

ARTICLE 18. ENTOMOLOGY AND PLANT PATHOLOGY

Rule 1. Definitions

312 IAC 18-1-1 Application of definitions

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

Sec. 1. The definitions contained in this rule apply throughout this article. *(Natural Resources Commission; 312 IAC 18-1-1; filed Nov 22, 1996, 3:00 p.m.: 20 IR 940; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

312 IAC 18-1-2 "Agent" defined

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

Sec. 2. "Agent" means a person who sells nursery stock under the partial or full control of a nurseryman, a dealer, or another agent. *(Natural Resources Commission; 312 IAC 18-1-2; filed Nov 22, 1996, 3:00 p.m.: 20 IR 940; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

312 IAC 18-1-3 "Apiary" defined

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

Sec. 3. "Apiary" means a place where one (1) or more hives or colonies of bees are kept. *(Natural Resources Commission; 312 IAC 18-1-3; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

312 IAC 18-1-4 "Beneficial organism" defined

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

Sec. 4. "Beneficial organism" means a parasitoid, a predator, an antagonist, a competitor, a biologically specific pathogen, or a similar living entity which is used for one (1) or more of the following purposes:

- (1) To provide biological control of a pest or pathogen.
- (2) To benefit pollination.
- (3) To benefit agriculture, horticulture, floriculture, or silviculture.

(Natural Resources Commission; 312 IAC 18-1-4; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)

312 IAC 18-1-5 "Dealer" defined

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

Sec. 5. "Dealer" means a person who grows or buys nursery stock for the purpose of reselling or reshipping that stock in Indiana. *(Natural Resources Commission; 312 IAC 18-1-5; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

312 IAC 18-1-6 "Division inspector" defined

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

Sec. 6. "Division inspector" means an employee of the division who is authorized by the division director to conduct inspections under IC 14-24 and this article. *(Natural Resources Commission; 312 IAC 18-1-6; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

312 IAC 18-1-7 “Elements of beekeeping” defined

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

Sec. 7. “Elements of beekeeping” includes the following:

- (1) Bees.
- (2) Hives.
- (3) Combs.
- (4) Combless packages of bees or queens.
- (5) Beekeeping equipment or appurtenances.

(Natural Resources Commission; 312 IAC 18-1-7; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)

312 IAC 18-1-8 “Eradication area” defined

Authority: IC 14-24-2; IC 14-24-4
Affected: IC 14-24

Sec. 8. “Eradication area” means a property or political subdivision of the state where a pest or pathogen that is not widely distributed or is newly introduced in Indiana is found in one (1) or more life stages. *(Natural Resources Commission; 312 IAC 18-1-8; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

312 IAC 18-1-9 “Feral bee” defined

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

Sec. 9. (a) “Feral bee” means a wild bee which is not kept or managed by a person.

(b) The term includes a bee which is located in a swarm or nest, whether or not a comb is present. The term does not include a bee which is maintained in a movable frame hive. *(Natural Resources Commission; 312 IAC 18-1-9; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

312 IAC 18-1-10 “Nursery” defined

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

Sec. 10. “Nursery” means the premises where nursery stock is propagated, grown, or cultivated for distribution or sale as a business. *(Natural Resources Commission; 312 IAC 18-1-10; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

312 IAC 18-1-11 “Nursery stock” defined

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

Sec. 11. “Nursery stock”, except as provided in 312 IAC 18-4-5, means botanically classified hardy perennial or biennial trees, shrubs, vines, and plants, fruit pits, and other plants or plant parts capable of propagation. The term does not include corms, tubers, field vegetables, or flower seeds. *(Natural Resources Commission; 312 IAC 18-1-11; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

312 IAC 18-1-12 “Nurseryman” defined

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

Sec. 12. "Nurseryman" means a person who owns, leases, manages, or controls a nursery. (*Natural Resources Commission; 312 IAC 18-1-12; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

312 IAC 18-1-13 "Pest or pathogen" defined

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

Sec. 13. "Pest or pathogen" means an arthropod, nematode, micro-organism, or plant disease that may be injurious to nursery stock, agricultural crops, other vegetation, or bees. (*Natural Resources Commission; 312 IAC 18-1-13; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

312 IAC 18-1-14 "State entomologist" defined

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

Sec. 14. "State entomologist" refers to the division director. (*Natural Resources Commission; 312 IAC 18-1-14; filed Nov 22, 1996, 3:00 p.m.: 20 IR 942; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

312 IAC 18-1-15 "Vital" defined

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

Sec. 15. "Vital" means a plant is physiologically vibrant and does not suffer unreasonably from mechanical or pathological stress. (*Natural Resources Commission; 312 IAC 18-1-15; filed Nov 22, 1996, 3:00 p.m.: 20 IR 942; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

Rule 2. Infested Areas and Quarantines

312 IAC 18-2-1 Operation and maintenance within an infested area; application

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

Sec. 1. (a) This rule establishes standards for operation and maintenance within an infested area declared under IC 14-24-4.

(b) This rule establishes quarantine standards necessary to carry out IC 14-24 which are in addition to those otherwise provided in this article. (*Natural Resources Commission; 312 IAC 18-2-1; filed Nov 22, 1996, 3:00 p.m.: 20 IR 942; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

312 IAC 18-2-2 Infested areas; quarantines

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

Sec. 2. (a) The division may inspect any site in Indiana where agricultural, horticultural, or sylvan products are being grown, shipped, sold, or stored to determine if a pest or pathogen is present. If, as a result of an inspection, a site is determined to be infested with a pest or pathogen that is likely to spread or communicate to adjacent or contiguous territory in an adjoining township, the director may declare all or part of the township where the pest or pathogen is located to be an infested area.

(b) The division director shall formulate a quarantine under section 3 of this rule for an infested area declared under subsection (a). The quarantine may restrict or prohibit the transportation, maintenance, or continued existence of designated plants, plant products, elements of beekeeping, pests or pathogens, animal products, or other articles or materials known or reasonably believed to harbor or carry pests or pathogens. (*Natural Resources Commission; 312 IAC 18-2-2; filed Nov 22, 1996, 3:00 p.m.: 20 IR 942; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

312 IAC 18-2-3 Quarantine principles

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

Sec. 3. The division director shall formulate a quarantine according to the following principles:

- (1) Every restrictive measure of a quarantine is biologically sound.
- (2) Language in the quarantine is phrased clearly and stated as simply as practicable to be consistent with legal requirements and the objectives to be attained by the quarantine.
- (3) The boundaries of a quarantine reference the boundaries used by the director to describe the infested area but may also reference boundaries delineated by rivers, streams, highways, railways, or natural geographic features.
- (4) A pest or pathogen which is the subject of a quarantine presents an actual or reasonably anticipated environmental, health, or economic hazard in Indiana.
- (5) The quarantine is a measure for which no substitute action requiring a less obtrusive strategy would be reasonably expected to be as effective.
- (6) The objectives of the quarantine can be attained.
- (7) The restrictions imposed by a quarantine are reasonably believed to be essential to the attainment of the objectives. These restrictions may be relatively extensive if the eradication of a pest or pathogen is sought. A less extensive restriction may be required for an infested area where the prevention of spread of the pest or pathogen to other areas is the primary intent of the quarantine.
- (8) The economic gains anticipated by the quarantine outweigh the cost of administration and the cost of interference with private enterprise caused by the quarantine.

(Natural Resources Commission; 312 IAC 18-2-3; filed Nov 22, 1996, 3:00 p.m.: 20 IR 942; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)

312 IAC 18-2-4 Quarantine issuance; termination; review

Authority: IC 14-10-2-4; IC 14-24-3
Affected: IC 4-21.5-4-5; IC 14-24

Sec. 4. (a) The department shall give notice of the quarantine as is practicable to the persons who are required to comply with the quarantine. The quarantine is effective when issued.

(b) A quarantine is an order which is controlled by IC 4-21.5-4. A quarantine is effective for ninety (90) days unless a shorter period is stated in the quarantine or unless terminated or modified under this section. The quarantine may be extended as provided in IC 4-21.5-4-5(b).

(c) As quickly as practicable, following a request for administrative review by an affected person, a hearing shall be scheduled under IC 4-21.5-4 and 312 IAC 3 to determine whether the quarantine should be voided, terminated, modified, stayed, or continued.

(d) The division director may terminate a quarantine which:

- (1) has attained its objectives;
- (2) is determined not to be biologically sound; or
- (3) is found incapable of attaining its objectives.

(Natural Resources Commission; 312 IAC 18-2-4; filed Nov 22, 1996, 3:00 p.m.: 20 IR 942; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)

Rule 3. Control of Pests or Pathogens

312 IAC 18-3-1 Identification and standards for the control of pests or pathogens; isolated occurrences

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

Sec. 1. (a) This rule serves to identify certain pests or pathogens.

(b) This rule establishes standards for the control of pests or pathogens.

(c) A pest or pathogen which may cause plant destruction or the destruction of elements of beekeeping is subject to this article

and IC 14-24 even if the pest or pathogen is isolated or not directly associated with a plant, plant part, or an element of beekeeping. (*Natural Resources Commission; 312 IAC 18-3-1; filed Nov 22, 1996, 3:00 p.m.: 20 IR 943; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

312 IAC 18-3-2 Control of pests or pathogens newly introduced or not widely established in Indiana

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

Affected: IC 4-21.5-3-6; IC 4-21.5-4; IC 14-24-4-3

Sec. 2. (a) This section establishes standards for the control of pests or pathogens which are newly introduced or not widely established in Indiana.

