

**§ 689.9 Dispositions**

(c) \* \* \*

(1) In cases in which debarment is considered by OIG to be an appropriate disposition, the case will be referred to the debarment official pursuant to 2 CFR part 180 and the procedures of 2 CFR part 180 will be followed, but:

\* \* \* \* \*

**Lawrence Rudolph,***General Counsel.*

[FR Doc. E7-1419 Filed 2-1-07; 8:45 am]

BILLING CODE 7555-01-P

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****7 CFR Part 301**

[Docket No. APHIS-2006-0131]

**Emerald Ash Borer; Quarantined Areas; MI****AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the emerald ash borer regulations by adding areas in Michigan to the list of areas quarantined because of emerald ash borer. As a result of that action, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of the emerald ash borer from infested areas in the State of Michigan into noninfested areas of the United States.

**DATES:** Effective on February 2, 2007, we are adopting as a final rule the interim rule published at 71 FR 57871-57873 on October 2, 2006.

**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**

The emerald ash borer (EAB) (*Agrilus planipennis*) is a destructive wood-boring insect that attacks ash trees (*Fraxinus* spp., including green ash, white ash, black ash, and several horticultural varieties of ash). The insect, which is indigenous to Asia and known to occur in China, Korea, Japan, Mongolia, the Russian Far East, Taiwan, and Canada, eventually kills healthy ash

trees after it bores beneath their bark and disrupts their vascular tissues.

The EAB regulations in 7 CFR 301.53-1 through 301.53-9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of EAB to noninfested areas of the United States. Portions of the States of Indiana, Michigan, and Ohio are already designated as quarantined areas.

In an interim rule<sup>1</sup> effective September 25, 2006, and published in the **Federal Register** on October 2, 2006 (71 FR 57871-57873, Docket No. APHIS-2006-0131), we amended the EAB regulations in § 301.53-3(c) by designating the entire Lower Peninsula of Michigan as a quarantined area. That action was necessary to prevent the artificial spread of the EAB from infested areas in the State of Michigan into noninfested areas of the United States.

Comments on the interim rule were required to be received on or before December 1, 2006. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

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

**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 that amended 7 CFR part 301 and that was published at 71 FR 57871-57873 on October 2, 2006.

Done in Washington, DC, this 29th day of January 2007.

**Kevin Shea,***Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E7-1720 Filed 2-1-07; 8:45 am]

BILLING CODE 3410-34-P

<sup>1</sup>To view the interim rule, go to <http://www.regulations.gov>, click on the "Advanced Search" tab, and select "Docket Search." In the Docket ID field, enter APHIS-2006-0131, then click "Submit." Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

**NUCLEAR REGULATORY COMMISSION****10 CFR Part 73**

RIN A104

**Relief From Fingerprinting and Criminal History Records Checks****AGENCY:** Nuclear Regulatory Commission.**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC or Commission) is issuing new regulations to relieve certain categories of individuals from the requirement to undergo fingerprinting, identification, and criminal history records checks under section 149 of the Atomic Energy Act of 1954, as amended, (AEA) before being permitted unescorted access to radioactive materials or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant such checks.

**DATES:** This final rule is effective on February 2, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Jared K. Heck, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-1623, e-mail [jkh3@nrc.gov](mailto:jkh3@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Need for Rule
- III. Analysis of Rule
- IV. Basis for Immediate Effectiveness and Dispensing With Notice and Comment
- V. Voluntary Consensus Standards
- VI. Finding of No Significant Impact: Availability
- VII. Paperwork Reduction Act Statement
- VIII. Regulatory Analysis
- IX. Backfit Analysis
- X. Congressional Review Act

**I. Background**

On August 8, 2005, Congress enacted legislation that authorized the Commission to impose new requirements governing unescorted access to certain radioactive material and other property subject to regulation by the Commission. Specifically, section 652 of the Energy Policy Act of 2005, Pub. L. 109-58, which amended AEA section 149, requires the Commission to ensure that "any individual" who is permitted unescorted access to "radioactive material or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and

security as to warrant fingerprinting and background checks” be fingerprinted “for identification and a criminal history records check” by the Attorney General. Previously, AEA section 149 only required fingerprinting and criminal history records checks of individuals permitted unescorted access to a “utilization facility.”

On October 17, 2006, the NRC issued a series of Orders to certain radioactive materials licensees that implemented in part the provisions of the amended AEA section 149.<sup>1</sup> Those Orders applied to large panoramic irradiator licensees, manufacturers and distributors of radioactive material, and certain other licensees who ship radioactive material in quantities of concern. As stated in the Orders, those licensees possess material the NRC has determined to be of such significance to the public health and safety and the common defense and security that fingerprinting, identification, and criminal history records checks of individuals permitted unescorted access to that material is warranted.

Under AEA section 149.b., the NRC may by rule relieve individuals from the fingerprinting, identification and criminal history records check requirements imposed by the Orders if it finds that such action is “consistent with its obligations to promote the common defense and security and to protect the health and safety of the public.” Currently, the NRC has no rule that would relieve individuals who are permitted unescorted access to the radioactive materials described in the Orders from the subject requirements of AEA section 149.a. This final rule will provide that relief for certain categories of individuals to whom licensees may wish to permit unescorted access.

