

Rules and Regulations

Federal Register

Vol. 71, No. 57

Friday, March 24, 2006

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–125–4]

Emerald Ash Borer; Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rules as final rule.

SUMMARY: We are adopting as a final rule, without change, three interim rules regarding emerald ash borer (EAB). The first interim rule established regulations restricting the interstate movement of regulated articles from areas quarantined because of EAB and designated 13 counties in Michigan as quarantined areas. The second and third interim rules amended the regulations by adding areas in Indiana, Michigan, and Ohio to the list of areas quarantined because of EAB. As a result of those actions, the interstate movement of regulated articles from the quarantined areas is restricted. The interim rules were necessary to prevent the artificial spread of EAB from infested areas in the States of Indiana, Michigan, and Ohio into noninfested areas of the United States.

DATES: Effective on March 24, 2006, we are adopting as a final rule the interim rules that became effective on October 8, 2003, December 28, 2004, and February 25, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah McPartlan, Operations Officer, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective on October 8, 2003, and published in the **Federal Register** on October 14, 2003 (68 FR 59082–59091, Docket No. 02–125–1), we amended the Domestic Quarantine Notices in 7 CFR part 301 by adding a new “Subpart—Emerald Ash Borer” (§§ 301.53–1 through 301.53–9, referred to below as the regulations). The regulations designated 13 counties in the southeastern portion of the State of Michigan as quarantined areas because of emerald ash borer (EAB) and restricted the interstate movement of regulated articles from the quarantined areas.

In a second interim rule effective December 28, 2004, and published in the **Federal Register** on January 4, 2005 (70 FR 249–253, Docket No. 02–125–2), we amended the regulations by adding areas in Indiana, Michigan, and Ohio to the list of areas quarantined because of EAB and restricting the interstate movement of regulated articles from the quarantined areas.

In a third interim rule effective February 25, 2005, and published in the **Federal Register** on March 3, 2005 (70 FR 10315–10318, Docket No. 02–125–3), we amended the regulations by adding more areas in Indiana, Michigan, and Ohio to the list of areas quarantined because of EAB and restricting the interstate movement of regulated articles from the quarantined areas.

Comments on each interim rule were required to be received on or before 60 days after the date of its publication in the **Federal Register**. We received two comments by the close of the comment period for the first interim rule. We did not receive any comments on the January 2005 or March 2005 interim rules. The comments that we received regarding the October 2003 interim rule were from a State agricultural agency and a private citizen. Both commenters supported the interim rule. However, one commenter offered several suggestions, which are discussed below.

The commenter suggested that nurseries engaged in the interstate shipment of nursery stock be required to create and maintain for regulatory inspection, for an appropriate number of years, records documenting the following information for each shipment: Origin of stock shipped, destination, date of shipment,

description of stock, and quantity of stock.

The regulations in § 301.53–4 require that, with the exception of articles that originate outside a quarantined area or that are being moved by the U.S. Department of Agriculture, regulated articles being moved interstate from a quarantined area must be accompanied by a certificate or limited permit. In addition, under § 301.53–8, regulated articles must be plainly marked with the names and addresses of the consignor and the consignee, and the certificate or limited permit must be securely attached to the regulated article, the container carrying the regulated article, or the consignee’s copy of the accompanying waybill. We believe that the information generated through compliance with these requirements will provide the specific sorts of information suggested by the commenter.

The commenter suggested that, in light of the practical difficulty of delineating the full extent of EAB infestation in a given locality, as well as the discovery of EAB outside the core areas of infestation in Michigan originally listed in the regulations, the EAB quarantine be expanded beyond the current range to include the entire State of Michigan, possibly excluding the Upper Peninsula.

The regulations in § 301.53–3(a) provide that the Administrator will list as a quarantined area each State or portion of a State in which the EAB has been found by an inspector, in which the Administrator has reason to believe that the EAB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where the EAB has been found. If we and/or our State cooperators identify additional areas that meet any of these criteria for the designation of quarantined areas, we will amend our regulations accordingly.

The commenter also suggested that a “firebreak” across southeastern Michigan, in which all ash trees would be removed along a band at least one-half mile wide, could be of great benefit in preventing the further spread of EAB into Ohio and other noninfested areas of the United States, citing that the benefits of such a firebreak would vastly outweigh the negative impact.