(b) The division director may implement the following procedures if the division discovers a pest or pathogen which is newly introduced or not widely established in Indiana:

(1) The area surrounding the initial discovery of the pest or pathogen shall be surveyed or monitored by the division to confirm that the pest or pathogen is present. Transporting equipment, utensils, elements of beekeeping, and other items which might harbor the pest or pathogen shall be examined.

(2) To eradicate the pest or pathogen, the division director may, under IC 14-24-4-3, order the owner of infested property to destroy, refrain from selling, immobilize, or otherwise treat any plants, plant parts, or elements of beekeeping. A written order issued under this subdivision is effective when served. A person who is aggrieved by the order may request administrative review under IC 4-21.5-3-6. In addition, an aggrieved person may seek temporary relief from the order under IC 4-21.5-4. Unless otherwise agreed by the parties, a hearing on temporary relief must be conducted within five (5) days of receipt of the hearing request in the county where the infested plants are located.

(3) If an action under subdivision (2) is not performed as ordered, the division director may take necessary action and incur the expenses required to satisfy the directive contained in the written order. Expenses incurred by the department under this subdivision shall be certified to the auditor of the county where the site is located. The auditor shall place the assessment on the tax duplicates of the county, and the assessment shall be collected as state and county taxes are collected and paid over to the department.

(4) If nursery stock, plants, plant parts, a pest or pathogen, elements of beekeeping or associated packaging, shipping products, or other personal property has been sold or transported from the site, the owner or proprietor shall provide the division with the names and addresses of the persons who received the property. The persons who received the property are subject to the requirements of this section.

(5) Surveying or monitoring shall continue by the division for two (2) consecutive growing seasons or until the biological threat is eliminated. If a pest or pathogen persists, the director may declare an infested area, and the division director shall implement any quarantine appropriate under 312 IAC 18-2.

(*Natural Resources Commission; 312 IAC 18-3-2; filed Nov 22, 1996, 3:00 p.m.: 20 IR 943; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

312 IAC 18-3-3 Permit requirement for the movement of a plant or element of beekeeping that contains a pest or pathogen

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

Affected: IC 14-24-9-2

Sec. 3. (a) A person may not cause the movement into or within Indiana of a plant or element of beekeeping that contains a pest or pathogen without a permit issued by the division director under IC 14-24-9-2 and this section.

(b) A permit for the movement of a pest or pathogen may be issued where either of the following conditions are met:

(1) A permit is issued by the United States Department of Agriculture (USDA) for the movement of the pest or pathogen, and the division director approves the permit for use at a designated containment facility or field site. Approval of the USDA permit constitutes a permit under this section and subjects the permit holder to the requirements of IC 14-24 and this article.

(2) A permit application establishes, under section 4 of this rule, either of the following:

(A) A proposed containment facility is adequate to prevent escape of the pest or pathogen.

(B) The pest or pathogen does not represent a threat to the plant production interests of Indiana or a surrounding state.

(*Natural Resources Commission; 312 IAC 18-3-3; filed Nov 22, 1996, 3:00 p.m.: 20 IR 943; readopted filed Oct 2, 2002, 9:10 a.m.*)

26 IR 546)

312 IAC 18-3-4 Criteria for a permit for the movement of a plant or element of beekeeping that contains a pest or pathogen

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

Affected: IC 14-24

Sec. 4. (a) This section establishes the criteria by which an application for a permit for the movement of a plant or element of beekeeping that contains a pest or pathogen, issued under section 3(b)(2) of this rule, is evaluated.

(b) The following categories for a pest or pathogen are established:

(1) Category A is one (1) of the following:

(A) A plant pest from another country which is newly introduced or not widely distributed in the United States.

(B) A plant pest of limited occurrence in the United States, including pests listed by an agency of the federal government.

(C) A plant pest regulated by Indiana.

(D) An exotic strain of a domestic pest.

(2) Category B is a beneficial organism or pollinator. The pest or pathogen is high risk which is a weed antagonist or a shipment accompanied by federally or state prohibited plant material of a Category A pest. The pest or pathogen is a low risk which is constituted by pure cultures of known beneficial organisms.

(3) Category C is a domestic pest which:

(A) has attained its ecological range; or

(B) is a nonpest organism.

(c) A facility proposed in an application for the maintenance of a plant or element of beekeeping that contains a pest or pathogen is evaluated according to the factors referenced as follows:

(1) The likelihood of harm by the pest or pathogen is evaluated as follows:

(A) A pest or pathogen poses a serious likelihood of harm which is contained within:

(i) Category A; or

(ii) Category B as a high risk.

(B) A pest or pathogen does not pose a serious likelihood of harm which is contained within:

(i) Category B as a low risk; or

(ii) Category C.

(2) The difficulty of containment of the pest or pathogen is evaluated as follows:

(A) Considered is the adequacy of the confinement facility to prevent escape.

(B) The life stages, quantity, size, and mobility of the pest are evaluated.

(C) Human traffic patterns are assessed as they bear upon the probability of contamination or dissemination of the pest.

(D) The cleanliness of the containment area is reviewed.

(3) The nature of the work of the applicant is evaluated as follows:

(A) The purposes to be served by the permit are considered. Examples of purposes include the following:

(i) Taxonomy.

(ii) Chemical analysis.

(iii) Pesticide screening.

(iv) Behavior.

(v) Inoculation.

(vi) Isolation.

(vii) Characterization.

Work which is likely to enhance scientific awareness is favored over work which is not.

(B) The techniques and processes are considered which are required for rearing or culturing the pest or pathogen.

(C) The length of time which a pest or pathogen will be contained is determined.

(D) Determined is the number of shipments which will be required during the effectiveness of the proposed permit.

(4) The chance of establishment of the pest or pathogen if an escape occurs is evaluated as follows:

(A) The availability of known hosts is determined.

- (B) Climatic conditions are considered, including the time of year when the proposed permit would be effective.
 - (C) The ability of the pest or pathogen for survival through a winter or a summer, to become dormant, or to otherwise rest in a viable condition is determined.
 - (D) The reproductive potential of the pest or pathogen is considered. Factors include parthenogenesis and vegetative states.
- (5) The experience of the permit applicant and employees is evaluated as follows:
- (A) The demonstrated awareness of the applicant for the risk posed by dissemination of the pest or pathogen is considered.
 - (B) The appreciation expressed by the applicant for security needs is weighed.
 - (C) The willingness of the applicant for cooperation is determined relative to the department and other regulatory agencies.
- (6) The containment features of the site where the pest or pathogen will be maintained are evaluated as follows:
- (A) Containment features must be described in the permit application which will reduce the probability of pest or pathogen escape.
 - (B) The specific features used for the containment of a pest or pathogen will depend on the category of the pest or pathogen, the conditions prescribed on a permit, and the kind of organism, but the following general standards apply:
 - (i) Walls ordinarily shall be white and shall be covered with a smooth coating of paint or with plasterboard sealed at panel seams, inside corners, and joints with the floor and ceiling.
 - (ii) Ceilings shall be painted white.
 - (iii) Floors shall be covered with smooth painted concrete or covered with asphalt tile.
 - (iv) Vents, air intakes, and drains shall be covered with sufficient mesh to prevent an escape of the pest or pathogen. Containment screen sizes are commonly fifty (50), sixty (60), or one hundred (100) mesh.
 - (v) Windows shall be sealed in frames and permanently closed.
 - (vi) Light fixtures, electrical service outlets, and other equipment which penetrates the walls, ceilings, and floors shall be sealed to prevent the entry or escape of pests or pathogens.
 - (vii) Air conditioning supply and return ducts shall be fitted with appropriate filters.
 - (viii) A secure waste trap shall be affixed to the drainage system.
 - (ix) Entry doors shall be kept closed and shall be locked when the room is unoccupied.
 - (x) A warning sign shall be posted at the entrance to the containment area to deter the entry of unauthorized personnel.
 - (xi) Access to the containment area shall be limited to the permittee and employees authorized to participate in the permit.
 - (xii) An incinerator or autoclave shall be maintained in the containment area to sterilize or devitalize all wastes.
 - (xiii) Pests or pathogens shall be held in secure cages within the containment area.
 - (xiv) A blacklight trap shall be activated in the containment area if arthropods are involved.
 - (xv) A greenhouse shall be air conditioned and its humidity controlled, with wire reinforcement and glass panels, sealed both inside and outside.
- (d) General conditions applicable to any permit issued under this section are as follows:
- (1) A pest or pathogen shall be shipped in sturdy containers which will prevent escape.
 - (2) Packing material and shipping containers shall be sterilized or destroyed immediately after removing the pest or pathogen at the confined area.
 - (3) With respect to parasitic plant seeds, the shipments shall be within a metal container enclosed within another metal container. A person who handles parasitic plant seeds shall wear a plastic or rubber apron, cuffless trousers, plastic gloves, and disposable shoe covers.
 - (4) Rearing or culturing of pests or pathogens is prohibited.
 - (5) Plant material is limited to the minimum sections of leaves needed to perform the purposes of the permit. Soil and plant materials capable of propagation are prohibited.
 - (6) Necessary precautions shall be taken to prevent the escape of a pest or pathogen. A permittee must contact the division as soon as practicable if an escape occurs, but not later than twenty-four (24) hours after the occurrence.
- (e) Conditions applicable to a high risk permit, as described in subsection (c)(1)(A), are as follows:
- (1) The arrival of every shipment of pests or pathogens at the containment area shall be reported immediately to the division.

