provides penalties for violations. Also outlines exemption criteria for certain activities (eradication, control, education, research) concerning the specified plants.

Pine Shoot Beetle Quarantine, VTAAF/VTFPR Joint Quarantine Number 4 Describes the nature of the pest, the threat(s), infested and regulated areas within Vermont, inspection, certification, notification, and survey activities. Although this State quarantine rule has not been rescinded, it has been superseded by the Federal Pine Shoot Beetle Quarantine Rule which places all of Vermont and much of northern US under a regional quarantine (7 CFR 301.50, et seq.), which the state rule paralleled until 2005.

Placing Fish in Waters – Title 10, Chapter 111 § 4605

Regulates public fish stocking activities through a permit process. Provides authority to the Commissioner of Fish & Wildlife to adopt the Prohibited Fish Species Rule.

Review of pest control programs – Title 6, Chapter 87 § 1102

Authorizes the secretary of Agriculture and the Vermont Pesticide Advisory Council to evaluate the effectiveness and impacts of pest control activities or programs, and recommend changes to activities or program and appropriate pesticide usage. (See Appendix 3.)

Rule Establishing A List for Prohibited, Restricted and Unrestricted Fish Species – Title 10, Chapter 111, § 4605

Placing fish in waters, (c) grants the commissioner of the Department of Fish and Wildlife authority to create a rule establishing a list of harmful fish species. The final adopted rule dated November 2009, establishes a list by which the importation and possession of fish are regulated. 1) Prohibited Fish Species: Species for which importation into or possession within Vermont is prohibited except through a commissioner's Prohibited Fish Species Permit. This includes species not native to the state that are known to pose a threat to Vermont's fish populations. 2) Restricted Fish Species: Includes native & certain naturalized species which do not require a Prohibited Fish Species Permit but may be regulated through other department permits. 3) Unrestricted Fish Species: Species commonly imported into the state for the aquarium trade that are considered to pose minimal or no risk to Vermont fish populations. No permit is required to import or possess these species. These species cannot be released into waters of the state or waters discharging to waters of the state. All fish species not included in these lists are also considered to be Prohibited Fish Species. Transgenic fish are prohibited.

Seed Inspection and Stop Sale – Title 6, Chapter 35 § 642, 643

Authorizes the secretary of Agriculture to perform inspections of seed offered for sale and provides for issuance of stop sale orders for those lots of seed not in compliance with statute or rule, including those lots containing noxious or invasive weed seeds. (See Appendix 3.)

Surveys and investigations – Title 10, Chapter 83 § 2661

Authorizes the Department of Forests, Parks and Recreation to survey, investigate and control forest pests.

Taking, possessing, transporting, use and selling of baitfish – Title 10 Appendix, Chapter 2 § 122

The Department of Fish and Wildlife implemented the first "baitfish regulation" in 2002 in recognition that the movement and use of baitfish between state waters was a potential source of introductions of undesirable and invasive fish species. The regulation established a "green list" of baitfish species approved for sale and use for angling throughout the state. In 2008, the regulation was revised in response to an invasive fish disease, Viral Hemorrhagic Septicemia (VHS) spreading

through the Great Lakes and inland waters of Great Lakes states. The amendment restricts the sale and use of wild-harvested baitfish to the same waters where harvested and prohibits their transportation away from those waters. It also imposes restrictions on the statewide sale of baitfish through Department permitted baitshops.

Zebra Mussel; Eurasian Watermilfoil; Water Chestnut; Quagga Mussel – Title 10, Chapter 47 V.S.A. § 1266* **Penalties** – Title 23, Chapter 29 § 3317

Makes the transport of zebra mussels (*Dreissena polymorpha*), Eurasian watermilfoil (*Myriophyllum spicatum*), quagga mussels (*Dreissena bugensis*), or water chestnuts (*Trapa natans*) to or from any Vermont surface water illegal. A person who violates this law shall be subject to a penalty of not more than \$1,000.00 for each violation.

Federal Regulations

Federal Rules implemented and enforced by the Agency of Agriculture, Food and Markets (AAFM), frequently through the Cooperative Agricultural Pest Survey (CAPS) Program (indicated by †)

Japanese Beetle Quarantine (7 CFR § 301.48), prohibits movement of Japanese beetle or infested materials from quarantined areas (includes entirety of Vermont), provides for inspections, certifications, and other activities relevant to Japanese beetles.

Gypsy Moth Quarantine (7 CFR § 301.45), prohibiting movement of gypsy moth or infested materials from within quarantined areas, including Vermont. AAFM provides support to USDA and citizens with implementing the restrictions on regulated articles leaving Vermont.

Sudden Oak Death (*Phytophthora ramorum*) Quarantine (7 CFR § 301.92), prohibits movement of regulated articles from within quarantined areas of CA, OR, and WA. AAFM aids USDA in trace-forward activities of suspected articles.

Asian Longhorned Beetle Quarantine† (7 CFR 301.51), prohibiting movement of regulated articles out of quarantined areas. The AAFM also helps with outreach and educational activities surrounding the movement of this pest and risks associated with its' spread.

Emerald Ash Borer Quarantine† (7 CFR 301.53), AAFM role similar to Asian longhorned beetle rule, with additional activity including statewide trapping program during 2008, 2009, and 2010 (anticipated).



Figure 9. Asian longhorned beetle is regulated by federal quarantine. In Worcester, MA, where Asian longhorned beetle was detected in 2008, over 25,000 trees have been removed.

Other USDA APHIS Rules and Programs:

Chronic Wasting Disease (CWD) Compliance with 2006 USDA APHIS rule by creating an annual chronic wasting disease surveillance program of hunter-harvested deer for detection of chronic wasting disease in Vermont.

Chrysanthemum White Rust Quarantine[‡] (7 CFR 319.37) AAFM aids USDA with trace forward activities and annual surveys in greenhouses, plant retailers, nurseries, and garden centers.

Light Brown Apple Moth[‡] (Federal Order DA-2009-46) prohibiting the movement of regulated articles from infested areas of CA and HI. Also conducted trapping/survey activities during summer 2008.

Southern Bacterial Wilt (Geranium wilt - *Ralstonia solanacearum*) Currently, APHIS requires certification of susceptible foreign nursery stock as free of *R. solanacearum* infection prior to entry to the U.S. Outbreaks of this disease have occurred in southern greenhouse facilities, and the AAFM has been involved in trace-forward activities to prevent its spread and establishment in Vermont.

The AAFM provides **export certification services** as a USDA cooperator, in order to facilitate interstate and international trade in Vermont agricultural and forest products, while preventing or limiting the spread of Vermont-established plant pests of national and/or international concern.

Summary of How State Agencies and Affected State Industry Respond to Invasive Species Outbreaks in the State

Efforts to address the growing problem of invasive species have been undertaken in Vermont by both state agencies and industry. The most critical of these efforts address preventing new invasive species from being introduced to and established in Vermont, not only to limit the future cost of managing invasive species but also to protect the integrity of Vermont's ecosystems.

Invasive species typically display an exponential rate of spread. Initially, invasive species co-exist with other species but as time progresses they begin to dominate the landscape. A study in New York documented a three-fold increase in the mean number of woody, exotic plants in 30 forests in the period from 1938 to 1999 (Hunter and Mattice, 2002). Programs aimed at preventing the spread or introduction of invasive species into Vermont are the best and least costly means of protection available. For example, in 2008, Eurasian watermilfoil control costs on individual water bodies ranged from \$4,000 to \$130,000. Comparatively in the same year, the cost of programs aimed at preventing the introduction of Eurasian watermilfoil or another aquatic invasive species into individual water bodies ranged from \$2,700 to \$52,000. Total costs for Eurasian watermilfoil control exceeded \$1 million; total project costs for programs aimed at preventing the introduction of an invasive species were approximately \$219,000.

Numerous species known to be extremely invasive in other regions of New England are a real threat to the Vermont landscape. The Invasive Plant Atlas of New England (IPANE) is one of a number of groups that track the spread of new invasive species in each state in New England; some of IPANE's data is presented in Table 1. Although IPANE data is out of date, it is the best information presently available that documents the spread of invasive plants in New England. Perhaps the greatest value of the data is as an early detection system alerting agencies in Vermont to the invasive plants that occur to our south in New England and that are likely to move into Vermont in the near future. A number of invasive species are documented to be present at four or more locations in Massachusetts, but are not yet known to occur in Vermont. Among these are the very invasive Japanese stilt grass, an annual grass that rapidly spreads into woodlands inhibiting tree regeneration; pale swallowwort, a vine that creates dense tangles that chokes out neighboring vegetation; and hydrilla, an aquatic that is "considered by many to be one of the most troublesome weeds in southern U.S." (Crow and Hellquist, 2000). Figure 10 depicts the locations where IPANE volunteers have collected data on the presence or absence of Oriental bittersweet in the map on the left. Dots indicate sites where Oriental bittersweet was present (red) or absent (orange/yellow). The map on the right shows the potential distribution (darker areas indicating an increased probability of presence) of Oriental bittersweet in New England according to IPANE's model (based on Ibanez et al. 2009). With additional resources, the IPANE database, or a Vermont only version, could be kept current with new information regularly added, especially on invasive species entering our border from the south.

Table 1. Some early detection species by state. Table modified from Invasive Plant Atlas of New England.

SPECIES	ME	NH	VT	MA	RI	CT
Shrubs						
Amur honeysuckle	0	0	0	+	0	+
Wineberry	0	0	0	+	+	+
Herbaceous Plants						
Narrowleaf bittercress	1	2	0	1	0	+
Marsh thistle	0	H	0	H	0	0
Pale swallow-wort	1	1	0	+	2	+
Slender snake-cotton	0	1	3	+	0	+
Yellow hornpoppy	0	0	0	+	+	H
Giant Hogweed	3	+	0	+	?	+
Ornamental jewelweed	+	0	?	+	0	H
Tall pepperweed	0	0	0	+	0	+
Mile-a-minute vine	0	0	0	0	1	2
Fig buttercup	1	1	0	+	1	+
Tansy ragwort	1	0	0	3	0	0
Graminoid Plants (grasses)						
Japanese stilt grass	0	0	0	3	0	+
Aquatic Plants						
Fanwort	0	+	0	+	+	+
Brazilian water-weed	0	2	0	+	1	2
Hydrilla	1	0	0	1	0	3
Variable-leaved watermilfoil	+	+	0	+	+	+

0 = No known occurrences

1 = 1 occurrence

2 = 2 occurrences

3 = 3 occurrences

+ = 4 or more occurrences

H = historic occurrences about which the current status is unclear and the reports are more than 25 years old

? = number of occurrences unclear

Oriental Bittersweet

Celastrus orbiculatus

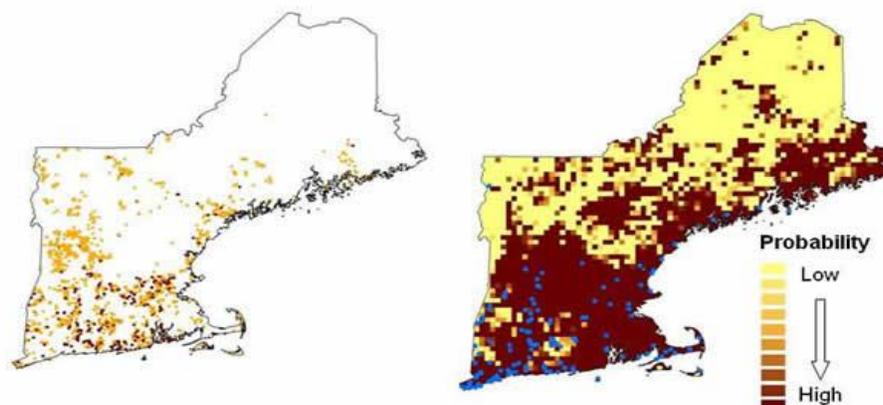


Figure 10. The present and predicted distribution of Oriental bittersweet, a highly invasive species that is known to be spreading northward (based on Ibanez et al. 2009).

The ability to quickly initiate a response to contain and control a new invasive species introduction, or one recently established, before it can spread is critical to reduce future management costs and protect the integrity of Vermont's aquatic ecosystems. However, an integral part of rapid response is early detection. To a large extent, once invasive species become established, eradication is difficult, if not impossible. Feasible alternatives to control invasive species populations after establishment may be limited and are often expensive.

For these reasons, preventing the introduction of invasive species through regulations, public outreach and education, and other measures should be of the utmost importance when addressing the invasive species issue.

Examples of state agencies and industry responses to invasive species outbreaks follow.

Agency of Agriculture Food and Markets (AAFM)

Inspection and Certification Programs, Confiscation and Destruction of Affected Materials

From 2006 to 2009, the Hemlock Nursery Stock Inspection Program has inspected and certified 9623 trees, and 71 trees have been destroyed due to non-compliance. Additionally, in 2004, 413 nursery trees were destroyed after hemlock wooly adelgid was detected on material originating from North Carolina and Pennsylvania.

Stop Sale/Cease and Desist Orders

Including noxious weeds stop sales issued for prohibited species for sale (purple loosestrife, goutweed, various honeysuckle species, stop sales of hemlock imported from unauthorized locations in Connecticut, Oregon, Pennsylvania, and New York).

Fines and Administrative Orders

Fines for continued sale of live Christmas trees with elongate scale-infestation post-“cease and desist order” issuance and plants placed on stop sale.

Detection, Delineation, and Destruction Activities

Including sirex wood wasp survey, light brown apple moth and emerald ash borer quarantine trapping and delineation efforts, chrysanthemum white rust and sudden oak death trace forward activities (coordinated with Animal Plant Health Inspection Service).

Education and Outreach Activities

- Regular events with professional organizations (Vermont Nursery and Landscape Association, Greenscapes, Vermont-New Hampshire Christmas Tree Association), public events (Farm Show, Flower Show, Champlain Valley Fair, other county fairs), schools, garden clubs, meetings with private citizens, etc.
- Specific programs directed at public awareness and training (e.g. 2009 Asian longhorned beetle outreach program)

Ongoing Survey and Trapping Activities

- Sirex wood wasp survey activities (CAPS 2007 – 2009, ongoing); trapping and educational activities surrounding limiting spread and introduction of sirex wood wasp into uninfested

Vermont counties. In 2007, a single adult sirex wasp was found in Lamoille County. Currently considered a quarantine pest, but is unregulated by USDA APHIS.

- Emerald Ash Borer Trapping Program (CAPS 2008 – 2009, ongoing); placement and maintenance of purple 'sticky traps' in State parks and public areas during emerald ash borer emergence and flight periods. Trap numbers were 150 in 2009, and will be 500 (estimated) in 2010
- Sudden Oak Death trace forwards, sampling and testing (AAFPM and USDA, ongoing); sampling and analysis of confirmed host material (rhododendron, lilac, etc.) originating from west coast locations throughout Vermont nurseries and retailer outlets (2003-2005), inspection and sampling of privately held materials as part of USDA trace forward activities (ongoing, as required).
- Light Brown Apple Moth trapping (CAPS, 2008); survey trapping for significant pest of agricultural and ornamental plants known to be established in California.
- Hot Zone Monitoring (CAPS, ongoing since 2004); trapping and identification of potential pest introductions in solid wood packing material and associated items in warehouses, receiving areas, and retail outlets across Vermont.

Agency of Natural Resources

Spread Prevention Activities

The Agency has taken a number of steps to reduce the risk of invasive species spread from the development and distribution of informational materials and paid advertising to procedural and infrastructure changes, and the adoption of regulations. The examples that follow represent a sampling of Agency efforts to address invasive species spread prevention in Vermont.

- *Public Access Area Greeter Programs*: These programs are one of the most effective methods for preventing the spread of invasive aquatic species to recreational waters. They educate boaters, anglers and other recreationists about invasive species, and encourage adoption of spread prevention methods. Courtesy boat and equipment inspections are offered and recreationists with contaminated boats/equipment are assisted with decontamination or urged to wash boats/equipment away from the water before launching. The Department of Environmental Conservation provides annual training for greeter programs. Greeter program “saves” are documented annually. For example, the Lake Seymour greeter program conducted 1,462 voluntary inspections and documented 23 saves in 2009 alone. Of the 23 saves, 22 were Eurasian watermilfoil and one was water chestnut. Funding from the Aquatic Nuisance Control Grant-in-Aid Program, a grant program administered by the Department, supported 12 locally-run greeter programs in 2008.
- *Habitattitude™*: Habitattitude™ is a non-regulatory volunteer effort intended to prevent aquatic invasive species invasions. It is a public-private partnership of which both the Department of Environmental Conservation and the Department of Fish and Wildlife are partners.
- *Aquarium Retailer Inspections*: The Department of Fish and Wildlife inspects and provides outreach to aquarium shops for regulation compliance related to fish. In cooperation with the Agency of Agriculture, Food and Markets, the Department of Environmental Conservation staff annually inspects all state retailers selling live aquatic plants in the state for prohibited species (Noxious Weeds Quarantine Rule Number 3) since 2002 with the exception of one year. Although prohibited aquatic plants have been found for sale during past inspections, 2009 inspections of 13 retailers found no violations. Search of internet

retailers is also conducted. In 2009, a total of 41 internet sites were found selling aquatic plants. Of these sites, 16 were selling one or more species that were listed as prohibited but not listed as illegal to sell in Vermont.

- *HACCP Planning:* Department of Environmental Conservation Lakes and Ponds Section staff developed Hazard Analysis and Critical Control Points or HACCP Plans for minimizing the risk of spreading aquatic invasive species during Section monitoring activities. Checklists were developed as reminders of spread prevention procedures and for documentation, and implemented beginning in 2009.
- *Zip Code Surveys:* The Department of Forest, Parks and Recreation has contacted all residents of the Asian longhorned beetle infested areas in Massachusetts who own property in Vermont, and is conducting follow-up surveys of selected properties. Zip codes of past campground visitors are used to target surveys of State Parks and other camping areas.
- *Northeast Forest Pest Survey and Outreach Program:* In 2009, the Department of Forest, Parks and Recreation and Agency of Agriculture, Food and Markets collaborated with sister agencies in eight states and federal partners to improve early detection of invasive forest pests through an intensive public awareness program. Outreach in Vermont included 14 Train the Trainer sessions, and over 30 other events. Intensive surveys were done in Brattleboro and Burlington.
- *Don't Move Firewood Efforts:* The Department of Forest, Parks and Recreation initiated a firewood policy in state parks in the summer of 2009 to limit the potential import of exotic insects from infested areas. In addition, the Department has worked with private campground owners and provided outreach at Welcome Centers and other public venues to stop the spread of wood-borne invasives such as Asian longhorned beetle and emerald ash borer.
- *Wetlands Best Management Practices:* The Wetlands Office Bioassessment Program is taking measures to prevent the spread of invasive species through the development and use of best management practices which include soaking waders at the lab, brushing off clothing upon leaving bioassessment sites, and cleaning water testing equipment.
- *Fish Culture Activities:* The Department of Fish and Wildlife implemented procedural and infrastructure changes in State fish hatcheries to reduce the potential of spreading invasive species and diseases during fish culture including: increased disease testing of all Department cultured fish lots prior to stocking; changes in fish production and stocking procedures and patterns, to reduce the distribution of cultured fish between watersheds; and increased biosecurity and improved disinfection systems at Department fish culture stations to disinfect hatchery water sources, safeguard the facility from fish disease contamination, and reduce or eliminate the potential to distribute invasive species (e.g., zebra mussels) during fish stocking.



Figure 11. Firewood collected from State Parks visitors is inspected for wood-borne invasives. (VTFPR)



Figure 12. Invasive species informational signs posted at public water body accesses.

- *Public Water Body Access Signs:* The Department of Environmental Conservation posts metal signs at public water body accesses to warn boaters and other recreationalists of the presence of invasive aquatic plants and animals and encourage spread prevention measures.
- *Fisheries Management Activities:* As with fish culture, the Department of Fish and Wildlife has made changes to reduce the potential for invasive species to be spread during routine fisheries management activities. These include; increased disease testing of wild fish populations throughout the state; the elimination of some “fish lift” operations on certain rivers to prevent the movement of potentially infected migratory fish above barriers to uninfected areas; and adopting pertinent regulations on fish importation, movement, use and possession.

- *Fisheries Management/Fish Culture Disinfection:* Regular disinfection of mobile equipment (boats, trailers, stocking trucks, nets, waders) between waters using chemical disinfectant spray and rinsing has been implemented. However, the Department will soon replace this system with hot water/steam high pressure wash disinfection units for use at all five Department fish culture stations and five fisheries management district offices.
- *Baitshops, and Baitfish Wholesalers and Importers Inspections:* The Department of Fish and Wildlife conducts inspections with both biologists and wardens for regulation compliance. Violations discovered during inspections have resulted in permit revocations and other enforcement actions.

Early Detection/ Rapid Response Activities

- A volunteer “watch” program was created by the Department of Environmental Conservation in 1987 to utilize volunteers to search for populations of Eurasian watermilfoil. This program has since grown to include other invasive aquatic plants and aquatic animals under the auspices of the “Volunteer Invasive Patroller” Program or VIPs. From 2007-2009 the Division held more than 20 workshops around the state, training approximately 300 volunteers to recognize and survey for aquatic invasive species. Certified VIPs documented 44 surveys on 14 water bodies during 2009.
- In May 2009, The Lake Champlain Basin Aquatic Invasive Species Rapid Response Action Plan was approved by the Lake Champlain Basin Program Steering Committee (The Agency has representation on the Steering Committee.). In essence, the plan is an administrative blueprint for appropriate state, federal and provincial agencies to work in partnership to



Figure 13. Volunteers learn to survey for aquatic invasive species at a Vermont Invasive Patrollers training workshop (VTDEC).

facilitate rapid control or eradication of invasive species in Lake Champlain Basin waters. The next step is for each jurisdiction – Vermont, New York and Quebec - to appoint members to a new Rapid Response Task Force to help implement and oversee rapid response actions. The Plan will only be effective if each jurisdiction commits resources, funding and staff, to ensure effective implementation. The Department of Environmental Conservation’s response to the confirmation of variable-leaved watermilfoil in Halls Lake in 2008 - the first occurrence of this invasive aquatic species known from Vermont - mirrored the steps outlined in this model.

- The Department of Environmental Conservation has responded to new aquatic invasive species populations (primarily plants) since 1987 when staff (one person) was dedicated to the Department's Aquatic Nuisance Species Program, a program established by the Legislature in 1978. However the extent of response actions undertaken is limited by available resources – there are no established funding sources to support rapid response actions – and the availability of local involvement - existing Department aquatic invasive species staff (three) cannot sustain actions state-wide over the long-term without local partners. Despite these limitations and an increase in the number of aquatic invasive species confirmed in Vermont annually, rapid response successes have been documented. For example, Eurasian watermilfoil has now been controlled in three Vermont water bodies, lakes Ninevah in Mt. Holly, Rescue in Ludlow and Sunset in Benson. These successes are a result of early detection, town and lake association involvement, a quickly initiated response, and sustained annual follow-up actions.
- The Department of Forest, Parks and Recreation with the Agency of Agriculture, Food and Markets has created an Invasive Forest Pest Action Plan (Appendix 2). It identifies state and federal agency roles and prioritizes actions, covers statutory authorities, lists potential stakeholders and funding sources, outlines an incident command structure, and provides a framework for documenting pest-specific information. This is a working document to be updated as necessary. Pest-specific supplements for emerald ash borer and hemlock woolly adelgid provide detailed information for responding to these insects. A pest-specific supplement for Asian longhorned beetle is in preparation.
- The Department of Forest, Parks and Recreation conducts a wide range of activities aimed at detecting or reducing the likelihood of responding to introductions of invasive exotic forest pests that have been introduced and reducing damage from invasive pests that have been established. Currently, a three-state management program is focused on hemlock woolly adelgid, including biological control, chemical suppression, reducing impact through silviculture, and an active volunteer survey effort. An information sheet “Overview of



Figure 14. The Invasive Forest Pest Action Plan identifies roles and prioritizes actions to allow rapid response to invasions, like this hemlock woolly adelgid eradication effort. (VTFPR)

Quarantine Requirements for Moving Hemlock Wood Products from Vermont to Sites Within the Region” was created to clarify some of the quarantine requirements surrounding the hemlock woolly adelgid quarantine.

Education and Outreach Initiatives

Agency staff routinely conducts public education and outreach campaigns that include invasive species messages. Examples include the development of educational materials aimed at both broad and specific audiences, public service announcements, paid advertisements, press releases, presentations, workshops and training sessions, and the design and implementation of online resources.

Control Efforts

- In 2007 the Department of Environmental Conservation put together its last Purple Loosestrife Biocontrol Program Annual Report. The report functioned as a tool which assessed damages to natural areas, and measured the effectiveness of all methods used for purple loosestrife control, the costs associated with each method, and the risks that each method posed to native plant species. As well, the report kept up-to-date information on volunteers, collaboration efforts, publications, and education for volunteers who were a keystone to the biocontrol program’s success. Unfortunately, as of 2008, funding was no longer available to support this program.
- The Department of Environmental Conservation’s Wetlands Office has taken a proactive approach to managing potential infestations of common reed and purple loosestrife through its Conditional Use Program. Conditions on all Wetland Conditional Use Permits now require the permit holder to control invasive species within the wetland and its buffer on their property.
- The Departments of Fish and Wildlife and Forest, Parks and Recreation cooperate with the Natural Resource Conservation Service (NRCS) on programs to assist landowners in controlling invasive plant species. Most invasive plant control projects cost-shared by NRCS are with the Wildlife Habitat Incentives Program (WHIP) to improve wildlife habitat in natural areas. NRCS has also had a few Environmental Quality Incentives Program (EQIP) contracts that included invasive control. Most projects involve multiple invasive species. The primary species found on most projects are honeysuckle, buckthorn, barberry, multiflora rose and bittersweet.
- The Department of Environmental Conservation manages water chestnut in all 22 infested waters including Lake Champlain in cooperation with a number of partners.
- Technical assistance to lakeshore residents, municipalities and others to help them design and implement water body-specific, long-range aquatic invasive species control projects is provided by the Department of Environmental Conservation. Matching funds to support a portion of these efforts are available thru the Aquatic Nuisance Control Grant-in-Aid Program.

Monitoring Efforts

- Following the discovery of the alewife in Lake Champlain in 2004, the Department of Fish and Wildlife began monitoring the population increase of the species and the potential impacts to native fish species such as rainbow smelt through annual fish surveys on the lake.
- The Department of Forest, Parks and Recreation conducts annual aerial surveys to evaluate pest impact, participates in a multi-state effort to preserve the genes of butternut affected by

butternut canker and works with the Department of Fish and Wildlife to develop management strategies in bear habitat compromised by beech bark disease.

- The Department of Environmental Conservation conducts aquatic invasive species population surveys of established populations to monitor expanding or declining populations and searches for new introductions on numerous water bodies annually.

Agency of Transportation (VTTrans)

VTTrans has the following policies in place to control the spread of invasive species:

- Memorandum of Understanding with Green Mountain National Forest to jointly determine best methods for controlling the spread of wild chervil along roadsides
- Section 651 of Army Corps of Engineer permits has construction specifications stating that grubbing material shall not contain any invasive plant material found on the Agency of Agriculture, Food and Markets Noxious Weeds Quarantine Number 3
- Memorandum of Understandings with the Upper White River and Champlain Valley Cooperative Weed Management Areas
- Best Management Practices for controlling invasive species along roadways (under development)
- Voluntary compliance with Executive Order 13112 signed in 1999 to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause.

Industry

The following list provides examples of affected state industry response to invasive species in Vermont.

- *General early detection and awareness:* Vermont Nursery and Landscape Association, Society of American Foresters, Central Vermont Public Service, Vermont Woodlands Association, Orvis, and many others.
- *Assistance in publicizing the Don't Move Firewood message:* Vermont Campground Association, Northern Woodlands, individual campground owners.
- *Assistance in organizing public input regarding proposed federal quarantine regulations:* Northeastern Lumber Manufacturers' Assn and individual sawmill owners.
- *Assistance in publicizing and distributing the voluntary aquatic nuisance control sticker:* Northern Forest Canoe Trail.
- *Use of "safe alternatives" promotion:* Vermont Nursery Landscape Association – GreenWorks.

Consultation with the Vermont Invasive Exotic Plant Committee

The Vermont Invasive Exotic Plant Committee (VIEPC) is comprised of representatives from state and federal government, non-profit organizations, private industry, and concerned individuals. The Committee meets semi-annually to assemble and disseminate information about invasive non-native plants and was originally convened in 1996 by staff within the Department of Environmental Conservation to provide guidance to the Agency of Agriculture, Food and Markets on the development of Pest Risk Assessments in relation to the Noxious Weeds Quarantine Rule Number 3. In addition, the Committee has developed fact sheets on all plant species currently listed as prohibited under the Rule (25); established a "watch" list of non-native plants that have the potential

to become invasive in Vermont; created a website; and convened a statewide stakeholder meeting in April 2009 in an attempt to bring together as many Vermont invasive species stakeholders as possible to discuss invasive species. Staff from all three Departments of the Agency of Natural Resources actively participates in this group.

Act 46 requires that the Agency of Natural Resources consult with the VIEPC on this report. Members of the Agency's workgroup formed to address this all taxa report requirement, consulted with VIEPC on November 4 and 24, 2009. VIEPC provided the following:

State and federal agencies, conservation and professional organizations are providing education and technical assistance related to invasive species in Vermont. However, VIEPC recognizes that in order to prevent new and manage existing infestations, more needs to be done. In particular, there is currently no coordinated state-wide effort underway to address invasive species outreach and management. The VIEPC encourages the state of Vermont to develop an office of invasive species. This office would coordinate invasive species management with other entities in Vermont and adjacent states; be a central repository for invasive species information; and respond to public requests for information and assistance. VIEPC encourages the state of Vermont to create a Vermont Invasive Species Task Force. These entities would then collaborate with stakeholders to:

- Secure private and federal funding to support activities
- Develop early detection rapid response plans
- Develop an efficient process for disseminating information and providing technical assistance to private and public land managers
- Oversee the addition of species to the quarantine rule
- Oversee the development and support of an invasive species database
- Oversee the development and support citizen science monitoring programs
- Oversee the coordination of activities between federal and state agencies, non-profit conservation organizations, and private and public land managers
- Development of a Voluntary Code of Conduct for Vermont horticultural professionals

Although three employees of the Agency of Natural Resources as well as one Agency of Agriculture Food and Markets and one Agency of Transportation representative serve on or actively participate on VIEPC, any consultation or recommendation of VIEPC does not necessarily represent the positions of these Agencies.

Recommendations for Improving State Regulation of and Response to the Threat and Spread of Invasive Species; and for Providing and Coordinating Public Education and Outreach Regarding Invasive Species

The following recommendations are offered (not necessarily in order of priority):

- **Develop a permanent leadership structure to coordinate invasive species efforts in Vermont.** A permanent task force or council should be established to address invasive species in the state. The group should include state agencies and authorities whose missions

relate to invasive species. The group should have the ability to establish ad hoc committees comprised of representatives from both the public and private sectors.

- **Prepare and implement a comprehensive Vermont invasive species management plan.** Vermont should have a comprehensive plan for invasive species management that addresses all taxa of invasive species. At a minimum, such a plan should establish interagency responsibilities; identify stakeholders; establish a coordination framework; address spread prevention, early detection and rapid response; provide a structure for scientific review; identify opportunities for control; assess research needs; identify regulatory gaps, including support for enforcing regulations; describe effective education and outreach mechanisms; identify areas for volunteer effort coordination; identify funding needs and mechanisms.
- **Allocate appropriate resources to support Vermont invasive species efforts.** Adequate funding and dedicated staff positions are needed to support invasive species management activities, including the development and implementation of a management plan mentioned above. Vermont should explore options to allocate and sustain funding needs over the long-term.
- **Influence federal actions to support invasive species prevention, early detection and control.** The state of Vermont should work with its Congressional Delegation, the National Governors Association, state and federal agencies, and other bodies to influence federal actions. The federal government provides critical support via funding, research and regulation.
- **Coordinate regulatory processes with bordering jurisdictions.** Vermont is within 50 miles of six states and 2 Canadian provinces, but none of these borders are respected by invasive species. Vermont should capitalize on existing relationships with neighboring states and provinces to cooperate on slowing the spread of invasive species, increase dialogue that will improve timely response, and coordinate regulations to maximize compliance.
- **Clarify environmental review process.** Formalize state policy and practices on invasive species so that projects undergoing state review may not utilize species on the Invasive Species Watch List for Vermont.
- **Establish a comprehensive education and outreach effort.** Invasive species education and outreach efforts should be coordinated and broadened to include all taxa of species. Efforts should be less fragmented between state agencies and departments. The main focus of invasive species messages should be spread prevention, and early detection/rapid response.
- **Develop best management practices for the control of invasive species** to insure the highest level of success for managed areas, prevent the spread of invasive species being managed, and eliminate new introductions of invasive species at disturbed sites.

- **Encourage nonregulatory approaches to prevention.** Vermont should encourage stakeholder industries voluntary codes of conduct and other nonregulatory approaches to preventing the spread of invasive species. Such codes are designed to curb invasive species use and distribution thru self-governance and self-regulation by the groups concerned. Industries and the general public should be encouraged to adopt these codes. The state should explore ways to officially recognize and provide other incentives for such efforts. In addition, Vermont should expand the state’s Buy Local program, and otherwise encourage the use of local goods, to prevent spread on products that are known to carry invasive species.

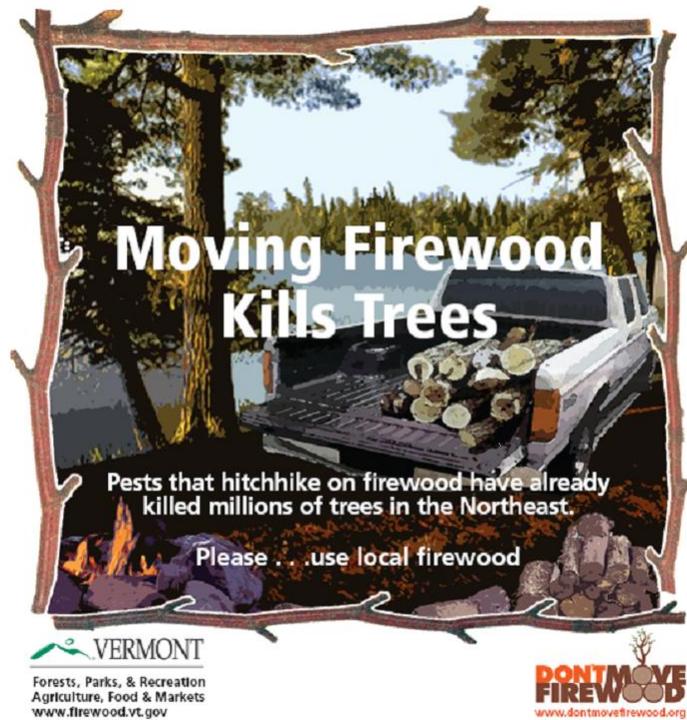


Figure 15. Vermont should encourage the use of local goods. Long-distance movement of firewood can spread invasive species like Asian longhorned beetle and emerald ash borer.

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Appendix 1 - Full Text of Invasive Species Regulations

State Regulations

Aquatic Nuisance Control Permits – Title 10, Chapter 47 § 1263a

(a) No person may use pesticides, chemicals other than pesticides, biological controls, bottom barriers, structural controls or powered mechanical devices in waters of the state to control nuisance aquatic vegetation, insects or other aquatic life including lamprey unless that person has been issued a permit by the secretary.

(b) In this section:

(1) "Biological controls" mean multi-cellular organisms.

(2) "Pesticide" means any substance, produced, distributed or used for preventing, destroying, or repelling nuisance aquatic vegetation, insects or other aquatic life including lamprey. Pesticide includes unicellular organisms or extracts from unicellular organisms and does not include biological controls.

(c) Notwithstanding other requirements of this chapter to the contrary, the secretary may issue permits under this section.

(d) Persons desiring a permit under this section shall make application to the secretary on a form prescribed by the secretary.

(e) The secretary shall issue a permit for the use of pesticides in waters of the state for the control of nuisance aquatic vegetation, insects or other aquatic life including lamprey, when the applicant demonstrates and the secretary finds:

(1) there is no reasonable nonchemical alternative available;

(2) there is acceptable risk to the nontarget environment;

(3) there is negligible risk to public health;

(4) a long-range management plan has been developed which incorporates a schedule of pesticide minimization; and

(5) there is a public benefit to be achieved from the application of a pesticide or, in the case of a pond located entirely on a landowner's property, no undue adverse effect upon the public good.

(f) A landowner applying to use a pesticide on a pond located entirely on the landowner's property is exempt from the requirement of subdivision (e)(4) of this section.

(g) The secretary shall issue a permit for the control of aquatic nuisances by biological controls, bottom barriers, structural controls, powered mechanical devices, or chemicals other than pesticides when the secretary finds:

(1) there is acceptable risk to the nontarget environment;

(2) there is negligible risk to public health; and

(3) there is either benefit to or no undue adverse effect upon the public good.

(h) The use of copper compounds, as an algaecide, in waters with a surface area of one acre or less, located entirely on a person's property and with an outlet where the flow can be controlled for at least three days is exempt from the permit requirements of this section.

(i) The secretary shall adopt procedures under 3 V.S.A. chapter 25 which will provide an opportunity for public review and comment on permit applications. The procedures shall classify permit applications by degree of environmental risk involved and establish appropriate opportunities for public notice and comment for each class.

(j) An aquatic nuisance control permit issued under this section shall:

(1) specify in writing the secretary's findings under subsection (e) or (g) of this section;

(2) specify the location, manner, nature and frequency of the permitted activity;

- (3) contain additional conditions, requirements, and restrictions as the secretary deems necessary to preserve and protect the quality of the receiving waters, to protect the public health and to minimize the impact on the nontarget environment. Such conditions may include but are not limited to requirements concerning recording, reporting and monitoring;
- (4) be valid for the period of time specified in the permit, not to exceed five years for chemical control, and not to exceed ten years for nonchemical control.
- (k) An aquatic nuisance control permit issued under this chapter may be renewed from time to time upon application to the secretary. The process of permit renewal will be consistent with the requirements of this section.
- (l) An applicant for a permit under this section shall pay an application fee as required by 3 V.S.A. § 2822. The agency of natural resources shall be exempt from this fee requirement.
- (m) No permit shall be required under this section for mosquito control activities that are regulated by the agency of agriculture, food and markets, provided that:
 - (1) Prior to authorizing the use of larvicides or pupacides in waters of the state, the secretary of the agency of agriculture, food and markets shall designate acceptable control products and methods for their use, and issue permits pursuant to 6 V.S.A. § 1083(5); and
 - (2) On an annual basis, the secretary of agriculture, food and markets shall notify the secretary of the location of all authorized mosquito control applications to the waters of the state that took place during the reporting year, and the type and quantity of larvicide and pupacide used at each location.
- (n) The secretary may issue general permits for the use of nonchemical aquatic nuisance control activities, provided that the secretary makes the findings required in subsection (g) of this section. A general permit issued under this subsection is not required to specify the exact location or the frequency of the permitted activity. (Added 1989, No. 88, § 2; amended 2001, No. 61, § 51, eff. June 16, 2001; 2003, No. 42, § 2, eff. May 27, 2003; 2009, No. 46, § 4.)

Aquatic Nuisance Control Program – Title 10, Chapter 37 § 921

- (a) The department of environmental conservation shall establish and maintain an aquatic nuisance control program.
- (b) The aquatic nuisance control program shall perform the following services:
 - (1) receive and respond to aquatic nuisance complaints;
 - (2) work with municipalities, local interest organizations, and private individuals and agencies of the state to develop long-range programs regarding aquatic nuisance controls;
 - (3) work with federal, state and local governments to obtain funding for aquatic nuisance control programs;
 - (4) [Repealed.]
 - (5) administer a grant-in-aid program under section 922 of this title;
 - (6) place a sign at least 2' by 2' in size which states that the water is infected with an aquatic nuisance and that a person transporting the nuisance in violation of section 1266 of this title may be subject to a penalty of up to \$1,000.00 pursuant to 23 V.S.A. § 3317, so that the sign is easily visible from a ramp used to launch vessels at any fish and wildlife access area on a body of water infected with an aquatic nuisance;
 - (7) provide the commissioner of fish and wildlife and the commissioner of motor vehicles with written educational information about aquatic nuisances, which can be included in an envelope containing a boat registration and in a fish and wildlife publication pertaining to fishing and boating.
- (c) For the purposes of an aquatic nuisance control program, "aquatic nuisance" means undesirable or excessive substances or populations that interfere with the recreational potential of a body of water. Aquatic nuisances include, but are not limited to, rooted aquatic vegetation, algal populations and sediment deposits.

(d) [Repealed.] (Added 1977, No. 230 (Adj. Sess.), § 1; amended 1981, No. 222 (Adj. Sess.), § 12; 1983, No. 173 (Adj. Sess.), § 2; 1987, No. 76, § 18; 1989, No. 88, § 1; 2003, No. 121 (Adj. Sess.), § 67, eff. June 8, 2004; 2009, No. 46, § 4.)

Aquatic Nuisance Control Sticker – Title 10, Chapter 37 § 924

(a) The department of environmental conservation may develop an aquatic nuisance control sticker for voluntary mounting on motorboats, personal watercraft, paddlecraft, or other vehicles or areas of display. The department, as part of any program developed under this section, shall select a graphic design or designs for the sticker that will enhance the public awareness of the state's interest in controlling aquatic nuisance species.

(b) The commissioner of environmental conservation shall have the authority to sell and distribute the stickers. The charge for an individual aquatic nuisance control sticker sold by any person shall be \$10.00. The department is authorized to sell stickers at a cost of \$9.00 per sticker if sold for resale. The department of environmental conservation shall use monies collected under this section and any gifts, grants, or contributions received by the department for the purpose of aquatic nuisance control to implement the programs authorized by this section and sections 921, 922, and 923 of this title.

(c) The aquatic nuisance control special fund is established in the state treasury pursuant to subchapter 5 of chapter 7 of Title 32. The fund shall be administered by the department of environmental conservation to implement programs authorized by this section and sections 921, 922, and 923 of this title. The fund shall consist of gifts, donations, fees collected by the department for aquatic nuisance stickers, and appropriations by the general assembly. (Added 2005, No. 72, § 25; amended 2009, No. 46, § 4.)

Captive Cervidae Rule

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SECTION I SOURCES OF INFORMATION AND ASSISTANCE

Information and assistance in understanding these rules may be obtained by writing the Office of the State Veterinarian, Agency of Agriculture, Food, and Markets, 116 State Street, Drawer 20, Montpelier, VT 05620-2901; by telephoning the office at 802-8282421, Monday through Friday, 7:45 am to 4:30 pm.; by fax: 802-828-5983; or by email (animal.health@agr.state.vt.us).

SECTION II DEFINITIONS

- 1 "Agency" means the Vermont Agency of Agriculture, Food, and Markets.
- 2 "Antlers in velvet" means antlers in the growing stage that are covered with viable skin and are sensitive to touch.
- 3 "Captive" means cervids that are privately or publicly maintained or held for economic or other purposes within a perimeter fence or confined space.
- 4 "Cervid", "Cervidae" and "deer" means any member of the cervidae family, excluding white-tailed deer and moose (6 VSA, Chapter 102, §1151).
- 5 "Chronic wasting disease" ("CWD") means a transmissible spongiform encephalopathy (TSE) of cervids.
- 6 "Clinical CWD suspect cervids" means an animal that is displaying clinical signs consistent with chronic wasting disease (i.e., neurological signs and emaciation).
- 7 "Commingling" means cervids that have direct contact with each other or have less than thirty (30) feet of physical separation or that share management equipment and/or pasture. Cervids are considered to have commingled if they have had such contact within the last five years.
- 8 "CWD certified herd" means a herd that has successfully completed five years of participation in the CWD Certified Herd Program.
- 9 "CWD Certified Herd Program" means a program of surveillance, monitoring, testing and related actions designed to provide a chronic wasting disease status to captive susceptible cervid herds.
- 10 "CWD exposed cervid" means a cervid that is, or has been part of a CWD positive herd within five years.
- 11 "CWD exposed herd" means a herd in which a CWD positive or exposed cervid has resided within five years prior to the diagnosis of CWD in said cervid.
12. "CWD herd plan" means a written herd management agreement developed by the herd owner, State veterinarians, and others, and that has been approved by the respective Federal, State, and Tribal officials. A herd plan sets out the steps to be taken to eradicate CWD in a CWD positive, exposed, or suspect herd.
- 12 "CWD herd status" means the level of participation achieved in the CWD Certified Herd Program. The herd status reflects the number of years of successful participation in the CWD Certified Herd Program without evidence of the disease or reflects specific evidence with the disease (such as CWD positive, exposed or suspect herd).
- 13 "CWD infected zone" means a defined geographic area, irrespective of state boundaries, in which CWD is present, whether in wild or captive cervids. These zones will be established by State and USDA/APHIS officials, using established scientific and epidemiologic evidence.
- 14 "CWD monitored herd" means a program of surveillance, monitoring, testing and related actions designed to identify CWD infection in special purpose CWD susceptible cervid herds.
- 15 "CWD negative cervid" means a cervid that has had an official CWD test conducted by a laboratory certified by USDA/APHIS that resulted in a "not detected" or negative classification.
- 16 "CWD positive cervid" means a cervid that has had a diagnosis of CWD confirmed by means of an official CWD test conducted by a laboratory certified by USDA/APHIS.

- 17 "CWD positive herd" means a herd in which a CWD positive cervid resided at the time it was diagnosed and which has not been depopulated or released from quarantine.
- 18 "CWD premises plan" means the section of a herd plan which outlines the actions to be taken with regard to possible environmental contamination of the premise due to a CWD positive or exposed herd.
- 19 "CWD susceptible cervid" means any captive cervid of the family Cervidae, or any other family or genera when published, scientific evidence shows susceptibility. Fallow deer (*Cervus dama*) are excluded until susceptibility evidence is discovered.
- 20 "CWD suspect cervid" means a cervid for which inconclusive laboratory evidence suggests a diagnosis of CWD.
- 21 "CWD suspect herd" means a herd in which one or more CWD suspect cervids are present.
- 22 "Enrollment date" means the day, month and year in which the State officially enrolls an owner's herd in the CWD certification program.
- 23 "Escape-proof" means so constructed that the cervidae will remain confined under all circumstances, except when natural catastrophe or other incidents occur over which the owner or the owner's agent has no control.
- 24 "Herd" means one or more cervids that are under common ownership or supervision and are grouped on one or more parts of any single premises (lot, farm or ranch), and all cervids under common ownership or supervision on two or more premises which are geographically separated but on which cervids have been commingled or had direct or indirect contact with one another.
- 25 "Herd inventory" means an official list of all of the cervids belonging to a herd, including verification of the official or approved cervid identifications.
- 26 "NAIS" means national animal identification system. This is a national program outlining standard operating procedures in animal identification.
- 27 "Official identification" means a form of identification approved by the Agency.
- 28 "Official test" means a diagnostic CWD test approved by USDA/APHIS.
- 29 "Owner" means an individual, partnership, company, corporation or other legal entity that has legal title to an animal or herd of animals.
- 30 "Premises" means the ground, area, buildings, water sources and equipment commonly shared by a herd of animals.
- 31 "Prohibited feed" means the feeding of ruminant protein to ruminants as regulated by the Food and Drug Administration (FDA) in 21 CFR, Part 589. Deer are ruminants.
- 32 "Quarantine" means an order issued by a State or Federal official prohibiting the movement of animals to and from a designated premise.
- 33 "RFID" means radio frequency identification as approved by the Agency in accordance with technology standards set forth in NAIS.
- 34 "Special purpose herd" means a captive herd managed and maintained in such a manner that no live cervid is removed, or allowed to be removed, from the designated premises.
- 35 "State animal health official" means the official of a state or country responsible for livestock and poultry disease control and eradication programs.
- 36 "Status date" means the day, month and year on which the respective State official approves a change in the status of a herd in regard to CWD.
- 37 "Suitable facilities" means facilities specially built to confine cervidae and to enable disease testing procedures to be performed on cervidae in a safe and humane manner.
- 38 "Test eligible cervid" means a CWD susceptible cervid that is greater than 16 months of age. As knowledge gaps are bridged with CWD scientific discovery, the age requirement for testing may change.

39 "USDA/APHIS" means the United States Department of Agriculture Animal and Plant Health Inspection Service.

SECTION III GENERAL INFORMATION

1 Applicability. The requirements of this Part apply to all captive cervid operations.

2 Mandatory reporting. Any person having knowledge of a suspected or confirmed case of reportable contagious disease in captive cervids shall report the event to the Agency immediately.

3. Movement of captive cervids. No person shall import, move, or hold captive cervids into or within Vermont except in compliance with the requirements of this part. A valid certificate of veterinary inspection shall accompany all cervids imported into Vermont, with the exception of those moving directly to slaughter. In addition, no person shall import or move captive cervids into the State, or within the State, for any purpose, including slaughter and transit through Vermont, unless a permit authorizing such movement has been obtained from the Agency prior to such movement. An application for a permit may be obtained by calling the Agency during normal business hours. A permit shall identify the source and destination of the shipment, the number of animals involved, and the official individual identification of each cervid in the shipment, and shall accompany the cervids imported or moved into or within the State. Except for cervids moving directly to slaughter, permits shall be issued only for captive cervids that meet the Vermont animal importation health requirements for captive cervids (Rule 98-74).

Nothing in these rules shall restrict the respective authority of the Secretary of Agriculture, Food and Markets or the Commissioner of Fish and Wildlife to prohibit the importation of cervids into Vermont under 6 VSA §1152 (c) and §1461 (a), or 10 VSA §§ 4132, 4709 (a), 4714 (a), respectively.

4 Enforcement. Violations of the provisions of this Part are subject to the enforcement actions authorized by the Agency (6 VSA, chapter 102, §1163 and §1164).

5 Fencing, Facility, and Transportation. All captive cervid operations shall have proper fencing and restraining facilities as defined in Section X of these rules.

This includes chutes, gates and corrals to capture and restrain cervids for diagnostic testing and inventory purposes, where appropriate. Capture and restraint of captive cervids shall be the responsibility of the owner. All captive cervid operations and all cervid slaughter facilities shall provide appropriate refrigeration and storage facilities to contain and preserve CWD samples obtained from harvested, slaughtered, and/or dead cervids for at least seventy-two hours following notification of death, as required by the CWD monitored herd program. Captive cervid operations established prior to the effective date of this Part are required to meet the facility standards of Section X by 1 January 2006.