The commenter submitted this suggestion before we published the second and third interim rules establishing quarantined areas for EAB in Indiana and Ohio. Currently, control techniques and detection and delineation efforts are being utilized by APHIS, State, and city cooperators, as well as the U.S. Forest Service, in order to eradicate this pest. The idea of a firebreak has been examined, but we have determined that due to the expanded scope of the infestation in Indiana and Ohio, the quarantined areas are large enough to make a firebreak impractical from cost and management perspectives. We are making no changes in response to this comment.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rules concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act. In addition, this action affirms the information contained in the October 2003 and January 2005 interim rules concerning the Regulatory Flexibility Act.

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

Regulatory Flexibility Act

This rule follows a series of three interim rules regarding EAB. The first interim rule established regulations restricting the interstate movement of regulated articles from areas quarantined because of EAB and designated 13 counties in Michigan as quarantined areas. The second and third interim rules amended the regulations by adding areas in Indiana, Michigan, and Ohio to the list of areas quarantined because of EAB. In the first and second interim rules, published in October 2003 and January 2005, respectively, we addressed the economic effects, including effects on small entities, associated with the establishment of the EAB quarantine and regulations and the designation of all or portions of 26 counties in Indiana, Michigan, and Ohio as quarantined areas. The following analysis examines the economic effects on small entities associated with the March 2005 interim rule's extension of the quarantined areas in 1 county in Indiana, 5 counties in Michigan, and 3 counties in Ohio, and the addition of all or portions of 20 counties in Michigan to the list of areas quarantined because of EAB.

Economic Effects on Small Entities

The Small Business Administration (SBA) has established size criteria based on the North American Industry Classification (NAICS) for determining which economic entities meet the definition of a small firm. The small entity size standard for nursery and tree production (NAICS code 111421) is \$750,000 or less in annual receipts, and \$5 million or less in annual receipts for forest nurseries and gathering of forest products (NAICS code 113210). The small business size standard based upon NAICS codes 113310 (logging operations) and 321113 (sawmills) is 500 or fewer persons employed by the operation.¹ It is estimated that more than 90 percent of nursery operations located in these States are small operations with annual receipts of less than \$750,000 (including nursery operations that sell deciduous shade trees).² It is reasonable to assume that nearly all sawmills and logging operations have 500 or fewer employees, since more than 80 percent of the sawmills located in these States have fewer than 20 employees and each State has an average of 14–15 employees per operation.³

In Indiana, State officials estimate that the interim rule will affect a total of 12 operations. In LaGrange County, two production nurseries and six sawmills are located within quarantined areas. In Steuben County, four sawmills are located within quarantined areas. A nursery operation located within the quarantined area of Steuben County is not a grower of any species of ash, and, therefore, is not affected by the quarantine.

In Ohio, State officials estimate that approximately 2,520 operations are located within the quarantined areas of the 4 counties. Among the operations located within these quarantined counties are approximately 250 nurseries, nursery stock dealers, and landscapers, as well as 50 logging operations, 100 firewood dealers, 10 sawmills, 10 pallet and other wood product manufacturers, and roughly 2,000 woodlot owners.

In Michigan, State officials estimate that there are approximately 7,000 to 8,000 nursery operations located within the State's quarantined areas; however, the rule only affects the ash nursery

stock handled by these operations. In addition, it is estimated that approximately 5,000 to 6,000 sawmills and firewood dealers are located within or near quarantined areas of the State.

Under the regulations, regulated articles may be moved interstate from a quarantined area into or through an area that is not quarantined if they are accompanied by a certificate or limited permit. An inspector or a person operating under a compliance agreement will issue a certificate for interstate movement of a regulated article if certain conditions are met, including that the regulated article is determined to be apparently free of EAB.

Businesses could be affected by the regulations in two ways. First, if a business wishes to move regulated articles interstate from a quarantined area, that business must either: (1) Enter into a compliance agreement with APHIS for the inspection and certification of regulated articles to be moved interstate from the quarantined area; or (2) present its regulated articles for inspection by an inspector and obtain a certificate or a limited permit, issued by the inspector, for the interstate movement of regulated articles. The inspections may be inconvenient, but they should not be costly in most cases, even for businesses operating under a compliance agreement who would perform the inspections themselves. For those businesses that elect not to enter into a compliance agreement, APHIS would provide the services of the inspector without cost. There is also no cost for the compliance agreement, certificate, or limited permit for the interstate movement of regulated articles.

Second, there is a possibility that, upon inspection, a regulated article could be determined by the inspector to be potentially infested with EAB, and, as a result, the article would be ineligible for interstate movement under a certificate. In such a case, the entity's ability to move regulated articles interstate would be restricted. However, the affected entity could conceivably obtain a limited permit under the conditions of § 301.53–5(b).