- (2) With respect to insects, the shipments shall be limited to one (1) sex and be subject to verification.
- (3) With respect to parasitic plant seeds, the shipments shall be within a metal container enclosed within another metal container. A person who handles parasitic plant seeds shall wear a plastic or rubber apron, cuffless trousers, plastic gloves, and disposable shoe covers.
- (4) Rearing or culturing of pests or pathogens is prohibited.
- (5) Plant material is limited to the minimum sections of leaves needed to perform the purposes of the permit. Soil and plant materials capable of propagation are prohibited.
- (6) Plant inoculation tests shall be conducted only within growth chambers or biochemical chambers.
- (7) The termination of the research project and the destruction of all pests or pathogens and infected materials shall be reported immediately to the division.
- (f) The division director may require the completion of an environmental assessment under 329 IAC 5-1 or an environmental impact statement under 329 IAC 5-2 as a prerequisite to the consideration of a permit application under this section. (*Natural Resources Commission; 312 IAC 18-3-4; filed Nov 22, 1996, 3:00 p.m.: 20 IR 944; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

312 IAC 18-3-5 Standards governing materials under the federal post entry quarantine; nursery stock imported from a foreign country

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

Affected: IC 14-24

Sec. 5. (a) This section establishes standards to govern the handling of nursery stock imported into Indiana from a foreign country under federal post entry quarantine conditions (7 CFR 319.37-7).

(b) A permit granted under 7 CFR 319.37 and approved by the state entomologist in the state screening notice constitutes the Indiana state permit.

(c) Nursery stock and any restricted article defined under 7 CFR 319.37 required to be grown under federal post entry quarantine conditions shall conform to this subsection. The nursery stock and any restricted article must be grown under the supervision and control of a person who has signed a federal post entry quarantine agreement under which the person assures compliance with the following conditions:

- (1) The article and any increase from the article will be grown only on the premises approved in the permit.
- (2) A division inspector will be given access to the premises for inspection during regular business hours.
- (3) The article and any increase from the article will be identified by a label showing the name of the article, the port accession number, and the date of importation.
- (4) The article will be kept separated by at least three (3) meters from any:
 - (A) domestic plant or plant product of the same genus; or
 - (B) other imported plant or plant product.
- (5) Remedial measures (including destruction) will be applied as determined by an inspector to be necessary to prevent the spread of a pest or pathogen.
- (6) The state entomologist or a designee will be notified promptly if the article is found to be abnormal or if the article dies.
- (7) If an article is a *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, or raspberry) from Europe, the article will be grown only in a greenhouse with screening which has at least sixteen (16) mesh per inch.
- (8) If an article is a *Chrysanthemum* spp. (*Chrysanthemum*) or *Dianthus* spp. (carnation or sweet-william), the article will be grown or an increase made from the article, only in a greenhouse or other enclosed building.
- (9) The requirements of this section will be met according to the following schedules:
 - (A) For six (6) months after the importation of an article of *Chrysanthemum*.
 - (B) For one (1) year after the importation of an article of carnation or sweet-william.
 - (C) For two (2) years after the importation of any other article regulated under this section.
- (d) A person who violates this section is subject to any administrative, civil, or criminal sanction set forth in IC 14-24 or this article.
- (e) A sanction imposed by the state entomologist under this section may be levied independently of any federal action. (*Natural Resources Commission; 312 IAC 18-3-5; filed Nov 22, 1996, 3:00 p.m.: 20 IR 946; errata, 20 IR 1124; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

312 IAC 18-3-6 Maintenance of honeybees in movable frame hives

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

Affected: IC 14-24

Sec. 6. (a) A person who manages honeybees for hobby or commercial purposes must maintain the bees in movable frame hives.

(b) Except as provided in subsection (c), movable frames shall have a size and construction which meet ordinary industry standards.

(c) The division may issue a permit for the maintenance, without movable frame hives, of honeybees in an exhibit or for educational purposes. (*Natural Resources Commission; 312 IAC 18-3-6; filed Nov 22, 1996, 3:00 p.m.: 20 IR 946; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

312 IAC 18-3-7 Africanized bees

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

Affected: IC 14-24

Sec. 7. (a) *Apis mellifera scutellata* is a species or subspecies of bee which may endanger the honey industry in Indiana.

(b) *Apis mellifera scutellata* is a pest or pathogen. This section governs the control of *Apis mellifera scutellata*.

(c) This subsection provides the criteria to establish what is the minimum action required to control *Apis mellifera* as follows:

(1) If one (1) swarm, nest, or managed colony without a comb with a less than seven-tenths (0.7) probability of Africanization is detected or confirmed by the division, no additional action is required.

(2) If one (1) swarm or nest without a comb having at least a seven-tenths (0.7) probability of Africanization (or a managed colony with a seven-tenths (0.7) to nine-tenths (0.9) probability of Africanization) is detected or confirmed by the division, the following applies:

(A) The following for feral bees:

(i) Any swarm or nest shall be destroyed.

(ii) If the bees are detected in association with a vehicle of conveyance or transportation, the vehicle shall not leave the site until eradication is completed.

(B) The following for a managed colony of bees:

(i) Requeening and brood disposal of the colony shall be completed.

(ii) Other colonies in the vicinity of the affected colony shall be sampled as determined by the division.

(3) If two (2) or three (3) swarms or one (1) nest with a comb having seven-tenths (0.7) or greater probability of Africanization (or a managed colony with more than a nine-tenths (0.9) probability of Africanization) is detected within an area that is no larger than one (1) square mile, the following applies:

(A) The following for feral bees:

(i) Any swarm or nest of feral bees within the area of one (1) square mile shall be destroyed.

(ii) Any managed colony within the one (1) square mile area shall be inspected.

(B) The following for a managed colony of bees which has more than a nine-tenths (0.9) probability of Africanization:

(i) The bees and broods in the colony shall be destroyed.

(ii) All feral swarms and nests within the one (1) square mile area shall be destroyed.

(iii) Any other managed colony within the one (1) square mile area shall be inspected.

(iv) Queen excluders shall be placed on any managed colony to confine the queen within the colony until inspection and control activities are completed within the one (1) square mile area which is regulated under this subsection.

(4) If an inspection of an adjacent apiary with a previous detection of Africanization also discloses evidence of Africanization, the adjacent apiary is an extension of the original detection and shall be treated as provided in this subsection depending upon the probability of Africanization. Any managed colony subsequently found in a physically separate apiary is a separate detection and treated depending upon the probability of Africanization.

(5) The division director may order eradication activities in addition to those prescribed in subdivisions (1) through (4) where appropriate to the control of *Apis mellifera scutellata*.

(6) An eradication activity required under this subsection shall continue for the longer of the following periods:

(A) Until eradication is declared by the division director.

(B) One (1) year.

(7) Unless otherwise inconsistent with IC 14-24 or this article, the division may apply the recommendations for the control of *Apis mellifera scutellata* which are contained in USDA-APHIS-PPQ-EP, Action Plan for African Honey Bee (1983).

(Natural Resources Commission; 312 IAC 18-3-7; filed Nov 22, 1996, 3:00 p.m.: 20 IR 946; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)

312 IAC 18-3-8 Control of black stem rust

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

Affected: IC 14-24-5

Sec. 8. (a) Black stem rust is a pest or pathogen. This section governs standards for the control of black stem rust in Indiana.

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

(1) Seedlings and plants that exhibit growth for less than two (2) years of the genus *Berberis*.

(2) All plants, seeds, fruits, and other plant parts capable of propagation from the following rust-resistant *Berberis* species:

- B. *aggregata* x B. *wilsoniae* "Pirate King"
- B. "Amstelveen"
- B. *aridocalida*
- B. *beaniana*
- B. *buxifolia*
- B. *buxifolia nana*
- B. *calliantha*
- B. *candidula*
- B. *candidula* "Amstelveen"
- B. *candidula* x B. *verruculosa* "Amstelveen"
- B. *cavallieri*
- B. *chenaulti*
- B. *chanaulti* "Apricot Queen"
- B. *circumserrata*
- B. *concinna*
- B. *coxii*
- B. *darwini*
- B. *dasystachya*
- B. *dubia*
- B. *feddeana*
- B. *formosana*
- B. *franchetiana*
- B. *gagnepainii*
- B. *gagnepaini* "Chenault"
- B. *gilgiana*
- B. *gladwynensis*
- B. *gladwynensis* "William Penn"
- B. *gylaica*
- B. *heterophylla*
- B. *horvathi*
- B. *hybrido-gagnepaini*
- B. *insignis*
- B. *integerrima* "Wallichs Purple"
- B. *julianae*
- B. *julianae* "Nana"
- B. *julianae* "Spring Glory"

B. koreana
B. koreana x *B. thunbergii* hybrid Bailsel
B. koreana x *B. thunbergii* hybrid Tara
B. lempergiana
B. lepidifolia
B. linearifolia
B. linearifolia var. "Orange King"
B. lologensis
B. lologensis "Mystery Fire"
B. manipurana
B. media "Park Jewel"
B. media "Red Jewel"
B. mentorensis
B. pallens
B. poiretii "BJG 073", "MTA"
B. potanini
B. renton
B. replicata
B. sanguinea
B. sargentiana
B. sikkimensis
B. soulieana "Claret Cascade"
B. stenophylla
B. stenophylla diversifolia
B. stenophylla gracilis
B. stenophylla irwini
B. stenophylla nana compacta
B. taliensis
B. telomaica artisepala
B. thunbergii
B. thunbergii "Antares"
B. thunbergii argenteo marginata
B. thunbergii atropurpurea
B. thunbergii atropurpurea erecta
B. thunbergii atropurpurea erecta Marshalli
B. thunbergii atropurpurea "Golden Ring"
B. thunbergii atropurpurea "Intermedia"
B. thunbergii atropurpurea "Knight Burgundy"
B. thunbergii atropurpurea nana
B. thunbergii atropurpurea "Redbird"
B. thunbergii atropurpurea "Rose Glow"
B. thunbergii aurea
B. thunbergii "Aurea Nana"
B. thunbergii "Bagatelle"
B. thunbergii "Bailgreen" (Jade Carousel™)
B. thunbergii "Bailone"
B. thunbergii "Bailone" (Ruby Carousel®)
B. thunbergii "Bailtwo"
B. thunbergii "Bailtwo" (Burgundy Carousel®)
B. thunbergii "Bonanza Gold"
B. thunbergii "Concorde"

M. aquifolium compacta
 M. aquifolium compacta "John Muir"
 M. aquifolium "Donewell"
 M. aquifolium "Kings Ransom"
 M. aquifolium "Orangee Flame"
 M. aquifolium "Undulata"
 M. aquifolium "Winter Sun"
 M. "Arthur Menzies"
 M. bealei
 M. dictyota
 M. fortunei
 M. "Golden Abundance"
 M. japonica
 M. japonica x M. lomariifolia "Charity"
 M. lomariifolia
 M. nervosa
 M. pinnata
 M. pinnata "Ken Hartman"
 M. piperiana
 M. pumila
 M. repens
 M. x media "Charity"
 M. x media "Winter Sun".

