

### 301.55 SOUTH AMERICAN CACTUS MOTH

Federal Domestic Quarantine

#### A. Pest. South American Cactus Moth

#### B. Quarantined Area (7 CFR 301.55-3)

The States of Alabama, Florida, Georgia, Louisiana, Mississippi, and South Carolina.

#### C. Regulated Articles (7 CFR 301.55-2)

1. The South American cactus moth, in any living stage of its development.
2. Cactus plants or parts thereof (excluding seeds and canned, preserved, or frozen pads or fruits) of the following genera: *Consolea*, *Cylindropuntia*, *Nopalea*, and *Opuntia*.
3. Any other product, article, or means of conveyance not listed in paragraphs (1) or (2) of this section that an inspector determines presents a risk of spreading the South American cactus moth, after the inspector provides written notification to the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

#### D. Restrictions (7 CFR 301.55-4)

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 Section H;
2. **Without a certificate or limited permit** if:
  - a. The regulated article originated outside the quarantined area and is either moved in an enclosed vehicle or is completely enclosed by a covering (such as canvas, plastic, or closely woven cloth) adequate to prevent access by South American cactus moths while moving through the quarantined area; **and**
  - b. The point of origin of the regulated article is indicated on the waybill, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area; **and**
  - c. The regulated article is moved through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs.
3. **Without a certificate or limited permit** if the regulated articles are cactus pads and fruits for consumption from outside the quarantined area that are being moved in accordance with the protocols described in a compliance agreement (see Section F) to a commercial food warehouse or distribution center within the quarantined area and the regulated articles remain enclosed by a covering (such as canvas, plastic, or closely woven cloth) adequate to prevent access by South American cactus moths while within the quarantined area: **and**
4. **Without a certificate or limited permit** if the regulated article is moved:
  - a. By the United States Department of Agriculture for experimental or scientific purposes;
  - b. Pursuant to a departmental permit issued by the Administrator for the regulated article;
  - c. Under conditions specified in the departmental permit and found by the Administrator to be adequate to prevent the spread of the South American cactus moth; **and**
  - d. With a tag or label bearing the number of the departmental 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 not in a container.

#### E. Issuance of certificates and limited permits. (7 CFR 301.55-5)

1. **An inspector may issue a certificate** for the interstate movement of a regulated article if the inspector determines that:
  - a. The regulated article to be moved and all other regulated articles on the premises have been grown and maintained indoors in a shadehouse or greenhouse and no other cactus moth host material exists on the premises outside of a shadehouse or greenhouse;
  - b. The regulated article to be moved and all other regulated articles on the premises are maintained on benches that are kept separate from benches containing non-host material;
  - c. The regulated article to be moved and all other regulated articles on the premises have been placed on a 21-day insecticide spray cycle and have been sprayed with *Bacillus thuringiensis* subsp. *kurstaki*, carbaryl, spinosad, or imidaploprid if maintained in the nursery for longer than 21 days;
  - d. The regulated article to be moved has been sprayed with *Bacillus thuringiensis* subsp. *kurstaki*, carbaryl, spinosad, or imidaploprid 3 to 5 days prior to shipment and inspected and found free of cactus moth egg sticks and larval damage; **and**
  - e. If the regulated article was moved into the premises from another premises in a quarantined area listed in section C., it was immediately placed inside the shadehouse or greenhouse **and** sprayed with *Bacillus thuringiensis* subsp. *kurstaki*, carbaryl, spinosad, or imidaploprid within 24 hours.
2. **An inspector will issue a limited permit** for the interstate movement of a regulated article if the inspector determines that:
  - a. 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 South American cactus moth because life stages of the South American cactus moth will be destroyed by the specified handling, processing, or utilization;
  - b. 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 South American cactus moth; **and**
  - c. It is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.
3. **Certificates and limited permits for the 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 or limited permit for interstate movement of a regulated article after an inspector has determined that the regulated article is eligible for a certificate or limited permit in accordance with paragraphs (1) or (2) of this section.
4. **Any certificate or limited permit that has been issued may be canceled**, either orally or in writing, by an inspector whenever the inspector determines that the holder of the 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.

movement of a regulated article must be furnished by the carrier or the carrier's representative to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

**F. Compliance agreements and cancellation. (7 CFR 301.55-6)**

**I. Costs and charges. (7 CFR 301.55-9)**

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. APHIS will not be responsible for all 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. **Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement** when an inspector determines that the person is aware of this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.
2. **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 or the terms of the compliance agreement. 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, 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. 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.

**APPENDIX A**

**07-13-09**

See pertinent definitions below as defined by 7 CFR 301.55.

**Cactus plants.** Any of various fleshy-stemmed plants of the botanical family Cactaceae.

**Infestation.** The presence of the South American cactus moth or the existence of circumstances that make it reasonable to believe that the South American cactus moth may be present.

**South American cactus moth.** The live insect known as the South American cactus moth, *Cactoblastis cactorum*, in any life stage (egg, larva, pupa, adult).

**G. Assembly and inspection of regulated articles. (7 CFR 301.55-7)**

1. Any person (other than a person authorized to issue limited permits under Section E3) who desires a certificate or limited permit to move a regulated article interstate must request an inspector to examine the articles as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired interstate movement.
2. The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

**H. Attachment and disposition of certificates and limited permits. (7 CFR 301.55-8)**

1. A certificate or limited permit required for the interstate movement of a regulated article must, at all times during the interstate movement, be:
  - a. Attached to the outside of the container containing the regulated article; or
  - b. Attached to the regulated article itself if not in a container; or
  - c. Attached to the consignee's copy of the accompanying waybill. If the certificate or limited permit is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.
2. The certificate or limited permit for the interstate