6 Premises inspection. All captive cervid perimeter fencing and facilities shall be inspected and approved by an Agency representative. The initial inspection shall be conducted prior to the addition of any cervids. Cervids may not be added to the premises prior to inspection and approval. Captive cervid herds established prior to the effective date of this Part are required to meet the fencing and facility standards of Section X by 1 January 2006. Fencing and facilities shall be subject to inspection by Agency officials thereafter.

7 Record keeping. Accurate records documenting purchases, sales, interstate shipments, intrastate shipments, escaped cervids and deaths (including harvested cervids) shall be established and maintained for at least 72 months (6 years) for all captive CWD cervid operations. Documentation shall be made available to Agency regulatory officials upon request. Information provided in the records shall include, but not limited to, where animal originated, travel (sale) history, individual animal identification, carcass and sample identification numbers, sex, species, and age. In addition, the owners of all CWD cervid herds shall establish and maintain accurate records

that document the results of the annual herd inventory. These records shall be maintained for six years.

8 Feeding. The feeding of ruminant protein to cervids is strictly prohibited. All captive cervid operations are forbidden from feeding prohibited feed ingredients. The storage of prohibited feed in the same area as allowable feed is also prohibited. Feeding practices will be reviewed during the periodic fencing inspections, or as necessary.

9 Herd integrity. Separate herd inventories, biosecurity, records, working facilities, watering facilities, equipment, and land use shall be maintained for each distinct herd for which an individual CWD status is sought or between separate premises, irrespective of ownership. No commingling of animals shall occur between distinct herds with individual disease status unless program movement requirements for herd status are met. Movement of animals between such herds shall be recorded as if they were separately owned herds.

10 Sample collection and testing. Only individuals authorized by the Agency who have passed State or USDA approved sample collection training may collect and submit samples to support CWD program requirements. Testing shall be done in an approved laboratory by an official test.

11 Premises location. All captive cervid locations shall be identified by detailed location descriptions, including county, township, street address and directions from the nearest public road. Each premise will be allocated a unique registration number following NAIS standards.

SECTION IV SPECIAL PROVISIONS FOR CAPTIVE CERVIDS SUSCEPTIBLE TO CHRONIC WASTING DISEASE

1 Applicability. In addition to the general information in Section III, the requirements of this section apply to all captive cervid operations harboring any CWD susceptible captive cervid. Fallow deer (*Cervus dama*) are excluded until susceptibility evidence is discovered. A voluntary CWD surveillance program for non-susceptible cervid species may be developed by the Agency.

2 Importation. Except as provided herein, CWD susceptible cervids shall be approved for importation only if they are moved from a CWD certified herd and the state of origin has adopted mandatory reporting and quarantine requirements equivalent to those set forth in this Part. Importation of CWD susceptible cervids from a CWD infected zone is prohibited. Importation of CWD susceptible cervids into the State from any herd located within a CWD infected zone is prohibited.

3 Prohibition. No person shall hold CWD susceptible cervids in captivity in Vermont unless they are enrolled in the CWD Certified Herd Program or enrolled in the CWD Monitored Herd Program. Application for enrollment of existing herds in the CWD Certified Herd Program and CWD Monitored Herd Program shall take place within thirty days of the effective date of this Part.

4 Carcass Retention - Inspected. All test eligible cervids, presented for Vermont's meat inspection brand, will be tested for CWD and shall not enter commercial food channels or be donated for charity or public consumption until a negative test has been returned.

5 Carcass Retention. Except as provided for in paragraph 4 above, the Secretary may, in consultation with the Commissioner of Health, require that no captive cervid owner shall allow any meat from any cervid slaughtered at any premise or establishment to enter any private or public human food channel until the owner has been notified by the agency that the agency has received a negative CWD test for the slaughtered cervid when the Secretary in his or her judgment determines that the public health and welfare so requires.

SECTION V CWD CERTIFIED HERD PROGRAM

1 Applicability. CWD herd status is required for all captive CWD susceptible cervid operations engaged in breeding and/or the sale or removal of live cervids from the premises for any purposes.

CWD certified herd status shall be granted to captive CWD susceptible cervid herds that enroll and comply with all program standards and maintain that status for sixty months. A CWD herd status shall be granted to herds enrolled in the CWD herd certification program for less than sixty months, but which otherwise meet the requirements of a CWD certified free herd.

2 Establishment of a CWD herd status. CWD herd status shall be based on the date of official enrollment in the program. Herds properly enrolled and satisfactorily participating in the CWD Certified Herd Program shall receive a status designation based upon the number of months of successful participation. A herd with fewer than twelve months of satisfactory participation shall be designated a First Year Status Herd. If the herd continues to meet the requirements of the CWD Certified Herd Program, each year, upon review of the report of the annual herd inventory, and on or after the anniversary of the enrollment date, the herd status will be upgraded by one year; i.e., Second Year Status, Third Year Status, Fourth Year Status and Fifth Year Status. Herds currently participating in Vermont's voluntary CWD certification program will be grandfathered into this CWD certified program at their current status in the voluntary program, providing they meet the requirements of this Part.

3 CWD Certified Herd Program Requirements. Herds enrolled in the CWD Certified Herd Program shall meet the following requirements:

(a) Sampling and testing.

All deaths of test eligible cervids, regardless of cause shall be tested. As the scientific community fills current knowledge gaps associated with CWD, the age requirement for testing may change.

(i) CWD samples from all natural deaths of CWD test eligible cervids shall be submitted and tested.

(ii) CWD samples from all slaughter and/or harvested CWD test eligible cervids shall be submitted and tested. Animals presented for slaughter will be subjected to the governing authority's rule and policy with regards to inspection. Test eligible cervids, presented for Vermont's mark of inspection, will be retained pending official test results. Carcasses from the same premises can be processed and stored separately or together while retained.

(iii) CWD samples from all clinical CWD suspect cervids shall be submitted and tested, regardless of species or age.

(b) Animal identification

As of the first annual inventory after the effective date of this Part, each herd member and herd addition shall have a minimum of two official/approved unique identifiers. At least one of these identification systems shall include visible identification and at least one shall include RFID, as set forth in NAIS.

(c) Annual physical herd inventory

A physical herd inventory shall be conducted between ninety days prior to and ninety days following the annual anniversary date established based upon the CWD Certified Herd Program enrollment date. All cervids shall either be present or accounted for on the annual inventory. Cervids that were killed or died during the course of the year shall be tested as provided in Section V (3) (a) of this Part.

A state official or designee shall validate the annual inventory. A report of the validated annual inventory containing all man-made identification of each animal will be promptly submitted to the Agency. Discrepancy at the annual inventory may result in a loss of status by at least one year. The Agency will maintain in the National CWD Database or in a State database all of the premise information and individual animal information.

4 Additions to CWD Certified Herd Program Herds.

(a) Equivalent or higher CWD herd status additions

Vermont origin herd additions shall be permitted if the additions originate from a herd enrolled in and in good standing with a CWD Certified Herd Program and which has equal or greater CWD herd status.

Out of state additions shall be permitted only from CWD certified herds. The CWD Certified Herd Program for herds existing outside Vermont must be equal or equivalent to the Vermont CWD Certified Herd Program. However, the movement of CWD susceptible cervids is prohibited from any herd located within a CWD infected zone.

No change in CWD herd status will result from qualified additions.

(b) Herd additions originating from lower CWD status herds

Herd additions originating from non-status CWD herds are not permitted.

Additions originating from lower CWD status herds will result in the importing herd's reduction in CWD status to the same level as the addition.

SECTION VI CWD MONITORED HERD

Captive cervid herds consisting of one or more CWD susceptible cervid shall participate in the CWD Monitored Herd Program if they are not participating in the CWD Certified Herd Program and are considered special purpose herds. No live cervid sales or movements may be made from CWD Monitored Herds. Live cervids may not be removed from the premises of a CWD Monitored Herd, unless under special permit from the secretary of agriculture.

1. CWD Monitored Herd requirements. Herds enrolled in the CWD Monitored Herd Program shall meet the following requirements.

(a) Sampling and testing

(i) Submit for testing all discovered natural deaths of CWD test eligible cervids;

(ii) Submit for testing all clinical CWD suspect cervids; and

(iii) Submit for testing all test eligible cervids slaughtered on farm.

(b) Additions to CWD Monitored Herds

(i) Movement of CWD susceptible cervids is prohibited from any herd located within a CWD infected zone.

(ii) Vermont Source Additions. During the first year following the effective date of this Part, additions to CWD Monitored Herds may be made only if such additions originate from Vermont herds that have achieved CWD First Year Status Herd or higher status. During the second and third years following the effective date of this Part, additions to CWD Monitored Herds may be made only if such additions originate from Vermont herds that have achieved CWD Second Year Status Herd or higher status. During the fourth and fifth years following the effective date of this Part, additions to CWD Monitored Herds may be made only if such additions originate from Vermont herds that have achieved CWD Fourth Year Status Herd or higher status. During the sixth and subsequent years following the effective date of this Part, additions to CWD Monitored Herds will be permitted if they originate from herds that have achieved CWD Certified Herd status.

(iii) Imported Source Additions. Imported herd additions to Vermont CWD Monitored Herds may enter Vermont only if the source herd is a CWD certified herd, and the State's CWD program is equivalent to Vermont's.

All imports must meet requirements set forth in Section III of these rules.

(c) Animal Identification

(i) As of the first annual inventory after the effective date of this Part, each herd member and herd addition shall have a minimum of two official/approved unique identifiers. At least one of these identification systems shall include visible identification and at least one shall include RFID, as set forth in NAIS.

For those cervid operations engaged in hunting, as defined in 10 VSA, exception to the visible identification may be made after the secretary of agriculture approves a written identification

plan generated by the owner. This plan will include methods of identification that can satisfy the requirements set forth in 6 VSA, Chapter 102, §1153. Without this approved plan filed with the Agency, these operations will be subject to the requirements of this part.

(ii) Carcass and sample identification tags, provided by the State of Vermont, shall be affixed to all unidentified harvested captive cervids, natural deaths, and clinical suspects. Tag numbers shall be entered into the CWD Monitored Herd record along with the corresponding information that identifies the disposition of the carcass.

SECTION VII APPROVED CWD SUSCEPTIBLE CERVID SLAUGHTER FACILITY

An approved CWD susceptible cervid slaughter facility shall comply with the following requirements. Any facility under the state or federal meat inspection program approved for exotic meat inspection is an approved slaughter facility.

- 1 Holding pens shall be constructed to prevent contact with captive or free-ranging cervid populations;
- 2 Sample retention and holding facilities shall be adequate to preserve and store appropriate diagnostic tissues for seventy-two hours post slaughter;
- 3 A CWD susceptible cervid offal disposal plan must be developed, approved by the Agency and implemented; and
- 4 The facility must be inspected and approved annually by the Agency.

SECTION VIII IMPORTATION OF CAPTIVE CWD SUSCEPTIBLE CERVIDS FOR IMMEDIATE SLAUGHTER

Captive CWD susceptible cervids originating from source herds in states with no known cases of CWD in the previous sixty months may be moved directly to slaughter at an approved CWD susceptible cervid slaughter facility within Vermont under the following conditions:

- 1 A permit authorizing movement has been obtained from the Agency prior to movement;
- 2 Movement is directly to an approved CWD susceptible cervid slaughter facility. The shipment, or any part thereof, may not be diverted to any other location than that designated as the destination on the movement permit;
- 3 Samples shall be obtained from ten percent or thirty; whichever is less, of each distinct lot, of CWD test eligible cervids;
- 4 Sampled carcasses will be handled according to meat inspection rule and policy;

1 Waste from all CWD susceptible cervids imported under this provision shall be disposed of in a manner consistent with the approved disposal plan; and

2 Cervids shall be slaughtered within six days of the date of movement as provided in the movement permit.

SECTION IX MANAGEMENT OF CWD POSITIVE, EXPOSED, OR SUSPECT HERDS

1 Premises quarantine. If a CWD positive, exposed, or suspect cervid is identified in a herd, the herd shall be subject to immediate quarantine by an Agency official. Epidemiologic investigations shall be initiated to determine possible sources and potential contacts. All contact premises shall be evaluated for CWD status. All herds epidemiologically linked to the positive herd shall be subject to quarantine and management as CWD exposed herds.

2 Establishment of a CWD herd and premises plan. CWD herd and premises plans shall be developed for any CWD positive, exposed or suspect herd. Such plans shall be developed by Agency officials, in conjunction with the herd owner, and shall be subject to final approval by the Agency. Such plans shall contain the following procedures for positive or trace herds, which shall be implemented within sixty days of CWD diagnosis.

(a) CWD positive herd Captive cervid herds in which one or more of the cervids are classified as CWD positive shall be subject to:

- (i) Immediate depopulation of the whole herd; and
- (ii) Development of a CWD premises plan addressing possible environmental

contamination and other long term considerations. A CWD premises plan shall include provisions for:

- (a) Cleaning and disinfection;
- (b) Future land use restrictions;
- (c) Restocking constraints and timeframes; and
- (d) Fencing requirements to prevent contact with and entrapment of native cervidae.

(b) CWD exposed or suspect herds

The Agency shall conduct a risk analysis of all CWD exposed or suspect herds. High risk herds shall be subject to depopulation. Lower risk herds shall be subject to quarantine under the following conditions:

(i) Official herd quarantine. CWD exposed or suspect herds in which the risk is undeveloped or undefined shall remain under quarantine for sixty months. No off-premises sales or movement shall occur for the duration of the quarantine period. Discovery of any CWD infected cervid during the quarantine period shall result in conversion to CWD positive herd status.

(ii) Elimination of high-risk cervids within the herd. Herds that have received herd additions from source herds subsequently found to be CWD infected shall have their CWD herd certification status suspended. The suspect herd additions shall be euthanized and appropriate samples shall be submitted for CWD testing. If there is no evidence of CWD following official testing, the herd status shall be restored. If the cervid is CWD positive, the herd shall be classified as a CWD positive herd and managed in accordance with this Part.

(iii) Suspect or exposed herds may be depopulated by sending the cervids directly to slaughter, under permit from the Agency. All animals from these herds will be tested for CWD. Carcasses will be retained and may be released after a negative test is returned. If any animal becomes positive from this event, the herd and premises will be classified as positive.

1 Special fencing requirements. Perimeter fencing adequate to prevent fence line contact with captive and free-ranging cervids shall be established for all CWD positive, exposed, or suspect herds; and their respective premises. Fencing requirements and biosecurity provisions shall be specified in the herd and premises plan.

2 Testing. All cervids will be tested from depopulated CWD positive, exposed, or suspect herds.

3 Disposal. The carcasses of CWD positive cervids that are depopulated shall be disposed of in accordance with disposal plans approved by the Agency. Such plans shall be developed to prevent contamination of the environment and exposure of live cervids.

SECTION X FENCING, FACILITY AND TRANSPORTATION REQUIREMENTS

1 Applicability. All captive cervid operations shall have proper fencing and restraining facilities as defined in this Part. This includes chutes, gates, and corrals to capture and restrain the cervids for diagnostic testing and inventory purposes, where appropriate. Capture and restraint of captive cervids shall be the responsibility of the owner. All captive cervid operations and all cervid slaughter facilities shall provide appropriate refrigeration and storage facilities to contain and preserve CWD samples obtained from harvested, slaughtered, and/or dead cervids for at least seventy-two hours following notification of death, as required by the CWD monitored herd program. Captive cervid

operations established prior to the effective date of this Part are required to meet the facility standards of Section IX by 1 January 2006.

Herds established prior to the effective date of these rules shall be deemed to be in compliance with this section of these rules if their current fencing has proven the ability to contain captive cervids and prevent inclusion of wild cervids. Any new fencing erected or repaired after the effective date of these rules on these existing establishments shall be in accordance to these rules.

2 Authority. This part is promulgated pursuant to 6 VSA, Chapter 102, §1153 (b).

3 Fencing Requirements:

(a) General: Cervidae must be contained within an escape-proof enclosure at all times except when used as work animals or for exhibition under conditions appropriate for the species involved.

(b) Specifications:

(1) Conventional or hi-tensile perimeter fences of which at least the bottom six (6) feet must be mesh (maximum mesh size shall be 12 1/2" X 7"). The overall height is to be a minimum of 8 ft.

(2) Minimum wire gauges - 12 1/2 gauge - conventional fence, 14-1/2 gauge - woven hi-tensile.

(3) All perimeter gates providing access to animal holding facilities shall be kept secured when animals are present. Gate construction shall prevent escape of cervidae either by crawling under the gate or by jumping over the gate.

(4) Posts - four (4) inch minimum diameter, wood or equivalent (e.g., rust resistant steel), spaced no more than fifty (50) feet apart (60 foot spacing is allowed if there are at least two (2) steel posts between the wood posts). There shall be a post or stay (wood or steel) every 20 feet. Posts must be at least six (8) feet above ground level. Corners shall be braced wood or equivalent material.

(5) Perimeter fences constructed prior to enactment of these rules that have not proven effective in containing captive cervids or preventing the inclusion of wild cervids, have until January 1, 2006 to come into compliance.

(c) Inspection: The secretary of agriculture, or designee, shall inspect the perimeter fence to ensure compliance with these rules.

(d) Responsibility: The owner is responsible to ensure that their cervidae remain within the escape-proof enclosure.

(e) Time requirements for capture of cervidae that escape from the enclosure:

(1) The owner must notify the secretary within the next business day of learning that the cervidae have escaped.

(2) The owner has four days (96 hours) after discovery that cervidae have escaped from the enclosure to return the cervidae to the enclosure and repair the damage to the perimeter fence.

(3) For good cause shown, the secretary may grant additional time for recapture when a written request for extension of time is submitted.

(f) Entrapment of wild cervids: All wild cervids which become entrapped within a perimeter fence containing domestic cervidae must be separated from the domestic cervidae promptly following discovery, when separation is available. The owner of the cervid herd must notify the Department of Fish and Wildlife within the next business day of the entrapment. The Department of Fish and Wildlife may take whatever steps under their authority are deemed necessary to remove and dispose of any entrapped wild cervid.

(g) Penalties: Any owner that allows cervidae to remain outside the enclosure longer than permitted by the secretary shall be deemed in violation of these rules.

3 Testing Facilities for Disease Control: It is the owner's responsibility to present the cervidae for testing for control of contagious livestock disease upon request by the secretary, pursuant to 6 VSA, Chapter 102, §1154 (d). All owners must construct or maintain suitable facilities for restraining and testing cervidae. Failure to provide suitable facilities for restraint and testing of cervidae shall be deemed a violation of these rules.

4 Transportation of Cervidae:

(a) General: 13 VSA Chapter 8, subchapter 7, Transportation of Animals, apply to the transportation of cervidae.

(b) Cervidae with antlers not in velvet must be dehorned or:

(1) shall be separated from antlerless deer, or

(2) shall be so confined as to prevent injury to each other from the antlers.

5 Penalties. Any person who violates a provision of these rules is subject to Administrative Penalties, 6 V.S.A., §15, 16 & 17 and Civil Penalties, 6 V.S.A. §1164.

Conditional Use Determination, Wetlands – Title 10, Chapter 37 § 6025 (d) (7), § 903, Act 31. 10 V.S.A., Chapter § 905b(18) is amended to read:(18) study and investigate the wetlands of the state and cooperate with municipalities, the general public, other agencies, and the board in collecting and compiling data relating to wetlands, propose to the board specific wetlands to be designated as significant Class I wetlands, and issue or deny permits pursuant to section 6025 of this title and the rules of the panel, issue wetland determinations pursuant to section 914 of this title, issue orders pursuant to section 1272 of this title, and implement through existing programs the rules adopted by the board governing significant wetlands, including the issuance or denial conditional use determinations pursuant to section 1272 of this title.

Control measures – Title 10, Chapter 83 § 2662

(a) Whenever the commissioner finds that an area in the state is infested or threatened to be infested with forest pests, he shall determine whether measures of control are needed and are available and the area over which the control measures shall be applied. He shall prescribe a proposed zone of infestation covering the area in which control measures are to be applied, and shall publish notice of the proposal in one or more newspapers having a general circulation in the area in which control measures are to be undertaken.

(b) The notice shall include a brief description of the location of the proposed zone of infestation and the approximate time when control measures will be executed. (Added 1977, No. 253 (Adj. Sess.), § 1.)

Fees Collected; Special Fund – Title 23, Chapter 29 § 3319

(a) There is hereby established a special fund to be known as the motorboat registration fund for the purposes of ensuring that the fees and penalties collected under this subchapter are utilized in the protection and maintenance of the state's water resources. Any interest earned on the monies in this fund will be deposited in the general fund.

(b) The fees and penalties collected under the provisions of this subchapter, excluding surcharges collected under subsection 3305(b) and subdivisions 3305(c)(3)(A) and (B) of this title, shall be deposited in the motorboat registration fund and shall be allocated as follows:

(1) 15 percent to the department of public safety, to be used for enforcement of this subchapter and implementation of a boating safety education program;

(2) 50 percent to the department of fish and wildlife, to be used: to match federal funds; for upgrading and expanding boating access areas and facilities located at those areas; for developing and constructing new boating access areas; and for facilitating or establishing and maintaining pump

out stations, which may be, in the discretion of the commissioner, constructed or operated either by the department or on a contractual basis by a private person or entity. Users shall be charged reasonable and appropriate fees;

(3) 25 percent to the department of environmental conservation for the purpose of aquatic nuisance control pursuant to 10 V.S.A. §§ 921, 922, 923, and 1263a;

(4) 10 percent to the agency of agriculture, food and markets for the purpose of mosquito control pursuant to 6 V.S.A. chapter 85.

(c) The surcharges collected under subsection 3305(d) and subdivisions (c)(3)(A) and (B) of this title shall be credited to the special fund established under subdivision (b)(3) of this section for the purpose of an aquatic nuisance control grant program pursuant to sections 921, 922, and 923 of Title 10. (Added 1983, No. 212 (Adj. Sess.), § 2; amended 1989, No. 65, § 13; 1989, No. 265 (Adj. Sess.), § 6; 1993, No. 52, § 3, eff. July 1, 1994; 2001, No. 143 (Adj. Sess.), § 57; 2003, No. 42, § 2, eff. May 27, 2003.)

Fish Importation – Title 10 Appendix, § 139

1.0 Authority

1.1 This rule is adopted pursuant to 10 V.S.A §§ 4081(a), 4082, 4083 and 4605 which authorize the board to carry out the purposes of protecting the state's fish and the waters of this state.

2.0 Purpose:

2.1 It is the purpose of this regulation to carry out the mandate of the Vermont General Assembly to control through a permit program the importation of fish as provided in 10 V.S.A. 4605 to guard the health of Vermont's fish populations and prevent the introduction of fish and fish diseases that could have the potential to cause harm to fish populations in the waters of the state.

3.0 Definitions

3.1 Fish - all fresh and salt-water fish species including fish ovum and fish semen that will be introduced into any of the inland or outlying waters of the state as defined in 10 V.S.A. § 1251(13).

3.2 Board - Vermont Fish and Wildlife Board

3.3 Department - Vermont Fish & Wildlife Department

3.4 Commissioner - Fish and Wildlife Department Commissioner

3.5 Person - an individual, association, corporation, partnership, or municipality.

3.6 State - state of Vermont

3.7 Fish Hatchery - Any fish culture station, hatchery, rearing pond, net pen, container which holds, rears or releases fish for sale and/or distribution in waters of Vermont.

4.0 Importation of Fish

4.1 It is unlawful for any person to bring into the state any fish that will be introduced into any of the inland or outlying waters of the state unless upon application in writing and receipt of a fish importation permit from the commissioner.

4.2 No person shall import fish unless the fish come from a fish hatchery approved by the commissioner. Fish disease inspection shall be made by inspection of the fish at the hatchery source by an inspector acceptable to the department. Inspection procedures, methods of diagnosis, and inspection frequency will be specified by the department.

4.3 Notwithstanding the provisions of paragraph 4.2, the commissioner may, subject to conditions designed to protect the fish and wildlife in the state, permit the importation of live wild caught fish species from waters identified in a list maintained by the department.

4.4 No fish that are considered endangered or threatened by the department shall be permitted into the state unless the department determines that the intent of such importation is for scientific purposes or for purposes of re-establishment of fish populations.

4.5 The importation and possession of dead fish is exempt from this regulation provided they are disposed of to guard against the introduction of fish diseases to state waters. Acceptable disposal methods include: 1) placement of all fish waste products in an approved state landfill; or 2) incineration of all fish waste products; or 3) burial of fish on private land only, no less than one hundred feet from a public water.

4.6 Dead fish imported and possessed as bait must be processed through approved methods which eliminate all fish pathogens. These approved methods will be identified in a list maintained by the department.

5.0 Permits

5.1 Bait Dealers Permit

5.1.1 All commercial dealers who import, export or sell fish must first obtain a valid bait dealers permit pursuant to 10 V.S.A Append. § 122.

5.2 Importation Permit

5.2.1 The commissioner shall not issue a permit unless it has been determined that the fish proposed to be brought into the state do not conflict with the purpose of this regulation.

5.2.2 For all fish species, the commissioner shall consider the following criteria in determining whether to issue a fish importation permit: does the fish proposed for importation pose a potential threat to the fisheries resources of the state through diseases or species competition; are they free of all disease organisms as the department may specify; could the fish be a significant competitor with resident fish and wildlife for food and habitat; could the fish be destructive to habitat; could the fish be a threat to the health of resident fishes, wildlife, or humans; and could the fish pose any other threat to public or private interests as may be determined by the department.

5.3 Temporary Exhibition

5.3.1 Any person importing fish for the purposes of temporary exhibition must obtain a fish importation permit from the commissioner. The commissioner may impose conditions necessary to protect the health and welfare of Vermont's fish and wildlife.

6.0 Applications

6.1 Application for a fish importation, bait dealers, scientific, education, or temporary exhibit permit must be complete and submitted to the department on an application form to be provided by the department. For an application to be considered complete, it must be legible, must contain all information requested by the department, shall contain no false statements, must bear the applicant's official signature and must be accompanied by the required application fee.

6.2 With regard to all fish, the applicant shall present to the department, as a requirement of the permit, written fish health inspection reports as the department may specify. Fish health inspection reports shall be made by a qualified fish health inspector acceptable to the department.

7.0 Inspections

7.1 Persons holding a fish importation, bait dealers and education or temporary exhibit permit shall allow inspection at reasonable times of their premises, facilities, records, and fish by state game wardens or other duly authorized persons as the commissioner may direct.

7.2 The issued permit shall be available for inspection by any duly authorized persons as the commissioner may direct.

8.0 Quarantine, Destruction, Sterilization and Disposition Where Disease and Harmful Species are Present

8.1 The department may require a period of quarantine and treatment, the destruction of fish, and/or order whatever remedial action necessary; if a harmful fish species and/or fish pathogens are confirmed. This shall occur at the expense of the owner.

8.2 Commercial hatcheries or ponds under private ownership may be ordered by the department to be sterilized at the expense of the owner, if upon inspection a harmful fish pathogen or species is confirmed.

8.3 Any fish, which are brought into the state in violation of these regulations or kept in violation of any permit issued may be disposed of in accordance with 10 V.S.A. § 4709. (2007, Fish and Wildlife Reg. No. 881A, eff. March 13, 2007)

Fish Regulation – Title 10 Appendix, § 122. Section 10.1.1.

10.0 Fish - Open Seasons, Size Restrictions and Daily Bag Limits.

Fish of the species named or described in the tables set forth below may be taken:

In the waters specified in column 1, by the method specified in column 2, during the open season specified in column 3.

Provided they meet any size restrictions specified in column 4, and only in numbers listed under daily bag limits specified in column 5, under no circumstances may a person take in one day, more than the daily bag or weight limit from a listed body of water. No person may take in aggregate more than the daily state-wide aggregate limit for any species listed.

Businesses may buy lawfully taken fish, with the approval of the commissioner, pursuant to guidelines of the board. Fish species are restricted to species not protected by title 10 V.S.A. 4611.

10.1 Possession limits are equal to twice the "daily bag limits". Fish species with limit restrictions, may not be possessed in excess of the possession limits at any time.

10.1.1 No person shall have live fish in their possession that are transported in a manner which attempts to keep them alive when leaving waters of the state (10 V.S.A. § 1251(13)), except as follows:

10.1.1.1 those species allowed to be possessed and used as live fish for bait,

10.1.1.2 the person has been issued a scientific collection permit by the Commissioner which specifically approves of the activity,

10.1.1.3 the person has been issued a fish transportation permit by the commissioner which specifically approves of the activity,

10.1.1.4 the person has been issued a fish breeders permit or fish importation permit by the commissioner which specifically approves of the activity.

10.2 The daily bag limit for a fish species on a water body with a closed season for that fish species is zero.

10.3 "General waters" restrictions are the provisions applicable to all waters of the state, except the waters specifically named or described.

10.4 Unless otherwise specifically provided, fish not listed in this regulation may be taken at any time and without size or catch limit, in waters not listed as Seasonally Closed Waters in Section 9 of these regulations.

Fish Propagation – Title 10 Appendix, § 117

(1) Purpose. The purpose of this regulation is to carry out the mandate of the Vermont General Assembly to control, through a permit program, the propagation of fish, 10 V.S.A. Chapter 119, §§ 5207-5209. In addition, a Memorandum of Understanding of the operation of the fish health inspection program was adopted July 21, 1992, by the Commissioners of the Fish and Wildlife Department and the Department of Agriculture, Food and Markets. The Department of Fish and Wildlife will review the Fish and Wildlife regulation governing the industry of fish propagation annually. This review will consider the recommendations of the Vermont Aquaculture Advisory Board to include testimony and data.

(2) Scope of Regulations. The provisions of this part are in addition to, and not in lieu of, any present State law or regulation pertaining to the taking of any fish in a lawful means and lawful manner. These regulations provide for the establishment of an application process, investigation process, permit issuance process and conditions under which the propagated species may be sold or purchased.

(3) Definitions.

(A) Fish. All fresh water fish and any salt water fish capable of adapting to fresh water. Also includes live fish, viable fish eggs, and viable sperm.

(B) Propagation. To cause to multiply or breed. To increase the species, or to cause to spread.

(C) Endangered Species. All fish named as threatened or endangered by the Federal Endangered Species Act (P.L. 93-205) and those listed as threatened or endangered pursuant to 10 V.S.A. Chapter 123.

(D) Commissioner. Commissioner of the Vermont Fish and Wildlife Department.

(E) Department. Vermont Fish and Wildlife Department.

(F) Injurious Fish. Fish determined by the Vermont Fish and Wildlife Department or the United States Fish and Wildlife Service to be a danger to or potential danger to, Vermont's fish or wildlife.

(G) Annual Fish Health Inspection. Annual inspection (minimum once a year) for fish pathogens using inspection procedures approved by the Department, such as those provided for in the most recent addition of the "Blue Book," which is developed by the Fish Health Section of the American Fisheries Society (AFS) or the most recent addition of the "Fish Health Protection Regulations Manual of Compliance," of the Department of Fisheries and Oceans, Canada.

(H) Fish Health Inspector. Person responsible for carrying out fish health inspections based on standards approved by the Department, such as those provided for by the Fish Health Section of the American Fisheries Society and/or the New England Salmonid Health Guidelines. Fish health inspectors shall have access to adequate laboratory facilities and qualified personnel to assure the prompt conduct of inspections, diagnosis, and reporting.

(I) Fish Lot. A group of fish of the same species and age that originated from the same discrete spawning population during the same year, and are being raised on the same water source.

(4) Permit Requirements.

(A) A person shall not rear for sale or distribution, any species of live fish within this state without first procuring a permit from the Commissioner to do so (10 V.S.A. Chapter 119, §§ 5207-5209). Persons maintaining fish in a closed rearing aquarium (no water discharge) may request exemptions (on the fish propagation application form) from the Annual Fish Health Inspection and/or the Breeders License.

(B) All individuals holding a Breeders License for trout and/or salmon will be required to have annual fish health inspections, conducted by a qualified fish health inspector acceptable by the Department. However, persons maintaining fish in a closed rearing unit may be exempt from the annual fish health inspection. All fish lots on the facility shall be tested for VHS (Viral Hemorrhagic Septicemia), IPN (Infectious Pancreatic Necrosis), IHN (Infectious Hematopoietic Necrosis), BKD (Renibacterium salmoninarum), ERM (Yersinia ruckeri), Aeromonas salmonicida (Furunculosis), Myxobolus cerebralis (Whirling disease), and other disease agents, that may be deemed necessary by the Commissioner. Fish health inspections will be scheduled by the fish health inspector. Individuals holding a Breeders License will be responsible for providing aid to help the fish health inspector with the collection of fish during the scheduled date of the inspection.

(C) Other species will be required to be inspected for those pathogens deemed necessary by the Commissioner with the approval of the Commissioner of Agriculture, Food and Markets.

(D) Sample sizes for each lot must be approved by the Department such as those provided for by the Fish Health Section of the (AFS) and/or the New England Salmonid Health Guidelines. (Mixed fish lots will be sampled according to the discretion of the Department.)

(E) If at any time fish are found to be infected with the causative agents of VHS (Viral Hemorrhagic Septicemia), IHN (Infectious Hematopoietic Necrosis), Whirling Disease (*Myxobolus cerebralis*) and/or other diseases as determined by the Commissioner to be a serious threat to the fishery resources of the State of Vermont, the Commissioner shall have the authority to impose an immediate prohibition on moving any fish. During the prohibition a compliance agreement stating the appropriate procedures for the disposal of fish and the disinfection of the facility shall be determined by the Department's appropriate representative and in consultation with the owner/operator in cooperation with a nonaffiliated fish health specialist. Other diseases as determined by the Commissioner, with the approval of the Commissioner of Agriculture, Food and Markets, to be a serious threat to the fisheries resources of the State of Vermont may also result in this action.

The action shall be designed to bring the least amount of economic hardship to the affected party, while affording maximum protection to other operators, growers, and the fishery resources of the State of Vermont.

(5)(A) Application.

(1) The applicant for a Breeders License shall apply on a form supplied by the Department and include appropriate fee. Such forms must be complete in all respects and shall contain the following information:

(a) License number.

(b) A description of the land or water to be utilized for propagation.

(c) Information on whether the applicant is the owner or lessee of such lands or waters. If the applicant is not the owner, list the owner's name and address.

(d) A map of the property and waters indicating any ingress and egress to his/her waters by public waters.

(e) A map of existing and/or proposed fish rearing units, including water sources. Unit type, volume, and available water supply (gallons per minute) should be included.

(f) Reason for propagating species: food fish or live sale (percent of each).

(g) The complete name, common and scientific, of each fish species will be listed on the application.

(h) A copy of the latest annual fish health inspection report and the fish health inspection reports of fish lots introduced to the station in the past year must be included. (See Page 2, B through E.)

(i) The applicant shall sign the application.

(j) A report shall be sent to the Department 30 days prior to the anniversary date of initial issuance. The report shall have an annual accounting (since submission of previous application) of all fish lots and/or eggs purchased or obtained, from who purchased or obtained, number, kind, and size of fish and/or eggs. The applicant shall sign the report. (Failure to comply will disqualify the permittee for issuance of a subsequent permit.)

(2) Upon receipt of the application the Department shall, within 30 working days, investigate and determine if the information on the application is correct and approve or deny the application.

(B) Issuance of Permit.

(1) Breeders Licenses will not be issued for: Endangered Species or Injurious Fish.

(2) If the permit application is denied, the applicant may appeal to the Commissioner for a hearing pursuant to Title 3, Chapter 25 of Vermont Statutes Annotated.

(3) Conditional permits may be issued, based on specifications and requirements set forth by the Department.

- (4) All Breeders Licenses shall expire on the anniversary date of initial issuance. Subsequent applications for a propagation permit will, if approved, receive the same breeders permit number assigned in the past.
- (6) Marking-Invoices. All persons licensed to propagate fish pursuant to this part shall provide an invoice and/or mark any box, carton, barrel, can, or other type of container or wrapper containing any propagated fish with the following information:
- (a) Name and address of propagator, supplier, or producer
 - (b) License number
 - (c) Species
 - (d) Number and/or total weight. (1994, Fish and Wildlife Commissioner's Reg. No. 1004, eff. March 26, 1994.)

Grant-in-aid to Municipalities and Agencies of the State; Joint Municipal Participation –
Title 10, Chapter 37 § 922, 923

- (a) A municipality or agency of the state which desires state assistance to control aquatic nuisance may apply in writing to the department of environmental conservation in a manner prescribed by the department.
- (b) When the department finds that a proposed aquatic nuisance control program is suitable to control or minimize the effect an aquatic nuisance has on water quality and water use, it may award a grant of 75 percent or less of the project costs as determined by the department. Recurring maintenance projects may be awarded grants of 75 percent or less of the annual project cost. In approving requests and determining the amount of any grant, the department shall consider the following:
- (1) the use of the waters by persons outside the municipality in which the waters are located;
 - (2) the long-range effect of the control project;
 - (3) the recreational use of the waters; and
 - (4) the effectiveness of municipal shoreland zoning and other controls in minimizing or preventing existing or new development from having any adverse effects on the waters subject to the control program.
- (c) The department shall make awards to priority projects to the extent funds are available. First priority shall be projects to manage incipient infestations of aquatic nuisances, second priority shall be projects to prevent or control the further spread of aquatic nuisances, and third priority shall be recurring maintenance projects. In establishing priorities for individual projects, the department shall consider the following:
- (1) public accessibility and recreational uses;
 - (2) the importance to commercial, agricultural or other interests;
 - (3) the degree of local interest, as manifested by municipal or other contributions to the project;
 - (4) local efforts to control aquatic nuisances;
 - (5) other considerations affecting feasibility, probability of achieving long-term control, necessity or advantage of the proposed work; and
 - (6) the extent to which the control project is a developmental rather than a maintenance program.
- (d) With the approval of the secretary, the department may use funds provided under this section as well as other funds for the restoration, management or protection projects or for studies in the best interests of the state when the appropriate municipal applicant is not available or not eligible to receive a grant.
- (e) When the department finds that a proposed aquatic nuisance control program is necessary and involves construction or installation of permanent facilities designed to control or minimize the effect that an aquatic nuisance has on water quality or water use, it may award a grant of up to 50

percent of the nonfederal costs of the project, provided evidence is received that the project applicant has voted funds in a specific amount to undertake the project. The applicant shall demonstrate it has or will acquire adequate interests in the site of the project to provide undisturbed possession and use during the life of the project and shall demonstrate ability to operate and maintain the project. The applicant may enter into agreements with the department for prosecution of all or any portion of the project. For purposes of this subsection corporations registered with the secretary of state may be eligible applicants.

(f) The department may make periodic grant payments upon submission by the grantee showing that costs for which reimbursement is requested have been incurred and paid by the grantee. Partial payments shall be made not more frequently than monthly. After the project has been completed and its costs audited by the department, the department shall certify the remainder of the award to the commissioner of finance and management who shall issue his or her warrant for payment. Interest costs incurred in local short-term borrowing of the grant amount shall be reimbursed as part of the grant. (Added 1977, No. 230 (Adj. Sess.), § 3; amended 1981, No. 222 (Adj. Sess.), § 13; 1983, No. 173 (Adj. Sess.), § 3; 1987, No. 76, § 18; 1989, No. 276 (Adj. Sess.), § 30, eff. June 20, 1990; 1993, No. 52, § 2; 1995, No. 153 (Adj. Sess.), § 1; 2009, No. 46, § 4.) **Joint Municipal**

Participation: Should the shorelands of waters for which funds are requested under sections 921-923 of this title be under more than one municipal governmental jurisdiction, the provisions herein shall apply to the respective municipalities under a joint application, except that the required municipal contribution shall be apportioned among the respective municipalities. (Added 1977, No. 230 (Adj. Sess.), § 4; amended 2009, No. 46, § 4.)

Importation and possession of animals for hunting – Title 10, § 4714

(a) A person shall not import or possess any live animal for the purpose of taking by hunting, unless the commissioner has issued the person an importation and possession permit. The fish and wildlife board shall adopt rules necessary to establish, implement and enforce the permit and permit process.

(b) An application for a permit shall be accompanied by a certificate of veterinary inspection certifying that the animal has been inspected, is not showing signs of contagious diseases, and has been inventoried, registered, and tested in accordance with rules of the secretary of agriculture, food and markets. The commissioner of fish and wildlife may inspect animals being imported under an importation and possession permit and may dispose of unlawfully imported or possessed animals. The state may collect treble damages for expenses incurred in enforcing a violation of this subsection.

(Added 1999, No. 30, § 6; amended 2003, No. 42, § 2, eff. May 27, 2003; 2005, No. 12, § 5, eff. May 2, 2005.)

Importation and possession of deer or elk from chronic wasting disease areas – Title 10, Appendix 1 § 17

1.0 Authority.

This rule is promulgated pursuant to 10 V.S.A. § 4081. In promulgating this rule, the Fish and Wildlife Board is following the policy established by the General Assembly that the protection, propagation, control, management, and conservation of fish, wildlife and fur-bearing animals in this state is in the interest of the public welfare and that the safeguarding of this valuable resource for the people of the state requires a constant and continual vigilance.

In accordance with 10 V.S.A. § 4082, this rule is designed to maintain the best health, population and utilization levels of the regulated species and other necessary or desirable species which are related to the regulated species.

This rule applies to importation and possession of deer or elk carcasses or the parts thereof, from chronic wasting disease endemic areas and captive hunt or farm facilities.

This rule shall apply to all persons who import, possess, transport, use, or deal with deer or elk carcasses, or parts thereof, from chronic wasting disease endemic areas and captive hunt or farm facilities.

2.0 Purpose.

The purpose of this rule is to:

- a) ensure the conservation of the wildlife in the state, and
- b) maintain the best health of native cervidae of the state, and
- c) prevent the introduction or spread of a disease that is potentially harmful to humans and wild species.

3.0 Permitted Activities and Restrictions.

The importation or possession of deer or elk carcasses, or the parts thereof, from chronic wasting disease endemic areas and captive hunt or farm facilities is prohibited except as provided below:

- a) Meat that is cut up and packaged, and not mixed with other deer or elk during processing.
- b) Meat that is boneless.
- c) Hides or cape with no part of the head attached
- d) Clean skull-cap with antlers attached.
- e) Antlers with no other meat or tissue attached.
- f) Finished taxidermy heads.
- g) Upper canine teeth with no tissue attached.

All hunters shall identify their deer and elk with their non-resident license information in accordance with 10 V.S.A. § Appendix 2a.

4.0 Chronic Wasting Disease Endemic Areas.

The department shall provide a list of chronic wasting disease endemic areas and shall update the list as areas are added or deleted.

The list shall be available on the department's web site, from the department's headquarters and from the department's district offices. The list shall also be made available to the media as much as practicably possible to provide maximum notice to the public.

Captive Hunting or Farm Facilities Defined.

Captive Hunting Facilities are any facilities with captive deer or elk held in a fenced or walled enclosure for the purpose of taking by hunting.

Farm Facilities are any facilities with captive deer or elk held in a fenced or walled enclosure and are raised for meat, hides, antlers or other products.

(Added 2003, Fish and Wildlife Board Reg. No. 1100, eff. June 4, 2003.)

Importation, Stocking Wild Animal – Title 10, Chapter 113 § 4709

(a) A person shall not bring into the state or possess any live wild bird or animal of any kind, unless, upon application in writing therefor, the person obtains from the commissioner a permit to do so. The importation permit may be granted under such regulations therefor as the board shall prescribe and only after the commissioner has made such investigation and inspection of the birds or animals as she or he may deem necessary. The department may dispose of unlawfully imported wildlife as it may judge best, and the state may collect treble damages from the violator of this subsection for all expenses incurred.

(b) Nothing in this section shall prohibit the commissioner or duly authorized agents of the fish and wildlife department from bringing into the state for the purpose of planting, introducing or stocking, or from planting, introducing or stocking in the state, any wild bird or animal.

(c) Applicants shall pay a permit fee of \$100.00. (Added 1961, No. 119, § 1, eff. May 9, 1961; amended 1967, No. 46; 1973, No. 178 (Adj. Sess.), § 4; 1983, No. 158 (Adj. Sess.), eff. April 13, 1984; 1991, No. 230 (Adj. Sess.), § 25; 1997, No. 99 (Adj. Sess.), § 13; No. 155 (Adj. Sess.), § 45, eff. Jan. 1, 1999; 2003, No. 163 (Adj. Sess.), § 16.)

Infestation control; agreements with owners – Title 10, Chapter 83 § 2663; Cost prorated; agreements – Title 10, Chapter 83 § 2664.

The commissioner under the provisions of section 2853 of Title 3 may apply measures of infestation control on public and private forest and other lands anywhere in the state to any trees, timber, plants or shrubs thereon harboring or which may harbor the forest pests. The commissioner may enter into agreements with owners of such lands covering the control work on their lands, and fix the pro rata basis on which the cost of such work will be shared between the state and said owner; provided, that the failure of the commissioner to offer an agreement to or execute an agreement with any owner shall not impair the right of representatives of the commissioner to enter on the lands of said owner to conduct control operations. (Added 1977, No. 253 (Adj. Sess.), § 1.) **Cost prorated; agreements:** If in any area the owners of a majority of the acreage to be protected from pests execute agreements with the state, the commissioner shall be authorized to carry out control work on other adjacent or interior holdings, which, if uncontrolled, would cause a re-infestation of the controlled area. The cost of control work on such areas may be prorated among the owners who have executed agreements on the same basis as for their own lands, if they agree thereto. (Added 1977, No. 253 (Adj. Sess.), § 1.)

Placing Fish in Waters – Title 10, Chapter 111 § 4605

(a) A person shall not introduce or attempt to introduce:

(1) pickerel or northern pike into any waters; or

(2) any fish, except trout or salmon, into any waters except private ponds lacking access to other waters of the state.

(b) A person shall not bring into the state for the purpose of planting or introducing, or to plant or introduce, into any of the inland or outlying waters of the state any live fish or the live spawn thereof, unless, upon application in writing therefor, the person obtains from the commissioner a permit so to do. The permit may include conditions which the commissioner finds necessary to guard the health of Vermont's fish population.

(c) The commissioner may, by rule, adopt a list of fish which, if introduced into Vermont waters, have the potential to cause harm to the fish population of the state. A person shall not possess or bring into the state any fish on the list unless the person has received a permit issued pursuant to this subsection. The commissioner may issue a permit allowing importation and possession of a fish on the list, provided the fish is to be kept in a controlled situation and used for a public purpose such as research or education. A permit issued under this subsection shall include conditions that ensure the health and safety of Vermont's fish population.

(d) Applicants shall pay a permit fee of \$50.00. The commissioner or duly authorized agents, shall make such investigation and inspection of the fish as they may deem necessary and then the importation permit may be granted pursuant to regulations which the board shall prescribe. The commissioner or duly authorized agents shall make a determination on the permit within 10 days of receiving the application. The department may dispose of unlawfully imported fish as it may judge best, and the state may collect damages from the violator of this subsection for all expenses incurred.

(e) Nothing in this section shall prohibit the board, the commissioner or their duly authorized agents from bringing into the state for the purpose of planting, introducing, or stocking, or from planting,

introducing, or stocking any fish in the state. (Added 1961, No. 119, § 1, eff. May 9, 1961; amended 1981, No. 85, § 7; 1997, No. 155 (Adj. Sess.), § 44, eff. Jan. 1, 1999; 2005, No. 42, § 2.)

Rule Establishing A List for Prohibited, Restricted and Unrestricted Fish Species

1.0 Authority

1.1 This rule is adopted pursuant to 10 V.S.A. § 4081 (a) which provides that the protection, propagation, control, management, and conservation of fish, wildlife, and furbearing animals in this state is in the interest of the public welfare and that the safeguarding of these valuable resources for the people of the state requires a constant and continual vigilance, and in accordance with 10 V.S.A. § 4605 (c) provides that the commissioner may, by rule, adopt a list of fish which, if introduced into Vermont waters, have the potential to cause harm to the fish population of the state.

2.0 Purpose

2.1 It is the purpose of this regulation to carry out the mandate of the Vermont General Assembly to control through a permit program the importation and possession of fish species as provided in 10 V.S.A. § 4605 (c) to guard the health of Vermont's fish populations by preventing the introduction of fish species that could have the potential to cause harm to fish populations of the state.

3.0 Definitions

3.1 "Fish" means all live fresh- and salt-water fish species including viable fish ovum and viable fish semen.

3.2 "Transgenic Fish" means any fish that possesses a novel combination of genetic material obtained through the use of modern biotechnology. This definition does not include diploid, triploid, or hybrid-crossed fish.

3.3 "Department" means Vermont Fish & Wildlife Department.

3.4 "Commissioner" means Fish and Wildlife Department Commissioner.

3.5 "Person" means an individual, association, corporation, partnership, or municipality, or other entity.

3.6 "State" means State of Vermont.

4.0 Importation and Possession of Live Fish

4.1 This rule establishes a list by which the importation and possession of fish shall be regulated.

4.1.1

Prohibited Fish Species Section: Fish species for which importation into or possession within Vermont shall be prohibited except through a Commissioner's Prohibited Fish Species Permit. This section of the list primarily includes species not native to the state that are known to pose a threat to Vermont's fish populations and/or aquatic ecosystems.

4.1.2 Restricted Fish Species Section: This section of the list primarily includes native and certain naturalized fish species which although they may not require a Commissioner's Prohibited Fish Species Permit as set out in 4.1.1 above, may be regulated through other department permits including but not limited to 10 V.S.A. § 4605 (b) Importation of Fish; 10V.S.A. § 5403, Protection of Endangered and Threatened Species; and 10V.S.A. Appen. § 122, Fish Regulations.

4.1.3 Unrestricted Fish Species Section: This section of the list primarily includes species commonly imported into the state for the pet or aquarium trade and are currently considered to pose minimal or no risk to Vermont fish populations. A Commissioner's Prohibited Fish Species Permit is not required to import or possess these species. Additionally, any species not on the Unrestricted, Restricted and Prohibited lists and which natural global distribution range occurs entirely within the bounds of the 30° north latitude and the 30° south latitude may be imported or possessed in Vermont without prior review and approval of the commissioner. Notwithstanding the foregoing,

an importation permit is required for any fish brought into the state which are intended to be introduced into waters of the state as per 10 V.S.A. 4605(b), and no fish shall be introduced into any waters except private ponds lacking access to other waters of the state as per 10 V.S.A. 4605(a).