(4) All plants, seeds, fruits, and other plant parts capable of propagation from rust-susceptible species and varieties of the genera Berberis, Mahoberberis, and Mahonia, and seedlings from rust-susceptible species and varieties of the genera Mahoberberis and Mahonia, except Mahonia cuttings for decorative purposes.

(5) Any other product or article not listed in this subsection which a division inspector determines presents a risk of spread of black stem rust. The division inspector shall notify the person in possession of a product or article that qualifies under this subdivision that it is subject to this section.

(c) During the inspection of a nursery under IC 14-24-5, a division inspector shall examine all nursery stock to determine that the nursery stock consists only of rust-resistant varieties of the genera Berberis, Mahoberberis, and Mahonia, and that the plants are true to type. A plant that does not meet the requirements of this subsection must be destroyed.

(d) If a nursery raises plants of the genera Berberis, Mahoberberis, or Mahonia from seed, the division shall conduct a visual inspection to verify that no wild or domesticated plants are growing within one-half (½) mile of the nursery. The inspection must conform to standards set forth in 7 CFR 301.38-3. A nursery that does not meet the requirements of this subsection must cease raising plants of the described genera.

(e) Except as provided in subsection (g), the following articles regulated under this section are prohibited from moving interstate into or through Indiana:

(1) All Berberis seedlings and plants that exhibit growth for less than two (2) years; rust-susceptible Berberis plants, seeds, and fruits; and other plant parts capable of propagation.

(2) Rust-susceptible Mahoberberis and Mahonia plants, seedlings, seeds, fruits, and other plant parts capable of propagation.

(f) The following articles regulated under this section may be moved interstate into or through Indiana only if accompanied by a certificate issued and attached under 7 CFR 301.38-5 and 7 CFR 301.38-7:

(1) Plants which exhibit growth for at least two (2) years, seeds, fruits, and other plant parts capable of propagation of the genera Mahoberberis and Mahonia that are designated as rust-resistant in subsection (b)(2).

(2) Plants, seedlings, seeds, fruits, and other plant parts capable of propagation of the genera Mahoberberis and Mahonia that are designated as rust-resistant in subsection (b)(3).

(g) A regulated article not eligible for a certificate under 7 CFR 301.38-5 and 7 CFR 301.38-7 may be moved interstate into or through Indiana as authorized by a special permit issued under 7 CFR 301.38-4 by an employee of the Animal and Plant Health Inspection Service of the United States Department of Agriculture. (*Natural Resources Commission; 312 IAC 18-3-8; filed Nov 22, 1996, 3:00 p.m.: 20 IR 947; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 19, 2003, 9:10 a.m.: 26 IR 3315*)

312 IAC 18-3-9 Control of pests or pathogens which may infect roses

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

Affected: IC 14-24

Sec. 9. (a) A plant virus which may infect roses is a pest or pathogen. This section governs standards for the control of rose viruses, including apple mosaic virus and prunus necrotic ringspot virus.

(b) A shipment of rose plants entering Indiana must be accompanied by an official certificate or statement, issued by an authorized official in the state of origin, certifying that the plants were inspected during the growing season at a time when symptoms would be apparent and found to be visibly free of plant viruses.

(c) No person shall offer rose plants for sale unless the person has on file in an Indiana place of business, and available upon request for public inspection, a copy of a certificate or statement issued by an authorized official from the state of origin for each shipment of rose plants, certifying that the plants were inspected during the growing season at a time when symptoms would be apparent and found visibly free of plant viruses.

(d) A rose plant shipped into Indiana which is infected with a plant virus or which is not accompanied by the documentation required by this section may be returned to the state of origin or destroyed by the division. The remedies set forth in this subsection are in addition to any other remedies prescribed by IC 14-24 or this article.

(e) As used in this section, "shipment of rose plants" includes any conveyance (including mail order) of dormant, packaged, replanted, or in-leaf rose plants. (*Natural Resources Commission; 312 IAC 18-3-9; filed Nov 22, 1996, 3:00 p.m.: 20 IR 949; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

312 IAC 18-3-10 Control of black vine weevils

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

Affected: IC 14-24-5-4

Sec. 10. (a) Black vine weevil (*Otiorhynchus sulcatus*) is a pest or pathogen. This section governs standards for the control of black vine weevils.

(b) Nursery stock which is shipped into Indiana or shipped, sold, or grown in Indiana must be free from black vine weevils.

(c) The certificate required under IC 14-24-5-4 for nursery stock shipped into Indiana from another state must verify the following:

(1) A visual inspection was made of the nursery stock before the shipment was made, and the inspection located no evidence of damage by black vine weevils.

(2) The nursery stock came from a site that was inspected by an authorized state or federal official, and the official certified the site was free from black vine weevils for two (2) growing seasons before the shipment.

(d) Nursery stock, containers for nursery stock, and any trucks in which nursery stock is shipped shall be returned to the state of origin or treated to the satisfaction of the division if the presence of black vine weevils or damage by black vine weevils is detected.

(e) A nurseryman who grows nursery stock at a site infested with black vine weevils may, upon notice by the division, be required to eradicate the black vine weevils and withhold from sale or movement plants which were grown in the infested site. These requirements apply until modified or terminated by the division director or a division inspector.

(f) A dealer who possesses nursery stock where black vine weevils are found or evidence of black vine weevil damages is found may, upon notice by the division, be required to do any of the following:

(1) Remove the infested nursery stock from sale.

(2) Return the infested nursery stock to the place of origin.

(3) Treat the nursery stock as specified by the division.

(g) A site used to grow or maintain nursery stock where black vine weevils have been found may be released from any restriction imposed under this section and certified free from black vine weevils if the following requirements are met:

(1) Efforts to eradicate the black vine weevils are undertaken as specified by the division.

(2) Two (2) growing seasons have elapsed with no occurrence of the weevils.

(*Natural Resources Commission; 312 IAC 18-3-10; filed Nov 22, 1996, 3:00 p.m.: 20 IR 949; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

312 IAC 18-3-11 Control of crown gall

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

Affected: IC 14-24-5-4

Sec. 11. (a) Crown gall (*Agrobacterium tumefaciens*) is a pest or pathogen. This section governs standards for the control of crown gall in Indiana.

(b) Nursery stock which is shipped into Indiana or shipped, sold, or grown in Indiana must be free from crown gall.

(c) The certificate required under IC 14-24-5-4 for nursery stock shipped into Indiana from another state must verify the following:

(1) A visual inspection was made of the nursery stock before the shipment was made, and the inspection revealed freedom from crown gall.

(2) The nursery stock came from a site that was inspected by an authorized state or federal official, and the official certified:

(A) the site was free from crown gall for two (2) growing seasons before the shipment; or

(B) the nursery stock came from tissue-cultured stock that was certified free from crown gall and grown in sterile soil with no exposure to soil which was or could have been contaminated with crown gall.

(d) A plant, container, or soil contaminated with crown gall must not be moved into or within Indiana unless a permit is issued under section 3 of this rule.

(e) Nursery stock which is contaminated with crown gall must be returned to its site of origin or destroyed.

(f) A nurseryman may, upon notice by the division, be required to remove from sale, and to destroy or return to the site of origin, any nursery stock which is contaminated or may reasonably be anticipated to be contaminated with crown gall.

(g) A dealer may, upon notice by the division, be required to remove from sale, and to destroy or return to the site of origin, any nursery stock which is possessed by the dealer. These requirements apply to soils, containers, and nursery stock from any shipment which contained contaminated nursery stock. (*Natural Resources Commission; 312 IAC 18-3-11; filed Nov 22, 1996, 3:00 p.m.: 20 IR 950; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

312 IAC 18-3-12 Control of larger pine shoot beetles

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

Affected: IC 14-24

Sec. 12. (a) The larger pine shoot beetle (*Tomicus piniperda*) is a pest or pathogen. This section governs standards for the control of the larger pine shoot beetle in Indiana.

(b) Except as provided in subsection (c), the division has determined Indiana is an infested area where the larger pine shoot beetle is present.

(c) Exempted from subsection (b) are the following counties:

(1) Clark.

(2) Clay.

(3) Crawford.

(4) Daviess.

(5) Dearborn.

(6) Dubois.

(7) Floyd.

(8) Gibson.

(9) Greene.

(10) Harrison.

(11) Jackson.

(12) Jefferson.

(13) Knox.

(14) Lawrence.

(15) Martin.

(16) Ohio.

(17) Orange.