Our experience with administering the EAB regulations and the regulations for other pests, such as the Asian longhorned beetle, that impose essentially the same conditions on the interstate movement of regulated articles lead us to believe that any economic effects on affected small entities will be small and are outweighed by the benefits associated with preventing the spread of EAB into noninfested areas of the United States.

¹ Based upon 2002 Census of Agriculture—State data and the “Small Business Size Standards by NAICS Industry,” Code of Federal Regulations, Title 13, Chapter I.

² “Nursery Crops: 2003 Summary” National Agricultural Statistics Service, USDA July 2004.

³ “2002 Economic Census: Manufacturing” U.S. Census Bureau, July 2005 (Indiana, Michigan, and Ohio geographical reports).

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule establishing “Subpart—Emerald Ash Borer” (§§ 301.53–1 through 301.53–9) that was published at 68 FR 59082–59091 on October 14, 2003, as amended by the interim rules published at 70 FR 249–253 on January 4, 2005, and 70 FR 10315–10318 on March 3, 2005.

Done in Washington, DC, this 20th day of March 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–2865 Filed 3–23–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–23271; Airspace Docket No. 05–AWP–15]

RIN 2120–AA66

Establishment of Class E Enroute Domestic Airspace Area, Vandenberg AFB, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments; correction.

SUMMARY: This action corrects the heading of the legal description and changes the effective date of a direct final rule published in the **Federal Register** on March 7, 2006 (71 FR 11297), Airspace Docket No. 05–AWP–15. In that rule, the heading of the legal description reads “Lompoc, CA, Vandenberg AFB [Established]” and will change to “AWP CA E6 Lompoc, CA [New]”. Also the effective date was inadvertently published as July 6, 2006. This action changes the effective date to June 8, 2006.

DATES: *Effective Date:* 0901 UTC [March 24, 2006.]

FOR FURTHER INFORMATION CONTACT: Francie Hope, Western Terminal Operations Airspace Specialist, AWP–520.3, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6502.

SUPPLEMENTARY INFORMATION:

History

On March 7, 2006, a direct final rule was published in the **Federal Register** (71 FR 11297), Airspace Docket No. 05–AWP–15. This rule established a Class E enroute domestic airspace area, Vandenberg AFB, CA, to replace existing Class G uncontrolled airspace. In that rule, the heading of the legal description reads “Lompoc, CA, Vandenberg AFB [Established]” and will change to “AWP CA E6 Lompoc, CA [New]”. Also the effective date was inadvertently published as July 6, 2006. This action changes the effective date to June 8, 2006.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the heading of the legal description for Airspace Docket No. 05–AWP–15, as published in the **Federal Register** on March 7, 2006 (71 FR 11297), is hereby changed to “AWP CA E6 Lompoc, CA [New]”, and the effective date is changed from July 6, 2006, to June 8, 2006.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Los Angeles, California, on March 14, 2006.

Leonard A. Mobley,

Manager, Airspace Branch AWP–520, Western Terminal Operations.

[FR Doc. 06–2879 Filed 3–23–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–23184; Airspace Docket No. 05–AWP–14]

Modification of Class E Airspace; Palm Springs, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace area at Palm Springs, CA. The establishment of an Area Navigation (RNAV) Required Navigation Performance (RNP) Y Instrument Approach Procedures (IAP) to Runway

(RWY) 13R and 31L to Palm Springs International Airport, Palm Springs, CA has made this action necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this RNAV (RNP) Y IAP RWY 13R to Palm Springs International Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules operations at Palm Springs International Airport, Palm Springs, CA.

EFFECTIVE DATE: 0901 UTC June 8, 2006.

FOR FURTHER INFORMATION CONTACT: The Office of the Regional Western Terminal Operations, Federal Aviation Administration, at 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

History

On January 6, 2006, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Palm Springs, CA (06 FR 889). Additional controlled airspace extending upward from 700 feet or more above the surface is needed to contain aircraft executing the RNAV (RNP) Y IAP RWY 13R to Palm Springs International Airport. This action will provide adequate controlled airspace for aircraft executing the RNAV (RNP) Y IAP RWY 13R to Palm Springs International Airport, Palm Springs, CA.

Interested parties were invited to participate in this rulemaking, proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9N, dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace area at Palm Springs, CA. The establishment of a RNAV (RNP) Y IAP RWY 13R to Palm Springs International Airport has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the RNAV (RNP) Y IAP RWY 13R to Palm Springs International Airport, Palm Springs, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which