4.2 All fish species not included in the sections of the list covered by 4.1.2 (Restricted Fish Species Section) and 4.1.3 (Unrestricted Fish Species Section) shall also be considered to be Prohibited Fish Species.

4.3 The importation and/or possession of transgenic fishes shall be prohibited unless explicitly included in the Unrestricted Fish Species section.

5.0 Review, Revision & Maintenance of List

5.1 The commissioner may review and revise the species contained within the list. The public may submit any species of fish for consideration of inclusion in this list by submitting a written request with relevant documentation.

5.2 The department shall maintain an up-to-date list of prohibited, restricted, and unrestricted fish species and shall make this list available on the department's website, from the department's headquarters and from the department's district offices.

6.0 Permits

6.1 Prohibited Fish Species Permits. The commissioner may issue a Commissioner's Prohibited Fish Species Permit allowing importation and possession of a fish on the Prohibited Fish Species section of the list.

6.1.1 In issuing a permit, the Commissioner shall consider:

- (a) How the fish are being kept in a controlled environment including but not limited to artificial tanks without inflow or outflow, and; without connection to waters of the state;
- (b) Whether the purpose is for research;
- (c) Whether the purpose is for education;
- (d) Whether it is for public purpose;
- (e) Whether there are available alternatives;
- (f) The health of native or naturalized fish species.

6.1.2 A permit issued under this subsection shall include conditions that ensure the health and safety of Vermont's fish population.

6.2 Restricted Fish Species Permits. Fish in the Restricted Fish Species section do not require a Commissioner's Prohibited Fish Species Permit. However, as noted in paragraph 4.1.2 above, other department permits may be required to import and/or possess fish listed in the Restricted Fish Species section.

7.0 Permit Applications

7.1 Applications for Commissioner's Prohibited Fish Species Permits shall be complete and submitted to the department on an application form to be provided by the department. For an application to be considered complete, it shall be legible, shall contain all information requested by the department, shall contain no false statements, shall bear the applicant's official signature and shall be accompanied by the required application fee.

7.2 With regard to all fish, the applicant shall present to the department, as a requirement of the permit, written fish health inspection reports as the department may specify, and invoices clearly indicating the source of the fish to be imported. Fish health inspection reports shall be made by a qualified fish health inspector acceptable to the department.

8.0 Inspections

8.1 Persons holding a Commissioner's Prohibited Fish Species Permit shall allow inspection at reasonable times of their premises, facilities, records, and fish by the Commissioner or the Commissioner's designee(s).

8.2 The issued permit shall be available for inspection by the Commissioner or the Commissioner's designee(s).

9.0 Quarantine, Destruction or Sterilization Where Disease and/or Harmful Species are Present

9.1 The department may require a period of quarantine and treatment, the destruction of fish, and/or order remedial action if necessary, if a harmful fish species and/or fish pathogen is confirmed. This shall occur at the expense of the owner.

List of Prohibited, Restricted, and Unrestricted Fish Species

Table 2. Prohibited Fish Species List.

Designation	Scientific name (genus & species)	Common name(s)
Prohibited	<i>Alosa pseudoharengus</i>	Alewife
Prohibited	<i>Aristichthys nobilis</i>	Bighead carp
Prohibited	<i>Carassius carassius</i>	Crucian carp
Prohibited	<i>Carassius gibelio</i>	Prussian carp
Prohibited	<i>Carassius cuvieri</i>	Japanese (white) crucian carp
Prohibited	<i>Channa spp.</i>	Asian snakehead
Prohibited	<i>Clarias batrachus</i>	Walking catfish
Prohibited	<i>Ctenopharyngodon idella</i>	Grass carp
Prohibited	<i>Dorosoma cepedianum</i>	Gizzard shad
Prohibited	<i>Gambusia spp.</i>	Mosquito fish
Prohibited	<i>Gymnocephalus ceruus</i>	Ruffe
Prohibited	<i>Hypophthalmichthys barmandi</i>	Large scale silver carp
Prohibited	<i>Hypophthalmichthys molitrix</i>	Silver carp
Prohibited	<i>Leuciscus idus</i>	Ide, orfe
Prohibited	<i>Misgurnus anguillicaudatus</i>	Oriental weather loach
Prohibited	<i>Monopterus albus</i>	Asian swamp eel
Prohibited	<i>Mylopharyngodon piceus</i>	Black carp
Prohibited	<i>Neogobius melanostomus</i>	Round goby
Prohibited	<i>Parachanna spp.</i>	African snakehead
Prohibited	<i>Proterorhinus marmoratus</i>	Tubenose goby
Prohibited	<i>Rhodeus sericeus</i>	Bitterling
Prohibited	<i>Sander lucioperca</i>	Zander
Prohibited	<i>Scardinius erythrophthalmus</i>	Rudd
Prohibited	<i>Tinca tinca</i>	Tench

Table 3. Restricted Fish Species List.

Designation	Scientific Name (genus & species)	Common name(s)
Restricted	<i>Acipenser fulvescens</i> ¹	Lake sturgeon ¹
Restricted	<i>Alosa aestivalis</i>	Blueback herring
Restricted	<i>Alosa sapidissima</i>	American shad
Restricted	<i>Ambloplites rupestris</i>	Rock bass
Restricted	<i>Ameiurus natalis</i>	Yellow bullhead
Restricted	<i>Ameiurus nebulosus</i>	Brown bullhead
Restricted	<i>Amia calva</i>	Bowfin
Restricted	<i>Ammocrypta pellucida</i> ¹	Eastern sand darter ¹

Restricted	<i>Anguilla rostrata</i>	American eel
Restricted	<i>Aplodinotus grunniens</i>	Freshwater drum
Restricted	<i>Carpiodes cyprinus</i>	Quillback
Restricted	<i>Catostomus catostomus</i> ²	Longnose sucker ²
Restricted	<i>Catostomus commersoni</i> ²	White sucker ²
Restricted	<i>Coregonus artedi</i>	Cisco or lake herring
Restricted	<i>Coregonus clupeaformis</i>	Lake whitefish
Restricted	<i>Cottus bairdi</i>	Mottled sculpin
Restricted	<i>Cottus cognatus</i>	Slimy sculpin
Restricted	<i>Couesius plumbeus</i>	Lake chub
Restricted	<i>Culeas inconstans</i>	Brook stickleback
Restricted	<i>Cyprinella spiloptera</i>	Spotfin shiner
Restricted	<i>Cyprinus carpio</i>	Common carp, mirror carp, koi
Restricted	<i>Esox americanus americanus</i>	Redfin pickerel
Restricted	<i>Esox lucius</i>	Northern pike
Restricted	<i>Esox masquinongy</i>	Muskellunge
Restricted	<i>Esox niger</i>	Chain pickerel
Restricted	<i>Etheostoma flabellare</i>	Fantail darter
Restricted	<i>Etheostoma olmstedi</i>	Tessellated darter
Restricted	<i>Exoglossum maxilllingua</i>	Cutlips minnow
Restricted	<i>Fundulus diaphinus</i>	Banded killifish
Restricted	<i>Hiodon tergisus</i>	Mooneye
Restricted	<i>Hybognathus bankinsoni</i>	Brassy minnow
Restricted	<i>Hybognathus regius</i>	Eastern silvery minnow ²
Restricted	<i>Ichthyomyzon fossor</i> ¹	Northern brook lamprey ¹
Restricted	<i>Ichthyomyzon unicuspis</i>	Silver lamprey
Restricted	<i>Ictalurus punctatus</i>	Channel catfish
Restricted	<i>Labidesthes sicculus</i>	Brook silverside
Restricted	<i>Lampetra appendix</i> ¹	American brook lamprey ¹
Restricted	<i>Lepisosteus osseus</i>	Longnose gar
Restricted	<i>Lepomis auritus</i>	Redbreast sunfish
Restricted	<i>Lepomis gibbosus</i>	Pumpkinseed
Restricted	<i>Lepomis macrochirus</i>	Bluegill
Restricted	<i>Lepomis microlophus</i>	Redear sunfish
Restricted	<i>Lota lota</i>	Burbot
Restricted	<i>Luxilus cornutus</i> ²	Common shiner ²
Restricted	<i>Margariscus margarita</i>	Pearl dace
Restricted	<i>Micropterus dolomieu</i>	Smallmouth bass
Restricted	<i>Micropterus salmoides</i>	Largemouth bass
Restricted	<i>Morone Americana</i>	White perch
Restricted	<i>Morone saxatilis</i>	Striped bass
Restricted	<i>Moxostoma anisurum</i>	Silver redhorse
Restricted	<i>Moxostoma macrolepidotum</i>	Shorthead redhorse
Restricted	<i>Moxostoma valenciennesi</i>	Greater redhorse
Restricted	<i>Notemigonus crysoleucas</i> ²	Golden shiner ²
Restricted	<i>Notropis atherinoides</i> ²	Emerald shiner ²

Restricted	<i>Notropis bifrenatus</i>	Bridle shiner
Restricted	<i>Notropis heterodon</i>	Blackchin shiner
Restricted	<i>Notropis heterolepis</i>	Blacknose shiner
Restricted	<i>Notropis hudsonius</i> ²	Spottail shiner ²
Restricted	<i>Notropis rubellus</i>	Rosyface shiner
Restricted	<i>Notropis stramineus</i>	Sand shiner
Restricted	<i>Notropis volucellus</i> ²	Mimic shiner ²
Restricted	<i>Noturus flavus</i> ¹	Stonecat ¹
Restricted	<i>Oncorhynchus mykiss</i>	Rainbow trout
Restricted	<i>Oreochromis spp.</i>	Tilapia spp.
Restricted	<i>Osmerus mordax</i> ²	Rainbow smelt ²
Restricted	<i>Perca flavescens</i> ²	Yellow perch ²
Restricted	<i>Percina copelandi</i> ¹	Channel darter ¹
Restricted	<i>Percina caprodes</i>	Logperch
Restricted	<i>Percopsis omiscomayus</i>	Trout-perch
Restricted	<i>Petromyzon marinus</i>	Sea lamprey
Restricted	<i>Phoxinus eos</i> ²	Northern redbelly dace ²
Restricted	<i>Phoxinus neogaeus</i>	Finescale dace
Restricted	<i>Pimephales notatus</i> ²	Bluntnose minnow ²
Restricted	<i>Pimephales promelas</i> ²	Fathead minnow ²
Restricted	<i>Pomoxis annularis</i>	White crappie
Restricted	<i>Pomoxis nigromaculatus</i>	Black crappie
Restricted	<i>Prosopium cylindraceum</i>	Round whitefish
Restricted	<i>Rhinichthys atratulus</i> ²	Blacknose dace ²
Restricted	<i>Rhinichthys cataractae</i> ²	Longnose dace ²
Restricted	<i>Salmo salar</i>	Atlantic salmon
Restricted	<i>Salmo trutta</i>	Brown trout
Restricted	<i>Salvelinus fontinalis</i>	Brook trout
Restricted	<i>Salvelinus namaycush</i>	Lake trout
Restricted	<i>Sander canadense</i>	Sauger
Restricted	<i>Sander vitreum</i>	Walleye
Restricted	<i>Semotilus atromaculatus</i> ²	Creek chub ²
Restricted	<i>Semotilus corporalis</i> ²	Fallfish ²
Restricted	<i>Sarotherodon spp.</i>	Tilapia spp.
Restricted	<i>Tilapia spp.</i>	Tilapia spp.
Restricted	<i>Umbra limi</i>	Central mudminnow

¹Species subject to 10 V.S.A. §5402, Endangered and Threatened Species Lists

²Species subject to 10 V.S.A. §122, Section 5.0 Rule governing the taking, possessing, transporting, use and selling of baitfish.

Unrestricted Fish Species Section.

Families noted with an asterisk indicate the global distribution of some species may lie outside the unrestricted zone (30° North latitude-30° South latitude). Such species will be considered prohibited as per 4.1.1 of this rule.

Table 4. Unrestricted Fish Species List.

	Family	Genera
Ancestrorhynchidae	Smallscale pike characins	<i>Ancestrorhynchus</i>
Achiridae	American soles	<i>Trinectes</i>
Alestidae	African tetras	<i>Phenacogrammus</i>
Ambassidae	Asiatic glassfishes	<i>Parambassis</i>
Amphiliidae	Loach catfishes	<i>Pbractura</i>
Anabantidae	Climbing gouramies	<i>Ctenopoma, Microctenopoma</i>
Anablepidae	Four-eyed fishes, one-sided livebearers, white-eye	<i>Anableps</i>
Anostomidae	Headstanders	<i>Abramites, Anostomus, Laemolyta, Leporinus, Pseudanos</i>
Aplocheilidae*	Rivulines	<i>Aplocheilus</i>
Apterontidae	Ghost knifefishes	<i>Apterontus</i>
Ariidae	Sea catfishes	<i>Arius</i>
Aspredinidae	Banjo catfishes	<i>Bunocephalus</i>
Auchenipteridae	Driftwood catfishes	<i>Auchenipterichthys, Liosomadorus</i>
Badidae	Blue Perch, Dwarf Chameleon Fish	<i>Badis</i>
Bagridae	Bagrid catfishes	<i>Bagrichthys, Horabagrus, Mystus, Pseudomystus</i>
Balitoridae	River loaches	<i>Beaufortia, Gastromyzon, Schistura</i>
Bedotiidae	Madagascar rainbowfishes	<i>Bedotia</i>
Belonidae	Needlefishes	<i>Xenentodon</i>
Callichthyidae	Callichthyid armored catfishes	<i>Brochis, Callichthys, Corydoras, Dianema, Hoplosternum, Megalechis</i>
Chacidae	Squarehead or angler catfish	<i>Chaca</i>
Characidae	Characins	<i>Aphyocharax, Astyanax, Boelkea, Boulengerella, Chalceus, Charax, Gymnocorymbus, Hasemania, Hemigrammus, Hyphessobrycon, Inpaichthys, Megalampodus, Metynnis, Moenkhausia, Myleus, Mylossoma, Nematobrycon, Paracheirodon, Piactus, Prionobrama, Pristella, Thayeria, Triportheus</i>
Chilodontidae		<i>Chilodus</i>
Cichlidae	Cichlids	<i>Aequidens, Altolamprologus, Amphilophus, Apistogramma, Archocentrus, Astronotus, Aulonocara, Cichla, Cichlasoma, Cleithracara, Crenicichla, Cyathopharynx, Cyphotilapia, Cyrtocara, Dimidiichromis, Etroplus, Geophagus, Gymnogeophagus, Haplochromis, Hemichromis, Herichthys,</i>

Family		Genera
		<i>Heros, Herotilapia, Hypselecara, Iodotropheus, Julidochromis, Labeotropheus, Labidochromis, Laetacara, Lamprologus, Lepidolamprologus, Limnochromis, Loboichilotes, Maylandia, Melanochromis, Mesonauta, Mikrogeophagus, Nannacara, Neolamprologus, Nimbochromis, Parachromis, Pelvicachromis, Placidochromis, Protomelas, Pseudocrenilabrus, Pseudotropheus, Pterophyllum, Rhamphochromis, Satanoperca, Sciaenochromis, Steatocranus, Symphysodon, Telmatochromis, Thorichthys, Trematochromis, Tropheus, Variabilichromis, Vieja</i>
Citharinidae	Lutefishes	<i>Distichodus</i>
Cobitidae*	Loaches	<i>Botia, Lepidocephalichthys, Lepidocephalus, Pangio, Syncrossus, Yasubikotakia</i>
Ctenoluciidae	Pike-characids	<i>Ctenolucius</i>
Cynodontidae	Dogtooth characins	<i>Rhaphiodon</i>
Cyprinidae*	Minnnows & carps	<i>Balantiocheilus, Barbichthys, Barbonymus, Borasas, Carassius auratus, Crossocheilus, Cyclocheilichthys, Danio, Epalzeorhynchus, Esomus, Hampala, Labeo, Leptobarbus, Luciosoma, Oreichthys, Puntius, Puntioplites, Rasbora, Tanichthys, Trigostigma</i>
Cyprinidae	Minnnows & carps	<i>Danio rerio (GloFish®)</i>
Cyprinodontidae*	Pupfishes	<i>Jordanella floridae</i>
Datnioididae		<i>Datnioides</i>
Doradidae	Thorny catfishes	<i>Acanthodoras, Agamyxis, Amblydoras, Platydoras</i>
Eleotridae	Sleepers	<i>Butis, Oxyeleotris</i>
Erethistidae	South Asian river catfishes	<i>Hara</i>
Erythrinidae	Trahiras	<i>Hoplias</i>
Gasteropelecidae	Freshwater hatchetfishes	<i>Carnegiella, Gasteropelecus, Thoracocharax</i>
Gobiidae*	Gobies	<i>Brachygobius, Gnatholepis, Gobioides, Stigmatogobius</i>
Gymnarchidae		<i>Gymnarchus</i>
Gyrinocheilidae	Algae eaters	<i>Gyrinocheilus</i>
Helostomatidae	Kissing gourami	<i>Helostoma</i>
Hemiodontidae		<i>Hemiodus</i>
Hemiramphidae	Halfbeaks	<i>Dermogenys</i>
Hypopomidae	Bluntnose knifefishes	<i>Hypopygus, Steatogenys</i>
Lebiasinidae	Pencilfishes	<i>Nannostomus</i>
Lepidosirenidae	Aestivating lungfishes	<i>Lepidosiren</i>
Loricariidae	Armored catfishes	<i>Ancistrus, Baryancistrus, Cephalosilurus, Chaetostoma, Dekeyseria, Farlowella, Glyptoperichthys, Hemiancistrus,</i>

Family		Genera
		<i>Hypancistrus, Hypstomus, Lasiancistrus, Leporacanthicus, Otocinclus, Panaque, Peckoltia, Pseudacanthicus, Pseudolithoxus, Pterosturisoma, Pterygoplichthys, Rineloricaria, Sturisoma</i>
Mastacembelidae	Spiny eels	<i>Macrognathus, Mastacembelus</i>
Melanotaeniidae	Rainbowfishes, blue eyes	<i>Chilathernia, Iriathernia, Melanotaenia</i>
Mochokidae	Squeakers or upside-down catfishes	<i>Synodontis</i>
Monodactylidae	Moonyfishes of fingerfishes	<i>Monodactylus</i>
Mormyridae	Elephantfishes	<i>Campylomormyrus, Gnathonemus, Mormyrops, Pollimyrus</i>
Muraenidae	Moray eels	<i>Gymnothorax</i>
Nandidae	Asian leaffishes	<i>Polycentropsis</i>
Nothobranchiidae	African rivulines	<i>Aphyosemion, Epiplatys, Nothobranchius</i>
Notopteridae	Featherbacks or knifefishes	<i>Chitala, Xenomystus</i>
Osphronemidae	Gouramies	<i>Betta, Colisa, Spaerichthys, Trichogaster, Trichopsis</i>
Osteoglossidae	Arowanas	<i>Osteoglossum</i>
Pangasiidae	Shark catfishes	<i>Pangasius</i>
Pantodontidae	Freshwater butterflyfish	<i>Pantodon</i>
Pimelodidae	Long-whiskered catfishes	<i>Leiarius, Phractocephalus, Pimelodella, Pimelodus, Sorubim</i>
Poeciliidae*	Poeciliids	<i>Poecilia, Xiphophorus</i>
Polycentridae	Leaffishes	<i>Monocirrhus, Polycentrus</i>
Polynemidae	Threadfins	<i>Polynemus</i>
Polypteridae	Bichirs	<i>Erpetoichthys, Polypterus</i>
Potamotrygonidae	River stingrays	<i>Potamotrygon</i>
Prochilodontidae	Flannel-mouth characiformes	<i>Semaprochilodus</i>
Pseudomugilidae	Blue eyes	<i>Pseudomugil</i>
Pseudopimelodidae	Bumblebee catfishes, dwarf marble catfishes	<i>Microglanis</i>
Rhamphichthyidae	Sand knifefishes	<i>Rhamphichthys</i>
Scatophagidae	Scats	<i>Scatophagus</i>
Schilbeidae	Schilbid catfishes	<i>Entropiellus, Paraila, Schilbe</i>
Siluridae	Sheatfishes	<i>Kryptopterus, Ompok</i>
Sternopygidae	Glass knifefishes	<i>Eigenmannia</i>
Synbranchidae	Swamp-eels	<i>Synbranchus</i>
Syngnathidae	Pipefishes, seahorses	<i>Microphis</i>
Telmatherinidae	Sailfin silversides	<i>Marosatherina</i>
Tetraodontidae	Puffers	<i>Carinotetraodon, Tetraodon</i>
Terapontidae	Grunters or tigerperches	<i>Terapon</i>
Toxotidae	Archerfishes	<i>Toxotes</i>

Surveys and investigations – Title 10, Chapter 83 § 2661

The commissioner shall make surveys and investigations to determine the threat or presence of infestations and control of forest pests. For this purpose duly designated representatives of the commissioner may enter at reasonable times on public and private lands for the purpose of conducting such surveys, investigations and controls. (Added 1977, No. 253 (Adj. Sess.), § 1.)

The taking, possessing, transporting, use and selling of baitfish – Title10 Appendix, Chapter 2, § 122

1.0 Authority

This rule is adopted pursuant to 10 V.S.A. § 4081(b). In adopting this rule, the Fish and Wildlife Board is following the policy established by the General Assembly that the protection, propagation, control, management, and conservation of fish, wildlife and fur-bearing animals in this state is in the interest of the public welfare and that the safeguarding of this valuable resource for the people of the state requires a constant and continual vigilance.

In accordance with 10 V.S.A. § 4082, this rule is designed to maintain the best health, population and utilization levels of Vermont's fisheries.

In accordance with 10 V.S.A. § 4083, this rule establishes open seasons; establishes daily, season, possession limits and size limits; prescribes the manner and means of taking fish; and prescribes the manner of transportation and exportation of fish.

2.0 Purpose

It is the policy of the state that the protection, propagation control, management and conservation of fish, wildlife, and fur-bearing animals in this state is in the interest of the public welfare, and that safeguarding of this valuable resource for the people of the state requires a constant and continual vigilance.

3.0 Angling, legal methods of taking fish

3.1 Definitions

3.1.1 Baited Hook - A single shank hook with 1, 2 or 3 points which may be baited with natural or artificial bait or both.

3.1.2 Lure - A man-made device designed to catch only 1 fish at a time, to include a spoon, plug, spinner, bait harness, tandem hook streamer or lead head jig.

3.1.3 Fly - A single pointed hook dressed with feathers, hair, thread, tinsel, or any similar material wound on or about the hook to which no hooks, spinners, spoons, or similar devices have been added.

3.1.4 Immediate Control - Such constant control as would enable the angler to respond forthwith to a fish taking their bait, lure or fly promptly and without any delay.

3.2 Whether still fishing, casting, or trolling in Vermont waters, a person may take fish only by using not more than two lines over which he or she has immediate control and to each of which lines is attached not more than two baited hooks, or more than three artificial flies, or more than two lures with or without bait, except that at Seymour Lake and Little Averill Lake a person may take fish only by using not more than one line.

3.3 A person fishing by angling shall not take fish through the ice, from the ice, or from an object supported by the ice.

3.4 A person shall not take any fish pursuant to subsection (3.2) unless it is hooked in the mouth. Any fish taken under subsection (3.2) that is not hooked in the mouth shall be immediately released pursuant to 10 V.S.A. § 4602. A fish hooked in any other part of the body with a hook or hooks manipulated in such a manner as to pierce and hook the fish other than in the mouth shall be considered to be foul hooked, and shall be prima facie evidence of foul hooking.

4.0 Ice Fishing

4.1 Definitions

4.1.1 Ice Fishing - Ice fishing is defined as fishing by means of hook and line in hand or attached to a rod, tip-up, jack or bob, where the angler is fishing through a hole in the ice, from the ice or on an object supported by the ice. Fishing by casting or trolling baited hooks, artificial flies or lures shall not be considered ice fishing.

4.2 Fish may be taken through the ice with not more than two baited hooks or three artificial flies or two lures on each line. A person shall not operate more than eight lines, except on Lake Champlain where no more than fifteen lines may be operated, and except on Seymour and Little Averill Lakes, where not more than four lines may be operated.

4.3 A person so fishing shall have at all times immediate control over the lines while in operation at all times.

4.4 The definitions of section 3 are applicable to this section.

5.0 The taking, possessing, transporting, use and selling of baitfish

5.1 Purpose

5.1.1 This rule applies to fish used as bait. This rule shall apply to all persons who take, possess, transport, use, or deal with baitfish.

5.1.2 The purpose of this paragraph is to: a) protect the fish, and fisheries in the state, b) ensure the conservation of the fish and fisheries in the state, c) maintain the best health of species of the state, d) prevent the introduction or spread of a disease or parasite harmful to humans and wild species, and e) prevent the escape or release of non-native species or species injurious to or competitive with natural ecological systems and processes.

5.2 Definitions

5.2.1 "Application" means a specific form provided by the Fish and Wildlife Department.

5.2.2 "Baitbox" means a receptacle used for holding or keeping baitfish alive for personal use. A legal baitbox shall not exceed 25 cubic feet in volume.

5.2.3 "Baitfish" means fish species and parts thereof, living or dead, used for the purpose of attracting and catching fish.

5.2.4 "Commercial Dealing, dealing, or deal" means to sell as defined in Title 10, § 4001, subsection 22.

5.2.5 "Fish Hatchery" refers to any fish culture station, hatchery, or artificial rearing pond which grows or maintains baitfish for sale in Vermont.

5.2.6 "Permit" is a document from the Commissioner granting a Commercial Bait Dealers Permit.

5.2.7 "Waterbody" means any lake, pond, river, or stream including all tributaries upstream to the first barrier impassable to upstream fish movement.

5.2.8 "Commercially Preserved Baitfish" means baitfish which are chemically treated in a manner approved by the Department, and then packaged for retail sale.

5.2.9 Personal Baitfish Harvest" means baitfish taken for non-commercial use.

5.3 Personal Baitfish Harvest

5.3.1 Personally harvested baitfish may be used only on the same waterbody, as defined in 5.2.7, from which they were collected.

5.3.2 A person may harvest for baitfish only those fish species listed under paragraphs 5.6. and 5.6.1.

5.3.3 It is unlawful to take baitfish for personal use other than by the following methods: a) minnow traps no longer than eighteen inches with an entrance for fish not exceeding one inch in diameter, b) dip nets, cast nets, and umbrella nets not exceeding a total of 51 square feet of mesh, or a seine net not exceeding 25 feet in length, c) angling by hook and line.

5.3.4 The personal harvest of baitfish is unlawful in Seasonally Closed Waters as listed in Section 9.0 of this regulation, except by angling or the use of minnow traps no longer than eighteen inches with an entrance for fish not exceeding one inch in diameter, and only during the open season for trout.

5.3.5 All traps, nets, baitboxes or other holding receptacles capable of taking, holding or keeping live baitfish in public waters must be marked with the name and address of the owner and user, unless the owner is present.

5.3.6 Personally harvested baitfish shall not be transported by motorized vehicle away from the waterbody from which they were collected.

5.3.7 Baitfish may be held on the water in a pen or baitbox as defined in paragraph 5.2.2. Unwanted baitfish shall be discarded dead in the water or on the ice.

5.3.8 Personally harvested baitfish may be collected from a waterbody's tributaries upstream to the first impassable barrier for use on such waterbody. Personally harvested baitfish shall not be transported upstream beyond the first impassable barrier.

5.3.9 The personal harvest of baitfish is prohibited on any waterbody of the state that is defined as closed to baitfish harvest. The Department will maintain and make available a list of closed waters.

5.3.10 Fish eggs may be collected from legally angled fish from Vermont waters, and used immediately as bait on the same water where taken unless that water body has been closed to baitfish collection. It is illegal to move personally harvested fish eggs to any other waterbody. It is illegal to transport fish eggs away from and return them to the same waterbody for use as bait unless they have been processed in a manner approved by the Department.

5.4 Commercially Purchased Baitfish

5.4.1 It is unlawful to import baitfish into the State of Vermont without a Fish Importation Permit, except as provided for in paragraphs 5.4.4 and 5.4.5.

5.4.2 A person purchasing baitfish shall retain and show upon request a transportation receipt issued by a state-approved commercial bait dealer, authorizing transportation of baitfish overland by motorized vehicle. The receipt shall contain the following information: 1) A unique receipt identification number, 2) The name and telephone number of the bait dealer, 3) time and date of sale, 4) species purchased, 5) quantity purchased, 6) waterbody (limited to one) on which the baitfish will be used, 7) signature of purchaser.

5.4.3 A transportation receipt shall be valid for 96 hours from time and date of sale.

5.4.4 Anglers may purchase baitfish from a New York baitshop for use on Lake Champlain only, provided the baitshop is Vermont-licensed, and the baitfish are accompanied by a Vermont-issued baitfish transportation receipt.

5.4.5 Anglers may purchase baitfish from a New Hampshire baitshop for use on the Connecticut River and its setbacks only, provided the baitshop is Vermont-licensed, and the baitfish are accompanied by a Vermont-issued baitfish transportation receipt. For the purposes of this paragraph, the Connecticut River is defined as all waters of the river including the bays, setbacks, and tributaries, only to the first highway bridge crossing said tributaries on the Vermont side.

5.4.6 Anglers shall not transport baitfish away from waters of the state by motorized vehicle. Baitfish may be held on the water in a pen or baitbox as per paragraph 5.2.2. Unwanted baitfish shall be discarded dead in the water or on the ice.

5.4.7 Commercially prepared and preserved baitfish and fish eggs available from retail stores may be purchased and used as bait, and may be taken home and kept for later use, provided they are retained in the original packaging at all times.

5.5 Commercial Bait Dealers

5.5.1 Any person who buys bait for resale or sells baitfish is required to obtain a Commercial Bait Dealers Permit from the Commissioner.

5.5.2 Commercial Bait Dealers may sell as bait only those species of fish listed under section 5.6 and 5.6.1. Commercial Bait Dealers may also sell rainbow smelt as bait, provided they are obtained from a fish hatchery approved by the Commissioner as per paragraph 5.5.4 and its subsections below, or

harvested and sold for use on the same waterbody on which the Bait Dealer is located as per paragraph 5.5.5 and its subsections below.

5.5.3 Commercial Bait Dealers must declare in their permit application if they will be a Statewide baitfish dealer, or a Waterbody-Specific baitfish dealer.

5.5.4 Statewide baitfish dealers are prohibited from possessing, buying or selling wild-caught baitfish.

5.5.4.1 Baitfish sold by Statewide baitfish dealers must originate from a fish hatchery approved by the Commissioner.

5.5.4.2 Statewide baitfish dealers must hold or keep baitfish in waters drawn from a secure well or municipal water source approved by the Fish & Wildlife Department.

5.5.4.3 Baitfish sold by Statewide baitfish dealers may be used in waters throughout the state, except those waters as described in Section 6.0 of this regulation.

5.5.5 Waterbody-specific baitfish dealers must declare on their permit application the waterbody on which they are located.

5.5.5.1 Waterbody-specific baitfish dealers may harvest wild baitfish only from the declared waterbody, and offer them for sale and use only on the declared waterbody.

5.5.5.2 Waterbody-specific baitfish dealers must have baitfish holding facilities that discharge directly to their declared waterbody. Holding facilities must not discharge to other waters of the state.

5.5.5.3 Waterbody-specific baitfish dealers shall not operate dip nets, cast nets, or umbrella nets exceeding 51 square feet of mesh, or a seine net exceeding 125 feet in length, for the purposes of taking fish for bait, unless otherwise provided for on a Commercial Bait Dealers Permit. Baitfish netting is prohibited in all Seasonally Closed Waters as listed in Section 9.0 of this regulation, unless otherwise provided for on a Commercial Bait Dealers Permit.

5.5.5.4 The commercial harvest of baitfish is prohibited on any waterbody of the state that is defined as closed to baitfish harvest. The Department will maintain and make available a list of closed waters.

5.5.6 A Commercial Bait Dealer shall provide to each customer at the point of sale a copy of a transportation receipt containing the following information: 1) A unique receipt identification number, 2) The name and telephone number of the bait dealer, 3) time and date of sale, 4) species purchased, 5) quantity purchased, 6) waterbody (limited to one) on which the baitfish will be used, 7) signature of purchaser.

5.5.7 A transportation receipt shall be valid for 96 hours from time and date of sale.

5.5.8 Receipt books shall be provided to Commercial Bait Dealers by the Department.

5.5.9 Any holder of a Commercial Bait Dealers Permit shall maintain receipts or records for each lot of wholesaled hatchery-raised or wild-caught baitfish introduced into their shop. The receipts or records shall include: name, address and telephone number of seller (for wholesaled baitfish), and date received, species identification, and quantity purchased or harvested, for wholesaled and wild-caught baitfish. The permit holder shall retain the receipts and records for at least one year after the date of sale or harvest. Receipts or records must be provided to the Department immediately upon request.

5.6 Approved Species of Fish for use as Bait

Eastern silvery minnow *Hybognathus regius*

Fathead minnow *Pimephales promelas*

Bluntnose minnow *Pimephales notatus*

Emerald shiner *Notropis atherinoides*

Golden shiner *Notemigonus crysoleucas*

Spottail shiner *Notropis hudsonius*

Common shiner *Luxilus cornutus* previously *Notropis cornutus*

Mimic shiner *Notropis volucellus*

Creek chub *Semotilus atromaculatus*

Fallfish *Semotilus corporalis*

Blacknose dace *Rhinichthys atratulus*

Longnose dace *Rhinichthys cataractae*

Northern redbelly dace *Phoxinus eos*

White sucker *Catostomus commersoni*

Longnose sucker *Catostomus catostomus*

5.6.1 The following additional fish species, or parts thereof, may be taken by angling and used for bait only in those waters where taken and shall not be transported alive from those waters:

Rainbow smelt *Osmerus mordax*

Yellow perch *Perca flavescens*

5.6.2 All other species of fish are prohibited for use as bait.

5.7 Commercial Bait Dealer Application Process

5.7.1 A party who wishes to obtain a Commercial Bait Dealers Permit shall apply to the Commissioner in writing on a form provided by the Department. The Commissioner or duly authorized agents may require the applicant to submit such additional information as is necessary to determine that the permitted activities comply with the purposes of this rule, including but not limited to fish health testing. The Commissioner or duly authorized agents shall review the application and determine whether the application is complete or deficient.

5.7.2 If the application is deficient, the Commissioner or agents shall inform the applicant of the deficiencies and return the application within 30 days of receipt, along with any associated fee, to the applicant for revision and re-submission. Once the application is complete, the Commissioner or agents shall review the information supplied to assess the impact of the proposed operation on Vermont's fish and fisheries. The Commissioner may issue the person an annual permit for commercial bait dealing. If the application is denied, the Commissioner shall, within 30 days of receipt of application, send the person a written denial providing the reasons why the application is denied.

5.8 Permit Compliance

5.8.1 The Permittee shall make the permit available upon request by an agent of the Department. Premises and equipment used by persons to take, store, or deal in baitfish shall be accessible for inspection by the Commissioner and his or her agents. Samples for species determination or disease examination shall be made available immediately upon request.

5.8.2 Permittees shall provide the Department with additional information as requested on an annual basis or prior to the re-issuance of a new permit.

5.9 Permit Revocation

5.9.1 The Commissioner may revoke any permit issued in order to protect regulated species when there is a concern of a disease developing, for failure to comply with the provisions of this rule, for failure to comply with other rules promulgated by the Board or for failure to comply with the provisions of Part 4, Title 10, Vermont Statutes Annotated.

5.9.2 Upon receipt of information alleging that a person permitted to deal commercially in baitfish within the State of Vermont has violated rules promulgated by the Board or the provisions of Part 4 of Title 10 of the Vermont Statutes Annotated, the Commissioner shall cause the information to be investigated. If as a result of the investigation the Commissioner finds that there is a reasonable belief that a person permitted under this rule has violated rules promulgated by the Board or the provisions of Part 4 of Title 10 of the Vermont Statutes Annotated, then the Commissioner shall notify that person in writing of the intent to revoke the permit.

5.9.3 Prior to permit revocation, the Commissioner shall provide a proceeding consistent with 3 V.S.A. § 814(c).

5.9.4 Appeals of the decisions of the Commissioner are subject to the Vermont Rules of Civil Procedure.

5.10 Permanent Rule Effective Date and Expiration of Emergency Rule

5.10.1 This rule shall take effect 15 days after being adopted by the Fish and Wildlife Board and filed with the Secretary of State and Legislative Committee on Administrative Rules. The existing emergency rule regarding baitfish shall expire when this regulation takes effect.

6.0 Use of fish as bait

Use of live bait is prohibited in certain bodies of water as specified: [in this section]

7.0 Lake Champlain Boundaries

Lake Champlain proper shall be considered to include the setback at the same level and the major tributaries to the lake to the following boundaries: [as specified in this section]

8.0 Clyde River: Catch and Release

Between October 1 and October 31, on the Clyde River (Newport City, Orleans County) beginning at the top of the abandoned mill dam located immediately upstream of the Newport 1, 2, 3 hydroelectric powerhouse downstream to the downstream edge of the arch bridge at Gardner Park entrance, fishing may be done with artificial flies and lures only, and all salmon caught must be released.

9.0 Seasonally Closed Waters

9.1 The following lakes and ponds or portions thereof are hereby designated Seasonally Closed Waters and shall be closed to all fishing except during the open season for trout as provided in section 10 of these regulations: [as specified in this section]

10.0 Fish - Open Seasons, Size Restrictions and Daily Bag Limits.

Fish of the species named or described in the tables set forth below may be taken:

In the waters specified in column 1, by the method specified in column 2, during the open season specified in column 3.

Provided they meet any size restrictions specified in column 4, and only in numbers listed under daily bag limits specified in column 5, under no circumstances may a person take in one day, more than the daily bag or weight limit from a listed body of water. No person may take in aggregate more than the daily state-wide aggregate limit for any species listed.

Businesses may buy lawfully taken fish, with the approval of the commissioner, pursuant to guidelines of the board. Fish species are restricted to species not protected by title 10 V.S.A. 4611.

10.1 Possession limits are equal to twice the "daily bag limits". Fish species with limit restrictions, may not be possessed in excess of the possession limits at any time.

10.1.1 No person shall have live fish in their possession that are transported in a manner which attempts to keep them alive when leaving waters of the state (10 V.S.A. § 1251(13)), except as follows:

10.1.1.1 those species allowed to be possessed and used as live fish for bait,

10.1.1.2 the person has been issued a scientific collection permit by the Commissioner which specifically approves of the activity,

10.1.1.3 the person has been issued a fish transportation permit by the commissioner which specifically approves of the activity,

10.1.1.4 the person has been issued a fish breeders permit or fish importation permit by the commissioner which specifically approves of the activity.

10.2 The daily bag limit for a fish species on a water body with a closed season for that fish species is zero.

10.3 "General waters" restrictions are the provisions applicable to all waters of the state, except the waters specifically named or described.

10.4 Unless otherwise specifically provided, fish not listed in this regulation may be taken at any time and without size or catch limit, in waters not listed as Seasonally Closed Waters in Section 9 of these regulations.

(1961, No. 119, § 2, eff. May 9, 1961; amended 1963, Fish and Game Board Reg. No. -, eff. Aug. 23, 1963; 1966, Fish and Game Board Reg. No. -, eff. Jan. 1, 1967; 1968, Fish and Game Board Reg. No. -, eff. Jan. 1, 1969; 1971, Fish and Game Board Regs. No. 840, eff. March 19, 1971; No. -, eff. June 21, 1971; 1973, Fish and Game Board Reg. No. 866, eff. Jan. 20, 1973; 1974, Fish and Game Board Reg. No. 892, eff. Dec. 26, 1974; 1975, Fish and Game Board Reg. No. 895, eff. Jan. 1, 1976; 1976, Fish and Game Board Reg. No. 899, eff. Jan. 1, 1977; 1977, Fish and Game Board Reg. No. 904, § 5, eff. Jan. 1, 1978; 1977, No. 245 (Adj. Sess.), § 1, eff. Apr. 17, 1978; 1978, Fish and Game Board Reg. No. 906, eff. Oct. 21, 1978; 1979, Fish and Game Board Reg. No. 913, eff. Nov. 21, 1979; 1980, Fish and Game Board Regs. No. 915, eff. June 30, 1980; No. 926, §§ 1-7, eff. Jan. 1, 1981; 1983, Fish and Game Board Regs. No. 936, §§ 1, 5, eff. Jan. 1, 1983; No. 942, eff. June 9, 1983; No. 946, eff. Oct. 17, 1983; 1984, Fish and Wildlife Board Regs. No. 950, eff. Sept. 17, 1984; No. 951, eff. Sept. 17, 1984; 1985, No. 953, eff. Jan. 1, 1985; 1985, No. 49; 1986, No. 962, eff. June 6, 1986; 1987, Fish and Wildlife Board Reg. No. 971, eff. Sept. 17, 1987; 1990, Fish and Wildlife Board Reg. No. 980, eff. Feb. 23, 1990; 1991, Fish and Wildlife Board Regs. No. 982, eff. Jan. 5, 1991; No. 990, eff. Sept. 1991; 1993, Fish and Wildlife Board Reg. No. 998, eff. March 23, 1993; 1995, Fish and Wildlife Board Reg. No. 1003, eff. Jan. 2, 1996; 1997, Fish and Wildlife Board Reg. No. 1003, eff. Nov. 1, 1997; 1999, Fish and Wildlife Board Reg. No. 1003, eff. March 13, 1999; 2000, Fish and Wildlife Board Reg. No. 1003, eff. Oct. 7, 2000; 2003, Fish and Wildlife Board Reg. No. 1003, eff. Dec. 6, 2002; 2004, Fish and Wildlife Board Reg. No. 1003, eff. June 4, 2004; 2005, Fish and Wildlife Board Reg. No. 1003, eff. July 21, 2005; 2005A, Fish and Wildlife Board Reg. No. 1003, eff. March 31, 2006; 2007, Fish and Wildlife Board Reg. No. 1003, eff. Sept. 1, 2006; 2008, Fish and Wildlife Board Reg. No. 1003, eff. January 1, 2009.)

Zebra Mussel; Eurasian Watermilfoil; Water Chestnut; Quagga Mussel – Title 10, Chapter 47 V.S.A. § 1266

(a) No person shall transport zebra mussels (*Dreissena polymorpha*), Eurasian watermilfoil (*Myriophyllum spicatum*), quagga mussels (*Dreissena bugensis*), or water chestnuts (*Trapa natans*) to or from any Vermont surface water. This section shall not restrict proper harvesting or other control activities undertaken for the purpose of eliminating or controlling the growth or propagation of zebra mussels, Eurasian watermilfoil, quagga mussels, or water chestnuts.

(b) The secretary may grant exceptions to persons to allow the transport of zebra mussels, Eurasian watermilfoil, quagga mussels, or water chestnuts for scientific or educational purposes. When granting exceptions, the secretary shall take into consideration both the value of the scientific or educational purpose and the risk to Vermont surface waters posed by the transport and ultimate use of the specimens. A letter from the secretary authorizing the transport must accompany the specimens during transport. (Added 1987, No. 219 (Adj. Sess.), § 8, eff. May 27, 1988; amended 1993, No. 233 (Adj. Sess.), § 53, eff. June 21, 1994; 1999, No. 42, § 1, eff. May 25, 1999; 2009, No. 46, § 4.) **Penalties** – Title 23, Chapter 29 § 3317 (partial) (b) A person who violates section 1266 of Title 10 shall be subject to a penalty of not more than \$1,000.00 for each violation.

Federal Regulations

1.1.1.1.1 7 CFR 301.45 Subpart—Gypsy Moth

Source: 58 FR 39423, July 23, 1993, unless otherwise noted.

1.1.1.1.2 § 301.45 Notice of quarantine; restriction on interstate movement of specified regulated articles.

(a) *Notice of quarantine.* Pursuant to the provisions of , sections 411, 412, 414, 431, and 434 of the Plant Protection Act (7 U.S.C. 7711, 7712, 7714, 7751, and 7754), the Secretary of Agriculture hereby quarantines the States of Connecticut, Delaware, District of Columbia, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin 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.

[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]

1.1.1.1.3 § 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 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.

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

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

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.

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.

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.

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) (7 U.S.C. 136i) as a certified commercial applicator in a category allowing use of the restricted use 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

¹ Names of qualified certified applicators may be obtained from State departments of agriculture.

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 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.²

² The Gypsy Moth Program Manual may be viewed on the Internet at http://www.aphis.usda.gov/ppq/manuals/online_manuals.html.

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; 72 FR 70764, Dec. 13, 2007]

1.1.1.1.4 § 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 Eradication, Suppression, and Slow the Spread 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 January 16, 1996; 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.

[58 FR 39423, July 23, 1993, as amended at 72 FR 70764, Dec. 13, 2007]

1.1.1.1.5 § 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.

Illinois

Cook County. The entire county.

Du Page County. The entire county.

Lake County. The entire county.

McHenry County. The entire county.

Indiana

Allen County. The entire county.

De Kalb County. The entire county.

Elkhart County. The entire county.

LaGrange County. The entire county.

Noble County. The entire county.

Porter County. The entire county.

St. Joseph County. The entire county.

Steuben County. The entire county.

Maine

Androscoggin County. The entire county.

Aroostook County. The townships of Glenwood Plantation, Houlton, New Limerick, Orient, Amity, Cary Plantation, Dyer Brook, Haynesville, Hodgdon, Linneus, Oakfield, Forkstown, Township of T2 R4 WELS, Township of T3 R3 WELS, Township of T4 R3 WELS and Township of TA R2 WELS.

Cumberland County. The entire county.

Franklin County. Eustis area.

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, 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. Pattern area.

Piscataquis County. The townships of Shirley, Elliotsville, Greenville, T7R9 NWP, Katahdin Iron Works, TBR11 WELS, TBR10 WELS, TAR11 WELS, TAD10 WELS, Veazie Gore, T1R11 WELS, T1R10 WELS, and TrR10 WELS.

Sagadahoc County. The entire county.

Somerset County. The Township of East Moxie.

Waldo County. The entire county.

Washington County. The entire county.

York County. The entire county.

Maryland

The entire State.

Massachusetts

The entire State.

Michigan

The entire State.

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

Ashland County. The entire county.

Ashtabula County. The entire county.

Belmont County. The entire county.

Carroll County. The entire county.

Columbiana County. The entire county.

Coshocton County. The entire county.

Cuyaboga County. The entire county.

Defiance County. The entire county.

Delaware County. The entire county.

Erie County. The entire county.

Fairfield County. The entire county.

Franklin County. The entire county.

Fulton County. The entire county.

Geauga County. The entire county.

Guernsey County. The entire county.

Harrison County. The entire county.

Henry County. The entire county.

Hocking County. The entire county.

Holmes County. The entire county.

Huron County. The entire county.

Jefferson County. The entire county.

Knox County. The entire county.

Lake County. The entire county.

Licking County. The entire county.

Lorain County. The entire county.

Lucas County. The entire county.

Mahoning County. The entire county.

Medina County. The entire county.

Monroe County. The entire county.

Morgan County. The entire county.

Morrow County. The entire county.

Muskingum County. The entire county.
Noble County. The entire county.
Ottawa County. The entire county.
Perry County. The entire county.
Portage County. The entire county.
Richland County. The entire county.
Sandusky County. The entire county.
Seneca County. The entire county.
Stark County. The entire county.
Summit County. The entire county.
Trumbull County. The entire county.
Tuscarawas County. The entire county.
Washington County. The entire county.
Wayne County. The entire county.
Williams County. The entire county.
Wood 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 Bedford. 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 Danville. The entire city.
City of Emporia. 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 Lynchburg. 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 Roanoke. The entire city.
City of Salem. The entire city.
City of South Boston. 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.
Alleghany County. The entire county.
Amelia County. The entire county.
Amherst County. The entire county.
Appomattox County. The entire county.
Arlington County. The entire county.
Augusta County. The entire county.
Bath County. The entire county.
Bedford County. The entire county.
Botetourt County. The entire county.
Brunswick County. The entire county.
Buckingham County. The entire county.
Campbell County. The entire county.
Caroline County. The entire county.
Charles City County. The entire county.
Charlotte County. The entire county.
Chesterfield County. The entire county.
Clarke County. The entire county.
Craig 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.
Frederick County. The entire county.
Giles County. The entire county.
Gloucester County. The entire county.
Goochland County. The entire county.
Greene County. The entire county.
Greensville County. The entire county.
Halifax County. The entire county.
Hanover County. The entire county.
Henrico County. The entire county.
Highland 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.
Lunenburg County. The entire county.
Madison County. The entire county.
Mathews County. The entire county.
Mecklenburg County The entire county.
Middlesex County. The entire county.
Montgomery 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.
Pittsylvania 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.
Roanoke 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.
Surry County. The entire county.
Sussex County. The entire county.
Warren County. The entire county.
Westmoreland County. The entire county.
York County. The entire county.
West Virginia
Barbour County. The entire county.
Berkeley County. The entire county.
Braxton County. The entire county.
Brooke County. The entire county.
Calhoun County. The entire county.
Doddridge County. The entire county.
Gilmer County. The entire county.
Grant County. The entire county.
Greenbrier County. The entire county.

Hampshire County. The entire county.
Harrison County. The entire county.
Hancock County. The entire county.
Hardy County. The entire county.
Jackson County. The entire county.
Jefferson County. The entire county.
Lewis County. The entire county.
Marion County. The entire county.
Marshall County. The entire county.
Mineral County. The entire county.
Monongalia County. The entire county.
Monroe County. The entire county.
Morgan County. The entire county.
Nicholas County. The entire county.
Ohio County. The entire county.
Pendleton County. The entire county.
Pleasants County. The entire county.
Pocahontas County. The entire county.
Preston County. The entire county.
Randolph County. The entire county.
Ritchie County. The entire county.
Taylor County. The entire county.
Tucker County. The entire county.
Tyler County. The entire county.
Upshur County. The entire county.
Webster County. The entire county.
Wetzel County. The entire county.
Wirt County. The entire county.
Wood County. The entire county.
Wisconsin
Adams County. The entire county.
Brown County. The entire county.
Calumet County. The entire county.
Columbia County. The entire county.
Dane County. The entire county.
Dodge County. The entire county.
Door County. The entire county.
Florence County. The entire county.
Fond du Lac County. The entire county.
Forest County. The entire county.
Green Lake County. The entire county.
Jefferson County. The entire county.
Juneau County. The entire county.
Kenosha County. The entire county.
Kewaunee County. The entire county.
Langlade County. The entire county.
Lincoln County. The entire county.
Manitowoc County. The entire county.