- (18) Perry.
- (19) Pike.
- (20) Posey.
- (21) Scott.
- (22) Spencer.
- (23) Sullivan.
- (24) Switzerland.
- (25) Vanderburgh.
- (26) Warrick.
- (27) Washington.
- (d) The following items are regulated articles:
 - (1) The larger pine shoot beetle in any life stage.
 - (2) Entire plants or parts of the genus pine (*Pinus* spp.). Exempted from this subdivision are plants that conform to each of the following:
 - (A) Are less than thirty-six (36) inches high.
 - (B) Are one (1) inch in basal diameter or less.
 - (3) Logs and lumber of pine with bark attached. Exempted from this subdivision are logs of pine and pine lumber with bark attached if:
 - (A) the source tree was felled during the period of July through October; and
 - (B) the logs and lumber are shipped from the quarantined area during the period of July through October.
 - (4) Any other article, product, or means of conveyance if determined by the division director to present the risk of spread of the larger pine shoot beetle.
- (e) The following actions are ordered within the infested area:
 - (1) The movement by a person of a regulated article to a destination outside the infested area is prohibited, except under the following conditions:
 - (A) A thorough examination of all nursery stock takes place on a piece by piece basis.
 - (B) A statistically based examination of Christmas trees is made according to the following schedules:

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	700 – 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 (1) 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

ENTOMOLOGY AND PLANT PATHOLOGY

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 (1) 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."

(C) Following the examination, a determination is made that no life stages of the larger pine shoot beetle are present. The determination must be accompanied by either of the following:

- (i) A certificate of inspection approved by the division.
- (ii) A certificate or similar authorization issued by the U.S. Department of Agriculture under a parallel federal quarantine.

(D) The certificate for the absence of the larger pine shoot beetle must be attached to and remain on the regulated articles until the articles reach their destinations. This requirement is, however, satisfied if the certificate is attached to the shipping document and the regulated article is adequately described on the shipping document of the certificate.

(2) A regulated article originating outside the infested area may move through the infested area without a certificate of inspection if the point of origin of the regulated article is indicated on the waybill or shipping documents and transportation conforms with this subdivision. Passage through the infested area must be made without stopping, except for refueling or traffic conditions, and shall be conducted within either of the following conditions:

- (A) The ambient temperature is below fifty (50) degrees Fahrenheit.
- (B) The regulated article is carried in an enclosed vehicle with an adequate covering to prevent access by the larger pine shoot beetle. Examples of an adequate covering include canvas, plastic, or loosely woven cloth.

(3) A regulated article originating outside the infested area that is moved into the infested area and exposed to potential infestation by the larger pine shoot beetle is considered to have originated from the infested area. Any regulated article under this subdivision is controlled by subdivision (1).

(4) The movement of a regulated article from an infested area through any noninfested area to another infested area is prohibited without a certificate for the absence of the larger pine shoot beetle except where both of the following conditions are met:

- (A) Passage through a noninfested area is made without stopping, except for refueling or traffic conditions, if the ambient temperature is below fifty (50) degrees Fahrenheit or if in an enclosed vehicle with an adequate covering to prevent access by the larger pine shoot beetle.
- (B) The waybill or shipping documents accompanying any shipment of regulated articles within or through Indiana indicate the county and state of origin of the regulated articles.

(5) Any regulated article imported or moved within Indiana in violation of this section shall be immediately removed from any noninfested area or destroyed. The expense of compliance with this subdivision is the joint and several responsibility of any person possessing or owning the regulated article. Compliance with this subsection shall be performed under the direction of the division director.

(6) In addition to the penalty set forth in subdivision (5), a person who violates this section is subject to any administrative, civil, or criminal sanction set forth in IC 14-24 and this article.

(7) This section does not preclude the division director from issuing any permit under section 3 of this rule.

(Natural Resources Commission; 312 IAC 18-3-12; filed Nov 22, 1996, 3:00 p.m.: 20 IR 950; filed Dec 3, 1997, 3:30 p.m.: 21 IR 1273; filed Feb 9, 1999, 4:16 p.m.: 22 IR 1945; filed Apr 4, 2001, 3:02 p.m.: 24 IR 2404; filed May 16, 2002, 12:28 p.m.: 25 IR 3049; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 19, 2003, 8:50 a.m.: 26 IR 3313; filed May 25, 2005, 10:30 a.m.: 28 IR 2951)

312 IAC 18-3-13 Permit to move, plant, or distribute *Rosa multiflora* or *Lythrum* species

Authority: IC 14-24-12-9
 Affected: IC 14-24-5; IC 14-24-7

Sec. 13. (a) This section governs the anthropogenic movement and distribution of *Rosa multiflora* and *Lythrum* species in Indiana.

(b) Except as provided by this section, a person must not plant *Rosa multiflora* in Indiana.

(c) Except as provided in this section, a person must not sell, offer for sale, give away, or otherwise distribute seeds or plants of any species of *Lythrum* (commonly known as purple loosestrife) in Indiana.

(d) A nurseryman whose nursery has been inspected and certified under IC 14-24-5, and who holds a nursery dealer's license issued under IC 14-24-7, may plant *Rosa multiflora* for use as grafting stock in growing roses in the nursery subject to the following conditions:

(1) The nurseryman informs any division inspector who inspects the nursery of the presence of, and every site where, the grafting stock is located.

(2) Except upon written permission by the division director, *Rosa multiflora* is not sown or grown in the field as nongrafted stock. The written permission shall be noted on the nursery certificate at the time the nursery is certified.

(e) Species of *Lythrum* native to Indiana may be sold or distributed for an approved project or activity according to a prior permit issued as follows:

(1) An application must be completed by the permit applicant on a department form and delivered to the division. This application shall include the following:

(A) The scientific name of the species to be sold or distributed.

(B) The character (examples include marsh, upland, dominant shrub habitat, and mixed forest) of the site where the species is to be taken.

(C) A topographic map of the site clearly marked to indicate the specific site to which the plant material is to be taken.

(D) The source of the plants to be distributed.

(E) Certification that the plants are not hybrids of *Lythrum salicaria* or *Lythrum virgatum*. The certification may be verified by a person identified by the division of nature preserves of the department or by gene testing methodologies through qualified laboratories. The applicant is responsible for the cost of certification.

(2) Permits will be considered on an individual site or site and project basis.

(3) Unless otherwise specified, the duration of a permit is ninety (90) days.

(f) The state entomologist may issue a license to a person to obtain and possess *Lythrum* as follows:

(1) The person may lawfully possess the *Lythrum* solely for one (1) or more of the following purposes:

(A) The production of biological control organisms directed to *Lythrum* growing in the wild.

(B) Research into the biology of these biological control organisms.

(C) Related educational programs.

(2) A person issued a license under this subsection must take reasonable precautions to prevent the release of seeds or other viable parts of the *Lythrum* plants to the wild. Disposal of plants shall, if practicable, be performed by incineration. If facilities to incinerate plants are not available, the plants must be disposed at sites already heavily infested with species of *Lythrum* that are not native to Indiana.

(3) The state entomologist may place any conditions on the placement of a license that are determined necessary or appropriate under IC 14-24 or this section. Included among these conditions are the following:

(A) A requirement the applicant act under the auspices of a regional program sponsored by a biological control laboratory.

(B) A requirement the applicant obtain written permission from a landowner before digging or removing plants to be possessed under the license.

(C) A requirement the applicant display a copy of the license at the site where the *Lythrum* plants are being grown.

(4) A license issued under this subsection also authorizes a program coordinator to provide to the license holder *Lythrum* plants that include biological control organisms.

(g) A person is subject to a civil penalty of five hundred dollars (\$500) for each site where *Rosa multiflora* or *Lythrum* is maintained or distributed in violation of this section. Each year that the species is maintained or distributed constitutes a separate offense. In addition, a person may be required to destroy any unlawful plants and to restore and reclaim the site with native or other approved species. (*Natural Resources Commission; 312 IAC 18-3-13; filed Nov 22, 1996, 3:00 p.m.: 20 IR 952; filed Mar 23, 2001, 3:00 p.m.: 24 IR 2403; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

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

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

Affected: IC 14-8-2-202; IC 14-24-4-1; IC 14-24-4-4; IC 14-24-5-7; IC 15-3-3.5-2; IC 15-3-3.6

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

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

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

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

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

(3) "Compliance agreement" means a written agreement between the department and a person engaged in growing, selling, processing, handling, or moving regulated articles.

(4) "Effectively diminishing" means the results of two (2) successive annual federal or state delimiting trapping surveys of an area conducted under section 2, "Gypsy Moth Survey", of the program manual show that the average number of gypsy moths caught per trap in the second delimiting survey (when comparable geographical areas and trapping densities are used) is:

- (A) less than ten (10); and
- (B) less than the average number of gypsy moths;

caught per trap in the first survey.

(5) "Eradication program" means a program that uses pesticide application, biological controls, or other methods with the goal of eliminating gypsy moth from an infested area.

(6) "General infestation" means either of the following:

- (A) The detection of gypsy moth egg masses through visual inspection by an inspector during a ten (10) minute walk through the area, but it does not include the presence of gypsy moth egg masses that are found as a result of hitchhiking on transitory means of conveyance.
- (B) The detection of gypsy moth through multiple catches of adult gypsy moths at multiple trapping locations in the area for two (2) or more consecutive years if the state entomologist determines the gypsy moth is established in the area.

(7) "Generally infested area" means an area that is listed or designated as set forth under either of the following:

- (A) A state or portion of a state listed in 7 CFR 301.45-3 or temporarily designated as a generally infested area under 7 CFR 301.45-2(c).
- (B) An Indiana county or portion of a county listed as generally infested in this rule.

(8) "Gypsy moth" means any race or strain of the live insect, *Lymantria dispar*, in any life stage (egg, larva, pupa, or adult).