Marathon County. The entire county.
Marinette County. The entire county.
Marquette County. The entire county.
Menominee County. The entire county.
Milwaukee County. The entire county.
Oconto County. The entire county.
Oneida County. The entire county.
Outagamie County. The entire county.
Ozaukee County. The entire county.
Portage County. The entire county.
Racine County. The entire county.
Rock County. The entire county.
Sauk County. The entire county.
Shawano County. The entire county.
Sheboygan County. The entire county.
Vilas County. The entire county.
Walworth County. The entire county.
Washington County. The entire county.
Waukesha County. The entire county.
Waupaca County. The entire county.
Waushara County. The entire county.
Winnebago County. The entire county.
Wood County. The entire county.

[58 FR 39423, July 23, 1993, as amended at 59 FR 46902, Sept. 13, 1994; 62 FR 29287, May 30, 1997; 62 FR 36646, July 9, 1997; 63 FR 25748, May 11, 1998; 63 FR 38280, July 16, 1998; 64 FR 40510, July 27, 1999; 66 FR 37114, July 17, 2001; 67 FR 41810, June 20, 2002; 69 FR 31723, June 7, 2004; 71 FR 25064, Apr. 28, 2006; 71 FR 53547, Sept. 12, 2006; 71 FR 66830, Nov. 17, 2006; 74 FR 48002, Sept. 21, 2009]

1.1.1.1.6 § 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 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 301.45-8.³

³ Requirements under all other applicable Federal domestic plant quarantines must also be met.

(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 August. The articles must be safeguarded by a covering adequate to prevent access by any gypsy moth life stages.

(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 bark and bark products, 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 movement and has found no life stages of gypsy moth on the article.

[58 FR 39423, July 23, 1993, as amended at 70 FR 33268, June 7, 2005; 71 FR 40878, July 19, 2006; 72 FR 70764, Dec. 13, 2007]

1.1.1.1.7 § 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 and part 305 of this chapter; 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 0579–0088)

[58 FR 39423, July 23, 1993, as amended at 59 FR 46902, Sept. 13, 1994; 70 FR 33268, June 7, 2005]

1.1.1.1.8 § 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 disinfestation practices or application of chemical materials in accordance with the treatment manual and part 305 of this chapter. 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 0579–0088)

[58 FR 39423, July 23, 1993, as amended at 59 FR 46902, Sept. 13, 1994; 70 FR 33268, June 7, 2005]

1.1.1.1.9 § 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. An owner who wants to move outdoor household articles interstate may self-inspect the articles and issue an OHA document in accordance with §301.45–5(e). [58 FR 39423, July 23, 1993, as amended at 72 FR 70764, Dec. 13, 2007]

1.1.1.10 § 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 State Plant Health Director for the State in which the document is issued.

(Approved by the Office of Management and Budget under control number 0579–0088)

[58 FR 39423, July 23, 1993, as amended at 59 FR 46902, Sept. 13, 1994; 72 FR 70764, Dec. 13, 2007]

1.1.1.11 § 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 sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

[58 FR 39423, July 23, 1993, as amended at 66 FR 21050, Apr. 27, 2001]

1.1.1.12 § 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.

1.1.1.13 § 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.

1.1.1.14 § 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 the Federal government as a commercial certified applicator under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136i) in a category allowing the application of restricted use pesticides.

(2) Noncompliance with any of the provisions of this subpart or with stipulations agreed on in the compliance agreement between the certified applicator and the Administrator.

(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 0579–0088)

[58 FR 39423, July 23, 1993, as amended at 59 FR 46902, Sept. 13, 1994; 72 FR 70764, Dec. 13, 2007]

1.1.1.1.15

1.1.1.1.16 7 CFR 301.48 Subpart—Japanese Beetle

Source: 44 FR 24035, Apr. 24, 1979, unless otherwise noted.

1.1.1.1.17 Quarantine and Regulations

1.1.1.1.18 § 301.48 Notice of quarantine; quarantine restrictions on interstate movement of regulated articles.

(a) Pursuant to the provisions of sections 411, 412, 414, 431, and 434 of the Plant Protection Act (7 U.S.C. 7711, 7712, 7714, 7751, and 7754), the Secretary of Agriculture heretofore determined after public hearing to quarantine the States of Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia in order to prevent the spread of the Japanese beetle, a dangerous insect injurious to cultivated crops and not theretofore widely prevalent or distributed within or throughout the United States.

(b) No person shall move any regulated article interstate from any regulated airport destined to any of the following States except in accordance with the conditions prescribed in this subpart: Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, and Washington.

[44 FR 24035, Apr. 24, 1979, as amended at 61 FR 32640, June 25, 1996; 66 FR 21050, Apr. 27, 2001; 68 FR 43614, July 24, 2003; 69 FR 40534, July 6, 2004; 71 FR 35493, June 21, 2006]

1.1.1.1.19 § 301.48-1 Definitions.

Terms used in the singular form in this subpart shall be deemed to import 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 of the Animal and Plant Health Inspection Service or any person authorized to act for the Administrator.

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

Compliance agreement. A written agreement between the Animal and Plant Health Inspection Service and a person engaged in the business of moving regulated articles interstate, in which the person agrees to comply with the provisions of this subpart.

Inspector. Any employee of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Administrator to enforce the provisions of the quarantine and regulations in this subpart.

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

Japanese beetle. The live insect known as the Japanese beetle (*Popillia japonica* Newm.) in any stage of development (egg, larva, pupa, or adult).

Person. Any individual, corporation, company, partnership, society, or association, or other organized group of any of the foregoing.

Regulated airport. Any airport or portions of an airport in a quarantined State declared regulated in accordance with provisions in §301.48–2 of this subpart.

Regulated articles. Aircraft at or from regulated airports.

State. Any State, territory, or district of the United States, including Puerto Rico.

State Plant Regulatory Official. The authorized official of a State who has responsibility for the operation of the State plant regulatory program.

[44 FR 24035, Apr. 24, 1979, as amended at 61 FR 32640, June 25, 1996; 70 FR 33268, June 7, 2005]

1.1.1.1.20 § 301.48-2 Authorization to designate, and terminate designation of, regulated airports.

(a) An inspector may declare any airport within a quarantined State to be a regulated airport when he or she determines that adult populations of Japanese beetle exist during daylight hours at the airport to the degree that aircraft constitute a threat to spread the Japanese beetle and aircraft destined for the States listed in §301.48(b) may be leaving the airport.

(b) An inspector shall terminate the designation provided for under paragraph (a) of this section when he or she determines that adult populations of Japanese beetle no longer exist at the airport to the degree that the aircraft pose a threat to spread the Japanese beetle.

[44 FR 24035, Apr. 24, 1979, as amended at 61 FR 32640, June 25, 1996]

1.1.1.1.21 § 301.48-3 Notification of designation, and termination of designation, of regulated airports.

Upon designating, or terminating the designation of, an airport as regulated, the inspector shall give written notice to the official in charge of the airport that the airport has been designated as a regulated airport or that the designation has been terminated. The inspector shall also give the same information in writing to the official at the airport in charge of each airline or the operator of any other aircraft, which will move a regulated article to any State designated in §301.48(b). The Administrator shall also give the same information to the State Plant Regulatory Official of each State designated in §301.48(b) to which any regulated article will move.

[44 FR 24035, Apr. 24, 1979, as amended at 61 FR 32640, June 25, 1996]

1.1.1.1.22 § 301.48-4 Conditions governing the interstate movement of regulated articles from quarantined States.

A regulated article may be moved interstate from a regulated airport to any State¹ designated in §301.48(b) only if:

¹ Requirements under all other applicable Federal domestic plant quarantines must be met.

(a) An inspector, upon visual inspection of the airport and/or the aircraft, determines that the regulated article does not present a threat to spread the Japanese beetle because adult beetle populations are not present; or

(b) The aircraft is opened and loaded only while it is enclosed inside a hangar that an inspector has determined to be free of and safeguarded against Japanese beetle; or

(c) The aircraft is loaded during the hours of 8:00 p.m. to 7:00 a.m. only or lands and departs during those hours and, in either situation, is kept completely closed while on the ground during the hours of 7:00 a.m. to 8:00 p.m.; or

(d) If opened and loaded between the hours of 7:00 a.m. to 8:00 p.m., the aircraft is inspected, treated, and safeguarded. Inspection, treatment, and safeguarding must be done either under a compliance agreement in accordance with §301.48-8 or under the direct supervision of an inspector. On a case-by-case basis, inspectors will determine which of the following conditions, and any supplemental conditions deemed necessary by the Administrator to prevent the spread of Japanese beetle, are required:

(1) All openings of the aircraft must be closed or safeguarded during the hours of 7:00 a.m. to 8:00 p.m. by exclusionary devices or by other means approved by the Administrator.

(2) All cargo containers that have not been safeguarded in a protected area must be inspected immediately prior to and during the loading process. All personnel must check their clothing immediately prior to entering the aircraft. All Japanese beetles found must be removed and destroyed.

(3) All areas around doors and hatches or other openings in the aircraft must be inspected prior to removing the exclusionary devices. All Japanese beetles found must be removed and destroyed. All doors and hatches must be closed immediately after the exclusionary devices are moved away from the aircraft.

(4) Aircraft must be treated in accordance with part 305 of this chapter no more than 1 hour before loading. Particular attention should be paid to the ball mat area and the holes around the main entrance. The aircraft must then be aerated under safeguard conditions as required by part 305 of this chapter.

(5) Aircraft treatment records must be maintained by the applicator completing or supervising the treatment for a period of 2 years. These records must be provided upon request for review by an inspector. Treatment records shall include the pesticide used, the date of application, the location where the pesticide was applied (airport and aircraft), the amount of pesticide applied, and the name of the applicator.

(6) When a designated aircraft is replaced with an alternate one just prior to departure (the procedure known as “tail swapping”), the alternate aircraft must be inspected and all Japanese beetles must be removed. The aircraft must be safeguarded by closing all openings and hatches or by equipping the aircraft with exclusionary devices until the aircraft is ready for use. During loading, all treatment and safeguard requirements applicable to regularly scheduled aircraft must be implemented.

(7) Aircraft may be retreated in the noninfested State if live Japanese beetles are found.

(8) Notification of unscheduled commercial flights and of all military flights must be given at least 1 hour before departure to the appropriate person in the destination airport of any of the States listed in §301.48(b). Notification of arriving military flights should also be given to base commanders to facilitate the entrance of Federal and/or State inspectors onto the base if necessary.

[61 FR 32640, June 25, 1996, as amended at 61 FR 56404, Nov. 1, 1996; 70 FR 33268, June 7, 2005]

1.1.1.1.23 § 301.48-5 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 and Japanese beetles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754) in accordance with instructions issued by the Administrator.

[44 FR 24035, Apr. 24, 1979, as amended at 61 FR 32641, June 25, 1996; 66 FR 21051, Apr. 27, 2001]

1.1.1.1.24 § 301.48-6 Movement of live Japanese beetles.

Regulations requiring a permit for and otherwise governing the movement of live Japanese beetles in interstate or foreign commerce are contained in the Federal Plant Pest Regulations in part 330 of this chapter. Applications for permits for the movement of the pest may be made to the Administrator.

[44 FR 24035, Apr. 24, 1979, as amended at 61 FR 32641, June 25, 1996]

1.1.1.1.25 § 301.48-7 Nonliability of the Department.

The U.S. Department of Agriculture disclaims liability for any costs incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart other than for the services of the inspector.

1.1.1.1.26 § 301.48-8 Compliance agreements and cancellation.

(a) Any person engaged in the business of moving regulated articles may enter into a compliance agreement to facilitate the movement of such articles under this subpart. Any person who enters into a compliance agreement, and employees or agents of that person, must allow an inspector access to all records regarding treatment of aircraft and to all areas where loading, unloading, and treatment of aircraft occurs.

(b) A compliance agreement may be canceled by an inspector, orally or in writing, whenever he or she determines that the person who has entered into the compliance agreement has failed to comply with the agreement or this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing within 20 days of oral notification. Any person whose compliance agreement has been canceled may appeal the decision, in writing, to the Administrator within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. A hearing will be held to resolve any conflict as to any material fact. The Administrator shall adopt rules of practice for the hearing. An appeal shall be granted or denied, in writing, as promptly as circumstances allow, and the reasons for the decision shall be stated. The compliance agreement will remain canceled pending the decision on the appeal.

[61 FR 32641, June 25, 1996]

1.1.1.1.27 7 CFR 301.50 Subpart—Pine Shoot Beetle

Source: 57 FR 54496, Nov. 19, 1992, unless otherwise noted.

1.1.1.1.28 § 301.50 Restrictions on interstate movement of regulated articles.

Regulated articles may be moved interstate from any quarantined area only in accordance with this subpart.¹

¹ Any properly identified inspector is authorized to stop and inspect persons and means of conveyance; and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 6347, Jan. 28, 1993; 66 FR 21051, Apr. 27, 2001]

1.1.1.1.29 § 301.50-1 Definitions.

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

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Certificate. A document in which an inspector, or person operating under a compliance agreement, affirms that a specified regulated article is free of pine shoot beetle and may be moved interstate to any destination.

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.

Infestation. The presence of the pine shoot beetle or the existence of circumstances that make it reasonable to believe that the pine shoot beetle is present.

Inspector. Any employee of the Animal and Plant Health Inspection Service, or other individual, authorized by the Administrator to enforce this subpart.

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

Limited permit (permit). A document in which an inspector, or person operating under a compliance agreement, affirms that the regulated article identified on the document is eligible for interstate movement in accordance with §301.50–5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

Moved (Move, Movement). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

Pine bark products. Pieces of pine bark including bark chips, bark nuggets, bark mulch and bark compost.

Pine nursery stock. All *Pinus* spp. woody plants, shrubs, and rooted trees, including dug (balled and burlaped) Christmas trees, and ornamental pine, such as bonsai.

Pine shoot beetle. The insect known as pine shoot beetle, *Tomicus piniperda* (Linnaeus), in any stage of development.

Quarantined area. Any State, or any portion of a State, listed in §301.50–3(c) of this subpart or otherwise designated as a quarantined area in accordance with §301.50–3(b) of this subpart.

Regulated article. Any article listed in §301.50–2 (a) or (b) of this subpart or otherwise designated as a regulated article in accordance with §301.50–2(c) of this subpart.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 6347, Jan. 28, 1993; 71 FR 13925, Mar. 20, 2006]

1.1.1.1.30 § 301.50-2 Regulated articles.

The following are regulated articles:

(a) Pine products (*Pinus* spp.), as follows: Bark products; Christmas trees; logs with bark attached; lumber with bark attached; nursery stock; raw pine materials for pine wreaths and garlands; and stumps.

(b) Any article, product, or means of conveyance not covered by paragraph (a) of this section, that presents a risk of spread of the pine shoot beetle and that an inspector notifies the person in possession of it is subject to the restrictions of this subpart.

[57 FR 54496, Nov. 19, 1992, as amended at 60 FR 55778, Nov. 3, 1995; 65 FR 51518, Aug. 24, 2000; 71 FR 13925, Mar. 20, 2006]

1.1.1.1.31 § 301.50-3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area, in paragraph (c) of this section, each State, or each portion of a State, in which the pine shoot beetle has been found by an inspector, in which the Administrator has reason to believe that the pine shoot beetle is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the pine shoot beetle has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing a quarantine and regulations that impose restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of these articles; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the pine shoot beetle.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice of this temporary designation to the owner or person in possession of the nonquarantined area; thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section, or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas:

Connecticut

The entire State.

Illinois

Boone County. The entire county.

Bureau County. The entire county.

Carroll County. The entire county.

Champaign County. The entire county.

Christian County. The entire county.

Clark County. The entire county.

Coles County. The entire county.

Cook County. The entire county.

De Kalb County. The entire county.

De Witt County. The entire county.

Douglas County. The entire county.

Du Page County. The entire county.

Edgar County. The entire county.

Ford County. The entire county.

Grundy County. The entire county.

Henry County. The entire county.

Iroquois County. The entire county.

Jo Daviess County. The entire county.

Kane County. The entire county.

Kankakee County. The entire county.

Kendall County. The entire county.

La Salle County. The entire county.

Lake County. The entire county.
Lee County. The entire county.
Livingston County. The entire county.
Macon County. The entire county.
Marshall County. The entire county.
Mason County. The entire county.
McHenry County. The entire county.
McLean County. The entire county.
Moultrie County. The entire county.
Ogle County. The entire county.
Peoria County. The entire county.
Piatt County. The entire county.
Putnam County. The entire county.
Shelby County. The entire county.
Stark County. The entire county.
Stephenson County. The entire county.
Tazewell County. The entire county.
Vermilion County. The entire county.
Whiteside County. The entire county.
Will County. The entire county.
Winnebago County. The entire county.
Woodford County. The entire county.
Indiana
Adams County. The entire county.
Allen County. The entire county.
Bartholomew County. The entire county.
Benton County. The entire county.
Blackford County. The entire county.
Boone County. The entire county.
Brown County. The entire county.
Carroll County. The entire county.
Cass County. The entire county.
Clinton County. The entire county.
Dearborn County. The entire county.
Decatur County. The entire county.
De Kalb County. The entire county.
Delaware County. The entire county.
Elkhart County. The entire county.
Fayette County. The entire county.
Fountain County. The entire county.
Franklin County. The entire county.
Fulton County. The entire county.
Grant County. The entire county.
Greene County. The entire county.
Hamilton County. The entire county.
Hancock County. The entire county.
Hendricks County. The entire county.
Henry County. The entire county.

Howard County. The entire county.
Huntington County. The entire county.
Jasper County. The entire county.
Jay County. The entire county.
Jennings County. The entire county.
Johnson County. The entire county.
Kosciusko County. The entire county.
Lagrange County. The entire county.
Lake County. The entire county.
La Porte County. The entire county.
Madison County. The entire county.
Marion County. The entire county.
Marshall County. The entire county.
Miami County. The entire county.
Monroe County. The entire county.
Montgomery County. The entire county.
Morgan County. The entire county.
Newton County. The entire county.
Noble County. The entire county.
Owen County. The entire county.
Park County. The entire county.
Porter County. The entire county.
Pulaski County. The entire county.
Putnam County. The entire county.
Randolph County. The entire county.
Ripley County. The entire county.
Rush County. The entire county.
Shelby County. The entire county.
St. Joseph County. The entire county.
Starke County. The entire county.
Steuben County. The entire county.
Tippecanoe County. The entire county.
Tipton County. The entire county.
Union County. The entire county.
Vermillion County. The entire county.
Vigo County. The entire county.
Wabash County. The entire county.
Warren County. The entire county.
Wayne County. The entire county.
Wells County. The entire county.
White County. The entire county.
Whitley County. The entire county.
Iowa
The entire State.
Maine
Androscoggin County. The entire county.
Cumberland County. The entire county.
Franklin County. The entire county.

Hancock County. The entire county.
Kennebec County. The entire county.
Knox County. The entire county.
Lincoln County. The entire county.
Oxford County. The entire county.
Penobscot County. The entire county.
Piscataquis County. The entire county.
Sagadahoc County. The entire county.
Somerset County. The entire county.
Waldo County. The entire county.
York County. The entire county.

Maryland

Allegany County. The entire county.
Frederick County. The entire county.
Garrett County. The entire county.
Montgomery County. The entire county.
Washington County. The entire county.

Massachusetts

The entire State.

Michigan

The entire State.

Minnesota

The entire State.

New Hampshire

The entire State.

New Jersey

Bergen County. The entire county.
Cumberland County. The entire county.
Hunterdon County. The entire county.
Morris County. The entire county.
Passaic County. The entire county.
Somerset County. The entire county.
Sussex County. The entire county.
Warren County. The entire county.

New York

Albany County. The entire county.
Allegany County. The entire county.
Broome County. The entire county.
Cattaraugus County. The entire county.
Cayuga County. The entire county.
Chautauqua County. The entire county.
Chemung County. The entire county.
Chenango County. The entire county.
Clinton County. The entire county.
Columbia County. The entire county.
Cortland County. The entire county.
Delaware County. The entire county.
Erie County. The entire county.

Essex County. The entire county.
Franklin County. The entire county.
Fulton County. The entire county.
Genesee County. The entire county.
Greene County. The entire county.
Hamilton County. The entire county.
Herkimer County. The entire county.
Jefferson County. The entire county.
Lewis County. The entire county.
Livingston County. The entire county.
Madison County. The entire county.
Monroe County. The entire county.
Montgomery County. The entire county.
Niagara County. The entire county.
Oneida County. The entire county.
Onondaga County. The entire county.
Ontario County. The entire county.
Orange County. The entire county.
Orleans County. The entire county.
Oswego County. The entire county.
Otsego County. The entire county.
Rensselaer County. The entire county.
St. Lawrence County. The entire county.
Saratoga County. The entire county.
Schenectady County. The entire county.
Schoharie County. The entire county.
Schuyler County. The entire county.
Seneca County. The entire county.
Steuben County. The entire county.
Sullivan County. The entire county.
Tioga County. The entire county.
Tompkins County. The entire county.
Ulster County. The entire county.
Warren County. The entire county.
Washington County. The entire county.
Wayne County. The entire county.
Wyoming County. The entire county.
Yates County. The entire county.

Ohio
The entire State.

Pennsylvania
The entire State.

Rhode Island
The entire State

Vermont
The entire State.

Virginia
Clarke County. The entire county.

West Virginia

The entire state.

Wisconsin

The entire State.

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 6348, Jan. 28, 1993; 58 FR 28335, May 13, 1993; 58 FR 34682, June 29, 1993; 58 FR 63027, Nov. 30, 1993; 59 FR 39939, Aug. 5, 1994; 59 FR 52892, Oct. 20, 1994; 60 FR 2322, Jan. 9, 1995; 60 FR 55779, Nov. 3, 1995; 62 FR 64679, Dec. 9, 1997; 63 FR 25155, May 7, 1998; 64 FR 387, Jan. 5, 1999; 65 FR 37842, June 19, 2000; 66 FR 37403, July 18, 2001; 66 FR 46692, Sept. 6, 2001; 67 FR 41308, June 18, 2002; 69 FR 244, Jan. 5, 2004; 69 FR 31725, June 7, 2004; 70 FR 30330, May 26, 2005; 71 FR 29762, May 24, 2006; 71 FR 58245, Oct. 3, 2006; 72 FR 6435, Feb. 12, 2007; 72 FR 34163, June 21, 2007; 74 FR 48004, Sept. 21, 2009]

1.1.1.1.32 § 301.50-4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area² only if moved under the following conditions:

² Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

(a) With a certificate or limited permit issued and attached in accordance with §§301.50–5 and 301.50–8 of this subpart;

(b) Without a certificate or limited permit, if:

(1)(i) The regulated article originates outside any quarantined area and is moved through the quarantined area without stopping (except for dropoff loads, refueling, or traffic conditions, such as traffic lights or stop signs) during October, November, or December, or when ambient air temperature is below 10 °C (50 °F); or

(ii) The regulated article originates outside any quarantined area and, during the period of January through September, is moved through the quarantined area at a temperature higher than 10 °C (50 °F), if the article is shipped in an enclosed vehicle or completely covered (such as with plastic, canvas, or other closely woven cloth) so as to prevent access by the pine shoot beetle; and

(2) The point of origin of the regulated article is indicated on the waybill.

(c) With a limited permit issued by the Administrator if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Under conditions, specified on the permit, which the Administrator has found to be adequate to prevent the spread of the pine shoot beetle; and

(3) With a tag or label, bearing the number of the permit issued for the regulated article, attached to the outside of the container of the regulated article or attached to the regulated article itself, if the regulated article is not in a container.

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 28335, May 13, 1993]

1.1.1.1.33 § 301.50-5 Issuance and cancellation of certificates and limited permits.

(a) A certificate will be issued by an inspector³ for the interstate movement of a regulated article if the inspector determines that:

³ Services of an inspector may be requested by contacting the local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained 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.

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with §301.50–10 of this subpart, or, if pine bark products, produced according to the requirements of the management method in §301.50–10(d) of this subpart; or

- (ii) Based on inspection of the premises of origin, if the regulated article is a greenhouse-grown pine (such as bonsai), that the greenhouse is free from the pine shoot beetle and is screened to prevent entry of the pine shoot beetle; or
- (iii) Based on inspection of the regulated article, if the regulated article is a pine seedling or a pine transplant and is no greater than 36 inches high with a bole diameter at soil level of 1 inch or less, that it is free from the pine shoot beetle; or
- (iv) Based on inspection by an inspector (branch tip-by-branch tip) of pine nursery stock, that it is free from the pine shoot beetle; or
- (v) If the regulated article is a pine log with bark attached or pine lumber with bark attached or a pine stump, that its source tree has been felled during the period of July 1 through October 31 or if the regulated article is pine bark products produced from a tree felled and debarked during the period of July 1 through October 31; and

- (2)(i) The regulated article will be moved through the quarantined area during October, November, or December, or when the ambient air temperature is below 10 °C (50 °F); or
- (ii) The regulated article will be moved through the quarantined area during the period of January through September, if the ambient air temperature is 10 °C (50 °F) or higher, in an enclosed vehicle or completely enclosed by a covering adequate to prevent access by the pine shoot beetle; or
- (iii) The pine log with pine bark attached, pine lumber with bark attached, or pine stump from a tree felled during the period of July 1 through October 31, or the pine bark products produced from a tree felled and debarked during the period of July 1 through October 31, will be shipped interstate from the quarantined area during the period of July 1 through October 31 of the same year in which the source tree was felled; and
- (3) The regulated article is to be moved in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714)⁴ to prevent the spread of the pine shoot beetle; and

⁴ An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

(4) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated articles.

(b) An inspector⁵ will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

⁵ See footnote 3 to §301.50–5(a).

- (1)(i) The regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the pine shoot beetle. If the regulated article is part of a shipment of pine Christmas trees, the inspector will make a pest-risk determination on the basis of an inspection conducted in accordance with §301.50–5(c) of this paragraph; or
 - (ii) The regulated article is to be moved interstate from a quarantined area to a quarantined area and will transit any non-quarantined area in an enclosed vehicle or completely enclosed by a covering adequate to prevent access by the pine shoot beetle; and
 - (2) The regulated article is to be moved in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the pine shoot beetle; and
 - (3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.
- (c) The number of pine Christmas trees randomly selected for inspection is determined by the size and type of shipment, in accordance with the following tables. If a shipment mixes painted and natural trees, the inspection procedure for painted trees will apply.

Table 1—Painted (Color-Enhanced) Pine Christmas Trees¹

No. of trees in shipment	No. of trees to sample	No. of trees in shipment	No. of trees to sample
1–72	All	701–800	120
73–100	73	801–900	121
101–200	96	901–1,000	122
201–300	106	1,001–2,000	126
301–400	111	2,001–3,000	127
401–500	115	3,001–5,000	128
501–600	117	5,001–10,000	129
601–700	119	10,001 or more	130

¹If a pine shoot beetle is detected in any one of the trees being sampled, the entire shipment must be rejected. If no pine shoot beetle is detected in any of the trees sampled, the shipment will be allowed to move with a limited permit. The limited permit must state, “All trees that remain unsold as of December 25 must be destroyed by burning or chipping, or must be fumigated, prior to January 1.”

Table 2—Natural (Unpainted) Christmas Trees¹

No. of trees in shipment	No. of trees to sample	No. of trees in shipment	No. of trees to sample
1–57	All	501–600	80
58–100	58	601–700	81
101–200	69	701–1,000	82
201–300	75	1,001–3,000	84
301–400	77	3,001–10,000	85
401–500	79	10,001 or more	86

¹If a pine shoot beetle is detected in any one of the trees being sampled, the entire shipment must be rejected. If no pine shoot beetle is detected in any of the trees sampled, the shipment will be allowed to move with a limited permit. The limited permit must state, “All trees that remain unsold as of December 25 must be destroyed by burning or chipping, or must be fumigated, prior to January 1.”

(d) Certificates and limited permits for use for interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if an inspector has determined that the regulated article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(e) Any certificate or limited permit that has been issued may be withdrawn by an inspector orally, or in writing, if he or she determines that the holder of the certificate or limited permit has not complied with all conditions under this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal

must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning such a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0088)

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 6348, Jan. 28, 1993; 58 FR 28335, May 13, 1993; 58 FR 34683, June 29, 1993; 59 FR 67608, Dec. 30, 1994; 66 FR 21051, Apr. 27, 2001; 71 FR 13925, Mar. 20, 2006]

1.1.1.1.34 § 301.50-6 Compliance agreements and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands this subpart.⁶

⁶ Compliance agreement forms are available without charge 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.

(b) Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning such a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0088)

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 34683, June 29, 1993; 59 FR 67608, Dec. 30, 1994]

1.1.1.1.35 § 301.50-7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under §301.50-5(c)), who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector,⁷ at least 48 hours in advance of the desired interstate movement.

⁷ See footnote 3 to §301.50-5(a).

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

(Approved by the Office of Management and Budget under control number 0579-0088)

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 34683, June 29, 1993]

1.1.1.1.36 § 301.50-8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article must be attached, at all times during the interstate movement, to the outside of the container containing the regulated article, or to the regulated article itself, if not in a container. The requirements of this section may also be met by attaching the certificate or limited permit to the consignee's copy of the waybill, provided the regulated article is sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article.

(Approved by the Office of Management and Budget under control number 0579-0088)

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 34683, June 29, 1993]

1.1.1.1.37 § 301.50-9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

1.1.1.38 § 301.50-10 Treatments and management method.

(a) Fumigation is authorized for use on pine logs with bark attached, pine lumber with bark attached, pine bark products, and pine stumps, as follows: Logs, lumber, and stumps may be treated with methyl bromide at normal atmospheric pressure with 48 g/m³ (3 lb/1000 ft³) for 16 hours at 21 °C (70 °F) or above, or 80 g/m³ (5 lb/1000 ft³) for 16 hours at 4.5 - 20.5 °C (40 - 69 °F).

(b) Cold treatment is authorized for cut pine Christmas trees, pine nursery stock, and raw pine materials for pine wreaths and garlands as follows: The regulated articles must be loaded into a refrigeration unit and held at -20.6 °C (-5 °F) for one hour; the period before the refrigeration unit reaches the specified temperature is not part of the treatment period.

(c) Any one of these fumigation treatments is authorized for use on cut pine Christmas trees and raw pine materials for pine wreaths and garlands. Cut pine Christmas trees and raw pine materials for pine wreaths and garlands may be treated with methyl bromide at normal atmospheric pressure as follows:

Temperature	Dosage: pounds per 1000 feet ³	Exposure: hours	Concentration readings: ounces per 1000 feet ³			
			2.0 hr	3.0 hr	3.5 hr	4.0 hr
40-49 °F	4.0	4.0	57	—	—	48
50-59 °F	4.0	3.5	57	—	48	—
50-59 °F	3.5	4.0	50	—	—	42
60 °F+	4.0	3.0	57	48	—	—
60 °F+	3.0	4.0	43	—	—	36

Note: APHIS assumes no responsibility for damage to cut pine Christmas trees due to possible phytotoxic effects of these treatments. Trees should be cut at least 14 days before treatment to reduce the possibility of phytotoxic effects.

(d) *Management method for pine bark products.* The following procedures are authorized for use with pine bark products derived from white pine (*Pinus strobus*), Scotch pine (*P. sylvestris*), red pine (*P. resinosa*), and jack pine (*P. banksiana*) trees. Pine bark products will only be considered to have been produced in accordance with this management method if the following procedures are followed:

- (1) For pine bark products produced from trees felled during the period November 1 through March 31:
 - (i) The trees must be harvested at a height of 4 inches or more above the duff line; and
 - (ii) The trees must have been mechanically debarked with a ring debarker or a Rosser head debarker; and
 - (iii) For Scotch pine, red pine, and jack pine, the bark must either be ground into pieces of 1 inch or less in diameter or composted in accordance with the procedure in paragraph (d)(3) of this section.
- (2) For pine bark products produced from trees felled during the period April 1 through June 30:
 - (i) The trees must have been mechanically debarked with a ring debarker or a Rosser head debarker; and
 - (ii) The bark must either be ground into pieces of 1 inch or less in size or composted in accordance with the procedure in paragraph (d)(3) of this section.
- (3) Composting for pine bark products for the management method in this paragraph (d) must be performed as follows:
 - (i) The pile of pine bark to be composted must be at least 200 cubic yards in size; and
 - (ii) The compost pile must remain undisturbed until the interior temperature of the pile reaches 120 °F (49 °C) and remains at or over that temperature for 4 consecutive days; and
 - (iii) After the 4-day period is completed, the outer layer of the compost pile must be removed to a depth of 3 feet; and

(iv) A second compost pile must be started using the cover material previously removed as a core. Core material must be removed from the first pile and used to cover the second compost pile to a depth of 3 feet; and

(v) The second compost pile must remain undisturbed until the interior temperature of the pile reaches 120 °F (49 °C) and remains at or over that temperature for 4 consecutive days. After this 4-day period, the composting procedure is complete.

(vi) Previously composted material generated using this procedure may be used as cover material for subsequent compost piles. A compost pile that uses previously composted material must remain undisturbed until the interior temperature of the pile reaches 120 °F (49 °C) and remains at or over that temperature for 4 consecutive days. After this 4-day period, the composting procedure is complete.

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 6348, Jan. 28, 1993; 58 FR 28335, May 13, 1993; 58 FR 63027, Nov. 30, 1993; 60 FR 55780, 55781, Nov. 3, 1995; 65 FR 51518, Aug. 24, 2000; 71 FR 13925, Mar. 20, 2006]

1.1.1.1.39 7 CFR 301.51 Subpart—Asian Longhorned Beetle

Source: 62 FR 10416, Mar. 7, 1997, unless otherwise noted.

1.1.1.1.40 § 301.51-1 Definitions.

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

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Asian longhorned beetle. The insect known as Asian longhorned beetle (*Anoplophora glabripennis*) in any stage of development.

Certificate. A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such article is eligible for interstate movement in accordance with §301.51–5(a).

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles that are moved interstate, in which the person agrees to comply with the provisions of this subpart and any conditions imposed under this subpart.

Infestation. The presence of the Asian longhorned beetle in any life stage.

Inspector. Any employee of the Animal and Plant Health Inspection Service, or other individual authorized by the Administrator to enforce the provisions of this subpart.

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

Limited permit. A document in which an inspector affirms that the regulated article not eligible for a certificate is eligible for interstate movement only to a specified destination and in accordance with conditions specified on the permit.

Moved (movement, move). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

Quarantined area. Any State, or any portion of a State, listed in §301.51–3(c) of this subpart or otherwise designated as a quarantined area in accordance with §301.51–3(b) of this subpart.

Regulated article. Any article listed in §301.51–2(a) of this subpart or otherwise designated as a regulated article in accordance with §301.51–2(b) of this subpart.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

1.1.1.1.41 § 301.51-2 Regulated articles.

The following are regulated articles:

(a) Firewood (all hardwood species), and green lumber and other material living, dead, cut, or fallen, inclusive of nursery stock, logs, stumps, roots, branches, and debris of half an inch or more in diameter of the following genera: *Acer* (maple), *Aesculus* (horse chestnut), *Albizia* (mimosa), *Betula* (birch), *Celtis* (hackberry), *Fraxinus* (ash), *Platanus* (sycamore), *Populus* (poplar), *Salix* (willow), *Sorbus* (mountain ash), and *Ulmus* (elm).

(b) Any other article, product, or means of conveyance not covered by paragraph (a) of this section if an inspector determines that it presents a risk of spreading Asian longhorned beetle and notifies the person in possession of the article, product, or means of conveyance that it is subject to the restrictions of this subpart. [62 FR 10416, Mar. 7, 1997, as amended at 62 FR 60764, Nov. 13, 1997; 68 FR 26985, May 19, 2003]

1.1.1.1.42 § 301.51-3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section, each State or each portion of a State in which the Asian longhorned beetle has been found by an inspector, in which the Administrator has reason to believe that the Asian longhorned beetle is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where Asian longhorned beetle has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

- (1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and
- (2) The designation of less than an entire State as a quarantined area will be adequate to prevent the artificial interstate spread of the Asian longhorned beetle.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area in accordance with the criteria specified in paragraph (a) of this section. The Administrator will give written notice of this designation to the owner or person in possession of the nonquarantined area, or, in the case of publicly owned land, to the person responsible for the management of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area either will be added to the list of designated quarantined areas in paragraph (c) of this section, or the Administrator will terminate the designation. The owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation is terminated will be given written notice of the termination as soon as practicable.

(c) The following areas are designated as quarantined areas:

Massachusetts

Worcester County. That area in Worcester County, including the municipalities of Worcester, Holden, West Boylston, Boylston, and Shrewsbury, that is bounded by a line starting at the intersection of Route 140 (Grafton Circle) and Route 9 (Belmont Street) in Shrewsbury; then north and northwest on Route 140 through Boylston into West Boylston until it intersects Muddy Brook (body of water); then east along Muddy Brook to the Wachusett Reservoir; then along the shoreline of Wachusett Reservoir in a northwest direction until it intersects Worcester Street; then southwest on Worcester Street to Goodale Street; then southwest and west on Goodale Street, which becomes Malden Street at the Holden town line; then west and southwest on Malden Street to Main Street (Route 122A) in Holden; then west on Main Street to Salisbury Street; then south on Salisbury Street to Fisher Road; then southwest on Fisher Road to Stonehouse Hill Road; then south on Stonehouse Hill Road to Reservoir Street; then southeast on Reservoir Street until it intersects the Worcester City boundary; then along the Worcester City boundary until it intersects Route 20 (Hartford Turnpike); then east on Route 20 to Lake Street; then north and northeast on Lake Street to Route 9 (Belmont Street); then east on Route 9 to the point of beginning.

New Jersey

Middlesex and Union Counties. That portion of the counties, including the municipalities of Roselle, Elizabeth City, Linden, Carteret, Woodbridge, Rahway, and Clark, that is bounded by a line drawn as follows: Beginning at the intersection of Locust Street (County Road 619) and West Grand Avenue (Union County 610) in Roselle, NJ; then east on West Grand Avenue to Chilton Street; then south on Chilton Street to South Street; then east on South Street to Broad Street; then south on Broad Street to Summer Street; then east on Summer Street to the Elizabeth River; then east along the Elizabeth River to the Arthur Kill; then south along the Arthur Kill (New Jersey and New York State border) to the point where Roosevelt Avenue (State Route 602) meets the Arthur Kill in Carteret, NJ; then south along Roosevelt Avenue to Port Reading Avenue (State Route 604); then west southwest along Port Reading Avenue to the Conrail railroad; then north and west along the Conrail railroad right-of-way to the NJ Transit railroad right-of-way; then north and northwest along the NJ Transit railroad right-of-way to the south branch of the Rahway River; then west along the south branch of the Rahway River to St. Georges Avenue (State Highway 27); then north along St. Georges Avenue to its intersection with the eastern border of Rahway River Park (Union County Park); then north along the eastern border of Rahway River Park to the intersection of Valley Road and Union County Parkway; then north along Union County Parkway to North Stiles Street; then northwest along North Stiles Street to Raritan Road; then northeast along Raritan Road to the perpendicular intersection of Raritan Road and the Cranford/Linden township border (144 Raritan Road); then north along the Cranford/Linden border to Myrtle Street; then east along Myrtle Street to the intersection of Amsterdam Avenue and Wood Avenue; then southeast along Wood Avenue to 5th Avenue; then northeast along 5th Avenue to Locust Street; then north along Locust Street to the point of beginning.

New York

New York City. (1) That area in the boroughs of Manhattan, Brooklyn, and Queens in the City of New York that is bounded by a line beginning at the point where the Brooklyn Battery Tunnel intersects the Manhattan shoreline of the East River; then west and north along the shoreline of the Hudson River to Martin Luther King Jr. Boulevard; then east on Martin Luther King Jr. Boulevard and across the Triborough Bridge to its intersection with the west shoreline of Randall's and Wards Island; then east and south along the shoreline of Randall's and Wards Island to its intersection with the Triborough Bridge; then east along the Triborough Bridge to its intersection with the Queens shoreline; then north and east along the Queens shoreline to its intersection with the City of New York/Nassau County line; then southeast along the City of New York/Nassau County line to its intersection with the Grand Central Parkway; then west on the Grand Central Parkway to the Jackie Robinson Parkway; then west on the Jackie Robinson Parkway to Park Lane; then south on Park Lane to Park Lane South; then south and west on Park Lane South to 112th Street; then south on 112th Street to Atlantic Avenue; then west on Atlantic Avenue to 106th Street; then south on 106th Street to Liberty Avenue; then west on Liberty Avenue to Euclid Avenue; then south on Euclid Avenue to Linden Boulevard; then west on Linden Boulevard to Canton Avenue; then west on Canton Avenue to the Prospect Expressway; then north and west on the Prospect Expressway to the Gowanus Expressway; then north and west on the Gowanus Expressway to Hamilton Avenue and the Brooklyn Battery Tunnel; then north on Hamilton Avenue and the Brooklyn Battery Tunnel across the East River to the point of beginning.

(2) That area in the Borough of Staten Island in the City of New York bounded by a line beginning at a point along the State of New York and the State of New Jersey border due north of the intersection of Richmond Terrace and Morningstar Road; then south to the intersection of Morningstar Road and Richmond Terrace; then southwest along Morningstar Road to Forest Avenue; then east along Forest Avenue to Willow Road East; then south and then southeast along Willow Road East to Victory Boulevard; then west along Victory Boulevard to Arlene Street; then south along Arlene Street until it becomes Park Drive North; then south on Park Drive North to Rivington Avenue; then east along Rivington Avenue to Mulberry Avenue; then south on Mulberry Avenue to Travis Avenue; then northwest on Travis Avenue until it crosses Main Creek; then along the west shoreline of Main Creek to Fresh Kills Creek; then along the

north shoreline of Fresh Kills Creek to Little Fresh Kills Creek; then along the north shoreline of Little Fresh Kills Creek to the Arthur Kill; then west to the border of the State of New York and the State of New Jersey in the Arthur Kill; then north along the borderline of the State of New York and the State of New Jersey; then east along the borderline of the State of New York and the State of New Jersey excluding Shooters Island to the point of beginning.

Nassau and Suffolk Counties. That area in the villages of Amityville, West Amityville, North Amityville, Babylon, West Babylon, Copiague, Lindenhurst, Massapequa, Massapequa Park, and East Massapequa; in the towns of Oyster Bay and Babylon; in the counties of Nassau and Suffolk that is bounded as follows: Beginning at a point where West Main Street intersects the west shoreline of Carlis Creek; then west along West Main Street to Route 109; then north along Route 109 to Arnold Avenue; then northwest along Arnold Avenue to Albin Avenue; then west along Albin Avenue to East John Street; then west along East John Street to Wellwood Avenue; then north along Wellwood Avenue to the Southern State Parkway; then west along the Southern State Parkway to Broadway; then south along Broadway to Hicksville Road; then south along Hicksville Road to Division Avenue; then south along Division Avenue to South Oyster Bay; then east along the shoreline of South Oyster Bay to Carlis Creek; then along the west shoreline of Carlis Creek to the point of beginning.

That area in the villages of Bayshore, East Islip, Islip, and Islip Terrace in the Town of Islip, in the County of Suffolk, that is bounded as follows: Beginning at a point where Route 27A intersects Brentwood Road; then east along Route 27A to the Southern State Parkway Heckscher Spur; then north and west along the Southern State Parkway Heckscher Spur to Carleton Avenue; then north along Carleton Avenue to the southern boundary of the New York Institute of Technology; then west along the southern boundary of the New York Institute of Technology through its intersection with Wilson Boulevard to Pear Street; then west along Pear Street through its intersection with Freeman Avenue to Riddle Street; then west along Riddle Street to Broadway; then south along Broadway to the Southern State Parkway Heckscher Spur; then west along the Southern State Parkway Heckscher Spur to Brentwood Road; then south along Brentwood Road to the point of beginning.

[62 FR 10416, Mar. 7, 1997]

Editorial Note: For Federal Register citations affecting § 301.51–3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

1.1.1.1.43 § 301.51-4 Conditions governing the interstate movement of regulated articles from quarantined areas.

- (a) Any regulated article may be moved interstate from a quarantined area only if moved under the following conditions:
- (1) With a certificate or limited permit issued and attached in accordance with §§ 301.51–5 and 301.51–8;
 - (2) Without a certificate or limited permit if:
 - (i) The regulated article is moved by the United States Department of Agriculture for experimental or scientific purposes; or
 - (ii) The regulated article originates outside the quarantined area and is moved interstate through the quarantined area under the following conditions:
 - (A) The points of origin and destination are indicated on a waybill accompanying the regulated article; and
 - (B) The regulated article is moved through the quarantined area without stopping, or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by Asian longhorned beetle; and
 - (C) The article has not been combined or commingled with other articles so as to lose its individual identity.
- (b) When an inspector has probable cause to believe a person or means of conveyance is moving a regulated article interstate, the inspector is authorized to stop the person or means of conveyance to determine whether a regulated article is present and to inspect the regulated article. Articles found to be infected by an

inspector, and articles not in compliance with the regulations in this subpart, may be seized, quarantined, treated, subjected to other remedial measures, destroyed, or otherwise disposed of.

1.1.1.144 § 301.51-5 Issuance and cancellation of certificates and limited permits.

(a) An inspector¹ or person operating under a compliance agreement will issue a certificate for the interstate movement of a regulated article if he or she determines that the regulated article:

¹ Inspectors are assigned to local offices of APHIS, which are listed in local telephone directories.

Information concerning such local offices may also be obtained 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.

(1)(i) Is apparently free of Asian longhorned beetle in any stage of development, based on inspection of the regulated article; or

(ii) Has been grown, produced, manufactured, stored, or handled in such a manner that, in the judgment of the inspector, the regulated article does not present a risk of spreading Asian longhorned beetle; and

(2) Is to be moved in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714)² to prevent the artificial spread of the Asian longhorned beetle; and

² An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

(3) Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated articles.

(b) An inspector or a person operating under a compliance agreement will issue a limited permit for the interstate movement of a regulated article not eligible for a certificate if he or she determines that the regulated article:

(1) Is to be moved interstate to a specified destination for specific processing, handling, or utilization (the destination and other conditions to be listed on the limited permit), and this interstate movement will not result in the spread of Asian longhorned beetle because Asian longhorned beetle will be destroyed by the specific processing, handling, or utilization; and

(2) It is to be moved in compliance with any additional conditions that the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) in order to prevent the spread of the Asian longhorned beetle; and

(3) Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) An inspector shall issue blank certificates and limited permits to a person operating under a compliance agreement in accordance with §301.51-6 or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates and limited permits may then be completed and used, as needed, for the interstate movement of regulated articles that have met all of the requirements of paragraph (a) or (b), respectively, of this section.

(d) Any certificate or limited permit may be canceled orally or in writing by an inspector whenever the inspector determines that the holder of the certificate or limited permit has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose certificate or limited permit has been cancelled may appeal the decision in writing to the Administrator within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

[62 FR 10416, Mar. 7, 1997, as amended at 66 FR 21051, Apr. 27, 2001]

1.1.1.1.45 § 301.51-6 Compliance agreements and cancellation.

(a) Persons engaged in growing, handling, or moving regulated articles interstate may enter into a compliance agreement³ if such persons review with an inspector each stipulation of the compliance agreement. Any person who enters into a compliance agreement with APHIS must agree to comply with the provisions of this subpart and any conditions imposed under this subpart.

³ Compliance agreements may be initiated by contacting a local office of APHIS. The addresses and telephone numbers of local offices are listed in local telephone directories and may also be obtained 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.

(b) Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector determines that the person who has entered into the compliance agreement has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose compliance agreement has been cancelled may appeal the decision in writing to the Administrator within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

1.1.1.1.46 § 301.51-7 Assembly and inspection of regulated articles.

(a) Persons requiring certification or other services must request the services from an inspector⁴ at least 48 hours before the services are needed.

⁴ See footnote 1 to §301.51–5.

(b) The regulated articles must be assembled at the place and in the manner that the inspector designates as necessary to comply with this subpart.

1.1.1.1.47 § 301.51-8 Attachment and disposition of certificates and limited permits.

(a) A regulated article must be plainly marked with the name and address of the consignor and the name and address of the consignee and must have the certificate or limited permit issued for the interstate movement of a regulated article securely attached at all times during interstate movement to:

- (1) The outside of the container encasing the regulated article;
 - (2) The article itself, if it is not in a container; or
 - (3) The consignee's copy of the accompanying waybill; Provided, that the description of the regulated article on the certificate or limited permit, and on the waybill, are sufficient to identify the regulated article; and
- (b) The carrier must furnish the certificate or limited permit authorizing interstate movement of a regulated article to the consignee at the destination of the shipment.

1.1.1.1.48 § 301.51-9 Costs and charges.

The services of the inspector during normal business hours will be furnished without cost to persons requiring the services. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

1.1.1.1.49 7 CFR 301.53 Subpart—Emerald Ash Borer

Source: 68 FR 59088, Oct. 8, 2003, unless otherwise noted.

1.1.1.1.50 § 301.53-1 Definitions.

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

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Certificate. A document that is issued for a regulated article by an inspector or by a person operating under a compliance agreement and that represents that such article is eligible for interstate movement in accordance with §301.53–5(a).

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles that are moved interstate, in which the person agrees to comply with the provisions of this subpart and any conditions imposed under this subpart.

Emerald ash borer. The insect known as emerald ash borer (*Agrilus planipennis* [Coleoptera: Buprestidae]) in any stage of development.

Infestation. The presence of the emerald ash borer or the existence of circumstances that make it reasonable to believe that the ash borer is present.

Inspector. Any employee of the Animal and Plant Health Inspection Service, or other individual authorized by the Administrator to enforce the provisions of this subpart.

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

Limited permit. A document in which an inspector or a person operating under a compliance agreement affirms that the regulated article not eligible for a certificate is eligible for interstate movement only to a specified destination and in accordance with conditions specified on the permit.

Moved (movement, move). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

Quarantined area. Any State, or any portion of a State, listed in §301.53–3(c) or otherwise designated as a quarantined area in accordance with §301.53–3(b).

Regulated article. Any article listed in §301.53–2(a) or otherwise designated as a regulated article in accordance with §301.53–2(b).

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

1.1.1.1.51 § 301.53-2 Regulated articles.

The following are regulated articles:

(a) The emerald ash borer; firewood of all hardwood (non-coniferous) species; nursery stock, green lumber, and other material living, dead, cut, or fallen, including logs, stumps, roots, branches, and composted and uncomposted chips of the genus *Fraxinus*.

(b) Any other article, product, or means of conveyance not listed in paragraph (a) of this section may be designated as a regulated article if an inspector determines that it presents a risk of spreading emerald ash borer and notifies the person in possession of the article, product, or means of conveyance that it is subject to the restrictions of the regulations.

[68 FR 59088, Oct. 8, 2003, as amended at 70 FR 252, Jan. 4, 2005]

1.1.1.1.52 § 301.53-3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State or each portion of a State in which the emerald ash borer has been found by an inspector, in which the Administrator has reason to believe that the emerald ash borer is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where emerald ash borer has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

- (1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and
- (2) The designation of less than an entire State as a quarantined area will be adequate to prevent the artificial interstate spread of the emerald ash borer.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area in accordance with the criteria specified in paragraph (a) of this section. The Administrator will give written notice of this designation to the owner or person in possession of the nonquarantined area, or, in the case of publicly owned land, to the person responsible for the management of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area either will be added to the list of designated quarantined areas in paragraph (c) of this section, or the Administrator will terminate the designation. The owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation is terminated will be given written notice of the termination as soon as practicable.

(c) The following areas are designated as quarantined areas:

Illinois

The entire State.

Indiana

The entire State.

Maryland

Charles County. The entire county.

Prince George's County. The entire county.

Michigan

Upper Peninsula: *Chippewa County.* Brimley area. That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Michigan Route 28 and Crawford Street; then north on Crawford Street to Irish Line Road; then north on Irish Line Road to its end and continuing north along an imaginary line to the Bay Mills/Superior Township line; then north and east along the Bay Mills/Superior Township line to the Lake Superior shoreline; then east along the Lake Superior shoreline to the Bay Mills/Soo Township line; then south on the Bay Mills/Soo Township line to the intersection of the Dafter and Superior Township lines at 6 Mile Road; then south along the Dafter/Superior Township line to Forrest Road; then south on Forrest Road to Michigan Route 28; then west on Michigan Route 28 to the point of beginning. [Note: This quarantined area includes tribal land of the Bay Mills Indian Community. Movement of regulated articles on those lands is subject to tribal jurisdiction.]

Delta County. The entire county.

Houghton County. The entire county.

Keweenaw County. The entire county.

Mackinac County. The entire county.

Schoolcraft County. The entire county.

Lower Peninsula: All counties, in their entirety (*i.e.* , Alcona, Allegan, Alpena, Antrim, Arenac, Barry, Bay, Benzie, Berrien, Branch, Calhoun, Cass, Charlevoix, Cheboygan, Clare, Clinton, Crawford, Eaton, Emmet, Genesee, Gladwin, Grand Traverse, Gratiot, Hillsdale, Huron, Ingham, Ionia, Iosco, Isabella, Jackson, Kalamazoo, Kalkaska, Kent, Lake, Lapeer, Leelanau, Lenawee, Livingston, Macomb, Manistee, Mason, Mecosta, Midland, Missaukee, Monroe, Montcalm, Montmorency, Muskegon, Newaygo, Oakland, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, Roscommon, Saginaw Sanilac, St. Clair, St. Joseph, Shiawassee, Tuscola, Van Buren, Washtenaw, Wayne, and Wexford Counties).

Minnesota

Houston County. The entire county.

Missouri

Wayne County. The entire county.

Ohio

The entire State.

Pennsylvania

Allegheny County. The entire county.

Beaver County. The entire county.

Butler County. The entire county.

Lawrence County. The entire county.

Mercer County. The entire county.

Mifflin County. The entire county.

Virginia

City of Alexandria. The entire city.

City of Fairfax. The entire city.

City of Falls Church. The entire city.

City of Manassas. The entire city.

City of Manassas Park. The entire city.

Arlington County. The entire county.

Fairfax County. The entire county.

Fauquier County. The entire county.

Loudon County. The entire county.

Prince William County. The entire county.

West Virginia

Fayette County. The entire county.

Wisconsin

Crawford County. The entire county.

Fond du Lac County. The entire county.

Ozaukee County. The entire county.

Sheboygan County. The entire county.

Vernon County. The entire county.

Washington County. The entire county.

[68 FR 59088, Oct. 8, 2003, as amended at 70 FR 252, Jan. 4, 2005; 70 FR 10316, Mar. 3, 2005; 70 FR 62231, Oct. 31, 2005; 71 FR 29764, May 24, 2006; 71 FR 57873, Oct. 2, 2006; 72 FR 15598, Apr. 2, 2007; 72 FR 30460, June 1, 2007; 74 FR 48000, Sept. 21, 2009]

1.1.1.1.53 § 301.53-4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Regulated articles may be moved interstate from a quarantined area only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§301.53–5 and 301.53–8;

(b) Without a certificate or limited permit if:

(1) The regulated article is moved by the United States Department of Agriculture for experimental or scientific purposes; or

(2) The regulated article originates outside the quarantined area and is moved interstate through the quarantined area under the following conditions:

(i) The points of origin and destination are indicated on a waybill accompanying the regulated article; and

(ii) The regulated article, if moved through the quarantined area during the period of May 1 through August 31 or when the ambient air temperature is 40 °F or higher, is moved in an enclosed vehicle or is completely covered to prevent access by the EAB; and

(iii) The regulated article is moved directly through the quarantined area without stopping (except for refueling or for traffic conditions, such as traffic lights or stop signs), or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by emerald ash borer; and

(iv) The article has not been combined or commingled with other articles so as to lose its individual identity.

1.1.1.1.54 § 301.53-5 Issuance and cancellation of certificates and limited permits.

(a) An inspector¹ or person operating under a compliance agreement will issue a certificate for the interstate movement of a regulated article if he or she determines that the regulated article:

¹ Inspectors are assigned to local offices of APHIS, which are listed in the local telephone directories. Information concerning such local offices may also be obtained 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.

(1)(i) Is apparently free of EAB, based on inspection; or the article or

(ii) Has been grown, produced, manufactured, stored, or handled in a manner that, in the judgment of the inspector, prevents the regulated article from presenting a risk of spreading EAB; and

(2) Is to be moved in compliance with any additional emergency conditions that the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714)² in order to prevent the artificial spread of emerald ash borer; and

² An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 423 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

(3) Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated articles.

(b) An inspector or a person operating under a compliance agreement will issue a limited permit for the interstate movement of a regulated article not eligible for a certificate if he or she determines that the regulated article:

(1) Is to be moved interstate to a specified destination for specific processing, handling, or utilization (the destination and other conditions to be listed on the limited permit), and this interstate movement will not result in the spread of emerald ash borer because emerald ash borer will be destroyed by the specific processing, handling, or utilization; and

(2) Is to be moved in compliance with any additional emergency conditions that the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) in order to prevent the spread of emerald ash borer; and

(3) Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) An inspector shall issue blank certificates and limited permits to a person operating under a compliance agreement in accordance with §301.53–6 or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates and limited permits may then be completed and used, as needed, for the interstate movement of regulated articles that have met all of the requirements of paragraph (a) or (b), respectively, of this section.

(d) Any certificate or limited permit may be canceled orally or in writing by an inspector whenever the inspector determines that the holder of the certificate or limited permit has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose certificate or limited permit has been canceled may appeal the decision in writing to the Administrator within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

(Approved by the Office of Management and Budget under control number 0579–0233)

1.1.1.55 § 301.53-6 Compliance agreements and cancellation.

(a) Persons engaged in growing, handling, or moving regulated articles interstate may enter into a compliance agreement³ if such persons review with an inspector each provision of the compliance

agreement. Any person who enters into a compliance agreement with APHIS must agree to comply with the provisions of this subpart and any conditions imposed under this subpart.

³ Compliance agreements may be initiated by contacting a local office of APHIS. The addresses and telephone numbers of local offices are listed in local telephone directories and may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, MD 20737–1236.

(b) Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector determines that the person who has entered into the compliance agreement has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose compliance agreement has been canceled may appeal the decision in writing to the Administrator within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

(Approved by the Office of Management and Budget under control number 0579–0233)

1.1.1.1.56 § 301.53-7 Assembly and inspection of regulated articles.

(a) Persons requiring certification or other services must request the services from an inspector⁴ at least 48 hours before the services are needed.

⁴ See footnote 1 to §301.53–5.

(b) The regulated articles must be assembled at the place and in the manner that the inspector designates as necessary to comply with this subpart.

(Approved by the Office of Management and Budget under control number 0579–0233)

1.1.1.1.57 § 301.53-8 Attachment and disposition of certificates and limited permits.

(a) A regulated article must be plainly marked with the name and address of the consignor and the name and address of the consignee and must have the certificate or limited permit issued for the interstate movement of a regulated article securely attached at all times during interstate movement to:

(1) The regulated article;

(2) The container carrying the regulated article; or

(3) The consignee's copy of the accompanying waybill: *Provided*, that the description of the regulated article on the certificate or limited permit, and on the waybill, are sufficient to identify the regulated article; and

(b) The carrier must furnish the certificate or limited permit authorizing interstate movement of a regulated article to the consignee at the destination of the shipment.

(Approved by the Office of Management and Budget under control number 0579–0233)

1.1.1.1.58 § 301.53-9 Costs and charges.

The services of the inspector during normal business hours will be furnished without cost to persons requiring the services. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

1.1.1.1.59 7 CFR 301.92 Subpart—*Phytophthora Ramorum*

Source: 72 FR 8597, Feb. 27, 2007, unless otherwise noted.

1.1.1.1.60 § 301.92 Restrictions on interstate movement.

(a) No person may move interstate from any quarantined area any regulated, restricted, or associated article or any other nursery stock except in accordance with this subpart.¹

¹ Any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated or restricted articles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

(b) No person may move interstate from any nursery in any regulated area any nursery stock except in accordance with this subpart.

(c) No person may move interstate from any quarantined or regulated area any regulated restricted, or associated article or nursery stock that has been tested with a test approved by APHIS and found infected with *Phytophthora ramorum*, or that is part of a plant that was found infected with *Phytophthora ramorum*, unless such movement is in accordance with part 330 of this chapter.

1.1.1.1.61 § 301.92-1 Definitions.

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 (APHIS) of the United States Department of Agriculture.

Associated article. Any article listed in §301.92–2(c).

Bark chips. Bark fragments broken or shredded from a log or tree.

Certificate. A document, stamp, or imprint by which an inspector or person operating under a compliance agreement affirms that a specified regulated or associated article meets applicable requirements of this subpart and may be moved interstate to any destination.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, processing, handling, or moving regulated or associated articles, wherein the person agrees to comply with this subpart.

Duff. Decaying plant matter that includes leaf litter, green waste, stem material, bark, and any other plant material that, upon visual inspection, does not appear to have completely decomposed.

Firewood. Wood that has been cut, sawn, or chopped into a shape and size commonly used for fuel, or other wood intended for fuel.

Forest stock. All flowers, trees, shrubs, vines, scions, buds, or other plants that are wild-grown, backyard-grown, or naturally occurring.

From. An article is considered to be “from” a specific site or location for the purposes of this subpart if it was grown or propagated in, stored or sold, or distributed from the site or location.

Growing media. Any material in which plant roots are growing or intended for that purpose.

Inspector. Any employee of APHIS, the U.S. Department of Agriculture, or other person authorized by the Administrator to perform the duties required under this subpart.

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

Log. The bole of a tree; trimmed timber that has not been sawn further than to form cants.

Lot. A contiguous block of plants of the same species or cultivar, of the same container size and from the same source, if known.

Lumber. Logs that have been sawn into boards, planks, or structural members such as beams.

Moved (move, movement). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

Mulch. Bark chips, wood chips, wood shavings, or sawdust, or a mixture thereof, that could be used as a protective or decorative ground cover or as part of a growing media mixture.

Non-host nursery stock. Any taxa of nursery stock not listed in §301.92–2 as a regulated or associated article.

Nursery. Any location where nursery stock is grown, propagated, stored, or sold, or any location from which nursery stock is distributed. Locations that grow trees for sale without roots (e.g., as Christmas trees) are considered to be nurseries for the purposes of this subpart.

Nursery stock. All plants for planting, including houseplants, propagative material that is grown in a nursery, and tree seedlings for reforestation, except the following: Seeds; turf or sod; bulbs, tubers, corms, or rhizomes;² greenhouse grown cactus, succulents, and orchids; aquarium grown aquatic plants; greenhouse, container, or field grown palms; greenhouse, container, or field grown cycads, and tissue culture plants grown in vitro; and plants meeting the definition of forest stock.

² Bulbs, tubers, corms, or rhizomes are only considered nursery stock (and therefore, regulated under this subpart) if they are of plant taxa listed in §301.92–2 as regulated articles or associated articles.

Permit. A written authorization issued by APHIS to allow the interstate movement of restricted articles in accordance with part 330 of this chapter.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

Plant Protection and Quarantine. The Plant Protection and Quarantine program of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

Quarantined area. Any State, or any portion of a State, listed in §301.92–3(a)(3) of this subpart or otherwise designated as a quarantined area in accordance with §301.92–3(a)(2) of this subpart.

Regulated area. Any area listed in §301.92–3(b) of this subpart.

Regulated article. Any article listed in §301.92–2(b) of this subpart.

Restricted article. Any article listed in §301.92–2(a) of this subpart.

Soil. The loose surface material of the earth in which plants grow, in most cases consisting of disintegrated rock with an admixture of organic material.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

1.1.1.1.62 § 301.92-2 Restricted, regulated, and associated articles; lists of proven hosts and associated plant taxa.

(a) *Restricted articles.* The following are restricted articles:

(1) Bark chips or mulch³ located in a quarantined area and that are proven host plant taxa listed in paragraph (d) of this section.

³ Bark chips or mulch of species listed in paragraph (d) of this section and that are marked with an asterisk (*) are not restricted articles.

(2) Forest stock located or grown in a quarantined area and that are proven host plant taxa or associated plant taxa listed in paragraph (d) or (e) of this section.

(3) Any other product or article that an inspector determines to present a risk of spreading *Phytophthora ramorum*, if an inspector notifies the person in possession of the product or article that it is a restricted article.

(b) *Regulated articles.* The following are regulated articles:

(1) Nursery stock, decorative trees without roots, unprocessed wood and wood products, and plant products, including firewood, logs, lumber,⁴ wreaths, garlands, and greenery of proven host plant taxa listed in paragraph (d) of this section.

⁴ Firewood, logs, and lumber of species listed in paragraph (d) of this section and that are marked with an asterisk (*) are not regulated articles.

(2) Soil and growing media.

(3) Any other product or article that an inspector determines to present a risk of spreading *Phytophthora ramorum* if an inspector notifies the person in possession of the product or article that it is subject to the restrictions in the regulations.

(c) *Associated articles.* The following are associated articles: Nursery stock of associated plant taxa listed in paragraph (e) of this section.

(d) *Proven host plant taxa.* The following are proven hosts of *Phytophthora ramorum*:

* *Acer macrophyllum* Bigleaf maple

Acer pseudoplatanus Planetree maple

* *Adiantum aleuticum* Western maidenhair fern

* *Adiantum jordanii* California maidenhair fern

* *Aesculus californica* California buckeye

Aesculus hippocastanum horse chestnut

- * *Arbutus menziesii* Madrone
 - * *Arctostaphylos manzanita* Manzanita
 - * *Calluna vulgaris* Scotch heather
 - * *Camellia* spp. Camellia—all species, hybrids and cultivars
 - * *Castanea sativa* Sweet chestnut
 - Fagus sylvatica* European beech
 - * *Frangula californica* (\equiv *Rhamnus californica*) California coffeeberry
 - * *Frangula purshiana* (\equiv *Rhamnus purshiana*) Cascara
 - Fraxinus excelsior* European ash
 - * *Griselinia littoralis* Griselinia
 - * *Hamamelis virginiana* Witch hazel
 - * *Heteromeles arbutifolia* Toyon
 - * *Kalmia* spp. Kalmia—includes all species, hybrids, and cultivars
 - * *Laurus nobilis* Bay laurel
 - Lithocarpus densiflorus* Tanoak
 - * *Lonicera hispidula* California honeysuckle
 - * *Maianthemum racemosum* (= *Smilacina racemosa*) False Solomon's seal
 - * *Michelia doltsopa* Michelia
 - * *Parrotia persica* Persian ironwood
 - * *Photinia fraseri* Red tip photinia
 - * *Pieris* spp. Pieris—includes all species, hybrids, and cultivars
 - * *Pseudotsuga menziesii* var. *menziesii* and all nursery-grown *P. menziesii* Douglas fir
 - Quercus agrifolia* Coast live oak
 - Quercus cerris* European turkey oak
 - Quercus chrysolepis* Canyon live oak
 - Quercus falcata* Southern red oak
 - * *Quercus ilex* Holm oak
 - Quercus kelloggii* California black oak
 - Quercus parvula* var. *shrevei* and all nursery grown *Q. parvula* Shreve's oak
 - * *Rhododendron* spp. Rhododendron (including azalea)—includes all species, hybrids, and cultivars
 - * *Rosa gymnocarpa* Wood rose
 - * *Salix caprea* Goat willow
 - * *Sequoia sempervirens* Coast redwood
 - * *Syringa vulgaris* Lilac
 - * *Taxus baccata* European yew
 - * *Trientalis latifolia* Western starflower
 - * *Umbellularia californica* California bay laurel, pepperwood, Oregon myrtle
 - * *Vaccinium ovatum* Evergreen huckleberry
 - * *Viburnum* spp. Viburnum—all species, hybrids, and cultivars
- (e) *Associated plant taxa.* The following plant taxa are considered to be associated with *Phytophthora ramorum*:
- Abies concolor* White fir
 - Abies grandis* Grand fir
 - Abies magnifica* Red fir
 - Acer circinatum* Vine maple
 - Acer davidii* Striped bark maple
 - Acer laevigatum* Evergreen maple
 - Arbutus unedo* Strawberry tree
 - Arctostaphylos columbiana* Manzanita

Arctostaphylos uva-ursi Kinnikinnick, bearberry
Ardisia japonica Ardisia
Calycanthus occidentalis Spicebush
Castanopsis orthacantha Castanopsis
Ceanothus thyrsiflorus Blueblossom
Cinnamomum camphora Camphor tree
Clintonia andrewsiana Andrew's clintonia bead lily
Cornus kousa x *Cornus capitata* Cornus Norman Haddon
Corylus cornuta California hazelnut
Distylium myricoides Myrtle-leafed distylium
Drimys winteri Winter's bark
Dryopteris arguta California wood fern
Eucalyptus haemastoma Scribbly gum
Euonymus kiautschovicus Spreading euonymus
Fraxinus latifolia Oregon ash
Gaultheria shallon Salal, Oregon wintergreen
Hamamelis mollis Chinese witch-hazel
Hamamelis x *intermedia* (*H. mollis* & *H. japonica*) Hybrid witchhazel
Ilex purpurea Oriental holly
Leucothoe axillaris Fetter-bush, dog hobble
Leucothoe fontanesiana Drooping leucothoe
Loropetalum chinense Loropetalum
Magnolia grandiflora Southern magnolia
Magnolia stellata Star magnolia
Magnolia x *loebneri* Loebner magnolia
Magnolia x *soulangeana* Saucer magnolia
Manglietia insignis Red lotus tree
Michelia maudiae Michelia
Michelia wilsonii Michelia
Nerium oleander Oleander
Nothofagus obliqua Roble beech
Osmanthus decorus (≡ *Phillyrea decora*; ≡ *P. vilmoriniana*) Osmanthus
Osmanthus delavayi Delavay Osmanthus, Delavay tea olive
Osmanthus fragrans Sweet olive
Osmanthus heterophyllus Holly olive
Osmorhiza berteroi Sweet Cicely
Parakmeria lotungensis Eastern joy lotus tree
Pittosporum undulatum Victorian box
Prunus laurocerasus English laurel, cherry laurel
Prunus lusitanica Portuguese laurel cherry
Pyracantha koidzumii Formosa firethorn
Quercus acuta Japanese evergreen oak
Quercus petraea Sessile oak
Quercus rubra Northern red oak
Rosa (specific cultivars)
 Royal Bonica (tagged: "MEI modac") Pink Meidiland (tagged: "MEIpoque") Pink Sevillana (tagged: "MEIgeroka")
Rosa rugosa Rugosa rose

Rubus spectabilis Salmonberry
Schima wallichii Chinese guger tree
Taxus brevifolia Pacific yew
Taxus x media Yew
Torreya californica California nutmeg
Toxicodendron diversilobum Poison oak
Vancouveria planipetala Redwood ivy

1.1.1.1.63 § 301.92-3 Quarantined and regulated areas.

(a) *Quarantined areas* . (1) Except as otherwise provided in paragraph (a)(2) of this section, the Administrator will list as a quarantined area in paragraph (a)(3) of this section each State, or each portion of a State, in which *Phytophthora ramorum* has been confirmed by an inspector to be established in the natural environment, in which the Administrator has reason to believe that *Phytophthora ramorum* is present in the natural environment, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which *Phytophthora ramorum* has been found in the natural environment. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

- (i) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated, restricted, and associated articles that are substantially the same as those imposed by this subpart on the interstate movement of regulated, restricted, and associated articles; and
- (ii) The designation of less than the entire State as a quarantined area will prevent the interstate spread of *Phytophthora ramorum* .

(2) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with paragraph (a)(1) of this section. The Administrator will give a copy of this regulation along with a written notice for the temporary designation to the owner or person in possession of the nonquarantined area. Thereafter, the interstate movement of any regulated, restricted, or associated article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (a)(3) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(3) The following areas are designated as quarantined areas:

California

Alameda County . The entire county.
Contra Costa County . The entire county.
Humboldt County . The entire county.
Lake County . The entire county.
Marin County . The entire county.
Mendocino County . The entire county.
Monterey County . The entire county.
Napa County . The entire county.
San Francisco County . The entire county.
San Mateo County . The entire county.
Santa Clara County . The entire county.
Santa Cruz County . The entire county.
Solano County . The entire county.
Sonoma County . The entire county.

Oregon

Curry County . That portion of the county as follows: In T. 39 S., R. 13 W., secs. 32, 33, and 34; T. 40 S., R. 13 W., secs. 3, 4, 5, 8, 9, 10, southeast quarter of sec. 11, southwest quarter of sec. 12, northwest quarter of sec.

13, northeast quarter of secs. 14, 15, 16, and 17, east half of sec. 18, east half of secs. 19, 20, 21, 22, 28, and 29, northeast quarter of secs. 30, 32, 33, and 34; T. 40 S., R. 14 W., southeast quarter of sec. 23, southwest quarter of sec. 24, northwest quarter of sec. 25, and the northeast quarter of sec. 26.

(b) *Regulated areas* . The following areas are designated as regulated areas:

California

All counties in the State not listed in paragraph (a) of this section as quarantined areas.

Oregon

All areas in the State not listed in paragraph (a) of this section as quarantined areas.

Washington

The entire State.

1.1.1.1.64 § 301.92-4 Conditions governing the interstate movement of regulated, restricted, and associated articles, and non-host nursery stock from quarantined and regulated areas.

(a) *Interstate movement of regulated and associated articles from quarantined areas*. Regulated and associated articles may be moved interstate from a quarantined area⁵ only in accordance with this subpart.

⁵ Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

(1) *With a certificate* . Any regulated or associated article may be moved interstate from a quarantined area if accompanied by a certificate issued and attached in accordance with §§301.92–5 and 301.92–8, and provided that the regulated or associated article is moved through the quarantined area without stopping except for refueling, rest stops, emergency repairs, and for traffic conditions, such as traffic lights or stop signs.

(2) *Without a certificate* .

(i) The regulated or associated article originated outside the quarantined area and the point of origin of the article is indicated on the waybill of the vehicle transporting the article; and

(ii) The regulated or associated article is moved from outside the quarantined area through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs, and the article is not unpacked or unloaded in the quarantined area.

(b) *Interstate movement of restricted articles from quarantined areas* . Restricted articles may be moved interstate from a quarantined area⁶ only in accordance with this section.

⁶ See footnote 4 of this subpart.

(1) *With a permit* . Any restricted article may be moved interstate from a quarantined area only if the article is moved pursuant to a permit issued by the Administrator in accordance with part 330 of this chapter.

(2) *Without a permit* .

(i) The restricted article originated outside the quarantined area and the point of origin of the article is indicated on the waybill of the vehicle transporting the article; and

(ii) The restricted article is moved from outside the quarantined area through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs, and the article is not unpacked or unloaded in the quarantined area.

(c) *Interstate movement of nursery stock from nurseries in quarantined areas* —(1) *Regulated articles of nursery stock and associated articles* . Regulated articles of nursery stock and associated articles may only be moved interstate from nurseries in quarantined areas in accordance with paragraph (a) of this section.

(2) *Non-host nursery stock* . Any nursery stock of a taxon not listed in §301.92–2 as a regulated or associated article may only be moved interstate from nurseries in quarantined areas as follows:

(i) *With a certificate* . If the non-host nursery stock originates from a nursery in a quarantined area that contains regulated or associated articles, the nursery stock must be accompanied by a certificate issued and attached in accordance with §§301.92–5 and 301.92–8, and be moved through the quarantined area without stopping except for refueling, rest stops, emergency repairs, and for traffic conditions, such as traffic lights or stop signs.

(ii) *Without a certificate.* If the non-host nursery stock originates from a nursery in a quarantined area that does not contain regulated or associated articles, the nursery stock may be moved interstate without a certificate, provided that:

(A) The nursery from which plants originate has been inspected and found free of evidence of *Phytophthora ramorum* in accordance with §301.92–11(b)(3), and

(B) The nursery stock is not rooted in soil or growing media.⁷

⁷ To be eligible for interstate movement, non-host nursery stock that is rooted in soil or growing media requires certification that the soil or growing media meets the requirements of §301.92–5(a)(1)(iii).

(d) *Interstate movement of nursery stock from nurseries in regulated areas* —(1) *Regulated and associated articles of nursery stock.* Regulated articles of nursery stock and associated articles may only be moved interstate from nurseries in regulated areas if accompanied by a certificate issued and attached in accordance with §§301.92–5 and 301.92–8, and provided that, if moved through a quarantined area en route to another State, the regulated articles of nursery stock or associated articles are moved through the quarantined area without stopping except for refueling, rest stops, emergency repairs, and for traffic conditions, such as traffic lights or stop signs.

(2) *Non-host nursery stock.* Any nursery stock of a taxon not listed in §301.92–2 as a regulated or associated article may only be moved interstate from nurseries in regulated areas as follows:

(i) *With a certificate.* If non-host nursery stock originates from a nursery in a regulated area that contains regulated or associated articles, the nursery stock must be accompanied by a certificate issued and attached in accordance with §§301.92–5 and 301.92–8, and provided that, if moved through a quarantined area en route to another State, the nursery stock is moved through the quarantined area without stopping except for refueling, rest stops, emergency repairs, and for traffic conditions, such as traffic lights or stop signs.

(ii) *Without a certificate.* If non-host nursery stock originates from a nursery in a regulated area that does not contain regulated or associated articles, the nursery stock may be moved interstate without a certificate, provided that the nursery from which plants originate has been inspected and found free of evidence of *Phytophthora ramorum* in accordance with §301.92–11(d)(3).

1.1.1.1.65 § 301.92-5 Issuance and cancellation of certificates.

(a) *Movements from quarantined areas.* (1) An inspector⁸ may issue a certificate for the interstate movement of regulated articles, associated articles, or non-host nursery stock⁹ from a quarantined area if the inspector determines that:

⁸ Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 160, Riverdale, MD 20737, or the APHIS Web site at <http://www.aphis.usda.gov/ppq/sphd/>.

⁹ Paragraph (d)(2)(ii) of §301.92–4 allows the interstate movement of non-host nursery stock without a certificate under certain conditions.

(i) The regulated articles have been treated under the direction of an inspector in accordance with §301.92–10 or part 305 of this chapter; or

(ii) The regulated articles are wood products such as firewood, logs, or lumber that are free of bark;¹⁰ or

¹⁰ Firewood, logs, lumber of species listed in 301.92–2(d) and marked with an asterisk are not regulated articles, as noted in §301.92–2(b)(1).

(iii) The regulated article is soil or growing media that has not been in direct physical contact with any article infected with *Phytophthora ramorum*, and from which all duff has been removed; or

(iv) The articles are nursery stock or regulated articles of decorative trees without roots, wreaths, garlands, or greenery that:

- (A) Are shipped from a nursery in a quarantined area that has been inspected in accordance with the inspection and sampling protocol described in §301.92–11(a)(1), and the nursery is free of evidence of *Phytophthora ramorum* infestation; and
- (B) Are part of a shipment of nursery stock, decorative trees without roots, wreaths, garlands, or greenery that has been inspected prior to interstate movement in accordance with §301.92–11(a)(2), and the regulated articles in the shipment are free of evidence of *Phytophthora ramorum* infection; and
- (C) Have been kept separate from regulated and associated articles and non-host nursery stock not inspected between the time of the inspection and the time of interstate movement; and
- (D) Have not been grown in, or moved from, other areas within a quarantined area except nurseries that are annually inspected for *Phytophthora ramorum* in accordance with §301.92–11 and that have been found free of evidence of *Phytophthora ramorum* infestation, *except that* certified nurseries which receive articles from a non-certified nursery in a quarantined or regulated area may continue to ship other plants interstate, provided that the uncertified plants are safeguarded, segregated, and withheld from interstate movement until the plants are inspected and tested and found free of evidence of *Phytophthora ramorum* .
- (v) The regulated or associated article or non-host nursery stock is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714)¹¹ to prevent the spread of *Phytophthora ramorum* ; and
- (vi) The regulated or associated article or non-host nursery stock is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated or associated article.

(2) [Reserved]

(b) *Movements from regulated areas.* (1) An inspector¹² may issue a certificate for the interstate movement of regulated articles of nursery stock, associated articles, or non-host nursery stock¹³ from a nursery in a regulated area if an inspector determines that:

¹² See footnote 7 of this subpart.

¹³ Paragraph (d)(2)(ii) of §301.92–4 allows the interstate movement of non-host nursery stock without a certificate under certain conditions.

- (i) The nursery from which the nursery stock originates has been inspected in accordance with §301.92–11(c) and found free of evidence of *Phytophthora ramorum* infestation; and
- (ii) All nursery stock in the nursery have not been grown in, or moved from, nurseries except those that have been inspected for *Phytophthora ramorum* in accordance with §301.92–11(c) and that have been found free of evidence of *Phytophthora ramorum* infestation, *except that* certified nurseries which receive articles from a non-certified nursery in a quarantined or regulated area may continue to ship other plants interstate, provided that the uncertified plants are safeguarded, segregated, and withheld from interstate movement until the plants are inspected and tested and found free of evidence of *Phytophthora ramorum* ; and
- (iii) The nursery stock is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714)¹⁴ to prevent the spread of *Phytophthora ramorum* ; and

¹⁴ See footnote 7 of this subpart.

(iv) The nursery stock is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the nursery stock.

(2) [Reserved]

(c) Certificates issued under paragraphs (a) and (b) of this section may be issued by any person engaged in the business of growing, processing, handling, or moving regulated or associated articles or nursery stock

provided such person has entered into and is operating under a compliance agreement in accordance with §301.92–6. Any such person may execute and issue a certificate for the interstate movement of regulated or associated articles or nursery stock if an inspector has previously made the determination that the article is eligible for a certificate in accordance with any applicable section of this subpart.

(d) Any certificate that has been issued may be withdrawn, either orally or in writing, by an inspector if he or she determines that the holder of the certificate has not complied with all conditions in this subpart for the use of the certificate. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose certificate has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator. (Approved by the Office of Management and Budget under control numbers 0579–0310 and 0579–0088)

1.1.1.1.66 § 301.92-6 Compliance agreements and cancellation.

(a) Any person engaged in growing, processing, handling, or moving regulated articles, associated articles, or non-host nursery stock may enter into a compliance agreement when an inspector determines that the person understands this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.¹⁵

¹⁵ Compliance agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 160, Riverdale, MD 20737–1236, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories. Forms are also available on the Internet at <http://www.aphis.usda.gov/ppq/ispm/pramorum/resources.html>.

(b) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator. (Approved by the Office of Management and Budget under control numbers 0579–0310)

1.1.1.1.67 § 301.92-7 Availability of inspectors; assembly for inspection.

(a) Any person (other than a person authorized to issue certificates under §301.92–5(c)) who desires to move a regulated or associated article or non-host nursery stock interstate accompanied by a certificate must notify an inspector¹⁶ as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired time of inspection.

¹⁶ See footnote 7 of this subpart.

(b) The regulated or associated article or non-host nursery stock must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

1.1.1.1.68 § 301.92-8 Attachment and disposition of certificates and recordkeeping.

(a) A certificate required for the interstate movement of a regulated article, associated article, or non-host nursery stock must, at all times during the interstate movement, be:

(1) Attached to the outside of the container containing the regulated article, associated article, or non-host nursery stock; or

(2) Attached to the regulated article, associated article, or non-host nursery stock itself if not in a container; or

(3) Attached to the consignee's copy of the accompanying waybill. If the certificate is attached to the consignee's copy of the waybill, the regulated article, associated article, or non-host nursery stock must be sufficiently described on the certificate and on the waybill to identify the regulated article, associated article, or non-host nursery stock.

(b) The certificate for the interstate movement of a regulated article, associated article, or non-host nursery stock must be furnished by the carrier to the consignee listed on the certificate upon arrival at the location provided on the certificate.

(c) All nurseries that are operating under compliance agreements must maintain records of all incoming shipments of plants for a minimum of 24 months and must make them available to inspectors upon request. In addition, all nurseries that are operating under compliance agreements, except retail dealers, must maintain records of outgoing shipments for a minimum of 24 months and must make them available to inspectors upon request.

(Approved by the Office of Management and Budget under control numbers 0579–0088 and 0579–0310)

1.1.1.1.69 § 301.92-9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside normal business hours.

1.1.1.1.70 § 301.92-10 Treatments.

Treatment schedules listed in part 305 of this chapter are authorized for use on certain regulated articles to prevent the spread of *Phytophthora ramorum*. The following treatments also may be used for the regulated articles indicated:

(a) *Soil*—Heat to a temperature of at least 180 °F at the center of the load for 30 minutes in the presence of an inspector.

(b) *Wreaths, garlands, and greenery of host material*—Dip for 1 hour in water that is held at a temperature of at least 160 °F.

(c) *Bay leaves*—Treat with vacuum heat in accordance with part 305 of this chapter.

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1.1.1.1.76 § 301.92-11 Inspection and sampling protocols.

Type(s) of plants in the nursery	Type(s) of plants shipped interstate	Inspection and certification protocol	
		Origin: Quarantined areas	Origin: Regulated areas
Regulated articles only	None	Not regulated	Not regulated.
Regulated articles only	Regulated articles	§301.92–11(a)	§301.92–11(c).
Associated articles only	None	Not regulated	Not regulated.
Associated articles only	Associated articles	§301.92–11(a)	§301.92–11(c).
Regulated and associated articles only	Regulated or associated articles, or both	§301.92–11(a)	§301.92–11(c).
Regulated and associated articles	None	Not regulated	Not regulated.

and non-hosts			
Regulated and associated articles and non-hosts	Regulated or associated articles, or both	§301.92–11(a)	§301.92–11(c).
Regulated and associated articles and non-hosts	Non-hosts only	§301.92–11(a)	§301.92–11(c).
Non-hosts only	None	Not regulated	Not regulated.
Non-hosts only	Non-hosts	§301.92–11(b)	§301.92–11(d).
Decorative trees without roots (e.g., Christmas trees)	Proven host plant taxa	§301.92–11(a)	Not regulated.
Decorative trees without roots (e.g., Christmas trees)	Associated plant taxa	Not regulated	Not regulated.

(a) *Nurseries in quarantined areas shipping regulated articles of nursery stock and associated articles interstate*. To meet the requirements of §301.92–5(a)(1)(iv), nurseries located in quarantined areas and that move regulated articles of nursery stock, decorative trees without roots, wreaths, garlands, or greenery, associated articles, or non-host nursery stock interstate must meet the requirements in this section. Nurseries in quarantined areas that do not meet the requirements of this section are prohibited from moving regulated articles and associated articles interstate. Nurseries in quarantined areas that do not meet the requirements of this section or paragraph (b) of this section are prohibited from moving non-host nursery stock interstate.

(1) *Annual inspection, sampling, and testing— (i) Inspection.* The nursery must be inspected annually for symptoms of *Phytophthora ramorum* by an inspector.¹⁷ Inspectors will visually inspect for symptomatic plants throughout the nursery, and inspection will focus on, but not be limited to, regulated articles and associated articles.

¹⁷ Persons operating under compliance agreements are eligible to issue certificates for the interstate movement of regulated and associated articles, but only inspectors are authorized to conduct nursery inspections required under the regulations.

(ii) *Sampling.* A minimum of 40 plant samples must be tested per nursery location. Samples must be taken from all symptomatic plants if symptomatic plants are present. If fewer than 40 symptomatic plants are present, each symptomatic plant must be sampled and the remainder of the 40 sample minimum must be taken from asymptomatic plants. If no symptomatic plants are present, 40 asymptomatic plants must be sampled; biased toward proven hosts. Each sample may contain more than one leaf, and may come from more than one plant, but all plants in the sample must be from the same lot. Asymptomatic samples, if collected, must be taken from regulated and associated articles and nearby plants. Inspectors must conduct inspections at times when the best expression of symptoms is anticipated and must take nursery fungicide programs into consideration. Nursery owners must keep records of fungicide applications for 2 years and must make them available to inspectors upon request.

(iii) *Testing.* Samples must be labeled and sent for testing to a laboratory approved by APHIS and must be tested using a test method approved by APHIS, in accordance with §301.92–12.

(iv) *Annual certification.* If all plant samples tested in accordance with this section and §301.92–12 return negative results for *Phytophthora ramorum*, an inspector may certify that the nursery is free of evidence of *Phytophthora ramorum* infestation at the time of inspection, and the nursery will be eligible to enter into a compliance agreement in accordance with §301.92–6.¹⁸

¹⁸ See footnote 14 of this subpart.

(2) *Pre-shipment inspection, sampling, and testing— (i) Inspection.* During the 30 days prior to interstate movement from a nursery in a quarantined area, regulated articles or associated articles intended for interstate movement must be inspected for symptoms of *Phytophthora ramorum* by an inspector.¹⁹ Inspection will focus

on, but not be limited to, regulated articles and associated articles. No inspections of shipments will be conducted unless the nursery from which the shipment originates has a current and valid annual certification in accordance with paragraph (a)(1)(iv) of this section.

¹⁹ See footnote 7 of this subpart.

(A) If no symptomatic plants are found upon inspection, the shipment may be considered free of evidence of *Phytophthora ramorum* infection and is eligible for interstate movement, provided that the nursery is operating under a compliance agreement with APHIS in accordance with §301.92–6.

(B) If symptomatic plants are found upon inspection, the inspector will collect at least one sample per symptomatic plant, and one sample per regulated article or associated article that is in close proximity to, or that has had physical contact with, a symptomatic plant.

(ii) *Testing and withholding from interstate movement.* Samples taken in accordance with paragraph (a)(2)(i)(B) of this section must be labeled and sent for testing to a laboratory approved by APHIS and must be tested using a test method approved by APHIS, in accordance with §301.92–12. The interstate movement of plants in the shipment is prohibited until the plants in the shipment are determined to be free of evidence of *Phytophthora ramorum* infection in accordance with §301.92–12.

(b) *Nurseries in quarantined areas shipping non-host nursery stock interstate.* Nurseries located in quarantined areas and that move non-host nursery stock interstate must meet the requirements of this paragraph or the requirements of paragraph (a) of this section.²⁰ If such nurseries contain any regulated or associated articles, the nursery must meet the requirements of paragraph (a). This paragraph (b) only applies if there are no regulated or associated articles of nursery stock in the nursery. Nurseries that do not meet the requirements of paragraphs (a) or (b) of this section are prohibited from moving non-host nursery stock interstate.

²⁰ In addition, to be eligible for interstate movement, non-host nursery stock that is rooted in soil or growing media requires certification that the soil or growing media meets the requirements of §301.92–5(a)(1)(iii).

(1) *Annual visual inspection.* The nursery must be visually inspected annually for symptoms of *Phytophthora ramorum*. Inspections and determinations of freedom from evidence of *Phytophthora ramorum* infestation must occur at the time when the best expression of symptoms is anticipated.

(2) *Sampling.* All plants showing symptoms of infection with *Phytophthora ramorum* upon inspection will be sampled and tested in accordance with §301.92–12. If symptomatic plants are found upon inspection, the following plants must be withheld from interstate shipment until testing is completed and the nursery is found free of evidence of *Phytophthora ramorum* in accordance with this paragraph (b)(3) of this section and §301.92–12: All symptomatic plants, any plants located in the same lot as the suspect plant, and any plants located within 2 meters of this lot of plants.

(3) *Certification.* If all plant samples tested in accordance with this section and §301.92–12 return negative results for *Phytophthora ramorum*, or if an inspector determines that plants in a nursery exhibit no signs of infection with *Phytophthora ramorum*, the inspector may certify that the nursery is free of evidence of *Phytophthora ramorum* infestation at the time of inspection. Certification is valid for 1 year and must be renewed each year to continue shipping plants interstate.

(c) *Nurseries in regulated areas shipping regulated articles of nursery stock or associated articles interstate.* To meet the conditions of §301.92–5(b), any nursery that is located in a regulated area and contains regulated articles of nursery stock or associated articles, and ships any nursery stock interstate must meet the following requirements:

(1) *Annual inspection.* The nursery must be inspected annually for symptoms of *Phytophthora ramorum* by an inspector.²¹ Inspection will focus on, but not be limited to, regulated articles of nursery stock and associated articles.

²¹ See footnote 7 of this subpart.

(2) *Sampling.* Samples must be taken from all symptomatic plants. If fewer than 40 symptomatic plants are present, each symptomatic plant must be sampled and additional samples must be taken from asymptomatic plants so that the minimum number of plants sampled is 40. If no symptomatic plants are present, 40

asymptomatic plants must be sampled. Each sample may contain more than one leaf, and may come from more than one plant, but all plants in the sample must be from the same lot. If samples are collected from asymptomatic plants, the samples must be taken from regulated and associated articles and nearby plants. Inspectors must conduct inspections at times when the best expression of symptoms is anticipated and must take nursery fungicide programs into consideration. Nursery owners must keep records of fungicide applications for 2 years and must make them available to inspectors upon request.

(3) *Annual certification.* If all plant samples tested in accordance with this section and §301.92–12 return negative results for *Phytophthora ramorum*, the inspector may certify that the nursery is free of evidence of *Phytophthora ramorum* infestation at the time of inspection. Nurseries in a regulated area must have current and valid certification to ship regulated articles of nursery stock and associated articles interstate. If annual certification expires prior to reinspection, all plants in the nursery are prohibited interstate movement until the nursery is inspected, tested, and re-certified in accordance with this section and §301.92–12.

(d) *Nurseries in regulated areas shipping non-host nursery stock interstate.* Nurseries located in regulated areas and that move non-host nursery stock interstate must meet the requirements in this paragraph or the requirements of paragraph (c) of this section. If such nurseries contain any regulated or associated articles, the nursery must meet the requirements of paragraph (c). This paragraph (d) only applies if there are no regulated or associated articles in the nursery. Nurseries that do not meet the requirements of paragraphs (c) or (d) of this section are prohibited from moving non-host nursery stock interstate.

(1) *Annual visual inspection.* The nursery must be visually inspected annually for symptoms of *Phytophthora ramorum*. Inspections and determinations of apparent pest freedom for such nurseries must occur at the time when the best expression of symptoms is anticipated.

(2) *Sampling.* All plants showing symptoms infection with *Phytophthora ramorum* upon inspection will be sampled and tested in accordance with §301.92–12. If symptomatic plants are found upon inspection, the following plants must be withheld from interstate shipment until testing is completed and the nursery is found free of evidence of *Phytophthora ramorum* in accordance with §301.92–12: All symptomatic plants, any plants located in the same lot as the symptomatic plant, and any plants located within 2 meters of that lot of plants.

(3) *Certification.* If all plant samples tested in accordance with this section and §301.92–12 return negative results for *Phytophthora ramorum*, or if an inspector determines that plants in the nursery exhibit no signs of infection with *Phytophthora ramorum*, the inspector may certify that the nursery is free of evidence of *Phytophthora ramorum* infestation at the time of inspection. Certification is valid for 1 year and must be renewed each year to continue shipping plants interstate.

(e) *Additions to the lists of proven hosts and associated plants.* In the event that APHIS informs a nursery owner that additional proven hosts or associated plants exist, but those taxa are not yet listed in this subpart, the following provisions apply:

(1) Nurseries operating under a compliance agreement in accordance with §301.92–6 may continue to ship plants interstate in accordance with this subpart.

(2) Nurseries that had not previously contained any regulated or associated articles, and that had been inspected in accordance with §301.92–11(b)(3) and allowed to ship plants interstate without certificate, but that contain a newly identified proven host or associated plant must cease interstate shipments of regulated articles and associated hosts until the nursery is reinspected and found free of evidence of *Phytophthora ramorum* in accordance with §301.92–11. Nurseries that come under regulation during winter dormancy periods and that are not able to be inspected in accordance with §301.92–11 prior to desired shipments of non-host nursery stock may be allowed to ship non-host nursery stock interstate at the discretion of an inspector.

(Approved by the Office of Management and Budget under control number 0579–0310)

1.1.1.1.77 § 301.92-12 Testing protocols.

Samples must be analyzed using a methodology approved by APHIS at a laboratory approved by APHIS. The following methodology is approved by APHIS.

(a) *Optional ELISA Prescreening.* An APHIS-approved ELISA may be used to prescreen plant samples to determine the presence of *Phytophthora* spp.

(1) *Negative prescreening results.* If all samples from a single nursery are found to be negative through APHIS-approved ELISA prescreening, no further testing is required. The nursery may be considered free of evidence of *Phytophthora ramorum*, and plants in the nursery are eligible for interstate movement under certificate in accordance with §301.92–5.

(2) *Positive prescreening results.* If ELISA prescreening reveals the presence of *Phytophthora* spp. in any plants, each sample that returns positive ELISA results must be tested as provided in paragraph (b) of this section.

(b) *Mandatory testing procedures.* If ELISA prescreening is not performed, or if results of ELISA prescreening are positive for *Phytophthora* spp. in any sample, the sample must be analyzed using an APHIS-approved test. Samples will be considered positive for *Phytophthora ramorum* based on positive results of any approved test. Positive PCR or other molecular tests do not require confirmatory culture tests, nor do positive culture tests require confirmatory PCR or other molecular tests; however, if culture tests return other than positive results, an APHIS-approved PCR or other molecular test must be conducted, as provided in paragraph (b)(1) of this section.

(1) *PCR or other molecular tests—* (i) *Negative results.* If the results of PCR or other molecular tests are negative for all samples in a nursery, no further testing is required. The nursery may be considered free of evidence of *Phytophthora ramorum* and plants in the nursery are eligible for interstate movement under certificate in accordance with §301.92–5.

(ii) *Positive results.* If any samples tested using PCR or other molecular tests return positive results for *Phytophthora ramorum*, the nursery from which they originate is prohibited from moving plants interstate. The nursery will be eligible to ship certain plants interstate when an inspector determines that those plants are free of evidence of *Phytophthora ramorum*.

(2) *Culture Test—* (i) *Negative results.* If the results of culture tests are other than positive for any samples taken from a single nursery, plants in the nursery must continue to be withheld from shipment in accordance with §301.92–11 and each plant sample must be tested again using a PCR or other molecular test, as described in this section.

(ii) *Positive results.* If any culture tests return positive results for *Phytophthora ramorum*, the nursery from which they originate is prohibited from moving plants interstate as directed by an inspector. The nursery will be eligible to ship certain plants interstate when an inspector determines that those plants are free of evidence of *Phytophthora ramorum*.

(c) *Other test methods.* Other test methods may be acceptable if approved by APHIS.

Appendix 2 – Vermont Invasive Forest Pest Action Plan

STATE OF VERMONT INVASIVE FOREST PEST ACTION PLAN

Vermont Department of Forests, Parks and Recreation
Vermont Agency of Agriculture, Food and Markets

This is an action plan for Vermont state agencies, and responsible federal agencies, when an invasive forest pest is detected in Vermont. It identifies agency roles and prioritizes actions. It also covers statutory authorities, lists potential stakeholders and funding sources, outlines an incident command structure, and provides a framework for documenting pest-specific information. This is a working document to be updated as necessary. Detailed information for responding to individual pests of concern is in pest-specific supplements.

Purpose

To prevent the establishment of invasive pests, or limit their spread within Vermont, in order to reduce economic, social, and environmental impacts.

To provide an outline for interagency coordination, acquiring information, rapid response, and public involvement.

1. Authorities

Responsibility for plant pest activities is shared between the Department of Forests, Parks & Recreation and the Agency of Agriculture, Food, & Markets under Title 6 §1031.

...the secretary of agriculture, food and markets shall have jurisdiction over plans for the survey, detection, and management of agricultural plant pests, and the commissioner of forests, parks and recreation over plans for the survey, detection, and management of forest pests. ... The two officials shall cooperate with each other on jointly operated projects to avoid duplication of efforts or duties.

Survey work by the Agency of Agriculture, Food, & Markets is authorized under Title 6 §1031 et seq. and for the Department of Forests, Parks, & Recreation in Title 10 §2661.

The secretary ... shall have jurisdiction over plans for the survey, detection, and management of agricultural plant pests...adopt and amend rules as he or she deems necessary... excluding private domiciles and curtilage, may enter any premises, public or private, as may be necessary to carry out the provisions of this chapter... may conduct detection and abundance surveys for plant pests of an injurious nature....to determine the necessity for establishing control practices.

The commissioner shall make surveys... of forest pests. For this purpose duly designated representatives of the commissioner may enter at reasonable times on public and private lands....

Control activities by the Agency of Agriculture, Food, & Markets are authorized under Title 6 §1033 and for the Department of Forests, Parks, & Recreation in Title 10 §2663.

When the secretary determines that...the pest dictates immediate action, he or she may proceed with a plan of eradication or suppression.

The commissioner...may apply measures of infestation control...anywhere in the state to any trees, timber, plants or shrubs thereon harboring or which may harbor the forest pests.

Quarantines may be established by the Agency of Agriculture, Food, & Markets.