(9) "Infested area" means any of the following:

- (A) An area in Indiana where the gypsy moth has been found and is known to have two (2) or more life stages present.
- (B) An area for which it is determined by the state entomologist as necessary to regulate because of the proximity of the infested area to a generally infested area or another infested area.
- (C) An area where a life stage of the Asian strain or another related strain of gypsy moth has been found.

(10) "Inspector" means a person designated to assist in the implementation of this section and includes each of the following:

- (A) An authorized employee of the division as defined in 312 IAC 18-1-6.
- (B) A federal employee authorized by the United States Department of Agriculture who is also authorized by the state entomologist.
- (C) Another person trained and authorized by the state entomologist.

(11) "Interstate" means from any state into or through any other state.

(12) "Intrastate" means within Indiana.

(13) "Limited permit" means a document issued by a federal inspector or an authorized state cooperator under 7 CFR 301.45 to allow the interstate movement of regulated articles to a specified destination.

(14) "Mobile home" means a vehicle, other than a recreational vehicle, designed to serve, when parked, as a dwelling or place of business.

(15) "Move" means any of the following:

- (A) Ship.
- (B) Offer for shipment to a common carrier.
- (C) Receive for transportation or transported by a common carrier.
- (D) Carry, transport, move, or allow to be moved by a person by any means.

"Movement" and "moved" shall be construed under this subdivision.

(16) "Outdoor household articles" or "OHA" means articles associated with a household that are kept outside the home. The term includes the following:

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

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

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

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

- (A) is certified in Indiana under IC 15-3-3.6 under the portions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) found at 7 U.S.C. 136i(a) through 7 U.S.C. 136i(c) as a certified commercial applicator in a category allowing use of a "restricted use pesticide" as defined at IC 15-3-3.5-2(27);
- (B) has attended and completed a workshop approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine on the identification and treatment of gypsy moth life stages on outdoor household articles and mobile homes; and
- (C) has entered into a compliance agreement under 7 CFR 301.45-6 for the purpose of inspecting, treating, and issuing certificates for the movement of outdoor household articles and mobile homes.

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

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

- (A) Trees without roots, for example, Christmas trees, trees with roots, and shrubs with roots and persistent woody stems (unless greenhouse-grown throughout the year).
- (B) Logs, pulpwood, and wood chips.
- (C) Mobile homes and associated equipment.
- (D) Any other products, articles, or means of conveyance if an inspector determines:
 - (i) a life stage of gypsy moth is in proximity to the articles; and
 - (ii) the articles present a high risk of artificial spread of gypsy moth infestation;

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

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

- (1) Gypsy moths.
- (2) Trees and woody shrubs, including cut Christmas trees, and nursery stock, not grown in a greenhouse throughout the year.
- (3) Logs, slab wood, wood chips, and pulpwood unless moved to a mill operating under a compliance agreement.
- (4) Recreational vehicles, boats, trailers, tents, and associated equipment.
- (5) Mobile homes and associated equipment.
- (6) Outdoor household articles.
- (7) Any other products, articles, or means of conveyance if it is determined by an inspector that a life stage of the gypsy moth is in proximity to such articles, presenting a risk of artificial spread of the gypsy moth, and the person in possession of those articles is so notified.

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

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

- (1) Allen County.
- (2) DeKalb County.
- (3) Elkhart County.
- (4) LaGrange County.
- (5) Noble County.
- (6) Porter County.
- (7) Steuben County.

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

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

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

- (A) originated in a not generally infested area and are not exposed to infestation while within the generally infested area;
- (B) are found by an inspector to be free of infestation;
- (C) are treated under procedures approved by the state entomologist to destroy any infestation;
- (D) are grown, produced, manufactured, stored, or handled so no infestation is transmitted; or
- (E) are handled, used, processed, or treated at the destination so the movement will not spread the gypsy moth.

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

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

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

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

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

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

(2) An outdoor household article must not be moved within Indiana or moved outside Indiana from a generally infested area

into or through an area that is not generally infested unless a certificate of OHA document is issued and attached to the outdoor household article under 7 CFR 301.45-5, 7 CFR 301.45-8, and this section.

(3) A regulated article originating outside a generally infested area may be moved interstate and intrastate directly through a generally infested area without a certificate or permit if the point of origin for the article is clearly indicated by shipping documents, its identity is maintained, and the article is safeguarded against infestation while in a generally infested area during the months of April through June. To be safeguarded, the article must be in an enclosed vehicle, or completely enclosed by a covering adequate to prevent access by gypsy moths. Examples of an appropriate covering include canvas, plastic, or closely woven cloth.

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

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

(B) The article is logs, pulpwood, or wood chips and the person moving the article has attached a signed accurate statement to the waybill, or other shipping documents accompanying the article, indicating the person inspected the article under the program manual no more than five (5) days before movement and found no life stages of gypsy moth on the article.

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

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

(A) The article originated in noninfested premises in a generally infested area and has not been exposed to the gypsy moth while within the generally infested area.

(B) An inspector inspects the article no more than five (5) days before movement during the months of April through August (fourteen (14) days before movement from September through March) and finds it to be free of gypsy moth.

(C) The article is treated under the direction of an inspector to destroy the gypsy moth under the program manual.

(D) An inspector determines the article is grown, produced, manufactured, stored, or handled so no infestation would be transmitted.

(2) Limited permits may be issued by an inspector to allow interstate movement of a regulated article to specified destinations for handling, use, processing, or treatment under the program manual, if the inspector determines other federal domestic plant quarantines are met and either:

(A) the movement will not result in the spread of the gypsy moth because life stages of the moths will be destroyed by the specific handling, use, processing, or treatment; or

(B) the gypsy moth will not survive in areas to which the regulated article is to be shipped.

(3) A certificate and limited permit form may be issued by an inspector to a person for use for subsequent shipments of regulated articles if the person is operating under a compliance agreement. A person operating under a compliance agreement may execute and issue the certificate forms, or reproduction of the forms, for the interstate movement of regulated articles from the person's premises, if:

(A) the person treats the articles as specified in the compliance agreement; and

(B) the regulated articles are eligible for certification for movement under any applicable federal domestic plant quarantines.

A person operating under a compliance agreement may execute and issue the limited permit forms, or reproductions of the forms, for the interstate movement of regulated articles to specified destinations if an inspector complies with subdivision (2).

(4) A certificate may be issued by a qualified certified applicator for the interstate movement of an outdoor household article or mobile home if the qualified certified applicator determines:

(A) the article was inspected by the qualified certified applicator and found to be free of any life stage of the gypsy moth; or

(B) the article has been treated to destroy the gypsy moth under section 3 of the program manual by, or under the direction of, a qualified certified applicator.

(5) An OHA document may be issued by the owner of an outdoor household article for the interstate movement of the article if the person inspects the outdoor household article and finds it to be free of the gypsy moth.

(6) A certificate or permit issued or authorized under this subsection may be suspended by an inspector upon a determination that a condition of the certificate or permit has been violated. The reasons for the suspension shall be set forth in a written notice under IC 14-24-5-7(d) and may include an order to destroy or control any article to prevent the spread of the gypsy moth.

(k) This subsection governs compliance agreements as follows:

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

(2) A compliance agreement may be suspended in writing by an inspector if the inspector determines the agreement has been violated. The reasons for the suspension shall be set forth in a written notice and may include an order to destroy or control any article so as to prevent the spread of the gypsy moth. The notice shall specify that an aggrieved person may request administrative review in the same manner as is provided under IC 14-24-5-7(d).

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

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

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

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

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

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

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

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

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

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

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

(2) The requirements of subdivision (1) are met by attaching the certificate, limited permit, or OHA document to the consignee's copy of the waybill or other shipping document only if the regulated article or outdoor household article is sufficiently described on the certificate, limited permit, OHA document, or shipping document to identify such article.

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

(4) A qualified certified applicator who issues a certificate or OHA document shall at the time of issuance send a copy of the certificate or OHA document to the United States Department of Agriculture, Animal and Plant Health Inspection Service for Indiana.

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

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

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

312 IAC 18-3-15 Release of a beneficial organism or a pest or pathogen

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

Affected: IC 14-24

Sec. 15. (a) A person or a federal agency must not release a beneficial organism or a pest or pathogen in Indiana without a permit issued by the division director under this section.

(b) Before a permit is issued under this section, a person or a federal agency must demonstrate, to a reasonable certainty, that the release of a beneficial organism or a pest or pathogen would do none of the following:

- (1) Harm a nontarget plant or animal.
- (2) Interfere with normal management and production practices in agriculture, horticulture, viticulture, silviculture, nursery production, or greenhouse production.
- (3) Disturb the ecological stability of an Indiana native organism or its environments.

(c) An application for release must be prepared on a commission form and must include each of the following:

(1) The current scientific name of the beneficial organism or pest or pathogen, as well as prior synonyms and taxonomic placements.

(2) The life stages to be considered for release, including any genetic recombinations.

(3) A listing of all known foods or hosts of the beneficial organism or pest or pathogen. The listing must identify the target organism, if applicable. The listing must be documented by published scientific literature with peer review.

(4) The known distribution of the beneficial organism or pest or pathogen, including habitat preferences and tolerances. This information must be documented by:

- (A) scientific literature;
- (B) regulatory survey; or
- (C) expert testimony.

(5) The method of release of the beneficial organism or pest or pathogen.

(6) The life cycle of the beneficial organism or pest or pathogen.

(7) The place of origin of the beneficial organism or pest or pathogen.

(8) The ecological classification of the beneficial organism or pest or pathogen. Examples of an ecological classification include:

- (A) predator;
- (B) pollinator;
- (C) parasite;
- (D) pathogen;
- (E) hyperparasite; and
- (F) herbivore.

(9) Documentation of any known pest or predator of the beneficial organism or pest or pathogen.

(10) The number of beneficial organisms or pests or pathogens to be released.