The secretary may establish and maintain quarantines....concerning the planting, exposing, sale, importation and transportation of all...articles capable of carrying plant pests.... The secretary may issue cease and desist orders ... to enforce this chapter... (Title 6, §1034, §1037)

Other pest control functions of the Agency of Agriculture described in Title 6 include cooperating with other government agencies (federal, state, local), entering into compliance agreements, issuing permits or cease and desist orders, soliciting funds, assessing penalties, and providing compensation for the destruction of cultivated plants.

Other pest control functions of the Department of Forests, Parks, and Recreation described in Title 10 include entering into cost-share agreements with landowners.

2. Agency Roles

Lead Agency Roles

Vermont Department of Forests, Parks and Recreation

- Conduct ground and aerial surveys
- Co-implement emergency measures at the state level to prevent spread
- Prepare environmental assessments
- Control forest pests on public and private forest and other lands
- Provide information on forest resources and ownerships
- Communicate with forest industry, managers, and landowners
- Provide laboratory support
- Lead forest management, wood utilization, and restoration activities
- Coordinate incident command system, if necessary
- Provide liaison with the US Forest Service to request assistance and funding
- Collaborate with forestry agencies in other states
- Provide information to the public about forest pests

Vermont Agency of Agriculture, Food and Markets

- Inspect and regulate movement of nursery stock
- Issue and review international, interstate, and intrastate plant and plant pest movement permits
- Regulate pesticide registration and use
- Conduct cooperative pest surveys
- Co-implement emergency measures at the state level to prevent spread
- Provide information to national pest reporting systems

- Review APHIS permits for introduction of biological control agents
- Provide laboratory support
- Collaborate with USDA and other state and local agriculture agencies
- Represent Vermont on National and regional Plant Boards
- Maintain a Pesticide Advisory Council
- Designate and regulate invasive plant and plant pest species
- Provide information to the public about plant pests

Other Principal Agency Roles

USDA (APHIS Plant Protection and Quarantine, Agricultural Research Service,)

- Maintain and fund Cooperative Agricultural Pest Survey (CAPS) program and surveys
- Maintain cooperative agreements with state agencies for inspection and issuance of agricultural export certificates
- Confirm species identifications
- Implement emergency measures at the federal level to prevent spread
- Administer quarantines on interstate and international movement of regulated materials
- Provide international liaison services between individual states and foreign regulatory bodies
- Provide emergency funding for survey and response, as appropriate
- Develop and improve survey and control protocols and measures

USDA Forest Service

- Provide current information and technical assistance for survey and control activities
- Research and develop new technologies
- Implement survey and control measures on federal lands
- Provide information and education materials
- Coordinate interstate initiatives, as necessary
- Assist in coordinating survey and detection activities outside of the regulated area
- Assist with remote sensing technology
- Provide liaison with the Environmental Protection Agency for environmental assessments
- Provide funding through Cooperative Forest Health and other programs

University of Vermont

- Participate in scientific review
- Share results of relevant research with responsible agencies
- Provide information through Master Gardener and other programs
- Maintain laboratory facilities and voucher specimens
- Conduct research on plant and plant pest biology, impact, and management

Vermont Agency of Natural Resources

- Assist with media contacts
- Participate in environmental impact reviews

- Develop solid waste disposal strategies
- Maintain an agency invasive species committee
- Provide input on introductions of biological control agents

3. Incident Management

Structure

State response to highly destructive pest threats will be through a unified command system, shared between the Department of Forests, Parks, and Recreation and the Agency of Agriculture, Food, and Markets. The Chief of Forest Resource Protection and the Plant Industry Section Chief, or their designees, will be agency leads and perform unified command functions.

The local USDA APHIS State Plant Health Director and US Forest Service Forest Health Group Leader will be notified to determine if there is a federal role. In the case of a federally regulated pest, the project leader may be selected by APHIS in consultation with the two state agency leads. If leadership will be at the state level, a multiagency coordination system will be set up with a designated lead from the responsible federal agencies, and the agency leads will serve coordinator functions.

Panels to provide additional technical advice may be convened as necessary.

Functions

Unified Command with Multi-Agency Coordination System, if appropriate

- Approve response plan
- Mobilize teams as needed
- Ensure policy review
- Liaison with other agencies
- Convene technical advisory groups
- Coordinate safety procedures

Operations

- Conduct Surveys
- Institute quarantine actions
- Implement controls
- Evaluate response effectiveness
- Manage wood utilization
- Conduct restoration

Planning

- Implement training & certification
- Manage data
- Apply for grants
- Produce maps
- Gather technical information
- Environmental assessment
- Outline options
- Determine resource needs
- Update response plans
- Develop survey methods
- Identify stakeholders

Logistics & Finance

- Obtain supplies
- Establish communications systems
- Arrange transportation, facilities, and lodging
- Track expenses
- Administer grants

Communications

- Outreach to stakeholders
- Prepare and disseminate informational materials
- Work with landowners & municipalities
- Update cooperating agencies
- Contact media

4. Actions Prior to Detection

Annually, by December 1st, agency leads will review this plan for needed changes, identify pests that warrant supplemental work plans, and ensure that special pest work plans are updated. Agency leads will also review existing efforts for early detection of highly destructive pests.

5. Actions Upon Detection

Initiate Incident Response

Responsible agency leads will be notified. The agency leads will notify local officials, and, as necessary, identify technical advisors and stakeholders, seek funding, and fill other roles in the incident command system.

Confirm Identification

Initial screening is by state specialists. Verification may be required by USDA APHIS.

Take Necessary Emergency Measures

Agency leads will determine if there is an immediate risk of spread which may justify emergency eradication or restrictions. State of Vermont emergency rules may not remain in effect for more than 120 days, but permanent rules may be proposed simultaneously with emergency rule adoption (3 V.S.A. § 844). Federal emergency measures may be authorized under the Plant Protection Act and other rules.

Sites for immediate disposal of regulated material may be necessary.

Survey to Determine Extent of Infested Area

If the extent of the infestation is unknown, a delimiting survey will define the area subject to existing quarantines and help clarify management alternatives.

Report the Infestation

The report to plant pest control officials will indicate if eradication may be an option. A report will also be made to the Vermont forest pest listserve, VTFPEST@list.uvm.edu.

Conduct Outreach

Affected landowners, stakeholders, local governments and planning commissions, agency staff and partner groups with associated responsibilities, and technical advisors will be notified, and input will be sought regarding management actions and impacts.

Assess Management Options

Decisions include:

1. Whether to eradicate or suppress known infestations,
2. Which treatments are appropriate, considering chemical, biological, mechanical/physical, and cultural methods,
3. Whether treatment will be voluntary,
3. Whether to initiate or modify state regulations.

An environmental and economic assessment will be conducted. This will follow National Environmental Policy Act requirements, if applicable. The assessment will include brief discussions of the need for the proposal, alternatives, the environmental impacts of the proposed action(s) and alternatives; and a listing of agencies and persons consulted.

Proposed pesticide use will be reviewed by the Agency of Agriculture, Food, & Markets, Agrichemical Management Section.

A permit must be issued by USDA APHIS, with approval from the Plant Industry Section of the Agency of Agriculture, Food, and Markets, prior to releasing organisms for biological control. Proposals for release should also be reviewed by the Agency of Natural Resources invasive species committee.

The Nongame & Natural Heritage Program will be consulted to evaluate potential impacts of proposed controls on rare, threatened or endangered species.

For federally regulated pests, entire states may be quarantined, unless an internal state quarantine regulates movement between infested and non-infested areas. Quarantined areas may be released following a specified number of consecutive years of negative survey, depending on the pest species. Release of the quarantined area will occur with the consensus of the cooperating regulatory agencies. Compliance agreements may be made with businesses that remove, ship, or receive regulated materials.

An operations plan will be prepared, including human and environmental safety components, and quality assurance.

Implement Management Actions

A notice of proposed control measures, including location and approximate time, must be published in a local newspaper (Title 10, §2662). Responsible agencies may consider landowner compensation (Title 6, §1040).

Conduct Follow-up

Treatment areas will be resurveyed to assess efficacy. Restoration actions, if any, will be implemented.

6. Funding

Base programs are cost-shared by USDA APHIS and Forest Service cooperative agreements matched with state general funding. These agencies may provide emergency funds for selected pest activities, and for restoration.

State emergency funds can be requested by the secretaries of the responsible agencies.

By statute, control measures can be cost-shared with landowners. Other alternatives include volunteer hours provided through partner groups and control measures provided at no cost as part of demonstration or research efforts. The secretaries may solicit funds from other federal, state and local agencies or private organizations, as available.

7. Appendix: State Statutes From the Vermont Statutes Online

Note: not included in this version of the Plan as they are included in Appendix 1 and 3.

Appendix 3 – Agency of Agriculture, Food and Markets Statutes Authorizing Activities and Defining Responsibilities

Title 6: Agriculture, Chapter 35: SEEDS

§ 642. Duties and authority of the secretary

- (a) The secretary shall enforce and carry out the provisions of this subchapter, including:
- (1) sampling, inspecting, making analysis of, and testing seeds subject to the provisions of this subchapter that are transported, sold, or offered or exposed for sale within the state for sowing purposes. The secretary shall notify promptly a person who sells, offers or exposes seeds for sale and, if appropriate, the person who labels or transports seeds, of any violation and seizure of the seeds, or order to cease sale of the seeds under section 643 of this title;
 - (2) making or providing for purity and germination tests of seed for farmers and dealers on request and to fix and collect charges for the tests made;
 - (3) cooperating with the United States Department of Agriculture and other agencies in seed law enforcement.
- (b) The secretary shall establish rules to carry out the provisions of this subchapter including those governing the methods of sampling, inspecting, analyzing, testing, and examining seeds and reasonable standards for seed. (Added 1989, No. 85, § 2; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 643. Enforcement

- (a) To enforce the provisions of this subchapter, the secretary, upon presenting appropriate credentials, may:
- (1) enter upon any premises where seeds are processed, packed or held for distribution, during regular business hours, in order to have access to seeds and associated records subject to this subchapter, and inspect any truck or other conveyor by land, water, or air, at any time when the conveyor is accessible, for the same purpose;
 - (2) issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of seed subject to the provisions of this subchapter which the secretary finds is in violation of any of the provisions of this subchapter. The order shall prohibit further sale, processing and movement of the seed, except on approval of the secretary, until the secretary has issued a release from the "stop sale" order of the seed. The owner or custodian of seed for which a "stop sale" has been issued shall have the right to request a hearing in writing before the secretary within 15 days of the issuance of the order.
- (b) This section shall not be construed to limit the authority of the secretary to obtain a search warrant. (Added 1989, No. 85, § 2; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 644. Label requirements for agricultural, flower, and vegetable seeds

- (a) Each container of agricultural, flower and vegetable seeds which is sold in this state for sowing purposes shall be labeled.
- (1) All labels shall include:
- (A) the name of the kind of each agricultural, flower, grass and vegetable seed present;
 - (B) the lot number or other lot identification;
 - (C) for agricultural and grass seed, the percent by weight of all weed seeds, crop seeds and inert matter;
 - (D) the percent germination of agricultural and grass seed, exclusive of hard seed, the percentage by weight of hard seed, and the calendar month and year the test was completed;

(E) the name and address of labeler or distributor.

(2) For all seeds that have been treated, the label shall include a word or statement indicating that the seed has been treated with the commonly accepted chemical or abbreviated chemical name of the applied substance. A caution statement shall be set forth if the substance in the amount present is harmful to human or other vertebrate animals. The caution for toxic substances shall be a poison statement or symbol.

(3) For seed treated with an inoculant, the label shall state the date of expiration of the inoculant.

(4) For all seed containing genetically engineered material, the manufacturer or processor shall cause the label or labeling to specify the identity and relevant traits or characteristics of such seed, plus any requirements for their safe handling, storage, transport, and use, the contact point for further information and, as appropriate, the name and address of the manufacturer, distributor, or supplier of such seed.

(b) The secretary may adopt rules for labeling procedures consistent with the provisions of this section, which take into account: origin, presence of weed seed, mixtures, hermetically sealed containers, coated seed, "crop seeds," genetically engineered material, genetically engineered plant parts, hybrids, germination medium, and preplanted containers. (Added 1989, No. 85, § 2; amended 2003, No. 42, § 2, eff. May 27, 2003; 2003, No. 97 (Adj. Sess.), § 3, eff. Oct. 1, 2004; 2003, No. 149 (Adj. Sess.), § 13, eff. Oct. 2, 2004.)

§ 645. Records

Each person whose name appears on a label as handling agricultural, flower or vegetable seed subject to this subchapter shall keep for a period of two years complete records of each lot of agricultural, flower and vegetable seed handled, and keep for one year a file sample of each lot of seed after final disposition of the lot. All records and samples pertaining to the shipment or shipments involved shall be accessible for inspection by the secretary during customary business hours under section 643 of this title. (Added 1989, No. 85, § 2; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 646. Exemptions

(a) The provisions of sections 644, 645 and 647 of this title shall not apply:

(1) to seed or grain not intended for sowing purposes;

(2) to seed in storage in, or being transported or consigned to, a cleaning or processing establishment for cleaning or processing, provided that the invoice or labeling accompanying any shipment of such seed bears the statement "seeds for processing." Any labeling or other representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to section 644 of this title;

(3) to any carrier of seed transported or delivered for transportation in the ordinary course of its business as a carrier; provided that such carrier is not engaged in producing, processing, or marketing seeds subject to the provisions of this subchapter.

(b) No person shall be subject to the penalties of this subchapter for having sold or offered for sale seeds subject to provisions of this subchapter which were incorrectly labeled or represented as to kind, species and subspecies, variety, type or origin, unless the person has failed to obtain an invoice, genuine grower's declaration or other labeling information, or to take such other reasonable precautions to insure that the identity of the seed is set forth. "Genuine grower's declaration" means a statement signed by the grower which gives for each lot of seed the lot number, kind, variety (if known), origin, weight, year of production, date of shipment and to whom the shipment was made. (Added 1989, No. 85, § 2.)

§ 647. Administrative penalties

(a) The secretary may assess administrative penalties not to exceed \$250.00 for each offense, in any case he or she determines that a person has committed any of the following violations:

- (1) sold seed products without paying the seed inspection fees for hundredweight or seed registration under section 648 of this title;
- (2) sold seed products within the state of Vermont found deficient in guarantee analysis, and labeling as defined by rule; or
- (3) violated a stop sale order.

(b) In determining the amount of the penalty assessed under this subsection, the secretary shall consider the appropriateness of the penalty with respect to the size of the business being penalized, the gravity of the violation, the good faith of the person and overall history of prior violations.

(c) The secretary shall use the following procedure in assessing penalties:

- (1) a written notice of violation shall be issued setting forth facts establishing probable cause that a violation has occurred. The notice shall be served by personal service or by certified mail, return receipt requested;
- (2) the notice shall advise the person of the right to a hearing before the secretary. If a hearing is requested, it shall be conducted pursuant to 3 V.S.A. chapter 25;
- (3) the notice shall identify the proposed penalty and declare that the decision shall become final and the penalty imposed if no hearing is requested; and
- (4) the recipient of the notice shall have 15 days from the date on which notice is received to request a hearing.

(d) Any party aggrieved by the decision of the secretary after hearing may appeal to a superior court within 30 days of the decision by the secretary.

(e) The secretary may enforce a final administrative penalty by filing a civil collection action in any district or superior court. The secretary may, subject to the provisions of 3 V.S.A. chapter 25, suspend or revoke the right to sell seed in this state pursuant to this chapter for failure to pay a penalty within 60 days after the penalty becomes final.

(f) Each violation shall be a separate and distinct offense. In the case of a continuing violation, each day's continuance shall be deemed a separate and distinct offense. (Added 1989, No. 85, § 2; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 648. Inspections

(a) Inspection fees shall be paid to the secretary by a manufacturer or processor which distributes seed in the state. Fees shall be established as follows:

- (1) thirty-five cents per hundredweight for any seed sold in containers of more than ten pounds;
- (2) a flat fee of \$75.00 per company for any seed sold.

(b) The following shall be exempt from the inspection fee requirements:

- (1) seed not intended for sowing purposes;
- (2) seed in storage in, or consigned to a seed cleaning or processing establishment for cleaning or processing; and
- (3) seed grown, sold and delivered by a producer on his or her own premises for seeding purposes to the ultimate consumer, providing such seed has neither been advertised for sale nor been delivered via commercial carrier, and providing the seed contains no prohibited noxious weed seeds or not more than one restricted noxious weed seed per 2,000 of the seeds being sold.

(c) For those seeds sold in containers of more than ten pounds, a report shall be filed annually on January 15 on forms supplied by the secretary regarding sales during the previous calendar year, and

fees based on the 35 cent per hundredweight rate shall accompany the report. Reporting periods are January 1-June 30 and July 1-December 31.

(d) For those seeds sold in containers of ten pounds or less, the fee of \$75.00 per company shall be paid annually prior to distribution in the state. Fees shall be paid annually on January 1.

(e) All fees shall be deposited in the special fund created by section 364(e) of this title and used in accordance with its provisions.

(f) The secretary may waive seed inspection fees under this chapter, based on the number of seed varieties sold, and for the sale of heirloom seed varieties.

(g) For seeds sold in Vermont which contain genetically engineered material, the manufacturer or processor distributing such seed in Vermont shall report annually on January 15 to the secretary on forms supplied by the secretary regarding sales during the previous calendar year. (Added 1989, No. 85, § 2; amended 1993, No. 13, § 3; 1999, No. 49, § 113; 2001, No. 143 (Adj. Sess.), § 36b, eff. June 21, 2002; 2003, No. 42, § 2, eff. May 27, 2003; 2003, No. 97 (Adj. Sess.), § 4, eff. Oct. 1, 2004.)

Title 6: Agriculture, *Chapter 81: INSECTICIDES, FUNGICIDES AND RODENTICIDES*

§ 913. Powers of secretary

The secretary may, after opportunity for a hearing:

- (1) Declare as a pest any form of plant or animal life or virus which is injurious to plants, men, domestic animals, articles, or substances;
- (2) Determine whether economic poisons are highly toxic to man; and
- (3) Determine standards of coloring or discoloring for economic poisons, and subject economic poisons to the requirements of subdivision 919(4) of this title. (Amended 2003, No. 42, § 2, eff. May 27, 2003.)

Title 6: Agriculture, *Chapter 83: PEST CONTROL COMPACT*

§ 981. Adoption of compact

The Pest Control Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

PEST CONTROL COMPACT ARTICLE I Findings

The party states find that:

- (1) In the absence of the higher degree of cooperation among them possible under this compact, the annual loss of approximately 137 billion dollars from the depredations of pests is virtually certain to continue, if not to increase.
- (2) Because of the varying climatic, geographic, and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests which present serious dangers to them.
- (3) The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another to complement each other's activities when faced with conditions of infestation and reinfestation.
- (4) While every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crops and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an insurance fund, from which individual states may obtain financial support for pest control programs of benefit to them in other

states and to which they may contribute in accordance with their relative interest, the most equitable means of financing cooperative pest eradication and control programs.

ARTICLE II Definitions

As used in this compact, unless the context clearly requires a different construction:

- (1) "Executive committee" means the committee established pursuant to Article V(e) of this compact.
- (2) "Governing board" means the administrators of this compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this compact.
- (3) "Insurance fund" means the pest control insurance fund established pursuant to this compact.
- (4) "Pest" means any invertebrate animal, pathogen, parasitic plant, or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses, or other plants of substantial value.
- (5) "Requesting state" means a state which invokes the procedures of the compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states.
- (6) "Responding state" means a state requested to undertake or intensify the measures referred to in subdivision (5) of this article.
- (7) "State" means a state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE III The Insurance Fund

There is hereby established a pest control insurance fund for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this compact. The insurance fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the insurance fund shall not accept any donation or grant whose terms are inconsistent with any provision of this compact.

ARTICLE IV The Insurance Fund, Internal Operations, and Management

- (a) The insurance fund shall be administered by a governing board and executive committee as hereinafter provided. The actions of the governing board and the executive committee pursuant to this compact shall be deemed the actions of the insurance fund.
- (b) The members of the governing board shall each be entitled to one vote on such board. No action of the governing board shall be binding unless taken at a meeting at which a majority of the total number of votes on the governing board is cast in favor thereof. Action of the governing board shall be only at a meeting at which a majority of the members is present.
- (c) The insurance fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the governing board may provide.
- (d) The governing board shall elect annually, from among its members, a chair, a vice chair, a secretary, and a treasurer. The chair may not succeed himself or herself. The governing board may appoint an executive director and fix his or her duties and his or her compensation, if any. Such executive director shall serve at the pleasure of the governing board. The governing board shall make provision for the bonding of such of the officers and employees of the insurance fund as may be appropriate.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chair, in accordance with such procedures as the bylaws may provide, shall appoint, remove, or discharge such personnel as may be necessary for the performance of the functions of the insurance fund and shall fix the duties and compensation of such personnel. The governing board in its bylaws shall provide for the personnel policies and programs of the insurance fund.

(f) The insurance fund may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.

(g) The insurance fund may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, utilize, and dispose of the same. Any donation, gift, or grant accepted by the governing board pursuant to this subsection or services borrowed pursuant to subsection (h) of this article shall be reported in the annual report of the insurance fund. Such report shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender.

(h) The governing board shall adopt bylaws for the conduct of the business of the insurance fund and shall have the power to amend and to rescind these bylaws. The insurance fund shall publish its bylaws in a convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(i) The insurance fund annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. The insurance fund may make such additional reports as it may deem desirable.

(j) In addition to the powers and duties specifically authorized and imposed, the insurance fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this compact.

ARTICLE V Compact and Insurance Fund Administration

(a) In each party state there shall be a compact administrator, who shall be selected and serve in such manner as the laws of the state may provide, and who shall:

- (1) Assist in the coordination of activities pursuant to the compact in the state; and
- (2) Represent the state on the governing board of the insurance fund.

(b) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the governing board of the insurance fund by a number not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the governing board or the executive committee thereof.

(c) The governing board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the insurance fund and, consistent with the provisions of the compact, supervising and giving direction to the expenditure of moneys from the insurance fund. Additional meetings of the governing board shall be held on call of the chair, the executive committee, or a majority of the membership of the governing board.

(d) At such times as it may be meeting, the governing board shall pass upon applications for assistance from the insurance fund and authorize disbursements therefrom. When the governing

board is not in session, the executive committee thereof shall act as agent of the governing board, with full authority to act for it in passing upon such applications.

(e) The executive committee shall be composed of the chair of the governing board and four additional members of the governing board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The governing board shall make such geographic groupings. If there is representation of the United States on the governing board, one such representative may meet with the executive committee. The chair of the governing board shall be the chair of the executive committee. No action of the executive committee shall be binding unless taken at a meeting at which at least four members of such committee are present and vote in favor thereof. Necessary expenses of each of the five members of the executive committee incurred in attending meetings of such committee, when not held at the same time and place as a meeting of the governing board, shall be charges against the insurance fund.

ARTICLE VI Assistance and Reimbursement

(a) Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:

- (1) The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this compact.
- (2) The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this compact.

(b) Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the governing board to authorize expenditures from the insurance fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization, the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use moneys available from the insurance fund expeditiously and efficiently to assist in affording the protection requested.

(c) In order to apply for expenditures from the insurance fund, a requesting state shall submit the following in writing:

- (1) A detailed statement of the circumstances which occasion the request for the invoking of the compact.
- (2) Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass, or other plant having a substantial value to the requesting state.
- (3) A statement of the extent of the present and projected program of the requesting state and its subdivisions, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefor, in connection with the eradication, control, or prevention of introduction of the pest concerned.
- (4) Proof that the expenditures being made or budgeted as detailed in subdivision (3) of this subsection do not constitute a reduction of the effort for the control or eradication of the pest

concerned or, if there is a reduction, the reasons why the level of program detailed in subdivision (3) of this subsection constitutes a normal level of pest control activity.

(5) A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the compact in the particular instance can be abated by a program undertaken with the aid of moneys from the insurance fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.

(6) Such other information as the governing board may require consistent with the provisions of this compact.

(d) The governing board or executive committee shall give due notice of any meeting at which an application for assistance from the insurance fund is to be considered. Such notice shall be given to the compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.

(e) Upon the submission as required by subsection (c) of this article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this compact and justified thereby, the governing board or executive committee shall authorize support of the program. The governing board or executive committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the governing board or executive committee, with respect to an application, together with the reasons therefor shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

(f) A requesting state which is dissatisfied with a determination of the executive committee shall upon notice in writing given within 20 days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the governing board. Determinations of the executive committee shall be reviewable only by the governing board at one of its regular meetings, or at a special meeting held in such manner as the governing board may authorize.

(g) Responding states required to undertake or increase measures pursuant to this compact may receive moneys from the insurance fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the insurance fund. The governing board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.

(h) Before authorizing the expenditure of moneys from the insurance fund pursuant to an application of a requesting state, the insurance fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the federal government and shall request the appropriate agency or agencies of the federal government for such assistance and participation.

(i) The insurance fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the insurance fund, cooperating federal agencies, states, and any other entities concerned.

ARTICLE VII Advisory and Technical Committees

The governing board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions.

Any such advisory or technical committee or any member or members thereof may meet with and participate in its deliberations upon request of the governing board or executive committee. An advisory or technical committee may furnish information and recommendations with respect to any

application for assistance from the insurance fund being considered by such board or committee, and the board or committee may receive and consider the same, provided that any participant in a meeting of the governing board or executive committee held pursuant to Article VI(d) of the compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the governing board or executive committee makes its disposition of the application.

ARTICLE VIII Relations with Nonparty Jurisdictions

(a) A party state may make application for assistance from the insurance fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the governing board or executive committee in the same manner as an application with respect to a pest within a party state, except as provided in this article.

(b) At or in connection with any meeting of the governing board or executive committee held pursuant to Article VI(d) of this compact, a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the governing board or executive committee may provide. A nonparty state shall not be entitled to review of any determination made by the executive committee.

(c) The governing board or executive committee shall authorize expenditures from the insurance fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The governing board or executive committee may set any conditions which it deems appropriate with respect to the expenditure of moneys from the insurance fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect the interests of the insurance fund with respect to expenditures and activities outside party states.

ARTICLE IX Finance

(a) The insurance fund shall submit to the executive head or designated officer or officers of each party state a budget for the insurance fund for such period as may be required by the laws of that party state for a presentation to the legislature thereof.

(b) Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The request for appropriations shall be apportioned among the party states as follows: one-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products, the insurance fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

(c) The financial assets of the insurance fund shall be maintained in two accounts to be designated respectively as the "operating account" and the "claims account." The operating account shall consist only of those assets necessary for the administration of the insurance fund during the next ensuing two-year period. The claims account shall contain all moneys not included in the operating account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the insurance fund for a period of three years. At any time when the claims account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested

for appropriation by the party states, the governing board shall reduce its budget requests on a pro rata basis in such manner as to keep the claims account within such maximum limit. Any moneys in the claims account by virtue of conditional donations, grants, or gifts shall be included in calculations made pursuant to this subsection only to the extent that such moneys are available to meet demands arising out of the claims.

(d) The insurance fund shall not pledge the credit of any party state. The insurance fund may meet any of its obligations in whole or in part with moneys available to it under Article IV(g) of this compact, provided that the governing board take specific action setting aside such moneys prior to incurring any obligation to be met in whole or in part in such manner. Except where the insurance fund makes use of moneys available to it under Article IV(g) hereof, the insurance fund shall not incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.

(e) The insurance fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the insurance fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the insurance fund shall be audited yearly by a certified or licensed public accountant and a report of the audit shall be included in and become part of the annual report of the insurance fund.

(f) The accounts of the insurance fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the insurance fund.

ARTICLE X Entry Into Force and Withdrawal

(a) This compact shall enter into force when enacted into law by any five or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE XI Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. (Added 2009, No. 8, § 2.)

§ 982. Cooperation of state agencies with insurance fund

Consistent with law and within available appropriations, the departments, agencies, and officers of this state may cooperate with the insurance fund established by the pest control compact. (Added 2009, No. 8, § 2.)

§ 983. Filing of bylaws and amendments

Pursuant to 6 V.S.A. § 981, Article IV(h) of the compact, copies of bylaws and amendments thereto shall be filed with the agency of agriculture, food and markets. (Added 2009, No. 8, § 2.)

§ 984. Compact administrator

The compact administrator for this state shall be the secretary of agriculture, food and markets or a designated representative. The duties of the compact administrator shall be deemed a regular part of the duties of the secretary's office. (Added 2009, No. 8, § 2.)

§ 985. Request for assistance from insurance fund

Within the meaning of 6 V.S.A. § 981, Article VI(b) or Article VIII(a), a request or application for assistance from the insurance fund may be made by the secretary of agriculture, food and markets or designee whenever in his or her judgment the conditions qualifying this state for such assistance exist and it would be in the best interest of this state to make such request. (Added 2009, No. 8, § 2.)

§ 986. Credit for expenditures

The department, agency, or officer expending or becoming liable for an expenditure on account of a control or eradication program undertaken or intensified pursuant to the compact shall have credited to its, his, or her account in the state treasury the amount or amounts of any payments made to this state to defray the cost of such program, or any part thereof, or as reimbursement thereof. (Added 2009, No. 8, § 2.)

§ 987. Executive head

As used in the compact, with reference to this state, the term "executive head" shall mean the governor. (Added 2009, No. 8, § 2.)

Title 6: Agriculture, Chapter 84: PEST SURVEY, DETECTION AND MANAGEMENT

§ 1030. Definitions

Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context:

- (1) "Beneficial organism" means any organism which, during its life cycle, is an effective pollinator of plants, a parasite or predator of pests, or otherwise beneficial.
- (2) "Biological control agent" means any living organism applied to or introduced into the environment that is intended to function as a controlling agent against another organism.
- (3) "Secretary" means the secretary of agriculture, food and markets, or his or her designee.
- (4) "Compliance agreement" means a written agreement between the department and any person engaged in growing, handling or moving regulated articles, plant pests, plants, parts of plants, or plant products regulated under this chapter, where the person agrees to comply with stipulated requirements.
- (5) "Agency" means the Vermont agency of agriculture, food and markets.
- (6) "Genetically modified organism" means any organism altered or produced through genetic modification from a donor, vector, recipient organism, or by other means using modern molecular techniques.
- (7) "Host" means any plant pest, plant, plant product or other organism upon which a pest or beneficial organism is dependent for completion of any portion of its life cycle.
- (8) "Infested area" means an area which has been determined to have an established pest population.
- (9) "Permit" means a document issued by the secretary to provide for the importation of plant pests, biological control agents or regulated articles into the state and their movement within the state to restricted destinations for limited handling, utilization or processing.
- (10) "Person" means any individual or combination of individuals, partnership, corporation, company, society, association, governmental organization, university or other entity and each officer, agent or employee.

(11) "Plant and plant products" means trees, shrubs, and vines; forage, fiber, and cereal plants; cuttings, grafts, scions, buds and lumber; fruit, vegetables, roots, bulbs, seeds and wood; and all other plants, parts of plants, and plant products.

(12) "Plant pest" means any living stage of: insects, mites, nematodes, slugs, snails, protozoa or any other invertebrate animals; bacteria, fungi, mycoplasma or other parasitic plants, weeds or reproductive parts thereof; viruses or any organisms similar to or allied with any of the foregoing; and any genetically modified organisms or biological control agents that may directly or indirectly injure or cause disease or damage to any beneficial organisms, plants, parts of plants, or plant products.

(13) "Quarantine" means a legal declaration by the secretary to prevent the spread of highly injurious plant pests which specifies the plant pest, plants, parts of plants, plant products or the regulated articles, conditions governing movement, the area or areas quarantined, and any exemptions.

(14) "Regulated article" means an article of any character carrying or capable of carrying a plant pest. (Added 1995, No. 68 (Adj. Sess.), § 2; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1031. Functions of secretary of agriculture, food and markets and commissioner of forests, parks and recreation cooperation

Under the provisions of this chapter, the secretary of agriculture, food and markets shall have jurisdiction over plans for the survey, detection, and management of agricultural plant pests, and the commissioner of forests, parks and recreation over plans for the survey, detection, and management of forest pests. When the word "secretary" is used in sections 1033 and 1034 of this title, it shall mean either the secretary of agriculture, food and markets or the commissioner of forests, parks and recreation. The two officials shall cooperate with each other on jointly operated projects to avoid duplication of efforts or duties. (Added 1995, No. 68 (Adj. Sess.), § 2; amended 2003, No. 42, § 2, eff. May 27, 2003; 2003, No. 121 (Adj. Sess.), § 87, eff. June 8, 2004.)

§ 1032. Powers of the secretary

The secretary in furtherance of the purposes of this chapter may:

(1) Adopt and amend rules as he or she deems necessary in order to carry out the provisions of sections 1033, 1034, 1035 and 1040 of this chapter.

(2) Appoint assistants, subject to applicable laws and rules, to perform or assist in the performance of any of the duties or functions of the secretary under this chapter.

(3) Excluding private domiciles and curtilage, enter any premises, public or private, as may be necessary to carry out the provisions of this chapter. Whenever practicable, advanced notice of a proposed survey or examination shall be given to the owner or occupant of the property to be entered.

(4) Solicit and receive federal or private funds.

(5) Cooperate with the federal government and any agencies, departments and instrumentalities of the federal government, the state of Vermont and any agencies, departments, divisions or political subdivisions of the state, and any other state or commonwealth and any agencies, departments or political subdivisions of a state or commonwealth, in order to carry out the provisions of this chapter.

(6) Enter into compliance agreements with any person engaged in growing, handling, or moving regulated articles, plant pests, plants, or plant products. (Added 1995, No. 68 (Adj. Sess.), § 2; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1033. Detection and abundance surveys; eradication and suppression

The secretary may conduct detection and abundance surveys for plant pests of an injurious nature that may be present in the state to determine the necessity for establishing control practices. When the secretary determines that a new injurious plant pest exists within the state or that an established pest requires control and the nature of the pest dictates immediate action, he or she may proceed with a plan of eradication or suppression. (Added 1995, No. 68 (Adj. Sess.), § 2; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1034. Quarantines

The secretary may establish and maintain quarantines and adopt other orders and rules pursuant to 3 V.S.A. chapter 25 concerning the planting, exposing, sale, importation and transportation of all plants and plant products and regulated articles capable of carrying plant pests of an injurious nature in any living stage within the state. (Added 1995, No. 68 (Adj. Sess.), § 2; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1035. Permits

No person may sell, offer for sale, barter, expose, move, transport, deliver, ship or offer for shipment into or within this state any plant pest or biological control agent in any living stage without first obtaining either a federal permit, where applicable, and a state permit from the secretary. A state permit may only be issued after it has been determined by the secretary that the plant pests or biological control agents are not injurious, are generally present already, or are for scientific purposes subject to specified safeguards. (Added 1995, No. 68 (Adj. Sess.), § 2; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1036. Technical assistance

The secretary may provide technical assistance in the area of pest management. Such assistance may include diagnostic services, pest identification and pest management recommendations. The secretary is also authorized to conduct demonstrations, investigations and case studies on pest management strategies. (Added 1995, No. 68 (Adj. Sess.), § 2; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1037. Administrative orders

The secretary may issue cease and desist orders and institute appropriate proceedings on behalf of the agency to enforce this chapter or any rules adopted under this chapter. Whenever the secretary believes that any person is in violation of this chapter or rules adopted under this chapter, an action may be brought in a court of competent jurisdiction to restrain by temporary or permanent injunction the continuation or repetition of the violation. The court may issue temporary or permanent injunctions, or other relief as may be necessary and appropriate for abatement of any violations. (Added 1995, No. 68 (Adj. Sess.), § 2; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1038. Administrative penalties

A person who violates any provisions of this chapter or a rule adopted under this chapter may be assessed an administrative penalty by the secretary pursuant to the provisions of section 15 of this title. (Added 1995, No. 68 (Adj. Sess.), § 2; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1039. Confidentiality of trade secrets

The secretary may not make information public which contains or relates to trade secrets, commercial or financial information obtained from a person which is privileged or confidential. However, when the information is necessary to carry out the provisions of this chapter, or any of the rules adopted under this chapter, this information may be revealed, subject to a protective order, to any federal or state agency, or may be revealed, subject to a protective order, at a closed hearing

or in findings of fact issued by the secretary. (Added 1995, No. 68 (Adj. Sess.), § 2; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1040. Compensation for destruction

When in the suppression of insect pests or plant diseases it becomes necessary for the secretary to destroy the hosts of such pests or diseases, compensation shall be made as follows: the secretary and owner of lands upon which the plants are destroyed shall agree upon the price to be paid as compensation. The impact of the pest or disease on the fair market value of the plant shall be considered. However, compensation shall not be made for wild or uncultivated trees, plants or shrubbery which are ordered destroyed on account of disease or infestation. When plants have been destroyed and compensation accepted, no other such host plants may be maintained on the premises until all danger from the spread of the pest or disease is past. (Added 1995, No. 68 (Adj. Sess.), § 2; amended 2003, No. 42, § 2, eff. May 27, 2003.)

Title 6: Agriculture, Chapter 87: CONTROL OF PESTICIDES

§ 1102. Pesticide advisory council established

(a) The pesticide advisory council is established and attached to the agency of agriculture, food and markets. Members of the council, except those public members appointed by the governor, shall be qualified individuals who, by experience and training, are knowledgeable in one or more areas associated with pest control. The secretary, or commissioner as the case may be, shall represent each department or agency on the council:

- (1) The fish and wildlife department;
 - (2) The department of environmental conservation;
 - (3) The agency of agriculture, food and markets;
 - (4) The department of forests, parks and recreation;
 - (5) The department of health;
 - (6) The agency of transportation;
 - (7) One physician from the College of Medicine of the University of Vermont nominated by its dean;
 - (8) One representative in the area of entomology, plant pathology or weed control from the University of Vermont Extension Service to be named by the director;
 - (9) One representative in the area of pesticide research from the Vermont Agricultural Experiment Station named by the dean of the College of Agriculture and Life Sciences of the University of Vermont; and
 - (10) Two members appointed by the governor. In choosing these members, the governor shall consider people who have knowledge and qualities that could be useful in pursuing the goals and functions of the council. One of these members shall have practical experience in commercial agricultural production and shall be appointed in consultation with the secretary.
- (b) Each state or university member of the council shall serve until his or her resignation or until his or her successor is appointed or otherwise designated in accordance with this chapter. Public members of the pesticide advisory council shall be appointed for terms of three years, except initially, appointments shall be made such that one member shall serve for a term of one year and one for a term of two years.
- (c) The chair of the council shall be designated by the governor and serve as his or her personal representative, and shall coordinate activities on the council.
- (d) The functions of the council are:

- (1) To review insect, plant disease, weed, nematode, rodent, noxious wildlife, and other pest control programs within the state and to assess the effect of such programs on human health and comfort, natural resources, water, wildlife, and food and fibre production, and where necessary make recommendations for greater safety and efficiency.
- (2) To serve as the advisory group to state agencies having responsibilities for the use of pesticides as well as to other state agencies and departments.
- (3) To advise the executive branch of state government with respect to legislation concerning the use of various pest control measures.
- (4) To suggest programs, policies, and legislation for wise and effective pesticide use that lead to an overall reduction in the use of pesticides in Vermont consistent with sound pest or vegetative management practices.
- (5) To recommend studies necessary for the performance of its functions as established under this section.
- (6) To recommend benchmarks with respect to the state goal of achieving an overall reduction in the use of pesticides consistent with sound pest or vegetative management practices, and to issue an annual report to the general assembly, detailing the state's progress in reaching those benchmarks and attaining that goal. The benchmarks should be designed to enable evaluation of multiple indicators of pesticide usage, use patterns, and associated risks. Benchmarks should take into consideration, but shall not be limited to, the following:
 - (A) Reducing the amount of acreage where pesticides are used.
 - (B) Reducing the risks associated with the use of pesticides.
 - (C) Increasing the acreage managed by means of integrated pest management techniques.
 - (D) Decreasing, within each level of comparable risk, the quantity of pesticides applied per acre.
 - (E) Recommendations regarding the implementation of other management practices that result in decreased pesticide use.
- (e) The council shall meet semiannually, once in the fall and once in the spring. Meetings at other times may be called by the governor, by the chair or by a member of the council. Attendance at council meetings shall not be required of the commissioners of departments within the agency of natural resources, or their designees; however, at least one of these commissioners, or the commissioner's designee, shall attend each meeting of the council. Council proceedings shall be open to the public and its deliberations shall be recorded and made available to the public, along with its work product. (Added 1969, No. 273 (Adj. Sess.), § 2, eff. April 9, 1970; amended 1983, No. 158 (Adj. Sess.), eff. April 13, 1984; 1987, No. 71, § 4; No. 76, § 18; 1989, No. 256 (Adj. Sess.), § 10(a), eff. Jan. 1, 1991; 1991, No. 79, § 4; 1995, No. 189 (Adj. Sess.), § 1; 1999, No. 141 (Adj. Sess.), § 1; 2003, No. 42, § 2, eff. May 27, 2003; 2009, No. 33, § 12.)

Title 6: Agriculture, Chapter 102: CONTROL OF CONTAGIOUS LIVESTOCK DISEASES
§ 1152. Administration

- (a) The secretary shall be responsible for the administration and enforcement of the livestock disease control program. The secretary may appoint the state veterinarian to manage the program, and other personnel as are necessary for the sound administration of the program.
- (b) The secretary shall maintain a public record of all permits issued, and of all animals tested under this chapter, for a period of three years.

- (c) The secretary may conduct any inspections, investigations, tests, diagnoses or other reasonable steps necessary to discover and eliminate contagious diseases existing in domestic animals or cultured trout in this state.
- (d) The secretary may contract and cooperate with the United States Department of Agriculture and other federal agencies or other states for the control and eradication of contagious diseases of animals. The secretary shall consult and cooperate, as appropriate, with the commissioner of fish and wildlife and the commissioner of health regarding the control of contagious diseases.
- (e) If necessary, the secretary shall set priorities for the use of the funds available to operate the program established by this chapter.
- (f) The taking and possessing of an animal which is imported, possessed, or confined for the purpose of hunting shall be regulated by the fish and wildlife board and commissioner of fish and wildlife under the provisions of part 4 of Title 10. However, the secretary shall have jurisdiction over the animal for the purposes described in section 1153 of this title. (Added 1987, No. 276 (Adj. Sess.), § 1; amended 1993, No. 202 (Adj. Sess.), § 3; 2003, No. 42, § 2, eff. May 27, 2003; 2005, No. 12, § 2, eff. May 2, 2005.)

Title 6: Agriculture, Chapter 109: EAR TAGS

§ 1501. Misuse or removal of agency of agriculture, food and markets ear tags

- (a) A person who, without authority from the secretary, inserts or causes to be inserted or removes or causes to be removed from an animal, an agency of agriculture, food and markets or other official ear tag, as defined in subsection (b) of this section, or otherwise misuses or causes a tag to be misused, may be imprisoned not more than one year or fined not more than \$1,000.00, or both.
- (b) An official ear tag is one issued by the Vermont agency of agriculture, food and markets for use in identification, official state disease control programs, and artificial breeding programs or for purposes of the Dairy Herd Improvement Association testing programs, or one that is similarly issued by other states of the United States and Canada. (Added 1979, No. 102 (Adj. Sess.); amended 1989, No. 256 (Adj. Sess.), § 10(a), eff. Jan. 1, 1991; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1502. Revocation of livestock dealer license

The secretary shall revoke for a period of one year the license of a livestock dealer who has been convicted of a violation of the provisions of section 1501 of this title, and the license shall not be renewed prior to the expiration of one year from the date of conviction. (Added 1979, No. 102 (Adj. Sess.); amended 2003, No. 42, § 2, eff. May 27, 2003.)

Title 6: Agriculture, Chapter 172: INSPECTION OF APIARIES

§ 3022. Enforcement; inspection

- (a) The secretary shall enforce the provisions of this chapter. He may, with the approval of the governor, appoint one or more inspectors who shall also be authorized to inspect all apiaries and otherwise enforce the provisions of this chapter.
- (b) The secretary shall pay any such inspectors their salary and necessary expenses incurred in the performance of their duties from the moneys annually available to the agency. (Added 1983, No. 83, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 3023. Duties to report

It shall be the duty of any person who is the owner of any bees, apiary, colony, or hive to report to the secretary in writing:

- (1) the location of all such apiaries and number of colonies. The location of an apiary shall become its registered location;
 - (2) the change of location of any apiary within two weeks unless the change of location is to provide pollination services and the colonies will be returned to a registered apiary. Hives from a registered apiary may be moved to another registered apiary without reregistering;
 - (3) the discovery of a serious disease within any of his colonies;
 - (4) the transportation into this state of any colonies or used equipment, except as noted in subsection 3032(c) of this title; and
 - (5) the fact that he is engaged in the rearing of queen bees or any other bees for sale, if applicable.
- (Added 1983, No. 83, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 3024. Apiary inspection; owners to control or eradicate bee diseases

The secretary, or his inspectors, may examine all apiaries as necessary and ascertain whether any disease which is injurious to bees is present. If any such disease is found, he shall give the owners or caretakers of the diseased apiaries written orders to treat, destroy, or otherwise handle the colonies in order to prevent the spread or dissemination of the disease. (Added 1983, No. 83, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 3025. Second inspection of diseased colonies; destruction

The secretary or his inspectors shall inspect all diseased apiaries a second time no less than 10 days after the first inspection. If the existence of disease within the apiary has been confirmed by a federal laboratory, the inspector may destroy any colonies of bees if he finds them not cured of such disease, or not treated or handled according to his instructions, together with honey combs, hives or other equipment, without recompense to the owner thereof. This section shall not preclude an inspector from destroying diseased colonies at any time with the consent of the owner, or his agent. (Added 1983, No. 83, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 3026. Sale or other unauthorized disposition of diseased bees

The owner of any apiary in which a disease exists shall not knowingly sell, barter, give away, or move any diseased bees, colonies, honey, hives, combs or equipment unless he has the written consent of the secretary; such person shall not in any way expose other bees to the danger of the disease. (Added 1983, No. 83, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 3027. Abandoned apiaries and equipment

Any diseased hive or hives, found by the secretary or his inspector in an abandoned apiary shall be destroyed. Any abandoned diseased beekeeping equipment may be destroyed. (Added 1983, No. 83, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 3028. Traffic in bees; inspection; certification

A person engaged in the rearing of bees for sale shall have his apiary inspected by the secretary at least twice during each summer season and, if any disease is found which is injurious to bees, shall at once cease to ship bees from such diseased apiary until the secretary declares, in writing, such apiary free from all such diseases, and whenever the secretary shall find the apiary rearing bees for sale free from disease, he shall furnish the owner with a certificate to that effect. (Added 1983, No. 83, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 3029. Movable comb frames required

- (a) All hives shall be constructed with frames containing the honeycombs and brood combs which may be removed from the hive for purposes of inspection. Upon determination that any hive containing bees is not constructed with removable frames the secretary, or his inspector may:
- (1) order the owner to immediately transfer the bees to a hive with removable frames; or

(2) grant the owner an extension for a specific period of time after which the owner must transfer the bees to a hive with removable frames.

(b) The secretary may, by regulation, create a permit program to allow persons to operate hives without removable frames for exhibition purposes. The owner of such a hive will not be in violation of this section so long as he holds a valid permit and is in compliance with all applicable regulations which the secretary may promulgate.

(c) Upon determination that an owner has violated the terms of this section or any regulation promulgated pursuant to this section, the secretary may destroy the hive or hives. Any determination of a violation shall be appealable to the secretary, who shall provide the owner a hearing within ten days of the determination of the violation, during which the order to destroy shall be stayed. (Added 1983, No. 83, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 3030. Regulations

The secretary may adopt, promulgate and enforce such rules and regulations which may provide for inspection, disinfection, seizure, destruction or other disposition of bees, equipment, or bee products capable of carrying or transmitting any disease. (Added 1983, No. 83, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 3031. Right of entry; impeding prohibited

The secretary or his authorized inspector may enter at a reasonable hour public or private premises, except private dwellings, for the purpose of enforcing the provisions of this chapter and shall have access, ingress and egress, to any apiary or place where he has reason to believe bees or equipment are kept. Any person who restricts, impedes, gives false information or hinders in any way the secretary or his inspectors, in the discharge of his duties shall be subject to the penalties provided for in section 3035 of this title. (Added 1983, No. 83, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 3032. Transportation of bees or used equipment into the state

(a) No bees, used equipment or colonies shall be brought into the state of Vermont unless accompanied by a valid certificate of inspection within the previous ten months from the state or country of origin stating that the bees, used equipment or bee colonies are free from bee disease.

(b) Any person, other than a common carrier, who knowingly transports or causes to be transported used equipment or colonies to a point within this state shall provide the secretary with a copy of the certificate of inspection not more than 72 hours after entry into this state.

(c) This section shall not apply to a shipment of bees, equipment, or colonies which originated outside the state and is destined for another point which is also located outside this state. (Added 1983, No. 83, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 3033. Shipping bees or equipment into another state or country; application for inspection; expenses; certificate

(a) If an owner wishes to ship bees or equipment into another state or country he may apply to the secretary for an inspection for serious bee diseases likely to prevent the acceptance of the bees or beekeeping equipment in the state or country.

(b) Upon receipt of the application, or as soon thereafter as may be conveniently practicable, the secretary shall comply with the request. (Added 1983, No. 83, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 3034. Establishing an apiary location

No person shall locate an apiary within two miles of an existing apiary registered to a different person, with the following exceptions:

- (1) a person may locate an apiary anywhere on his or her own property;
- (2) beekeepers with a total ownership of ten hives or less shall be exempt from this restriction;
- (3) existing apiaries so long as they are properly registered with the state are exempt;
- (4) a person may locate an apiary within two miles of another existing apiary provided the owner of the existing apiary gives written permission or the existing apiary has less than 15 hives;
- (5) if a registered apiary of 15 or more hives should fall below and remain below 15 hives, anyone can petition the state and establish an apiary within two miles of the existing apiary provided the number of hives in the existing apiary stays below 15 for two years from the time of the petition. An apiary that loses the protection of the two mile limit in this manner cannot be built back above the number of hives it had at the end of the two year period. (Added 1983, No. 83, § 1.)

§ 3035. Penalty

A person who violates a provision of this chapter, or a regulation adopted under its authority, shall be fined not more than \$500.00 for each offense. (Added 1983, No. 83, § 1.)

Title 6: Agriculture, Chapter 206: NURSERY INSPECTION

§ 4021. Definitions

As used in this chapter:

- (1) "Secretary" means the secretary of agriculture, food and markets or his or her designee.
- (2) "Agency" means the agency of agriculture, food and markets.
- (3) "Nursery" means all lands, premises and buildings on or in which nursery stock is grown, transported, or offered for sale.
- (4) "Nursery dealer" means any person who buys, sells, or distributes nursery stock for commercial gain.
- (5) "Nursery stock" means all woody or herbaceous shrubs, trees, plants and vines, including bulbs and rhizomes as well as buds, grafts, scions and other parts capable of propagation whether wild, cultivated or grown under artificial covering. This definition does not include cut flowers or seeds. (Added 1985, No. 57, § 1; amended 1989, No. 256 (Adj. Sess.), § 10(a), eff. Jan. 1, 1991; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 4022. Secretary of agriculture, food and markets as enforcing official

The secretary shall enforce the provisions of this chapter and perform such duties as may be required by the federal plant pest quarantine statutes. The secretary may employ such assistance as necessary for the proper performance of his or her duties. (Added 1985, No. 57, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 4023. Nursery inspection; issuance of certificate

- (a) The secretary shall, at least annually, but not more than three times a year, inspect all nurseries or places within the state where nursery stock is grown, collected or stored. If, upon examination, the nursery stock is found to be healthy and apparently free from pests and diseases, the secretary shall issue a certificate. The secretary shall establish by rule the conditions for the issuance, suspension or revocation of the certificate, and may place any restrictions or requirements upon the certificate which he or she deems necessary.
- (b) No person may operate a nursery without a valid certificate.
- (c) The secretary may charge a fee for any inspection conducted under the provisions of this chapter. The amount of the fee shall be determined in a manner to be established by rule, but shall be no greater than is necessary, in the judgment of the secretary, to meet all expenses incurred in making the inspection. (Added 1985, No. 57, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 4024. Nursery dealers; license

(a) Every nursery dealer purchasing, selling or installing stock in this state shall annually apply for and receive a nursery dealer's license from the secretary. The secretary may inspect nursery stock in the possession of licensed dealers as he or she deems necessary. The secretary shall establish by rule the conditions for the issuance, suspension or revocation of the license, and may place any restrictions or requirements upon the license which he or she deems necessary.

(b) Any person soliciting orders for, selling, delivering or installing nursery stock shall have in his or her possession a copy of the license of the nursery which he or she represents or his or her own license, if required by subsection (a) of this section, which he or she shall show upon demand to prospective buyers or the secretary.

(c) Any person who has been issued a certificate by the secretary under section 4023 of this title shall automatically be issued a nursery dealer's license. (Added 1985, No. 57, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 4025. Shipments by nursery dealers to be accompanied by inspection certificates

Whenever a nursery dealer ships or delivers any nursery stock grown within this state, he or she shall include with each shipment a copy of the inspection certificate issued by the secretary, or an approved facsimile, stating that the nursery has been inspected and approved as required by this chapter and the nursery stock is believed to be free from injurious pests or plant diseases. (Added 1985, No. 57, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 4026. Foreign nursery stock; certificate of inspection; transportation; penalty

Nursery stock transported into this state for sale, distribution or installation shall be accompanied by a valid certificate of inspection, or a reasonable facsimile, or other certification accepted by the secretary, from the state from which the consignment comes or from a United States government inspector, stating that the nursery stock is believed to be free of injurious pests or plant diseases. The certificate shall contain the name and mailing address of the consignor. (Added 1985, No. 57, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 4027. Diseased or infested stock; stop-sale; destruction

(a) Only sound, healthy nursery stock which will maintain its vigor shall be offered for sale. Offering for sale stock which is diseased or infested with injurious pests is a violation of this chapter.

Whenever the secretary has reason to believe that any nursery in the state has introduced, installed, sold or offered for sale, diseased or infested stock, the secretary shall inspect that nursery. If, upon inspection, the secretary finds any diseased or infested stock, he or she may order the plants, either individually or in blocks, to be

- (1) put on stop-sale;
- (2) treated in a particular manner; or
- (3) destroyed according to the secretary's instructions.

(b) Plants ordered destroyed or placed on stop-sale must be clearly separable from noninfested stock. Any order must be confirmed in writing within seven days. The writing shall include the reason for action, a description of the nursery stock affected, and any recommended treatment. Stop-sale tags may not be removed except by written permission of the secretary or upon suitable disposal of the infested plants.

(c) A person issued any order under subsection (a) of this section may appeal that order to the secretary within 15 days after receiving the order. The person shall make an appeal by letter to the secretary, and shall state any grounds and designate the plants affected. (Added 1985, No. 57, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 4028. Access to records; nursery stock

A nursery dealer engaged in the sale, distribution, or installation of nursery stock shall:

- (1) provide access for inspection by the secretary of all nursery stock;
- (2) follow appropriate practices so that an adequate inspection of the nursery can be made; and
- (3) maintain for one year records of plant purchases, acquisitions, sales or other distributions, and make the records available upon request to the secretary for inspection. (Added 1985, No. 57, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 4029. Rules; distribution; penalties

(a) The secretary shall adopt rules as prescribed by 3 V.S.A. chapter 25 as he or she deems necessary to carry out the provisions of this chapter. The rules shall be printed by the state and distributed by the secretary.

(b) A person who violates any provisions of this chapter or a rule adopted under this chapter shall be fined not more than \$100.00 for the first offense and not more than \$500.00 for each subsequent offense. The secretary may seek and obtain preliminary and permanent injunctive relief for any violation of this chapter or the rules promulgated under this chapter. (Added 1985, No. 57, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 4030. Special conditions; certification

(a) The secretary is authorized to establish conditions and rules under which certain plants may be grown and certified free from virus, fungi, bacteria or any infesting organism considered detrimental to the plant.

(b) The secretary is authorized to issue an additional certificate, certifying that the plants were grown under special conditions or have been tested by a recognized procedure which has established them as being free from certain viruses, fungi, bacteria, or other organisms. Certification standards shall be established by the secretary.

(c) The secretary shall have authority to assess growers who apply for this additional certification a fee to be paid as the secretary may direct. The amount of the fee shall not be greater than is necessary, in the judgment of the secretary, to meet all expenses incurred in making the inspection and certification. (Added 1985, No. 57, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 4031. Plants taken from the wild

(a) The secretary may adopt procedural rules pursuant to the Administrative Procedure Act as set forth in 3 V.S.A. chapter 25, for the collection, sale, or distribution of plants taken from the wild, on the list of Convention on International Trade on Endangered Species of Wild Fauna and Flora, as amended, provided that the plants are not on the Vermont endangered species list. He or she may authorize surveys or other actions to determine the extent that plant collections may be undertaken without jeopardizing the survival of a plant species. He or she may classify plant species based on their populations or chances for survival and may restrict what amount, if any, of a particular species may be removed from the wild.

(b) The secretary may enter into programs with other government agencies to allow the movement of wild collected plants in interstate and international travel.

(c) The secretary is authorized to stop-sale, to seize or return to the point of origin at the possessor's expense any wild plants collected, sold, or distributed in violation of this provision. (Added 1985, No. 57, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 4032. Cooperation with other government agencies

The secretary may enter into agreements or programs with other government agencies to allow movement of nursery stock or to implement federal and/or state quarantines as the secretary deems

necessary or are required under federal or state law. (Added 1985, No. 57, § 1; amended 2003, No. 42, § 2, eff. May 27, 2003.)

**Agency of Agriculture, Food and Markets Rules promulgated under authority at 6 V.S.A.
State of Vermont Department of Agriculture / Department of Forests, Parks & Recreation
Joint Quarantine No. 1, Quarantine Regulations**

Section I Definitions

Section II Quarantined Area

Section III Regulated articles

Section IV Conditions governing the issuance of certificates and permits

Section V Inspection and disposition of shipments

Section VI Marking requirements

Section VII Shipments for experimental and scientific purposes

Section VIII Statement of origin of regulated articles

Section I: Definitions. For the purpose of these regulations, the following words names, and terms shall be construed, respectively to mean:

(a) Scleroderris canker. The disease known as Scleroderris canker, caused by the fungus *Gremmeniella abietina* (Lagerb.) Morelet (*Scleroderris laerbermii* Gremmen) in any stage of development.

(b) Infection. Refers to the presence of Scleroderris canker.

(c) Inspector. An inspector of tile Vermont State Department of Agriculture, Ver,jont State Department of Forests, Parka, and Recreation, or of the United States Department of Agriculture, when authorized by the Commissioner to act in that capacity.

(d) Moved, movement. Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, carried, transported, moved, or allowed to be moved from the quarantined area into or through any other portions of the State.

(e) Certificate. A valid form certifying the eligibility of products for movement outside of the quarantined area under the requirements of these regulations.

(f) Limited permit. A valid form authorizing the movement of regulated articles from a quarantined area to a specified destination for specific processing, handling, or utilization.

(g) Commissioner. The Commissioner of Agriculture and the Commissioner of Forests, Parks, and Recreation of the State of Vermont.

(h) Deregulation, deregulated. The removal of quarantine restrictions from regulated articles or quarantined areas due to satisfactory control measures to arrest or eradicate the disease.

(i) Premise quarantine. A limited action taken by tile Commissioner to immediately place under regulation any field, tree, or plantation found to be infected with Scleroderris canker.

Section II: Quarantined areas. The following counties or towns, or parts thereof, of the State of Vermont are declared to be quarantined areas:

(a) The towns of:

ADDISON COUNTY

Ripton
Starksboro

CALEDONIA COUNTY

LAMOILLE COUNTY

Belvidere
Cambridge
Eden
Elmore

WASHINGTON COUNTY

Barre
Berlin
Cabot
Calais

Barnet	Hyde Park	Duxbury
Burke	Johnson	East Montpelier
Danville	Morristown	Marshfield
Groton	Stowe	Middlesex
Hardwick	Waterville	Montpelier City
Kirby	Wolcott	Moretown
Lyndon		Northfield
Newark	<u>ORANGE COUNTY</u>	Plainfield
Peacham	Brookfield	Waterbury
St. Johnsbury	Chelsea	Woodbury
Sheffield	Orange	Worcester
Stannard	Washington	
Sutton	Williamstown	
Walden		
Wheelock	<u>ORLEANS COUNTY</u>	
<u>CHITTENDEN COUNTY</u>	Albany	
Jericho	Barton	
Milton	Brownington	
Underhill	Charleston	
	Craftsbury	
	Glover	
<u>ESSEX COUNTY</u>	Greensboro	
Brighton	Irasburg	
Maidstone	Lowell	
	Morgan	
<u>FRANKLIN COUNTY</u>	Troy	
Bakersfield	Westfield	
Berkshire	Westmore	
Enosburg Falls		
Fairfax		
Montgomery		
Richford		

(b) Upon discovery of new infections in unregulated towns, the Commissioner may issue written orders establishing premise quarantines for articles regulated by the quarantine.

Section III: Regulated articles.

(a) Prohibited movement. The movement in this State of Scleroderris canker in any stage of development, whether moved independent of or in connection with any other article, is prohibited, except as provided in Section IV hereof.

(b) Regulated movement. The following articles shall not be removed from a quarantined area except under a limited permit or unless accompanied by a certificate indicating freedom from infection:

(1) Nursery stock, Christmas trees, wreaths, branches, twigs, or parts thereof except logs and pulpwood, of any species of ljj which are grown in any forest, field, nursery, or greenhouse.

(2) Any other commodity or article when found on inspection to be infected with Scleroderris canker in any of its stages.

Section IV: Conditions governing the issuance of certificates and permits.

(a) Certificates. Certificates may be issued by an inspector for the movement of regulated articles under one or more of the following conditions:

(1) When they have been inspected and found apparently free from infection;

(2) When they have been treated or processed by methods approved by the Commissioner; or

(3) When they have been grown, produced, manufactured, stored or handled in such a manner that, in the judgment of the inspector, they have not been exposed to infection or if no infection would be transmitted by the shipment thereof: provided that subsequent to certification the regulated articles will be loaded, handled, and shipped under such protection and safeguards against re-infection as are required by the inspector.

(b) Limited permits. Limited permits may be issued for the movement of non—certified regulated articles to specified destinations for specified processing, handling, or utilization. Persons shipping, transporting, or receiving such articles may be required to enter into written dealer-carrier agreements to maintain such sanitation safeguards against the establishment and spread of infection and to comply with such conditions as to the maintenance of identity, handling, processing, or subsequent movement of regulated products as may be required by the inspector. Failure to comply with conditions of the agreement will result in its cancellation.

(c) Cancellation of certificates or limited permits. Certificates or limited permits issued under these regulations may be withdrawn or canceled by the inspector and further certification refused whenever in his judgment the further use of such certificates or permits might result in the dissemination of infection.

(d) Removal of quarantine restrictions. Upon completion of control measures found to be acceptable to the Commissioner, certain items or areas may be deregulated by the Commissioner. Such deregulation shall be based on the absence of Scleroderris canker from the articles or areas, and the reduced probability that movement of materials will constitute further dissemination of the disease.

Section V: Inspection and disposition of shipments. Any car or other conveyance, any package or other container, and any article to be moved, which is moving or which has been moved from the quarantined area, which contains, or which the inspector has probable cause to believe may contain infection, or articles regulated under this quarantine, may be examined by an inspector at any time or place. When articles are found to be moving or to have been moved in violation of these regulations, the inspector may take such action as he deems necessary to eliminate the danger of dissemination of infection.

Section VI: Marking requirements. Every container of regulated articles intended for movement from the quarantined areas shall be plainly marked with the name and address of the consignor and the name and address of the consignee, when offered for shipment, and shall have securely attached to the outside thereof a valid certificate or limited permit issued in compliance with these regulations:

provided, that

(1) One certificate may be attached to one of the containers and another to the waybill; and for carlot freight or express shipment, either in containers or in bulk, a certificate need be attached to the waybill only and a placard to the out side of the car, showing the number of the certificate accompanying the waybill;

(2) For movement by road vehicle, the certificate shall accompany the vehicle and be surrendered to consignee upon delivery or shipment;

(3) For movement of regulated material by personal vehicle, the certificate number shall appear on the bill of sale.

Section VII: Shipments for experimental and scientific purposes. Regulated articles may be moved from the quarantined area for experimental or scientific purposes, on such conditions and under such safeguards as may be approved by the Commissioner. The container of articles so moved shall bear, securely attached to the outside thereof, a certificate showing compliance with such conditions.

Section VIII: Statement of origin of regulated articles. Every person selling, or delivering, or attempting to sell, or deliver or ship regulated articles as defined in Section III hereof, in this State, shall accompany each such load, bundle, package, or shipment of the same with legible written statement of origin which shall contain the address of the lands on which such regulated articles were grown, obtained, or cut; the name and address of the consignor.

This quarantine shall become effective

APPROVED AS TO FORM:

Attorney General's Office

Paul A. Stone
Commissioner of Agriculture

Mollie Beattie
Commissioner of Forests,
Parks & Recreation
Madeleine H. Kunin
Governor of Vermont

STATE OF VERMONT

Department of Agriculture and Department of Forests, Parks and Recreation

Joint Quarantine #2 -Hemlock Woolly Adelgid

Section I.: Statement of Concerns

Whereas Hemlock Woolly Adelgid (*Adelges tsugae* Annand) has been found to cause mortality of Eastern Hemlock (*Tsuga canadensis*);

Whereas Hemlock Woolly Adelgid is established in Southern New England and has shown rapid movement northward;

Whereas this pest has been found to be difficult to control in natural Hemlock stands;

Whereas Hemlock is a very valuable component of Northern New England 's forest for both timber and wildlife as well as a high value landscape ornamental.

Therefore, the State of Vermont is hereby establishing this exterior plant quarantine against Hemlock Woolly Adelgid for the protection of these valuable resources.

Section II.: Definitions

1. "Bark" means the tissue of woody stem outside cambium.
2. "Hemlock" means all the species within the genus, *Tsuga*.
3. "Compliance Agreement" means the contract between State of Vermont and lumber mills to allow movement of Hemlock.

4. "Hemlock Woolly Adelgid" means the insect known as Hemlock Woolly Adelgid, *Adelges tsugae* Annand, in the order Homoptera and family Adelgidae.
5. "Nursery Stock" means all woody or herbaceous shrubs, trees, plants and vines, including bulbs and rhizomes as well as buds, grafts, scions and other parts capable of propagation whether wild, cultivated or grown under artificial covering or artificial conditions. This definition does not include cut flowers or seeds.
6. "Lumber" shall include sawed timber.
7. "Logs" means the main stem of a tree including smaller sections used for pulp.

Section III.: Statutory Authority.

The statutory authority for these regulations is 6 V.S.A., Chapter 84 'Pest Survey, Detection and Management'

Section IV.: Specific Purpose and Factual Basis

The specific purpose of these regulations is to protect Vermont's Hemlock resource by preventing the introduction of Hemlock Woolly Adelgid into Vermont and its spread within the State.

The Agency of Agriculture, Food, and Markets and Department of Forests, Parks and Recreation have determined that this exterior quarantine is necessary based on the following facts:

1. The Hemlock Woolly Adelgid is an introduced species native to Asia, and a serious pest of Eastern Hemlock in many Eastern States.
2. This insect feeds mainly on the young branches by inserting its piercing and sucking mouthparts and removing sap.
3. This feeding retards or prevents tree growth, causes needles to discolor and drop prematurely, kills branches, generally weakens, disfigures and causes tree mortality.

Section V.: Hemlock Woolly Adelgid Exterior Quarantine.

A quarantine is established against the following pest and possible carriers.

A. Pest. Hemlock Woolly Adelgid (*Adelges tsugae* Annand).

B. Area Under Quarantine. In the Eastern United States, the counties included in the USDA Forest Service's publication entitled "List of Counties and States with Known Hemlock Woolly Adelgid Infestations" dated December 2003, and any subsequent lists published hereafter.

In western United States, the State of Alaska, the State of California, the State of Oregon and the State of Washington. Also the province of British Columbia in western Canada.

C. Regulated Articles. Hemlock seedlings, hemlock nursery stock, hemlock logs, hemlock lumber with bark and chips.

D. Restrictions. All regulated articles are prohibited entry into the State of Vermont except as specifically allowed and conditioned below.

1. Hemlock seedlings and nursery stock originating from or having previously been held in an area under quarantine are prohibited entry into Vermont.
2. Hemlock seedlings and nursery stock from non-quarantined areas shipped into Vermont must be accompanied by a State Phytosanitary Certificate, or a Certificate of Origin, indicating the number and type of regulated articles, and attesting to the fact that the regulated articles:
 - originated from a non-quarantined area;
 - non-quarantined areas adjacent to quarantined counties are annually surveyed and found negative for Hemlock Woolly Adelgid by State Plant Protection Agencies.
 - have not been held in an area under quarantine; and
 - have not been exposed to regulated articles from quarantined areas.

A copy of the State Phytosanitary Certificate or Certificate of Origin must be signed by a plant regulatory official in the originating state and upon issuance must be faxed to the Agency of Agriculture, Plant Protection Section, at (802) 241-3008 or such other fax number as the Agency may from time to time publish. A copy must also be mailed to the Vermont Agency of Agriculture, Laboratory Building , Plant Protection Section, 103 South Main Street , Waterbury , VT 05671-0101 within 3 days of issuance.

The hemlock seedlings and nursery stock may not be sold or further distributed unless a written release is issued by the Vermont Agency of Agriculture.

3. Hemlock seedlings and nursery stock which have been transported through an area under quarantine are prohibited entry into Vermont except in accordance with the following conditions:
 - the vehicle transporting the regulated articles must transit the area under quarantine without stopping, except for refueling;
 - the regulated articles were not off-loaded in the area under quarantine; and
 - no regulated articles were added to the shipment in the quarantined area.
4. Hemlock logs, hemlock lumber with bark and chips are admissible provided that said material is only shipped to pre-approved sites within Vermont where compliance agreements are in effect. If said material is shipped to other sites, it must be accompanied by a certificate issued by the Departments of Agriculture or Forestry of the state of origin affirming:
 - originated from a non-quarantined area;
 - non-quarantined areas adjacent to quarantined counties are annually surveyed and found negative for Hemlock Woolly Adelgid by State Plant Protection Agencies.
 - have not been held in an area under quarantine; and
 - have not been exposed to regulated articles from quarantined areas.

A copy of the State Phytosanitary Certificate or Certificate of Origin must be signed by a plant regulatory official in the originating state and upon issuance must be faxed to the Agency of Agriculture, Plant Protection Section, at (802) 241-3008 or such other fax number as the Agency may from time to time publish. A copy must also be mailed to the Vermont Agency of Agriculture, Laboratory Building , Plant Protection Section, 103 South Main Street , Waterbury , VT 05671-0101 within 3 days of issuance.

STATE OF VERMONT

Department of Forests, Parks and Recreation and Department of Agriculture HEMLOCK WOOLLY ADELGID QUARANTINE

Compliance Agreement

Agreement between the State of Vermont and _____ for movement of hemlock logs, pulpwood, and other hemlock parts from states with known infestation of hemlock woolly adelgid (HWA) to preapproved sites in the State of Vermont.

1. Objective: To protect the hemlock resource of Vermont from the reported threat of HWA while not interrupting delivery of hemlock raw materials to using mills in Vermont.
2. Responsibility: As defined by Vermont State Law Title 6, Chapter 83, Section 981, Interstate Pest Control Compact, and Sections 982 and 983, the Commissioners of the Departments of Forests, Parks and Recreation and Agriculture may prohibit, prevent, or regulate the entry into the State of any plants or parts of plants which may cause the introduction or spread of a dangerous forest insect or disease. As defined in the above law, the commissioners, when it is found that there exists in another state any dangerous insect infestation, are authorized to promulgate and enforce a

quarantine prohibiting or restricting the transportation into or through the State. The Vermont Department of Agriculture and Department of Forests, Parks and Recreation, in cooperation with their counterparts in Maine and New Hampshire, have determined that HWA constitutes a potential threat to the hemlock resource of the State and the region.

Hemlock woolly adelgid is classed a dangerous forest insect, and transport of uncertified hemlock host material from infested states to unapproved sites in Vermont is prohibited. The Vermont Department of Forests, Parks and Recreation, in cooperation with the Vermont Department of Agriculture, will allow uncertified interstate transport of hemlock logs, pulpwood, and parts to preapproved sites.

3. Agreement: The Vermont Department of Agriculture and the Department of Forests, Parks and Recreation agrees to allow _____ and its wood suppliers to move uncertified hemlock logs, pulpwood, and parts from infested states (see attached map) to the premises located: _____. This agreement is to become effective _____ and will be renewed annually until conditions of pest risk are such that continuance of the agreement is inappropriate.

4. Special Requirements:

A. Hemlock logs, pulpwood and parts from these premises will not be moved to another location without approval of a State quarantine inspector and in compliance with the regulatory action prescribed by him, except that free movement between the premises listed herein is allowed.

B. Vermont Department of Forests, Parks and Recreation/Vermont Department of Agriculture representatives may go on _____ premises at any time to check for presence of HWA, but must be accompanied by a representative of _____ for safety reasons.

C. _____ shall undertake sanitary action against any infestation of HWA found on the above premise to the satisfaction of the Commissioner.

Vermont Agency of Agriculture, Food & Markets

Quarantine #3 - Noxious Weeds

Section I: Statement of Concerns

Whereas, the Vermont Department of Agriculture, Food & Markets having found that certain noxious weeds out compete and displace plants in natural ecosystems and managed lands; and Whereas, competition and displacement of plants by certain noxious weeds has significant environmental, agricultural and economic impacts; and

Whereas, it has been determined to be in the best interest of the State of Vermont to regulate the importation, movement, sale, possession, cultivation and / or distribution of certain noxious weeds: Therefore, the State of Vermont is hereby establishing this noxious weed quarantine regulation by the authority of 6 V.S.A., Chapter 84, Pest Survey, Detection and Management.

Section II: Definitions

"Class A Noxious Weed" means any noxious weed on the Federal Noxious Weed List (7 C.F.R. 360.200), or any noxious weed that is not native to the State, not currently known to occur in the State, and poses a serious threat to the State.

"Class B Noxious Weed" means any noxious weed that is not native to the state, is of limited distribution statewide, and poses a serious threat to the State, or any other designated noxious weed being managed to reduce its occurrence and impact in the State.

"Commissioner" means the Commissioner of Agriculture, Food & Markets, or his or her designee.

"Noxious Weed" means any plant in any stage of development, including parasitic plants whose presence whether direct or indirect, is detrimental to the environment, crops or other desirable plants, livestock, land, or other property, or is injurious to the public health.

"Plant and Plant Products" means trees, shrubs, and vines; forage, fiber, and cereal plants; cuttings, grafts, scions, buds and lumber; fruit, vegetables, roots, bulbs, seeds and wood; and all other plants, parts of plants, and plant products.

"Possession" means to grow, manage or cultivate through planting, pruning, watering, fertilization, weeding, propagation, or any other means that promotes the growth of the noxious weed. This does not include the incidental occurrence of a noxious weed on wild or managed land.

Section III: Designation as a Noxious Weed

(A) The following conditions shall be met for a plant or plant product to be designated as a Class A or B Noxious Weed:

(1) As determined by a pest risk assessment, a quarantined noxious weed must pose an actual or anticipated threat to a substantial agricultural, forestry or environmental interest and / or the general public.

(2) Establishment of a quarantine for a specified noxious weed is likely to contribute to the objective of preventing introduction or for limiting the spread and / or severity of the noxious weeds impact to the agricultural, forestry or environmental interest.

(3) No substitute or alternative mitigating action will accomplish the same pest prevention purpose.

(4) The economic and/or environmental benefits of quarantining a specified noxious weed outweigh the economic and/or environmental benefits associated with the noxious weed.

(B) The following biological factors shall be used to evaluate whether or not a plant or plant product has satisfied the conditions for designation as a Class A or Class B Noxious Weed.

(1) Native origin of the plant;

(2) Known distribution;

(3) Mechanism and potential for spread to and within Vermont;

(4) Past, current and potential environmental, economic and human health impacts;

(5) Feasibility of control and spread prevention;

(6) Regional and national perspective;

(7) Designation as a federal noxious weed; and / or

(8) Other pertinent factors.

(C) Designation as a Class A or Class B Noxious Weed shall occur through the Administrative Rule procedure as outlined in 3 V.S.A., Chapter 25.

Section IV: Designated Noxious Weeds

(A) Class A Noxious Weeds.

(1) All weeds listed in 7 C.F.R. 360.200 as amended, which is hereby incorporated by reference including subsequent amendments and editions.

(2) *Cabomba caroliniana* (fanwort)

(3) *Egeria densa* (Brazilian elodea)

(4) *Hydrilla verticillata* (hydrilla)

(5) *Hygrophila polysperma* (Roxb.) T. Anderson (E. Indian hygrophila)

(6) *Myriophyllum aquaticum* (Vell.) Verdc. (Parrot feather)

(7) *Myriophyllum heterophyllum* (variable-leaved milfoil)

(8) *Salvinia auriculata* (giant salvinia)

(9) *Salvinia biloba* (giant salvinia)

- (10) *Salvinia herzogii* (giant salvinia)
- (11) *Salvinia molesta* (giant salvinia)
- (12) *Vincetoxicum hirundinaria* Medikus. (pale swallow-wort)
- (B) Class B Noxious Weeds.
 - (1) *Aegopodium podagraria* L. (goutweed)
 - (2) *Ailanthus altissima* (tree-of-heaven)
 - (3) *Alliaria petiolata* (*A. officinalis*) (garlic mustard)
 - (4) *Butomus umbellatus* (flowering rush)
 - (5) *Celastrus orbiculatus* Thunb. (Oriental bittersweet)
 - (6) *Fallopia japonica* (*Polygonum cuspidatum*) (Japanese knotweed)
 - (7) *Hydrocharis morsus-ranae* L. (frogbit)
 - (8) *Lonicera x bella* (Bell honeysuckle)
 - (9) *Lonicera japonica* (Japanese honeysuckle)
 - (10) *Lonicera maackii* (Amur honeysuckle)
 - (11) *Lonicera morrowii* (Morrow honeysuckle)
 - (12) *Lonicera tatarica* (Tartarian honeysuckle)
 - (13) *Lythrum salicaria* (purple loosestrife)
 - (14) *Myriophyllum spicatum* (Eurasian watermilfoil)
 - (15) *Nymphoides peltata* (Gmel.) Ktze. (yellow floating heart)
 - (16) *Phragmites australis* (common reed)
 - (17) *Potamogeton crispus* L. (curly leaf pondweed)
 - (18) *Rhamnus cathartica* (common buckthorn)
 - (19) *Rhamnus frangula* (glossy buckthorn)
 - (20) *Trapa natans* L. (water chestnut)
 - (21) *Vincetoxicum nigrum* L. (black swallow-wort)

Section V: Prohibitions

- (A) The movement, sale, possession, cultivation, and / or distribution of Class A Noxious Weeds designated in Section IV of this quarantine regulation is prohibited.
- (B) The movement, sale, and / or distribution of Class B Noxious Weeds designated in Section IV of this quarantine regulation is prohibited.
- (C) Violation of any of the prohibitions listed in Section V of this regulation may result in:
 - (1) The issuance of cease and desist orders; and / or,
 - (2) Temporary or permanent injunctions; and / or,
 - (3) Administrative penalties not to exceed \$1,000 per violation, as specified in 6 V.S.A., Chapter 84, Sections 1037 and 1038.

Section VI: Exemptions

- (A) Scientific, economic and educational exemptions may be granted by the Commissioner to allow for the movement, possession and field experimentation of noxious weeds for scientific and educational purposes under such conditions as may be prescribed by the commissioner. When granting exemptions, the commissioner shall take into consideration the value of the scientific, economic or education purpose and the risk to Vermont's environment, economy and citizens.
- (B) Transportation of any Class A or B Noxious weed on any road or highway of the state is exempt if any of the following is true:
 - (1) It is for disposal as part of a management control activity; or

(2) It is for the purpose of identifying a species or reporting the presence of a species, and the Class A or B Noxious weed is in a sealed container; or

(C) Preserved specimens in the form of herbaria or other preservation means are not subject to this regulation.

(D) Varieties, cultivars, hybrids and/or subspecies that have been shown through scientific research and analysis not to be invasive.

Adopted on 4/22/02

Vermont Agency of Agriculture, Food & Markets Quarantine #4 – Pine Shoot Beetle

Section I: Statement of Concerns

Whereas, the Vermont Department of Agriculture, Food & Markets and the Vermont Department of Forests, Parks & Recreation having found that an exotic pest, known as the pine shoot beetle, *Tomicus piniperda* (L.), which is an introduced pest of pine trees, has been detected in this state and has a very limited distribution at this time; and

Whereas, a federal quarantine, 7 CFR, Ch. 111, Part 301.50, calls for the establishment of a parallel internal state quarantine; and

Whereas, it has been determined to be in the best interest of affected industries to regulate the movement of the pine shoot beetle at the county level:

Therefore, the State of Vermont is hereby establishing this interior plant quarantine regulation by the authority of 6 V.S.A., Chapter 84, Pest Survey, Detection and Management.

Section II: Definitions

"Certificate" means a document in which an inspector, or person operating under a compliance agreement, affirms that a specified regulated article is free of pine shoot beetle and may be moved interstate to any destination.

"Commissioner" means the Commissioner of Agriculture, Food & Markets and the Commissioner of Forests, Parks & Recreation.

"Compliance Agreement" means a written agreement between VDAF&M and a person engaged in growing, handling, or moving regulated articles, in which the person agrees to comply with the provisions of this quarantine.

"Evidence of Infestation" means the presence of a clean pine shoot beetle gallery, and/or the pine shoot beetle.

"Infestation" means the presence of the pine shoot beetle.

"Inspector" means any employee of the Animal and Plant Health Inspection Service, Vermont Department of Agriculture, Food & Markets, or Vermont Department of Forests, Parks & Recreation, authorized to enforce this quarantine.

"Interstate" means from any state into or through any other state.

"Limited Permit" means a document which an inspector, or person operating under a compliance agreement, affirms that the regulated article identified on the document is eligible for intrastate and/or interstate movement in accordance with this quarantine to a specified destination and only in accordance with specified conditions.

"Pine Nursery Stock" means all *Pinus* spp. woody plants, shrubs, and rooted trees, and ornamental pine, such as bonsai.

"Pine Shoot Beetle" means the insect known as pine shoot beetle, *Tomicus piniperda* (Linnaeus), in any stage of development.

"Processed Pine Product" means any pine product without bark, wreaths, roping, or any other commodity designated as such by the commissioner.

"Quarantined Area" means any state, or any portion of a state, listed in 7 CFR, Ch. 111, Part 301.50, or any Vermont town listed in Section IV of this quarantine regulation.

"Receiving Facility" means any mill, incinerator, or other facility that receives a regulated article.

"Regulated Article" means any article listed under Section III of this quarantine regulation.

"State" means the District of Columbia, Puerto Rico, the Northern Mariana Islands, or any state, territory, or possession of the United States.

Section III: Regulated Articles

(A) The pine shoot beetle, *Tomicus piniperda* (L.), in any living stage of development.

(B) Entire plants or parts thereof of the genus *Pinus* spp., including, but not limited to, Christmas trees, nursery stock and brush, unless specified under Section VI: Exemptions of this regulation.

(C) Logs and lumber of *Pinus* spp., with bark attached.

(D) Any other article, product or means of conveyance, when it is determined by the Commissioner, that it presents the risk of spread of pine shoot beetle, *Tomicus piniperda* (L.)

Section IV: Quarantined Areas

(A) Within this section, the Commissioner shall list any county, town or other political subdivision in which the pine shoot beetle has been found by an inspector, in which the commissioner has reason to believe the pine shoot beetle is present, or that the commissioner considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the pine shoot beetle has been found.

(1) Essex County

(2) Orleans County

(3) Caledonia County

(4) Any other county meeting USDA / APHIS criteria for regulated status in accordance with 7 CFR, Ch. 111, Part 301.50.

Section V: Conditions of Movement of Regulated Articles

(A) Movement Within Quarantined Areas: Movement of the regulated article from and through any quarantined area to any destination within a quarantined area is allowed.

(B) Movement Out of a Quarantined Area: Movement of the regulated article from any quarantined area to any destination outside the quarantined area is prohibited, except under the following conditions:

(1) Pine Christmas Trees & Brush: Movement of Christmas trees and brush during October, November and December is allowed under a limited permit, certificate, or compliance agreement if:

(a) Visual inspection of the trees or brush in a shipment or the plantation does not detect the presence of the pine shoot beetle. The number of trees selected for inspection is randomly determined by the size and type of shipment, in accordance with 7 CFR, Ch. 111, Part 301.50.; or

(b) The Christmas tree plantation is under, and adhering to the conditions of, a Compliance Agreement. The Compliance Agreement shall be in accordance with the conditions outlined under the 1999 Pine Shoot Beetle Compliance Management Program as cooperatively developed by the National Plant Board and USDA / APHIS / PPQ.; or,

(c) The shipment of Christmas trees or brush is treated using one of the fumigation methods as outlined in accordance with 7 CFR, Ch. 111, Part 301.50.

(2) Pine Logs and Lumber with Bark Attached: Movement of pine logs or lumber with bark attached out of the quarantine area is prohibited, except under the following conditions:

- (a) If the shipment is taking place from July 1st through October 31st, and the source of the pine was felled during the same period, then the shipment may move unrestricted.
- (b) If the shipment is taking place from November 1st through March 30th, then movement is allowed under the following conditions:
 - (b1) The shipment has been treated at the point of origin under the supervision of an inspector with the approved method of fumigation as outlined in accordance with 7 CFR, Ch. 111, Part 301, and issued a certificate attesting to such; or
 - (b2) The shipment will be moved under a limited permit to a receiving facility that is operating under, and meeting the standards set forth in, a compliance agreement approved by the Commissioner. The compliance agreement will specify the conditions for handling, processing, and/or utilization of the pine bark which will prevent the spread of the pine shoot beetle.
- (c) If the shipment is taking place from April 1st through June 30th, then movement is allowed under the following conditions:
 - (c1) The shipment has been treated at the point of origin under the supervision of an inspector with the approved method of fumigation as outlined in accordance with 7 CFR, Ch. 111, Part 301.50, and issued a certificate attesting to such.
 - (c2) The shipment will be moved under a limited permit to a receiving facility that is operating under, and meeting the standards set forth in, a compliance agreement approved by the Commissioner. The compliance agreement will specify the conditions for handling, processing, and/or utilization of the pine bark which will prevent the spread of the pine shoot beetle.
- (3) Pine Bark and Pine Mulch: Movement of pine bark and pine mulch out of the quarantine area is prohibited, except under the following conditions:
 - (a) If the shipment is taking place from July 1st through October 31st, and the source of the pine was felled during the same period, then the shipment may move unrestricted after the issuance of a certificate by an inspector attesting to such.
 - (b) If the shipment is taking place from November 1st through March 30th, then movement is allowed under the following conditions:
 - (b1) The shipment has been treated at the point of origin under the supervision of an inspector with the approved method of fumigation as outlined in accordance with 7 CFR, Ch. 111, Part 301.50, and issued a certificate attesting to such.; or
 - (b2) The pine bark or pine mulch shipment will be meeting the standards set forth in a compliance agreement approved by the Commissioner. The compliance agreement will specify the conditions for handling and processing of the pine bark which will prevent the spread of the pine shoot beetle.
 - (c) If the shipment is taking place from April 1st through June 30th, then movement is allowed under the following conditions:
 - (c1) The shipment has been treated at the point of origin under the supervision of an inspector with the approved method of fumigation as outlined in accordance with 7 CFR, Ch. 111, Part 301.50, and issued a certificate attesting to such.; or
 - (c2) The pine bark or pine mulch shipment will be meeting the standards set forth in a compliance agreement approved by the Commissioner. The compliance agreement will specify the conditions for handling and processing of the pine bark which will prevent the spread of the pine shoot beetle.
- (4) Pine Nursery Stock: Movement of pine nursery stock is allowed under a certificate, or compliance agreement if:
 - (a) A visual inspection of 100% of the trees in a shipment is conducted. Evidence of infestation in any one tree will result in the rejection of that tree; or

(b) The pine tree nursery is under, and adhering to the conditions of, a compliance agreement. The compliance agreement shall be in accordance with the conditions outlined under the 1999 Pine Shoot Beetle Compliance Management Program as cooperatively developed by the National Plant Board and USDA / APHIS / PPQ.

(C) Transiting Quarantined Areas: Movement of the regulated article from an area outside the quarantined area to any destination outside the quarantined area, that transits through the quarantined area is allowed under the following conditions.

(1) The point of origin must be indicated on the waybill, invoice, or shipping document that accompanies the shipment, and;

(2) The shipment must move through the quarantined areas without stopping except for drop-off loads, refueling, or traffic conditions such as traffic lights or stop signs.

(D) Transiting Non-Quarantined Areas: Movement of the regulated article from a quarantined area to any destination inside another quarantined area, that transits through a non-quarantined area is prohibited, except under the following conditions.

(1) The point of origin must be indicated on the waybill, invoice, or shipping document that accompanies the shipment, and;

(2) The shipment must move through the quarantined areas without stopping except for drop-off loads, refueling, or traffic conditions such as traffic lights or stop signs.

Section VI: Exemptions

(A) The commodities listed below present negligible risk to the artificial movement of pine shoot beetle and therefore are determined to be exempt from the requirements of this regulation.

Processed Pine Products. Pine seedlings less than 36 inches tall with a trunk diameter of 1 inch or less at the soil line.

VERMONT SEED STANDARD REGULATIONS

Seed Standard Regulations Section I. Statutory Authority

The following seed standard regulations are hereby promulgated by the Secretary of Agriculture, Food and Markets pursuant to the authority of 6 V.S.A. Chapter 35, subchapter 2, 642(b) and 644(b).

Section II. Definitions

As used in these rules:

"Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of these regulations.

"Agency" means the agency of agriculture, food and markets.

"Agricultural Seed" includes the seeds of grass, forage, cereal, oil and fiber crops and any other kinds of seeds commonly recognized within this State as agricultural seeds, lawn seeds and combinations of such seeds, and may include noxious-weed seeds when the secretary determines that such seed is being used as agricultural seed.

"Blend" means seed consisting of more than one variety of a kind, each in excess of five percent (5%) by weight of the whole.

"Brand" means a word, name, symbol, number, or design used to identify seed of one person to distinguish from seed of another person.

"Certifying Agency" means:

An agency authorized under the laws of a state, territory or possession to officially certify seed and which has standards and procedures approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified, or

An agency of a foreign country determined by the United States Secretary of Agriculture to adhere to procedures and standards for seed certifying agencies under Section II D.I. "Complete record" means any and all information which relates to the origin, treatment, germination, purity, kind and variety of each lot of agricultural seed sold in this State or which relates to the treatment, germination, kind and variety of each lot of vegetable and flower seed sold in this State. Such information includes: seed samples and records of declarations, labels, purchases, sales, conditioning, bulking, treatment, handling, storage, analyses, tests and examinations.

"Conditioning" means drying, cleaning, scarifying and other operations which could change the purity or germination of the seed and require the seed to be retested to determine the label information.

"Distributor" means a person who purchases, repackages and sells seeds.

"Dormant" means viable seed, excluding hard seed, which fails to germinate when provided the specified germination conditions for the kind of seed in question.

"Flower Seed" includes seed of herbaceous plants grown for their blooms, ornamental foliage or other ornamental parts and commonly known and sold under the name of flower seed or wildflower seed.

"Genetically engineered (GE) seed" means seed produced using a variety of methods, as identified by the National Organic Program of the U.S. Department of Agriculture, used to modify genetically organisms or influence their growth and development by means that are not possible under natural conditions or processes. Such methods include cell fusion, microencapsulation and macroencapsulation, and recombinant DNA technology (including gene deletion, gene doubling, introducing a foreign gene, and changing the positions of genes when achieved by recombinant DNA technology). Such methods do not include the use of traditional breeding, conjugation, fermentation, hybridization, in vitro fertilization, or tissue culture.

"Genetically engineered plant part" means a whole plant or plant part, including scions intended for planting, which contains material derived from a GE seed or is itself produced using the methods described in subdivision L. of these rules.

"Genuine grower declaration" means a statement signed by the grower which gives for each lot of seed the lot number, kind, variety (if known), origin, weight, year of production, date of shipment and to whom the shipment was made.

"Germination" means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

"Hard Seeds" means seeds which remain hard at the end of the prescribed test period because they have not absorbed water due to an impermeable seed coat.

"Hermetically-Sealed Seed" means the seed was packaged within 9 months after harvest, and the container used does not allow water vapor penetration through any wall, including the seals, greater than 0.05 grams of water per 24 hours per 100 square inches of surface at 100° F. with a relative humidity on one side of 90 percent and on the other side 0 percent. Water vapor penetration or WVP is measured by the standards of the U.S. Bureau of Standards as: gm H₂O/24 hr./100 sq. in./100° F./90% RH V 0% RH.

"Home Garden and Household Plantings" means the use of flower, vegetable, lawn and turf, and tree and shrub seeds which are not bought and sown for commercial agricultural uses.

"Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining (1) two or more inbred lines; (2) one inbred or a single cross with an open pollinated

variety; or (3) two varieties or species, except open-pollinated varieties of corn (*Zea mays*). The second generation of subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names.

"Inert Matter" means all matter, not seed, which includes broken seeds, sterile florets, chaff, fungus bodies and stones as determined by methods defined by rule or procedure adopted by the Secretary.

"Inoculant" means the organism, bacteria or virus that is deliberately mixed with seed.

"Introduced wildflower" means kinds or the types and varieties derived from those kinds that are not indigenous to North America.

"Kind" means one or more related species or subspecies which singly or collectively is known by one common name, for example; corn, oats, alfalfa and timothy.

"Labeling" includes all tags or other devices attached to, written, stamped, printed on any container or accompanying any seed purporting to set forth the information required on the seed label by these regulations and it may include any other information relating to the labeled seed.

"Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors which appear in the labeling.

"Mixture", "Mix" or "Mixed" means seed consisting of more than one kind, each in excess of 5% by weight of the whole.

AA. "Native wildflower" means kinds or the types and varieties derived from those kinds that are indigenous to North America.

BB. "Noxious-Weed Seeds" are defined as follows:

"Prohibited Noxious-Weed Seeds" are those seeds which are prohibited from being present in agricultural, vegetable, flower, tree, or shrub seed. They are the seeds of weeds which are highly destructive and difficult to control by good cultural practices and the use of herbicides. They include, but are not limited to, the seeds of field bindweed (*Convolvulus arvensis* L.), quackgrass (*Elymus repens* (L.) Gould), Canada thistle (*Cirsium arvense* (L.) Scop.), bedstraw (*Galium* spp.), serrated tussock (*Nasella trichotoma* (Nees) Hack.), and velvetleaf (*Abutilon theophrasti* Medik.).

"Restricted Noxious-Weed Seeds" are seeds which are very objectionable in agricultural crops, lawns and gardens of this state and which can be controlled by good cultural practices or the use of herbicides. They include, but are not limited to, the seeds of dodder (*Cuscuta* spp.), horsenettle (*Solanum carolinense* L.) wild mustard (*Brassica* spp.), wild onion (*Allium* spp.), wild radish (*Raphanus raphanistrum* L.), perennial sowthistle (*Sonchus arvensis* L.), purple loosestrife (*Lythrum salicaria* L.), and corncockle (*Agrostemma githago* L.).

CC. "Off-Type" means any seed or plant not a part of the variety in that it deviates in one or more characteristics from the variety; a seed or plant not necessarily any variety; a seed or plant resulting from cross-pollination by another kind of variety; a seed or plant resulting from uncontrolled self-pollination during production of hybrid seed; or segregates from any of the other crop seed.

DD. "Persons" includes any individual, partnership, corporation, company, society or association, receiver, trustee or agent.

EE. "Pure live seed" means the product of the percent of germination plus hard or dormant seed multiplied by the percent of pure seed divided by 100. The result is expressed as a whole number.

FF. "Pure Seed" means any seed exclusive of inert matter and all other seeds not of the seed being considered as determined by methods defined by rule.

GG. "Secretary" means the secretary of agriculture, food and markets, or his or her designee.

- HH. "Stop sale" means an administrative order provided by law, restraining the sale, use, disposition and movement of a definite amount of seed.
- II. "Treated" means that the seed has received an application of a substance or process which substance or process is designed to reduce, control or repel certain disease organisms, insects or other pests from attacking such seeds or seedlings growing therefrom.
- JJ. "Tree and shrub seed" includes seeds of woody plants commonly known and sold as tree and shrub seeds in this State.
- KK. "Tree seed collector's declaration" is a statement signed by a grower or person having knowledge of the place of collection giving, for a lot of seed, the lot number, common or scientific name of the species (and subspecies, if appropriate), origin, elevation, and quantity of tree and shrub seed.
- LL. "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.
- MM. "Undesirable Grass Seeds (UGS)" are seeds of grass species declared to be restricted noxious weed seed when found in lawn and turf seed.
- NN. "Variant" means any seed or plant which (a) is distinct within the variety but occurs naturally in the variety, (b) is stable and predictable with a degree of reliability comparable to other varieties of the same kind, within recognized tolerances, when the variety is reproduced or reconstituted, and (c) was originally a part of the variety as released. A variant is not an off-type.
00. "Variety" means a subdivision of a kind which is distinct, uniform, and stable; "distinct" in the sense that the variety can be differentiated by one or more identifiable morphological, physiological or other characteristics from all other varieties of public knowledge; "uniform" in the sense that variations in essential and distinctive characteristics are describable, and "stable" in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.
- PP. "Vegetable Seeds" include the seeds of those crops which are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds.
- QQ. "Weed Seeds" include the seeds of all plants generally recognized as weeds within this state as determined by procedure by the secretary and include noxious weed seeds.

Section III. Labeling

Agricultural, vegetable and flower seeds exposed for sale or transported within this state shall be labeled in the following manner:

A. All seeds shall:

Have a label written in legible English and placed in a conspicuous place on, or attached to the container.

Seeds that are relabeled in their original container shall display:

Calendar month and year the test was completed to determine the percentages required for that seed,

The same lot number that appears on the original label, and

The identity of the person(s) relabeling the seed, if different from the original labeler.

(3) The labeling requirements will be deemed to have been met under these regulations if the seed is weighed from a properly labeled container in the presence of the purchaser.

B. Labeling - Treated Seeds

Treated Seeds' labels shall:

Have a word or statement indicating that the seed has been treated,

Contain commonly, accepted, coined, chemical or abbreviated chemical (generic) name of the applied substance or description of the process used, and

Contain, if the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement such as "Do not use for food, feed, or oil purposes." The caution for toxic substances shall be a poison statement or symbol.

If the seed is treated with an inoculant, contain the date beyond which the inoculant is not considered effective (date of expiration).

C. Labeling - Agricultural Seeds

For agricultural seeds, except for cool season lawn and turf grass seed and mixtures thereof as provided in Section III D., for seed sold on a pure live seed basis as provided in Section III J.; and for hybrids which contain less than 95% hybrid seed as provided in Section III K., the label shall contain:

The name of the kind and variety of each agricultural seed component present in excess of five (5) percent of the whole and the percentage by weight of each, provided that, if the variety of those kinds generally labeled as to variety, as designated in the regulations is not stated, the label shall show the name of the kind and the words, "Variety Not Stated". Hybrids shall be labeled as hybrids.

The lot number or other lot identification.

(3) Origin (state or foreign country), if known, of alfalfa, red clover and field corn, except hybrid corn. If the origin is unknown, that fact shall be stated.

(4) Percentage by weight of all weed seeds.

(5) The name and rate of occurrence per pound of each kind of restricted noxious weed seed present.

(6) Percentage by weight of agricultural seeds, which may be designated as "crop seeds", other than those required to be named on the label.

(7) Percentage by weight of inert matter.

(8) The total of (C) (1), (4), (6) and (7) must equal 100%.

(9) For each named agricultural seed:

Percentage of germination, exclusive of hard seed,

Percentage of hard seeds, if present,

The calendar month and year the test was completed to determine such percentages.

Following a. and b. above, the "total germination and hard seed" may be stated as such, if desired.

(10) Name and address of the person who labeled said seed, or who sells, offers or exposes said seed for sale within this state.

D. For cool season lawn and turf grasses including Kentucky bluegrass, red fescue, chewings fescue, hard fescue, tall fescue, perennial ryegrass, intermediate ryegrass, annual ryegrass, colonial bentgrass, creeping bentgrass and mixtures thereof:

For single kinds, the name of the kind or kind and variety.

For mixtures:

The word "mix", "mixed", or "mixture" or "blend" shall be stated with the name of the mixture.