(11) The location of the proposed release.

(12) Clearly readable copies of scientific literature regarding the beneficial organism or pest or pathogen. Any literature supporting and not supporting the applicant's application must be made available to the division.

(13) Upon request by the division director, additional information reasonably necessary to demonstrate compliance with this article and IC 14-24. As a prerequisite to the consideration of a permit, the division director may require information consistent with an environmental assessment under 329 IAC 5-1 or an environmental impact statement under 329 IAC 5-2.

(14) The division director shall respond to the applicant within thirty (30) days with one (1) of the following notifications:

- (A) Deny the permit.
- (B) Approve the permit.
- (C) Approve the permit with conditions.
- (D) Request the applicant to provide additional information within a stated period with an explanation that, if information is not provided as requested, the permit would be denied.

(15) If the division director fails to make a timely response under subdivision (14), the applicant may treat the application as denied and seek administrative review.

(d) The division director may establish a listing of organisms that are exempted or that may be released under a general

license. The division director shall submit the listing to the commission for its approval.

(e) A person must not sell, barter, offer for sale or distribution, or release a beneficial organism or pest or pathogen without first obtaining a permit from the division.

(f) A person must not mislabel a beneficial organism or pest or pathogen.

(g) A person must not misrepresent data or submit incomplete data that could mislead an investigator or the division director in considering the merits of a permit application. (*Natural Resources Commission; 312 IAC 18-3-15; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2470*)

312 IAC 18-3-16 Control of kudzu (*Pueraria lobata*)

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

Affected: IC 14-24

Sec. 16. (a) Kudzu (*Pueraria lobata*) is a pest or pathogen. This section governs the standards for the control of kudzu in Indiana.

(b) A person must not:

(1) sell;

(2) distribute;

(3) offer for sale or distribution;

(4) give away;

(5) barter or exchange; or

(6) plant;

any life stage or reproductive material or recombined genes of kudzu.

(c) The division may enter a property in which kudzu is thought to exist, or in which kudzu has been detected or reported, for the purpose of verifying its presence and the extent to which it has become established.

(d) Data regarding the location, area infested, habitat, and related data about the site may be recorded in a division database.

(e) A site in which kudzu is found to be established may be monitored.

(f) Any property owner who is known to have kudzu on the owner's property must take efforts to eliminate this species in such a manner as is consistent with federal and state law.

(g) This section shall be construed so as not to conflict with the authority of the Indiana state seed commissioner or with the laws administered by that office in regulating noxious weeds.

(h) The division may regulate a site under section 2 of this rule until it is cleared to prevent further infestations.

(i) This section does not preclude the division director from issuing any permit under this rule for the study of kudzu. (*Natural Resources Commission; 312 IAC 18-3-16; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2471*)

312 IAC 18-3-17 Technical committees

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

Affected: IC 14-24

Sec. 17. The division director may convene and use technical committees in evaluating the release into the environment of a beneficial organism or a pest or pathogen. The committee may include any of the following:

(1) The division director or the division director's designee.

(2) Any technical expert.

(3) A representative of a university, college, or private research institution with expertise in the organism considered.

(4) A representative of an affected industry.

(5) A representative of an affected or participating federal or state agency.

(6) Any other technical representative.

(*Natural Resources Commission; 312 IAC 18-3-17; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2472*)

312 IAC 18-3-18 Control of the emerald ash borer

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

Affected: IC 14-24

ENTOMOLOGY AND PLANT PATHOLOGY

Sec. 18. (a) The emerald ash borer (Coleoptera: Buprestidae: *Agrilus planipennis*) is a pest or pathogen and is regulated under this section.

(b) The definitions in 312 IAC 1, 312 IAC 18-1, and as follows apply throughout this section:

(1) "Certificate of inspection" means a document issued or authorized to be issued by the state entomologist or the U.S. Department of Agriculture to allow the movement of a regulated article to any destination. A certificate may be in any form approved by the state entomologist or the U.S. Department of Agriculture for this purpose, including a phytosanitary document or multiple use quarantine certificate.

(2) "Compliance agreement" means a written agreement between the department or the U.S. Department of Agriculture and another person that authorizes the movement of regulated articles under this section and other stated conditions.

(3) "Eradication area" means the area including all plants infected by the emerald ash borer and any other ash species within one-half (½) mile radius of an infected plant.

(4) "Infested area" means a site where the emerald ash borer is present or where circumstances make it reasonable to believe that the ash borer is present.

(5) "Inspector" means a division inspector or a person authorized by the U.S. Department of Agriculture authorized to enforce this section.

(6) "Move" means to:

(A) ship;

(B) offer for shipment;

(C) receive for transportation;

(D) transport;

(E) carry; or

(F) allow to move or ship.

(c) The following counties include an infested area and are regulated under this section:

(1) Clay Township and Van Buren Township in LaGrange County.

(2) Jamestown Township and Millgrove Township in Steuben County.

(d) The following items are regulated articles:

(1) The emerald ash borer in any living stage of development.

(2) Any ash tree (*Fraxinus* spp.), including nursery stock.

(3) A limb, stump, branch, or debris of at least one (1) inch in diameter of an ash tree.

(4) An ash log, slab, or untreated ash lumber with bark attached.

(5) Composted and noncomposted ash chips and composted and noncomposted ash bark chips at least one (1) inch in diameter.

(6) An article, product, or means of conveyance reasonably determined by the state entomologist to present the risk of the spread of the emerald ash borer.

(7) Cut firewood of any nonconiferous species originating from a regulated area.

(e) A person must not move a regulated article outside an infested area except under the following conditions:

(1) An inspector issues a certificate of inspection following a thorough examination of the regulated article and any treatment method. The certificate must be properly supported by a determination by the inspector, or by a grower or shipper authorized to conduct an inspection under a compliance agreement, that no life stage of the emerald ash borer is present. A certificate may be conditioned upon the completion of treatments administered under methods approved by the state entomologist or by a United States federal officer authorized by the state entomologist.

(2) A certificate of inspection is attached to any regulated article or to a shipping document that adequately describes the regulated article. The certification must remain attached until the regulated article reaches its destination.

(f) A person must not move a regulated article originating outside an infested area, through a county regulated under subsection (c), without a certificate of inspection for the emerald ash borer, except under the following conditions:

(1) From September 1 through April 30, or when the ambient air temperature is below forty (40) degrees Fahrenheit, if the person does not stop except to refuel or for traffic conditions.

(2) From May 1 through August 31 when the temperature is forty (40) degrees Fahrenheit or higher if the article is:

(A) shipped in an enclosed vehicle; or

(B) completely enclosed by a covering adequate to prevent access by the emerald ash borer.

(3) The point of origin of the regulated article is indicated on the bill of lading or shipping document.

(4) The regulated article is moved within Indiana by approval of the state entomologist for scientific purposes.

(5) The article is not combined or commingled with other articles so as to lose its individual identity.

(g) A regulated article originating outside a regulated area that is moved into a county regulated under subsection (c) and exposed to potential infestation by the emerald ash borer is considered to have originated from a regulated area. A person must not move the regulated article from the regulated area except under subsection (e).

(h) A person must not move a regulated article from an infested area through any nonregulated area to a regulated destination without a certificate of inspection for emerald ash borer, except under the following conditions:

(1) From September 1 through April 30, or when the ambient air temperature is below forty (40) degrees Fahrenheit, if the person does not stop except to refuel or for traffic conditions.

(2) From May 1 through August 31 when the temperature is forty (40) degrees Fahrenheit or higher, if the article is:

(A) shipped in an enclosed vehicle; or

(B) completely enclosed by a covering adequate to prevent the escape of any emerald ash borer.

(3) The county and state of origin and the final destination of the regulated article is indicated on the bill of lading or shipping document.

(i) The bill of lading or shipping document accompanying any shipment of regulated articles in Indiana must indicate the county and state of origin of the regulated articles.

(j) A person who moves a regulated article in violation of this section must move or destroy the article, at the person's or owner's expense, as directed by the state entomologist.

(k) The state entomologist may issue a special permit for the movement of the emerald ash borer into or within Indiana for research purposes. The permit may, by express language, exempt the permit holder from conditions of this section.

(l) Uncomposted ash chips and uncomposted ash bark chips no larger than one (1) inch in diameter are exempted from the requirements of this section.

(m) Any ash species within the eradication area shall be removed and rendered incapable of supporting a life stage of the emerald ash borer.

(n) Regulated articles from another infested state or any part of a state infested with the emerald ash borer are prohibited entry into Indiana without an accompanying certificate of inspection or phytosanitary document issued by the U.S. Department of Agriculture or the plant health regulatory agencies of the originating state.

(o) Harvest for timber or other use of the wood of any non-ash forest species within the eradication area is prohibited until after all ash has been removed and the site is released by the state entomologist or his or her designee.

(p) A person must not move ash, in any form, from the eradication area without a compliance agreement signed by the state entomologist or his or her designee. (*Natural Resources Commission; 312 IAC 18-3-18; filed May 25, 2005, 10:00 a.m.: 28 IR 2942*)

312 IAC 18-3-19 Control of the giant African land snail

Authority: IC 14-24-3

Affected: IC 14-24

Sec. 19. (a) The giant African land snail (*Achatina achatina* (L.), *Achatina fulica* Bowdich, *Achatina marginata*, and other species of the family Achatinidae (Gastropoda)) is a pest or pathogen and is regulated under this section.

(b) Except as provided in subsection (c), a person must not:

(1) possess;

(2) offer for sale;

(3) sell;

(4) give away;

(5) barter;

(6) exchange; or

(7) otherwise distribute or release;

a giant African land snail, in any life stage, in Indiana.