(Reference "Definitions used in this act" for specific use).

The heading "Pure Seed" and "Germination" or "Germ" shall be used in the proper places.

Commonly accepted name of kind or kind and variety of each agricultural seed component in excess of five percent of the whole, and the percentage by weight of pure seed in order of its predominance and in columnar form.

(3) Percentage by weight of agricultural seed other than those required to be named on the label (which shall be designated as "crop seed").

(4) The percentage by weight of inert matter for lawn and turf grass not to exceed 10%, except that 15% inert matter is permitted in Kentucky bluegrass labeled without a variety name. Foreign material, other than material used for coating or pelleting, as in Section III E or combination products, as in Section III L (1), to enhance the planting value, not common to grass seed, may not be added.

(5) Percentage by weight of all weed seeds. Maximum weed seed content is not to exceed one-half of one percent (0.50%) by weight.

(6) The total of (D) (1), (2), (3), (4) and (5) must total 100%.

(7) Noxious weeds and Undesirable Grass Seed that are required to be labeled will be listed under the heading "Noxious Weed Seeds" or "Undesirable Grass Seeds". Undesirable Grass Seeds may not exceed 0.50% by weight.

(8) For each agricultural seed named under (1) or (2) above:

a. Percentage of germination, exclusive of hard seed;

b. Percentage of hard seed, if present;

c. Calendar month and year the test was completed to determine such percentages. Oldest test date shall be used.

d. The statement "Sell by" which may be no more than 15 months from the date of test exclusive of the month of test.

(9) Name and address of the person who labeled said seed, or who sells, offers or exposes said seed for sale with the state.

E. For agricultural seeds that are coated:

(1) Percentage of pure seeds with coating material removed.

(2) Percentage by weight of coating material.

(3) Percentage by weight of inert material exclusive of coating material.

(4) Percentage of germination should be determined on 400 pellets with or without seeds.

(5) In addition to the provisions of Section III E., labeling of coated seed shall comply with the requirements of Section III A, B, and C.

F. For vegetable seeds in packets as prepared for use in home gardens or household plantings or vegetable seeds in pre-planted containers, mats, tapes or other planting devices:

(1) Name of kind and variety of seed.

(2) Lot identification, such as by lot number or other means.

(3) (a) the calendar month and year the germination test was completed and the statement "Sell by _____", which may be no more than 12 months from the date of test exclusive of the month of test.

OR

The year for which the seed was packaged for sale as "Packed for yy" and the statement "Sell by yy" which shall be for a calendar year.

OR

The percentage germination and the calendar month and the test was completed to determine such percentage provided that the germination test must have been completed within 12 months exclusive of the month of test.

(4) Name and address of the person who labeled said seed or who sells, offers, or exposes said seed for sale within this state.

(5) For vegetable seeds which germinate less than the standard as outlined in procedures adopted by the secretary:

Percentage of germination, exclusive of hard seed,

Percentage of hard seed, if present, and

The words "Below Standard" in not less than 8-point type.

(6) For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the container.

G. For vegetable seeds in containers other than packets as prepared for use in home gardens or household plantings or vegetable seeds in other than pre-planted containers, mats, tapes, or other planting devices:

(1) The name of each kind and variety present in excess of five percent (5%) and the percentage by weight of each in order of its predominance.

(2) Lot number or other lot identification.

(3) For each named vegetable seed:

Percentage germination exclusive of hard seed,

Percentage of hard seed, if present,

The calendar month and year the test was completed to determine such percentages.

(4) For seeds which germinate less than the standard as outlined in procedures adopted by the secretary:

Percentage of germination, exclusive of hard seed,

Percentage of hard seed, if present,

The calendar month and year the test was completed to determine such percentages,

The words "Below Standard" in not less than 8-point type.

Following a. and b. the "total germination and hard seed" may be stated as such, if desired.

(5) Name and address of the person who labeled said seed, or who sells, offers or exposes said seed for sale within this state.

(6) The labeling requirements for vegetable seeds in containers of more than one pound shall be deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser.

H. For flower seeds in packets prepared for use in home gardens or household plantings or flower seeds in preplanted containers, mats, tapes, or other planting devices:

(1) For all kinds of flower seeds:

a. The name of the kind and variety or a statement of type and performance characteristics promulgated under the provisions of these rules.

b. (i) The calendar month and year the germination test was completed and the statement "Sell by ", which may be no more than 12 months from the date of test exclusive of the month of test,

OR

The year for which the seed was packed for sale as "Packed for yy"

and the statement "Sell by yy" which shall be for a calendar year,

OR

The percentage germination and the calendar month and year the test was completed to determine such percentage provided that the germination test must have been completed within 12 months exclusive of the month of test.

c. The name and address of the person who labeled said seed, or who sells, offers, or exposes said seed for sale within this state.

(2) For seeds of those kinds for which standard testing procedures are prescribed and which germinate less than the germination standard as outlined in procedures established by the secretary: Percentage of germination exclusive of hard seeds, and Percentage of hard or dormant seed, if present; and The words "Below Standard" in not less than 8-point type.

(3) For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the container.

I. For flower seeds in containers other than packets and other than pre-planted containers, mats, tapes, or other planting devices and not prepared for use in home flower gardens or household plantings:

The name of the kind and variety or a statement of type and performance characteristics promulgated under the provisions of these rules, and for wildflowers, the genus and species and subspecies, if appropriate.

The lot number or other lot identification.

(3) For wildflower seed only with a pure seed percentage of less than ninety percent:

a. The percentage, by weight, of each component listed in order of their predominance;

b. The percentage by weight of weed seed if present; and

c. The percentage by weight of inert matter.

(4) For those kinds of seed for which standard testing procedures are prescribed:

Percentage germination exclusive of hard or dormant seed;

Percentage of hard or dormant seed, if present; and,

The calendar month and year that the test was completed to determine such percentages.

(5) For those kinds of seed for which standard testing procedures are not available, the year of production or collection.

(6) The name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this state.

(7) For seeds of those kinds for which standard testing procedures are prescribed and which germinate less than the germination standard as outlined in procedures established by the secretary: Percentage of germination exclusive of hard seeds, and Percentage of hard or dormant seed, if present; and The words "Below Standard" in not less than 8-point type.

J. For agricultural seeds sold on a pure live seed basis, each container must bear a label containing the information required by subsection C. of this section above, except that:

(1) The label need not show:

a. The percentage by weight of each agricultural seed component as required by subsection C. (1) of this section; or

b. The percentage by weight of inert matter as required by subsection C. (7), of this section.

(2) The label must show for each named agricultural seed, instead of the information required by subsection C. (9) of this section:

The percentage of pure live seed determined in accordance with these rules; and

b. The calendar month and year in which the test determining the percentage of pure live seed was completed.

K. For agricultural and vegetable hybrid seed which contains less than 95% hybrid seed each container must bear a label containing the information required by subsection C. of this section above, and:

(1) The percent which is hybrid shall be labeled parenthetically in direct association following named variety, i.e., Comet (85% Hybrid).

(2) Kind or variety must be labeled as "hybrid".

(3) Varieties in which the pure seed contains less than 75% hybrid seed shall not be labeled hybrids.

L. For combination mulch, seed and fertilizer products:

The word "combination" followed by the words "mulch - seed - fertilizer (if appropriate)" must appear on the upper 30% of the principal display panel. The word "combination" must be the largest and most conspicuous type on the container, equal to or larger than the product name. The words "mulch - seed - fertilizer" shall be no smaller than one-half the size of the word "combination" and in close proximity to the word "combination". These products shall contain a minimum of 70% mulch.

Analysis Label - Agricultural, lawn and turf seeds placed in a germination medium, mat, tape or other device or mixed with mulch shall be labeled as follows:

Product name.

Lot number.

Percentage by weight of pure seed of each kind and variety named which may be less than 5% of the whole.

Percentage by weight of other crop seeds.

Percentage by weight of inert matter which shall not be less than 70%.

Percentage by weight of weed seeds.

The total of (2) (c),(d),(e) and (f) must total 100%.

h. Name and number of noxious weed seeds per pound, if present.

i. Percentage of germination (and hard seed if appropriate) of each kind or kind and variety named and date of test.

j. Name and address of tagger.

M. Label requirement for tree and shrub seeds.

(1) Each container of tree and shrub seed which is sold, offered for sale, or exposed for sale, or transported within this state for sowing purposes shall bear thereon or have attached hereto in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information, which statement shall not be modified or denied in the labeling or on another label attached to the container - except that labeling of seed supplied under a contractual agreement may be by invoice accompanying the shipment or by an analysis tag attached to said invoice if each bag or other container is clearly identified by a lot number stenciled on the container or if the seed is in bulk. Each bag or container that is not so identified must carry complete labeling.

(2) For all tree and shrub seeds treated as defined in these rules (for which a separate label may be used):

a. Word or statement indicating that the seed has been treated.

- b. The commonly accepted coined, chemical or abbreviated chemical (generic) name of the applied substance or description of the process used.
- c. If the substance in the amount present with the seed is harmful to human or other vertebrate animals a caution statement such as "Do not use for food or feed or oil purposes". The caution for mercurials and similarly toxic substances shall be a poison statement and symbol.
- d. If the seed has been treated with an inoculant, the date beyond which the inoculant is not to be considered effective (date of expiration).
- (3) For all tree and shrub seeds subject to these rules:
 - a. Common name of the species of seed (and subspecies, if appropriate).
 - b. The scientific name of the genus and species (and subspecies, if appropriate).
 - c. Lot number or other lot identification.
 - d. Origin.
 - (i) For seed collected from a predominantly indigenous stand, the area of collection given by latitude and longitude, or geographic description, or political subdivision such as state or county.
 - (ii) For seed collected from other than a predominantly indigenous stand, identify the area of collection and the origin of the stand or state "Origin not Indigenous".
 - e. The elevation or the upper and lower limits of elevations within which said seed was collected.
 - f. Purity as a percentage of pure seed by weight.
 - g. For those species for which standard germination testing procedures are prescribed by the secretary, the following:
 - (i) Percentage germination exclusive of hard seed,
 - (ii) Percentage of hard seed, if present,
 - (iii) The calendar month and year test was completed to determine such percentages.
 - h. In lieu of g (i), (ii), and (iii) above, the seed may be labeled "Test is in process, results will be supplied upon request".
 - i. For those species for which standard germination testing procedures have not been prescribed by the secretary, the calendar year in which the seed was collected.
 - j. The name and address of the person who labeled said seed or who sells, offers, or exposes said seed for sale within this state.

Section IV. Prohibitions

A. A person shall not sell, offer for sale, expose for sale, or transport for sale any agricultural, flower, vegetable, or tree and shrub seed within this State that:

- Is not labeled in accordance with the provisions of these rules, or
- Has false or misleading labeling or advertisement;

If subject to the germination requirements of Section III, unless otherwise stipulated to in Section III, the test to determine the percentage of germination required by Section III shall have been completed within a 9-month period exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation. This prohibition does not apply to tree and shrub seeds or to agricultural or vegetable seeds in hermetically-sealed containers. Agricultural or vegetable seeds packaged in hermetically-sealed containers under the conditions defined in and promulgated under the provisions of these rules may be sold, exposed for sale or offered for sale or transportation for a period of thirty-six (36) months after the last day

of the month that the seeds were tested for germination prior to packaging. If seeds in hermetically-sealed containers are sold, exposed for

sale, or offered for sale or transportation more than thirty-six (36) months after the last day of the month in which they were tested prior to packaging, they must have been retested within a nine (9) month period, exclusive of the calendar month in which the retest was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation.

Consists of or contains prohibited noxious weed seeds, subject to recognized tolerances.

Consists of or contains restricted noxious weed seeds per pound in excess of the number prescribed by these rules or in excess of the number declared or in excess of the maximum percentage allowed (0.50%) for UGS on the label attached to the container of the seed or associated seed.

Contains more than two and one-half (2 1/2) percent by weight of all weed seeds.

If any labeling, advertising or other representation subject to these rules represents the seed to be certified seed or any class thereof unless:

a. It has been determined by a seed certifying agency that such seed conformed to standards of purity and identity as to kind, species (and subspecies, if appropriate), or variety, and also that tree seed was found to be of the origin and elevation claimed, in compliance with the rules and regulations of such agency pertaining to such seed; and

b. That the seed bears an official label issued for such seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind, species (and subspecies, if appropriate) or variety.

(8) Is labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which a U.S. Certificate of Plant Variety Protection under the Plant Variety Protection Act Subchapter (7 U.S.C. 2321 et seq.) specifies sale only as a class of certified seed; provided that, seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.

B. A person shall not, within this state:

(1) Detach, alter, deface or destroy any label required by 6 V.S.A. Chapter 35 or these rules, or alter or substitute any seed in any manner that may defeat the purposes of 6 V.S.A.

Chapter 35 or these rules.

(2) Use relabeling stickers without having both the calendar month and year the germination test was completed, the sell by date, as stated in Section III (d) (9), III (f) (3), and III (h) (1) (b) of these rules, and the lot number that matches the existing, original lot number. A relabeling may not occur more than one time.

(3) Disseminate any false or misleading advertisements concerning seeds subject to 6 V.S.A. Chapter 35 or these rules in any manner or by any means.

(4) In any way hinder or obstruct the secretary in the performance of his or her duties under these rules.

(5) Fail to comply with a "stop sale" order or to move or otherwise handle or dispose of any lot of seed held under a "stop sale" order or tags attached thereto, except with express permission of the secretary, and for purpose specified thereby.

(6) Use the word "trace" or the phrase "contains > than .01%" as a substitute for any statement that is required by 6 V.S.A. Chapter 35 or these rules.

(7) To use the word "type" in any labeling in connection with the name of any agricultural seed variety.

(8) To alter or falsify any seed label(s), seed tests(s), laboratory report(s), record(s), or other document(s) to create a misleading impression as to kind, kind of variety, history, quality or origin of seed.

Section V. Records

Each person whose name appears on a label as handling agricultural, flower, vegetable, or tree and shrub seed subject to 6 V.S.A. Chapter 35 or these rules shall keep for a period of two years complete records of each lot of agricultural, flower and vegetable seed handled, and keep for one year a file sample of each lot of seed after final disposition of the lot. All records and samples pertaining to the shipment or shipments involved shall be accessible for inspection by the secretary during customary business hours.

Section VI. Exemptions

A. The provisions of Sections III and IV do not apply:

To seed that is sown on the premises upon which the seed was grown.

To seed grown, sold and delivered by a producer on his or her own premises for seeding purposes to the ultimate consumer, providing such seed has neither been advertised for sale nor been delivered via commercial carrier, and providing the seed contains no prohibited noxious weed seeds or not more than one restricted noxious weed seed per 2,000 of the seeds being sold.

(3) To seed or grain not intended for sowing purposes.

(4) To seed in storage in, or being transported or consigned to a cleaning, conditioning or processing establishment for cleaning, conditioning or processing, provided that the invoice or labeling accompanying any shipment of said seed bears the statement, "seeds for conditioning (or processing)"; and provided that any labeling or other representation which may be made with respect to the unclean, unconditioned or unprocessed seed shall be subject to 6 V.S.A. Chapter 35 or these rules.

(5) To any carrier in respect to any seed transported or delivered for transportation in the ordinary course of business as a carrier; provided that such carrier is not engaged in producing, conditioning or processing, or marketing seeds subject to the provisions of 6 V.S.A. Chapter 35 or these rules.

B. No person shall be subject to the penalties of 6 V.S.A. Chapter 35 or these rules, for selling or offering for sale seeds subject to the provisions of these rules which are incorrectly labeled or misrepresented as to kind, species (and subspecies if appropriate), variety, type or origin, elevation, and year of collection if required, which seeds cannot be identified by examination thereof, unless the person fails to obtain an invoice, genuine growers or tree seed collectors declaration or other labeling information and to take such other precautions as may be reasonable to insure the identity to be that which is stated. A genuine grower's declaration of variety shall affirm that the grower holds records of proof concerning parent seed, such as invoice and labels.

C. The provisions of Sections III, IV and V do not apply to tree seed produced by the consumer.

VII. Testing and Sampling Procedures

Methods of inspecting, testing and sampling procedures of agricultural, vegetable and flower seed shall conform to those outlined in Rules for Testing Seeds, Journal of Technology (6) 1981, and subsequently amended by the Association of Official Seed Analysts.

VIII. Powers of the Secretary

The secretary may issue a stop sale order for the violation of any of the provisions of 6 V.S.A. Chapter 35 or of these rules.

B. The sale, processing and movement of any seed subject to a stop sale order is prohibited until the secretary issues a release from the stop-sale order.

C. Stop sale tags may not be removed from the seed lots except by written permission from the secretary or upon authorized disposal of the seed lot.

D. It shall be a violation of this Section to sell or distribute seed which has been placed on stop-sale and any such violation will be subject to administrative penalties as outlined in 6 V.S.A. Chapter 35, Subchapter 2, Section 647 and/or 3 V.S.A. Chapter 25.

IX. Genetically engineered seed labeling

A. For seeds and plant parts which have been genetically engineered, the seed bag, container, bag tags, product use guides, technology use guides or other labeling shall specify: the identity and relevant traits or characteristics of such seed which shall include thereon the words "biotechnology traits" "biotechnology seed traits" "biotech seed" "transgenic material" "genetic material" "contain genes that confer tolerance to glyphosate" or equally similar words that indicate to the purchaser that the seeds have been genetically engineered to convey or contain in-plant tolerance to herbicides or contain proteins with pesticidal properties.

any requirements for the safe handling, storage, transport, and use of the genetically engineered seeds including any insect resistance management or refuge management requirements;

the contact point for further information; and,

the name and address of the manufacturer, distributor, or supplier of the genetically engineered seed.

B. The requirements of these rules for the labeling of genetically engineered seeds that contain proteins with pesticidal properties to convey insect resistance shall not apply to the labeling of plant-incorporated protectants otherwise regulated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) to the extent that these rules are in conflict with that Act or subsequent relevant Federal law (s).

X. Inspections and Reporting

Manufacturers or processors who distribute seeds in this state shall pay annual fees to the secretary based on rates as determined by the Legislature.

A flat fee shall be paid by each manufacturing or processing company that sells seeds in this state.

In addition to the flat fee, a fee based on a rate of each hundred pounds of seed sold in this state in containers of more than ten pounds shall also be paid.

The fee based on a rate for each hundred pounds of seed sold in this state in containers of more than ten pounds shall be based upon the prior calendar year sales.

The secretary shall prepare forms to be used by manufacturers or processors who distribute seeds in this state for the remittance of fees and the reporting of seed sold in this state in containers of more than ten pounds.

The manufacturers or processors of seeds sold in this state which have been genetically engineered to convey or contain in-plant tolerance to herbicides or contain proteins with pesticidal properties shall report to the secretary on or before January 15 of each year on forms supplied by the secretary. The annual report shall include the seed crop type, the name brand of the seed, the biotechnology trait expressed in the seed and the amount of each sold in the state based on weight for the previous calendar year.

Appendix A (Procedures) — Germination percentages for vegetable and flower seeds.

Germination Standard for Vegetable Seeds. The following standards for the germination of vegetable seeds are hereby adopted as agency procedures.

KIND PERCENT

ANISE	50	
ARTICHOKE	60	
ASPARAGUS	70	
ASPARAGUSBEAN	75	
BASIL, SWEET	70	
BEAN, GARDEN	70	
BEAN, LIMA	70	
BEAN, RUNNER	75	
BEET	65	
BROADBEAN	75	
BROCCOLI	75	
BRUSSEL SPROUTS	70	
BURDOCK, GREAT	60	
CABBAGE	75	
CABBAGE, TRONCHUDA	70	
CANTALOUPE (SEE MUSKMELON)		
CARAWAY	55	
CARDOON	60	
CARROT	55	
CAULIFLOWER	75	
CELERAIC	55	
CELERY	55	
CHARD, SWISS	65	
CHERVIL, SALAD	65	
CHICORY	65	
CHINESE CABBAGE	75	
CHIVES	50	
CITRON	65	
COLLARDS	80	
CORIANDER	70	
CORN, POP	75	
CORN, SWEET	75	
CORNSALAD	70	
COWPEA	75	
CRESS, GARDEN	75	
CRESS, UPLAND	60	
CRESS, WATER	40	
CUCUMBER	80	
DANDELION	60	
EGGPLANT	60	
ENDIVE	70	
FENNEL, FLORENCE	60	
FENNEL, SWEET	50	
KALE	75	

KALE, CHINESE	75	
KALE, SIBERIAN	75	
KOHLRABI	75	
LEEK	60	
LETTUCE	80	
MUSKMELON	75	
MARJORAM, SWEET	50	
MUSTARD	75	
MUSTARD, SPINACH	75	
OKRA	50	
ONION	70	
ONION, WELSH	70	
OREGANO	60	
PAK-CHOI	75	
PARSLEY	60	
PARSNIP	60	
PEA	80	
PEANUT	60	
PEPPER	55	
PUMPKIN	75	
RADISH	75	
RHUBARB	60	
ROQUETTE	60	
ROSEMARY	30	
RUTABAGA	75	
SAGE	60	
SALSIFY	75	
SAVORY, SUMMER	55	
SORREL	65	
SOYBEAN	75	
SPINACH	60	
SPINACH, NEW ZEALAND	40	
SQUASH	75	
THYME	50	
TOMATO	75	
TOMATO, HUSK	50	
TURNIP	80	
WATERMELON	70	

The germination standards for all other vegetable and herb seed, for which a standard has not been established, shall be 50%.

Kind of Flower Seeds. Subject to Germination Labeling Requirement and Germination Standard for Flower Seed.

The following standards for the germination of vegetable seeds are hereby adopted as agency procedures. The percentage listed opposite each kind is the germination standard for that kind. For

the kinds marked with an asterisk, the percentage is the total of percentage germination and percentage hard seed. For other kinds, it is the percentage germination.

SEED KIND PERCENT

Archillea (The Pearl) - <i>Achillea ptarmica</i>	50
African Daisy - <i>Dimorphotheca aurantiaca</i>	55
African Violet — <i>Saintpaulia</i> spp	30
Ageratum - <i>Ageratum mexicanum</i>	60
Agrostemma (rose campion) - <i>Agrostemma coronaria</i>	65
Alyssum - <i>Alyssum compactum</i> , <i>A. maritimum</i> , <i>A. procumbens</i> , <i>A. saxatile</i>	60
Amaranthus - <i>Amaranthus</i> spp	65
Anagalis (primpernel) - <i>Anagalis arvensis</i> , <i>Anagalis coerulea</i> , <i>Anagalis grandiflora</i>	60
Anemone - <i>Anemone coronaria</i> , <i>A. pulsatilla</i>	55
Angel's Trumpet - <i>Datura arborea</i>	60
Arabis - <i>Arabis alpina</i>	60
Arctotis (African lilac daisy) - <i>Arctotis grandis</i>	45
Armeria - <i>Armeria formosa</i>	55
Asparagus, fern - <i>Asparagus plumosus</i>	50
Asparagus, sprenger, <i>Asparagus sprengeri</i>	55
Aster, China - <i>Callistephus chinensis</i> ; except Pompon, Powderpuff, and Princess types	55
Aster, China - <i>Callistephus chinensis</i> ; Pompon, Powderpuff and Princess types	50
Aubretia - <i>Aubretia deltoidea</i>	45
Baby Smilax - <i>Asparagus asparagoides</i>	25
Balsam - <i>Impatiens balsamina</i>	70
Begonia - (<i>Begonia</i> fibrous rooted)	60
Begonia - (<i>Begonia</i> tuberous rooted)	50
Bells of Ireland - <i>Molucella laevis</i>	60
Brachycome (swan river daisy) - <i>Brachycome iberidifolia</i>	60
Browallia - <i>Browallia elata</i> and <i>B. speciosa</i>	65
Bupthalam (sunwheel) - <i>Bupthalam salicifolium</i>	60
Calceolaria - <i>Calceolaria</i> spp	60
Calendula - <i>Calendula officinalis</i>	65
California Poppy - <i>Eschscholtzia californica</i>	60
Calliopsis - <i>Coreopsis bicolor</i> , <i>C. drummondii</i> , <i>C. elegans</i>	65
Campanula: Canterbury Bells - <i>Campanula medium</i>	60
Cup and Saucer Bellflower - <i>Campanula medium</i> <i>Calycanthemum</i>	60
Carpathian Bellflower - <i>Campanula carpatica</i>	50
Peach Bellflower - <i>Campanula persicifolia</i>	50
Candytuft, Annual - <i>Iberis amara</i> , <i>I. umbellata</i>	65
Candytuft, Perennial - <i>Iberis gibraltarica</i> , <i>I. sempervirens</i>	55
Castor Bean - <i>Ricinus communis</i>	60

Cathedral Bells - <i>Cobaea scandens</i>	65
Celosia - <i>Celosia argentea</i>	65
Centaurea: Basket Flower - <i>Centaurea americana</i> , Cornflower- <i>C. cyanus</i> , Dusty Miller - <i>C. candidissima</i> , Royal Centaurea, <i>C. imperialis</i> Sweet Sultan - <i>C. moschata</i> , Velvet Centaurea <i>C. gymnocarpa</i>	60
Cerasium (snow-in-summer) <i>Cerastium biebersteini</i> and <i>C. tomentosum</i>	65
Chinese Forget-me-not - <i>Cynoglossum amabile</i>	55
Chrysanthemum, Annual - <i>Chrysanthemum carinatum</i> , <i>C. coronarium</i> , <i>C. segetum</i>	50
Cineraria — <i>Senecio cruentus</i>	60
Clarkia - <i>Clarkia elegans</i>	65
Cleome - <i>Cleome gigantea</i>	65
Coleus - <i>Coleus blumei</i>	65
Columbine - <i>Aquilegia</i> spp.	50
Coral Bells - <i>Heuchera sanguinea</i>	55
Coreopsis, Perennial - <i>Coreopsis lanceolata</i>	40
Corn, ornamental - <i>Zea mays</i>	75
Cosmos: Sensation, Mammoth and Crested types - <i>Cosmos</i> <i>bipinnatus</i> ; Klondyke type - <i>C. sulphurea</i>	65
Crossandra - (<i>Crossandra infundibuliformis</i>)	50
Dahlia - <i>Dahlia</i> spp	55
Daylily - <i>Hemerocallis</i> spp	45
Delphinium, Perennial- <i>Belladonna</i> and <i>Bellamosum</i> types; Cardinal Larkspur - <i>Delphinium cardinale</i> ; <i>Chinensis</i> types; Pacific Giant, Gold Medal and other hybrids of <i>D. elatum</i>	55
Dianthus: Carnation - <i>Dianthus caryophyllus</i>	60
China Pinks - <i>Dianthus chinensis</i> , <i>heddewigi</i> , <i>Heddinsis</i>	70
Grass Pinks - <i>Dianthus plumarius</i>	60
Maiden Pinks - <i>Dianthus deltoideus</i>	60
Sweet William - <i>Dianthus barbatus</i>	70
Sweet Wivelsfield - <i>Dianthus allwoodii</i>	60
Didiscus - (blue lace flower) - <i>Didiscus coerulea</i>	65
Doronicum (leopard's bane) - <i>Doronicum caucasicum</i>	60
Dracaena - <i>Dracaena indivisa</i>	55
Dragon Tree - <i>Dracaena draco</i>	40
English Daisy - <i>Bellis perennis</i>	55
Flowering Maple - <i>Abutilon</i> spp	35
Flax - Golden flax (<i>Linum flavum</i>); Flowering flax <i>L. randiflorum</i> ; Perennial flax, <i>L. perenne</i>	60
Foxglove - <i>Digitalis</i> spp	60
Gaillardia, Annual - <i>Gaillardia pulchella</i> ; <i>G. pieta</i> ; Perennial – <i>G. grandiflora</i>	45
Gerbera (transvaal daisy) - <i>Gerbera jamesoni</i>	60

Geum - Geum spp	55
Gilia - Gilia spp	65
Gloriosa daisy (rudbeckia) - Echinacea purpurea and Rudbeckia hirta	60
Godetia - Godetia amoena, G. grandiflora	65
Gloxinia - (Sinningia speciosa)	40
Gourds: Yellow Flowered - Cucurbita pepo; White Flowered- Lagenaria sisceraria; Dishcloth - Luffa cylindrical	70
Gypsophila: Annual Baby's Breath - Gypsophlla elegans; Perennial Baby's Breath - G. paniculata, G. pacifica G. Repens	70
Helenium - Helenium autumnale	40
Helichrysum - Helichrysum monstrosum	60
Heliopsis - Heliopsis scabra	55
Heliotrope - Heliotropium spp.	35
Helipterum (Acroclinium) Helipterum roseum	60
Hesperis (sweet rocket) - Hesperis matronalis	65
*Hollyhock - Althea rosea	65
Hunnemania (mexican tulip poppy) - Hunnemania Fumariaefolia	60
Hyacinh bean - Dolichos lablab	70
Impatiens - Impatiens hostii, I. sultani	55
*Ipomea - Cypress Vine - Ipomea quamoclit; Moonflower — I. noctiflora; Morning Glories, Cardinal Climber, Hearts and Honey Vine - Ipomea spp	75
Jerusalem cross (maltese cross) - Lychnis chalcedonica	70
Job's Tears - Coix lacrymajobi	70
Kochia - Kochia childsi	55
Larkspur, Annual - Delphinium ajacis	60
Lantana - Lantana camara, L. hybrid	35
Lilium (regal lily) - Lilium regale	50
Linaria - Linaria spp	65
Lobelia, Annual - Lobelia erinus	65
Lunaria, Annual - Lunaria annua	65
*Lupine - Lupinus spp	65
Marigold - Tagetes spp	65
Marvel of Peru - Mirabilis jalapa	60
Matricaria (feverfew) - Matricaria spp	60
Mignonette - Reseda odorata	55
Myosotis - Myosotis alpestris, M. oblongata, M. palustris	50
Nasturtium - Tropaeolum spp	60
Nemesia - Nemesia spp	65
Nemophila - Nemophila insignis	70
Nemophila, spotted - Nemophila maculate	60
Nicotiana - Nicotiana affinis, N. sanderae, N. sylvestris	65

Nierembergia - Nierembergia spp	55
Nigella - Nigella damascene	55
Pansy - Viola tricolor	60
Phacelia - Phacelia campanularia, P. minor, P. tanacetifolia	65
Penstemon - Penstemon barbatus, P. grandiflorus, P. laevigatus, P. pubescens	60
Petunia - Petunia spp	45
Phlox, Annual - Phlox drummondii all types and varieties	55
Physalis - Physalis spp	60
Platycodon (balloon flower) - Platycodon grandiflorum	60
Plumbago, cape - Plumbago capensis	50
Ponytail - Beaucarnea recurvata	40
Poppy: Shirley Poppy - Papaver rhoeas; Iceland Poppy - P. nudicaule; Oriental Poppy - P. orientale; Tulip Poppy - P. glaucum	60
Portulaca - Portulaca grandiflora	55
Primula (primrose) - Primula spp	50
Pyrethrum (painted daisy) - Pyrethrum coccineum	60
Salpiglossis - Salpiglossis gloxiniflora, S. sinuata	60
Salvia - Scarlet Sage - Salvia splendens; Mealycup Sage (blue bedder) — Salvia Farinacea	50
Saponaria - Saponaria ocymoides, S. vaccaria	60
Scabiosa, Annual - Scabiosa atropurpurea	50
Scabiosa, Perennial - Scabiosa caucasica	40
Schizanthus - Schizanthus spp	60
*Sensitive plant (mimosa) - Mimosa pudica	65
Shasta Daisy - Chrysanthemum maximum C. Leucanthemum	65
Silk Oak - Grevillea robusta	25
Snapdragon - Antirrhinum spp	55
Solanum - Solanum spp	60
Stocks: Common - Mathiola incana; Evening Scented — Mathiola bicornis	65
Sunflower - Helianthus spp	70
Sunrose - Helianthemum spp	30
*Sweet Pea, Annual and Perennial other than dwarf bush - Lathyrus odoratus, L. latifolius	75
*Sweet Pea, dwarf bush - Lathyrus odoratus	65
Tahoka daisy - Machaeranthera tanacetifolia	60
Thunbergia - Thunbergia alata	60
Torch Flower - Tithonia speciosa	70
Torenia (wishbone flower) - Torenia fournieri	70
Tritoma Kniphofia spp	65
Verbena, Annual - Verbena hybrid	35
Vinca - Vinca rosea	60
Viola - Viola cornuta	55
Virginian stocks - Malcolmia maritime	65

Wallflower - <i>Cheiranthus allioni</i>	65
Yucca (Adam's needle) - <i>Yucca filamentosa</i>	50
<i>multiflora</i> , <i>Z. pumila</i>	65
Zinna (except <i>Linearis</i> and <i>Creeping</i>) - <i>Zinnia angustifolia</i> ,	
<i>Z. elegans</i> , <i>Z. grandiflora</i> , <i>Z. gracillima</i> , <i>Z. haegeana</i> , <i>Z. Zinnia</i> ,	
<i>Linearis</i> and <i>Creeping</i> - <i>Zinnia linearis</i> , <i>Sanvitalia</i>	
<i>Procumbens</i>	50
All other kinds	50

A mixture of kinds of flower seeds will be considered to be below the standard if the germination of any kind or combination of kinds constituting 25 percent or more of the mixture by number is below standard for the kind or kinds involved.

REGULATIONS RELATING TO THE INSPECTION OF NURSERIES

Adopted September 16, 1988

SEC. I. STATUTORY AUTHORITY.

The Secretary of Agriculture, Food & Markets is authorized by 6 V.S.A. §4029 to promulgate regulations regarding the inspection of nurseries and nursery stock and to control the collection, sale or distribution of nursery stock and plants taken from the wild.

SEC. II. DEFINITIONS.

- "Approved facsimile" means a card, placard or certificate, issued or approved by the Secretary, identifying the holder, stock, or shipment as properly licensed or certified by the Agency pursuant to 6 V.S.A. Chapter 206 and these regulations.
- "Collecting" means cutting, gathering, rooting, severing, injuring, destroying, removing, or carrying away any ginseng plants or any other plants taken from the wild, or parts thereof, for the purpose of selling, or offering for sale.
- "Secretary" means the Secretary of agriculture or his or her designee.
- "Agency" means the Vermont Agency of Agriculture, Food & Markets.
- "Nursery" means all land, premises and buildings on or in which nursery stock is grown, transported, or offered for sale.
- "Nursery dealer" means any person who buys, sells, or distributes nursery stock for commercial gain.
- "Nursery stock" means all woody or herbaceous shrubs, trees, plants and vines, including bulbs and rhizomes, as well as, buds, grafts, scions, and other parts capable of propagation whether wild, cultivated or grown under artificial covering or artificial conditions. This definition does not include cut flowers or seeds.
- "Operate a nursery" means to conduct, for commercial gain, any or all of the activities associated with the preparation, sale or installation of nursery stock. Such activities include, but are not limited to, planting, cultivation, transportation, installation, treatment or display of nursery stock, and removal from the wild of plants with the intention of commercial gain.
- "Person" means any individual, partnership, corporation or other business entity.

* Missing definitions refer to Ginseng collection and are published under a separate cover.

SEC. III. LICENSES AND CERTIFICATES ISSUED BY THE VERMONT AGENCY OF AGRICULTURE, FOOD & MARKETS.

- Nursery Dealer's License.

(a) Every nursery dealer, as defined in SEC. II 14. of these regulations, who purchases, sells or installs nursery stock in this state shall annually apply for and receive a nursery dealer's license from the Secretary. It shall be a violation of the provisions of these regulations to operate a nursery without having been issued such license.

(b) Any person soliciting orders for, or selling, delivering or installing nursery stock shall have in his or her possession his or her nursery dealer's license or that of the nursery on whose behalf such activities are conducted. For the purposes of this subsection, the following approved facsimiles shall be acceptable:

- (1) a legible photocopy or other exact reproduction of the license;
- (2) a card, approved as to form by the Secretary, containing the nursery dealer's name, address, license number and expiration date;
- (3) the appearance on a receipt, packing ticket, way bill, manifest or other documentation normally presented or available to the customer, of the nursery dealer's name, address, license number and expiration date.

(c) Shipments of nursery stock accompanied by a valid certificate of inspection, as required by 6 V.S.A. Section 4025 and Section III 2. of these regulations, shall be exempt from the requirements of Subsection 1. (b) of this section.

(d) Any person who has been issued a certificate of inspection under 6 V.S.A. Section 4023 and Section III 2. of these regulations shall automatically be issued a nursery dealer's license.

2. Nursery Inspection Certificate.

(a) Every person who operates a nursery within the meaning of Section II 16. of these regulations shall be inspected at least once, but not more than three times, each year by the Secretary. If the Secretary finds the nursery and nursery stock to be apparently free from pests and diseases, he or she shall issue to that nursery a nursery inspection certificate. The certificate shall be valid from the date of issuance through December 31 of the calendar year in which it was issued, so long as the Secretary does not rescind, suspend, amend or revoke it pursuant to section IV of these regulations.

(b) The Secretary, in his or her discretion, may charge a fee for any inspection conducted under the provisions of 6 V.S.A. Chapter 206 or these regulations. The Secretary may take into account any or all of the following factors in computing the amount of the fee to be charged:

- (1) the number of inspections required to certify a given nursery;
- (2) the reasons or conditions which relate to prior inspections and degree of compliance with orders and recommendations pursuant to prior inspections;
- (3) the number of Agency personnel involved in the inspection;
- (4) the number of work-hours and mileage involved;
- (5) the cost of equipment, materials, sampling and laboratory work;
- (6) the difficulty or complexity of the inspection;
- (7) any other expenses incurred by the Secretary which are directly related to the inspection.

3. Special Certification.

(a) The Secretary may issue a certificate certifying that nursery stock has been grown under special conditions or has been tested by a recognized procedure which has established that stock as being free from any or all of the following diseases, pests or conditions;

- (1) certain viruses, fungi, bacteria or other organisms;
- (2) specific diseases or deficiencies; or

(3) any other conditions which require, in the opinion of the Secretary, special certification.

(b) The Secretary may assess growers who request this additional or special certification a fee for the inspection and/or certification. This fee shall not be greater than is necessary, in the judgment of the Secretary, to meet all expenses incurred in making the inspection and/or certification. The Secretary may take into account any or all of the factors listed in Section III 2. (b) of these regulations in computing the amount of the fee.

SEC. IV. POWERS OF THE SECRETARY.

1. Suspension or Revocation of Licenses and Certificates.

(a) The Secretary may amend, suspend or revoke any license or certificate issued under the authority of 6 V.S.A. Chapter 206 and these regulations for failure of the holder to comply with any of the provisions of that chapter or the regulations promulgated thereunder.

(b) In the event the Secretary has reason to believe that the activities or conditions of any person or facility licensed or certificated under the authority of 6 V.S.A. Chapter 206 or the regulations promulgated thereunder may pose an immediate and substantial threat to human or animal life or health, to the environment, or to other nursery dealers, he or she may suspend any or to other nursery dealers, he or she may suspend any license or certificate pending inquiry, for no longer than fifteen (15) days, providing that opportunity for a hearing is given prior to the end of such period. If the person affected by such suspension cannot attend a hearing within that fifteen day period, the suspension shall remain in effect until the date of such hearing. Following a hearing, if the Secretary determines that reinstatement of the suspended license or certificate might pose a threat to human or animal life or health, to the environment, or to other nursery dealers, the Secretary may issue an order continuing the suspension until such time as the problem is corrected, or may revoke or amend the license or certificate in question.

2. Placement of Restrictions, Requirements or Conditions Upon Licenses or Certificates.

The Secretary may place reasonable restrictions, conditions or requirements upon any license or certificate issued under the authority of 6 V.S.A. Chapter 206 or these regulations. The Secretary may take any or all of the following into consideration when imposing such restrictions, conditions or requirements:

(1) previous history of pest and disease conditions at a give facility;
(2) degree of compliance of persons or facilities with prior orders or recommendations;
(3) potential for physical or economic harm resulting from any activity or condition;
(4) proximity of the nursery or nursery stock in question to human or animal habitation, environmentally sensitive areas, sensitive plant populations or other nursery dealers or nursery stock;
or

(5) any other conditions which the Secretary considers to be significant.

3. Stop-Sale Orders.

(a) The Secretary, upon finding injurious insects or other pests or plant diseases present in a nursery or in nursery stock, may issue a stop-sale order against such plants. Plants placed on stop-sale shall be conspicuously tagged, either individually or in blocks, provided that such infested stock is clearly separable from non-infested stock, and that such physical separation is effected and maintained. Any issuance of a stop-sale order shall be confirmed in writing by the Secretary within seven days. Such confirmation shall state the following:

(1) the reason for the issuance of the stop-sale order;
(2) a description of the nursery stock placed on stop sale;

- (3) recommended control measures, if any; and
- (4) the date upon which such order became effective.

(b) Stop-sale tags may not be removed from nursery stock except by written permission of the Secretary or upon disposal of the infested stock in a manner acceptable to or authorized by the Secretary.

(c) It shall be a violation of this section to sell, install or otherwise distribute nursery stock which has been placed on stop sale.

(d) The Secretary may restrict or restrain the transportation of any nursery stock which has been placed on stop-sale, or may prescribe conditions under which such nursery stock may be transported.

4. Treatment or Destruction of Infested Plants.

If, upon inspection of a nursery or any other nursery stock, the Secretary finds any diseased or infested stock, he or she may order the plants, either individually or in blocks, to be:

- (1) placed on stop sale in accordance with Section III 3. of these regulations;
- (2) treated in a particular manner; or
- (3) destroyed according to the Secretary's instructions.

5. Entry onto Business Premises by Secretary.

The Secretary, in furtherance of his or her duties under 6 V.S.A. Chapter 206 or the regulations promulgated thereunder, may enter the business premises of any person licensed or certificated under that chapter and regulations for the purposes of inspecting nursery stock, facilities, equipment or business records, or to take samples as may be required. Such entry onto business premises shall be made during normal business hours, or at other times for which the Secretary may make arrangements.

6. Reciprocal Issuance of Licenses and Certificates.

(a) The Secretary may enter into reciprocal agreements with officials of other states and federal agencies, and may grant licenses and certificates on a reciprocal basis, provided that:

- (1) Certification and licensing standards are substantially the same as those required by Vermont;
 - (2) The person licensed or certificated knows and abides by Vermont's nursery inspection law and regulations;
 - (3) The person or facility licensed or certificated pays any and all applicable fees;
- and

(4) The person or facility is properly licensed by a state which has a reciprocal agreement with Vermont.

(b) Revocation or suspension of any certificate or license by the state or federal authority which originally issued such certificate or license shall result in the immediate suspension of the reciprocally-issued certificate or license pending investigation by the Secretary. Reinstatement of the certificate or license by the state or federal authority which revoked or suspended it shall effect reinstatement of the reciprocally-issued certificate or license.

7. In addition to the authority conferred by these regulations, the powers of the Secretary include all statutory authority vested in the Secretary, now and in the future, to enforce state nursery inspection laws and regulations.

SEC. V. TRANSPORTATION OF NURSERY STOCK.

1. Shipment of Nursery Stock Grown within Vermont.

(a) Whenever a nursery dealer ships or delivers any nursery stock grown within this state, he or she shall include with each shipment a copy of the inspection certificate issued by the Secretary, or a reasonable facsimile which satisfies the requirements of Section III 1.(b) of these regulations. Such certificate or facsimile shall state that the nursery has been inspected and approved as required by 6 V.S.A. Chapter 206 and these regulations, and that the nursery stock is believed to be free from injurious pests or plant diseases.

(b) Each shipment transported or caused to be transported without proper certification, as required by Subsection 1.(a) of this section shall be deemed to be a separate violation.

2. Transportation of Nursery Stock into Vermont for Sale.

(a) Nursery stock transported into this state for sale, distribution or installation shall be accompanied by a valid certificate of inspection or a reasonable facsimile, or other certification accepted by the Secretary, from the state from which the consignment comes or from a United States Government inspector, stating that the nursery stock is believed to be free of injurious pests or plant diseases. The certificate shall contain the name and mailing address of the consignor.

(b) The Secretary may accept inclusion of the consignor on a list of certified nursery dealers compiled by the state in which the shipment originates as certification under this section, provided that the shipment is identified by the name and mailing address of the consignor and a statement that the consignor is currently included on such list.

SEC. VI. DISEASED OR INFESTED STOCK.

(a) Only sound, healthy nursery stock which will maintain its vigor shall be offered for sale, distribution or installation in this state. Whenever the Secretary has reason to believe that any nursery in the state has introduced, installed, sold or offered for sale diseased or infested stock, the Secretary shall inspect that nursery. If, upon inspection, the Secretary finds any diseased or infested stock, he or she may order the plants, either individually or in blocks, to be

- (1) put on stop sale;
- (2) treated in a particular manner; or
- (3) destroyed according to the Secretary's instructions.

2. Appeals.

(b) Any person issued any order under 6 V.S.A. Section 4027(a) or under Subsection (a) of this section may appeal that order to the Secretary within 15 days after receiving that order. The appeal shall be made in writing and shall state any grounds and designate the plants or stock subject to the order.

SEC. VII. QUARANTINES.

State quarantine regulations on the following are effective on all nursery stock and shall apply to the quarantine-regulated areas and restrictions of the USDA Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs:

- (1) Gypsy moth; and
- (2) Scleroderris.

SEC. IX. SPECIAL CERTIFICATION REQUIREMENTS FOR DECIDUOUS FRUIT TREES, SMALL FRUIT PLANTS AND NURSERY STOCK

1. Definitions

“Foundation block” means an isolated planting of registered nursery stock maintained to serve as the primary source of propagating material for participating nurserymen.

“Nuclear block” means a planting of virus-indexed trees, small fruit plants or nursery stock, maintained and continuously protected from virus infection in a screenhouse, screened greenhouse or tissue culture to serve as a source of propagating material for the foundation block.

“Nursery increase block” means a planting of nursery stock, originating from registered seed and scion sources, used for increasing registered plants.

“Index” means testing a plant for virus infection by means of inoculation from the plant to be tested to an indicator plant or by other standard immunological technique.

“Indicator plant” means any woody or herbaceous plant used for detecting virus.

“Off-type” means different from the variety or cultivar listed on the application for registration or certification.

“Registered nursery stock” means a plant used as a propagation or seed source that has a history of negative virus indexing and inspection by an approved state or federal agency or commercial facilities.

“Scion block” means a planting of registered nursery stock maintained by a commercial nurseryman to serve as a source of propagating material.

“Seed block” means a planting of registered nursery stock maintained by a commercial nurseryman to serve as a seed source.

“Virus-infected” means presence of a virus (es) in a plant or plant part.

“Virus-like) means a disorder of unknown cause displaying symptoms which are possibly due to virus infection.

Requirements

Application for Special Certification shall be made to the Secretary on or before February 1 of each calendar year. Participation in this program shall be voluntary and may be withdrawn at the option of the applicant.

The applicant shall be responsible, subject to approval by the Agency, for the selection of the location and proper maintenance of registered plantings being grown under the provisions of this program. The applicant shall be responsible for maintaining the identity of all nursery stock entered in this program in a manner approved by the Agency.

Location of plantings

Each planting location shall be subject to approval by the Agency and shall be in an area having minimal risks for spread of infectious pests by drainage, flooding, irrigation or any other means.

A scion block shall be located not less than 300 feet from any nonregistered plant of the same genera. Volunteer or wild plants of the same genera within 500 feet (further if practical) shall be eradicated. Broad leaf weed control programs must minimize their occurrence within the block.

The sources of the scion block nursery stock shall have originated from the foundation block or nuclear block maintained by state or federal agencies or approved commercial facilities.

Certification Procedures

Nursery Stock being grown for “Vermont Premium” certification shall consist of rootstocks and scions originating from foundation blocks. Plants will be tested for those viruses where techniques have been established.

Nursery stock being grown for “Vermont Select” shall consist of Plants produced from registered scion block and nonregistered seed sources; or have only had virus-testing on a few viruses known to infect specific nursery stock.

All special certified nursery stock must have been produced in artificial soil, pasteurized soil, or on soils that received a preplant nematicide or were sampled by an approved agency prior to planting and found to be free from virus vector nematodes.

All nursery stock meeting the requirements of this program when sold shall have the variety and or interstock and rootstock designated where applicable.

Establishment and Maintenance of Plantings

Plantings entered in this program shall be kept in a thrifty growing condition and pests shall be effectively controlled. Suitable precautions shall be taken in cultivation, irrigation, movement and use of equipment, and in other farming practices to guard against spread of soil-borne pests to plants entered into this program.

Eligibility

Any kind or variety of deciduous fruit tree, small fruit plant or other nursery stock, when approved by the Agency, is eligible for entry into this program as provided in this outline. To be accepted for certification or to be eligible for any planting entered in this program, a plant shall have been tested and not found to be virus-infected or off type.

Inspection and Testing Procedures

Inspection and sampling of nursery stock shall be done under the supervision of the Agency.

Testing of plant material shall be done by Universities or businesses approved by the Agency. Approved labs shall use Immunological tests, Genetic Assays or Indexing procedures to test for viruses known to occur in the Northeast. Results of the tests shall be sent directly to the Agency of Agriculture, Food & Markets with copy to applicant.

Tagging and Identity

Tagging - The Agency will authorize the use of official tags for the identification of nursery stock or seed that meet the requirements of this program.

Identity - Any person selling Vermont special certified nursery stock is responsible for the identity of the stock bearing each tag and for such nursery stock meeting requirements. Persons issued tags authorized by the program shall account for stock produced and sold and keep records as may be necessary.

Refusal, Suspension or Cancellation of Registration or Certification

Registration or certification may be refused, suspended or cancelled for any plants in part or all of a planting if:

The requirements of these regulations have not been met.

The plant is found to be virus-infected or off-type including but not limited to differences caused by disorders of genetic origin.

A registered plant is found virus infected and it is determined that plants propagated from it also are liable to be infected.

Any violation of the Vermont Nursery Statute or any section of these regulations.

For any reason the identity of a plant becomes uncertain or has not been properly maintained.

Failure to have an Agency approved virus testing facility conduct testing.

SEC. X. PENALTIES.

Pursuant to 6 V.S.A. §4029, any person who violates any provision of 6 V.S.A. Chapter 206 or the regulations promulgated thereunder shall be fined not more than \$100.00 for the first offense

and not more than \$500.00 for each subsequent offense. In addition, the Secretary may seek and obtain preliminary and permanent injunctive relief for any violation of the provisions of 6 V.S.A. Chapter 206 or the regulations promulgated thereunder.