(c) The state entomologist may issue a permit to a qualified applicant to properly contain a species of giant African land snail for scientific research. (*Natural Resources Commission; 312 IAC 18-3-19; filed May 25, 2005, 10:10 a.m.: 28 IR 2942*)

Rule 4. Nurseries, Nursery Stock, Nurserymen, Dealers, and Agents

312 IAC 18-4-1 Standards for nurseries, nurserymen, dealers, and agents

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

Sec. 1. This rule provides for the regulation of nurseries, nurserymen, dealers, and agents. (*Natural Resources Commission; 312 IAC 18-4-1; filed Nov 22, 1996, 3:00 p.m.: 20 IR 952; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

312 IAC 18-4-2 Nursery inspections

Authority: IC 14-10-2-4; IC 14-24-3
Affected: IC 14-24-5

Sec. 2. (a) A nurseryman must provide for an inspection of each nursery owned, leased, managed, or controlled by the nurseryman at least once each year under IC 14-24-5.

(b) A nurseryman must maintain a nursery in a reasonably well-cultivated condition and free from weeds so that a division inspector may make an adequate inspection of all nursery stock. (*Natural Resources Commission; 312 IAC 18-4-2; filed Nov 22, 1996, 3:00 p.m.: 20 IR 953; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

312 IAC 18-4-3 Nursery dealers

Authority: IC 14-10-2-4; IC 14-24-3
Affected: IC 14-24-5; IC 14-24-7-1; IC 14-24-7-2

Sec. 3. (a) A person must obtain a dealer's license from the division under IC 14-24-7-1 before selling or soliciting an order for nursery stock or otherwise conducting the business of a dealer.

(b) In addition to the license application requirements contained in IC 14-24-7-2(a), an applicant with a principal place of business outside Indiana must include with the application a current listing of certified nurseries prepared by the originating state to establish the person is an authorized dealer in that state. (*Natural Resources Commission; 312 IAC 18-4-3; filed Nov 22, 1996, 3:00 p.m.: 20 IR 953; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

312 IAC 18-4-4 Certification of strawberry plants; special requirements

Authority: IC 14-10-2-4; IC 14-24-3
Affected: IC 14-24-5

Sec. 4. (a) Every package of strawberry plants shipped into Indiana from another state must be labeled on the outside with the name of the consignor, the name of the consignee, and a certificate from the other state showing that the contents have been examined and found free from any pest or pathogen.

(b) A person who receives strawberry plants from a foreign country must notify the division of the arrival of the strawberry plants and the name of the consignor. The person shall hold the shipment unopened until inspected or released by the division.

(c) A strawberry plant shall not be certified under IC 14-24-5 or offered for resale in Indiana until the following requirements are met:

- (1) The planting is inspected on at least two (2) occasions and during the proper periods to detect red stele disease.
- (2) The planting is made on soil in which red stele disease is not known to occur and which has not been subjected to drainage from soil infested with red stele disease.
- (3) The plantings satisfy the following standards for the identified pest or pathogen:
 - (A) Red stele disease: zero (0) tolerance.
 - (B) Crimp (foliar nematode disease): zero (0) tolerance, if the disease is generally distributed. Where the infestation is small and localized, the plantings may be certified if the infested plants are removed and destroyed.
 - (C) Crown borer, root weevil, root aphid, and strawberry root worm: one percent (1%) tolerance if the visibly affected plants are removed and destroyed.
- (4) If a mixture of plants is not observed, any off-variety plants are rogued.
- (5) Plantings are well-cultivated and maintained essentially free from weeds and grasses.
- (6) If plantings appear generally thrifty, very thin plant stands are disqualified.

(Natural Resources Commission; 312 IAC 18-4-4; filed Nov 22, 1996, 3:00 p.m.: 20 IR 953; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)

312 IAC 18-4-5 Nursery stock; plant labeling for imported hardy plants

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

Affected: IC 14-24

Sec. 5. (a) This section governs the labeling of imported nursery stock.

(b) As used in this section, "imported" means to bring into Indiana from:

(1) a foreign country; or

(2) a territory of the United States, Alaska, or Hawaii.

(c) As used in this section, "nursery stock" means botanically classified hardy perennial or biennial trees, shrubs, vines, and plants, evergreens, fruit pits, and other plants or plant parts capable of propagation. The term does not include corms, tubers, field vegetables, or flower seeds.

(d) Except as provided in subsection (e), imported nursery stock must bear a label that is of standard format, approximately four and seventy-five hundredths (4.75) inches by two and three hundred seventy-five thousandths (2.375) inches, on yellow, heavy duty card stock, and prepunched for attachment. The label shall list the following in order of the appearance from top to bottom:

(1) The common name of the nursery stock.

(2) The botanical name of the nursery stock.

(3) The hardiness zone of the nursery stock.

(e) Bulbs and similar plant parts used for propagation are exempted from subsection (d).

(f) This section does not apply to nursery stock that is imported into Indiana by a nursery grower and transplanted, grown, and held by the grower for a period of at least five (5) years after the date of import. *(Natural Resources Commission; 312 IAC 18-4-5; filed Nov 22, 1996, 3:00 p.m.: 20 IR 953; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

Rule 5. Special Service Fees

312 IAC 18-5-1 Collection of fees for special services; application

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

Affected: IC 14-24-10-1; IC 14-24-10-3

Sec. 1. (a) This rule establishes fees for special services by the division which are not described in IC 14-24-10-1.

(b) The fees collected under this rule shall be deposited in the entomology and plant pathology fund established by IC 14-24-10-3. *(Natural Resources Commission; 312 IAC 18-5-1; filed Nov 22, 1996, 3:00 p.m.: 20 IR 954; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

312 IAC 18-5-2 Florist or greenhouse stock; voluntary certification

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

Affected: IC 14-24

Sec. 2. (a) The owner or operator of a florist or greenhouse may seek a certification as required by federal law or by another state for the shipment into another state of:

(1) plants;

(2) corms;

(3) tubers;

(4) field vegetables; or

(5) flower seeds.

This certificate is not required by IC 14-24.

(b) The fee for this certification is fifty dollars (\$50) plus three dollars (\$3) per acre or any portion of an acre of inspected plants. *(Natural Resources Commission; 312 IAC 18-5-2; filed Nov 22, 1996, 3:00 p.m.: 20 IR 954; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2472)*

312 IAC 18-5-3 Laboratory fees and replacement certificates

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

Sec. 3. (a) The division shall be reimbursed for the actual cost of expenses incurred in performing laboratory services.

(b) The fee for the replacement of a certificate, where changes are made by the person who requests the certificate, is ten dollars (\$10). (*Natural Resources Commission; 312 IAC 18-5-3; filed Nov 22, 1996, 3:00 p.m.: 20 IR 954; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

312 IAC 18-5-4 Phytosanitary document fees and related fees

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

Sec. 4. (a) The fee is fifty dollars (\$50) for the issuance of any of the following:

- (1) A federal phytosanitary certificate.
- (2) A federal phytosanitary certificate for reexport.
- (3) A federal processed product certificate.
- (4) Except as provided in subsection (b), a state phytosanitary certificate.

(b) An exemption from the fee for a state phytosanitary certificate is provided for either of the following activities:

- (1) An Indiana resident who is lawfully moving domesticated plants for personal, noncommercial purposes into a state requiring certification.
- (2) A person that has been inspected and certified as a nursery under IC 14-24 or provided a voluntary certification under this rule.

(*Natural Resources Commission; 312 IAC 18-5-4; filed Nov 22, 1996, 3:00 p.m.: 20 IR 954; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed Nov 14, 2003, 5:15 p.m.: 27 IR 1166*)

312 IAC 18-5-5 Voluntary certification of herbaceous perennials; mandated certification of herbaceous perennials serving as harborage or as hosts of pests or pathogens

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

Sec. 5. (a) A person may seek from the division a certificate as required by another state for the movement or export of herbaceous perennials. The certificate under this subsection is not required by IC 14-24.

(b) The division director may mandate a certificate for the movement or export of herbaceous perennials which are:

- (1) known to provide harborage or to be a host for a pest or pathogen; or
- (2) otherwise subject to IC 14-24 or this article.

In determining whether or under what conditions to issue a certificate under this subsection, the division director shall consider the principles set forth in 312 IAC 18-2, 312 IAC 18-3-2, or 312 IAC 18-3-5.

(c) An inspection under this section shall be appropriate to the biological dictates of the pest or pathogen and the host activities.

(*Natural Resources Commission; 312 IAC 18-5-5; filed Nov 22, 1996, 3:00 p.m.: 20 IR 954; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

Rule 6. Trade Secrets

312 IAC 18-6-1 Trade secrets within documents filed with the division of entomology and plant pathology

Authority: IC 14-10-2-4; IC 14-24-3
Affected: IC 4-21.5; IC 5-14-3; IC 14-24

Sec. 1. (a) Permit applications, records, and other documents filed with the division under IC 14-24 and this article are subject to the requirements for access to public records contained within IC 5-14-3.

(b) A person who wishes to claim the status of any document filed with the division as a trade secret must include with the filing a concise written statement of the part or parts of the document for which that status is claimed.

(c) If a request for information is received from a person for a document described in subsection (b), the division shall make a reasonable attempt to contact the person claiming the protection as a trade secret to determine if consent to disclose can be obtained.

(d) If consent to disclose cannot be obtained under subsection (c), the division shall inform the person making the request. That person may obtain administrative review under IC 4-21.5 and 312 IAC 3-1 of the status of the document as a trade secret. The person who claims the status of a trade secret shall be named as a respondent in a request for administrative review. (*Natural Resources Commission; 312 IAC 18-6-1; filed Nov 22, 1996, 3:00 p.m.: 20 IR 954; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

*