This final rule does not authorize unescorted access to any radioactive materials or other property subject to regulation by the Commission. Rather, the rule makes clear that a licensee may permit unescorted access to certain categories of individuals otherwise qualified for access without first obtaining fingerprints or performing an identification and criminal history check. Licensees must decide whether to grant or deny an individual

unescorted access independently of this final rule according to other NRC requirements governing unescorted access.<sup>2</sup>

This final rule supersedes in part the Orders previously described. Condition III.B. of those Orders states in part that “[f]ingerprinting and the FBI identification and criminal history records check are not required for individuals that are exempted from fingerprinting requirements under 10 CFR 73.59 [71 FR 33,989 (June 13, 2006)] for access to [Safeguards Information].” That passage of Condition III.B. is ineffective because under AEA section 149.b., such relief can only be provided by rule. Accordingly, the quoted passage in Condition III.B. is hereby rescinded for good cause.<sup>3</sup> The remaining language in Condition III.B. of the Orders remains effective.

## II. Need for Rule

The individuals relieved from fingerprinting, identification, and criminal history checks under this final rule include Federal, State, and local officials involved in security planning and incident response, Agreement State employees who evaluate licensee compliance with security-related orders, and other government officials who may need unescorted access to radioactive materials or other property subject to regulation by the Commission as part of their oversight function. The categories of individuals relieved by this final rule are the same as those previously relieved in an earlier rulemaking from fingerprinting and criminal history records check requirements applicable to Safeguards Information access.<sup>4</sup> As

<sup>2</sup> See, e.g., *In the Matter of All Panoramic and Underwater Irradiators Authorized to Possess Greater than 370 TerraBecquerels (10,000 Curies) of Byproduct Material in the Form of Sealed Sources; Order Imposing Compensatory Measures (Effective Immediately)*, 68 FR 35458 (June 13, 2003); *In the Matter of all Licensees Authorized to Manufacture or Initially Transfer Items Containing Radioactive Material for Sale or Distribution and Possess Certain Radioactive Material of Concern and All Other Persons Who Obtain Safeguards Information Described Herein; Order Imposing Additional Security Measures (Effective Immediately)*, 69 FR 5375 (February 4, 2004). These Orders imposed limitations on unescorted access to certain radioactive materials. The particulars of the access limitations imposed by the Orders are Safeguards Information and are not publicly available.

<sup>3</sup> The NRC Orders issued on October 17, 2006, provide that the Director of the Office of Federal and State Materials and Environmental Management Programs may rescind any condition of the Orders for good cause. Under NRC rules at 10 CFR 1.32(c), the Executive Director for Operations, who has been delegated authority to issue this final rule on behalf of the Commission, may exercise the same authority.

<sup>4</sup> See *Final Rule*, “Relief from Fingerprinting and Criminal History Records Check for Designated

was the case in that earlier rulemaking, relief is needed in this context to ensure that a range of inspection, enforcement, planning, oversight, and response functions related to the security of nuclear materials continues uninterrupted during routine and emergency conditions. Accordingly, this final rule is consistent with the Commission’s obligations to promote the common defense and security and to protect the health and safety of the public.

## III. Analysis of Rule

This final rule provides relief from the fingerprinting and criminal history records check requirements set forth in AEA section 149 for the following categories of individuals:

(1) An employee of the Commission or of the Executive Branch of the U.S. Government who has undergone fingerprinting for a prior U.S. Government criminal history check;

(2) A member of Congress;

(3) An employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. Government criminal history check;

(4) The Governor of a State or his or her designated State employee representative;

(5) Federal, State, or local law enforcement personnel;

(6) State Radiation Control Program Directors and State Homeland Security Advisors or their designated State employee representatives;

(7) Agreement State employees conducting security inspections on behalf of the NRC pursuant to an agreement executed under section 274.i. of the AEA;

(8) Representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC.

The individuals described above are considered trustworthy and reliable by virtue of their occupational status and have either already undergone a background or criminal history check as a condition of their employment, or are subject to direct oversight by government authorities in their day-to-day job functions. Under this final rule, if an individual in one of the categories described above needs unescorted access to radioactive material or other property subject to regulation by the Commission to perform a job function, and the Commission has determined

<sup>1</sup> See *In the Matter of Holders of Materials Licenses Authorized to Use Sealed Sources in Panoramic and Underwater Irradiators and Possess Greater Than 370 Terabecquerels (10,000 Curies)*, Order EA-06-248 (October 17, 2006); *In the Matter of Certain Licensees Authorized to Possess and Transfer Items Containing Radioactive Material Quantities of Concern*, Order EA-06-249 (October 17, 2006); *In the Matter of Holders of Materials Licenses Authorized to Manufacture or Distribute Items Containing Radioactive Material of Concern*, Order EA-06-250 (October 17, 2006).

Categories of Individuals,” 71 FR 33989 (June 13, 2006).

that the material or property in question is of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks, then the individual may be permitted unescorted access without being fingerprinted or undergoing an identification and criminal history records check, provided the individual is otherwise qualified for unescorted access under other NRC regulations and orders.

#### **IV. Basis for Immediate Effectiveness and Dispensing With Notice and Comment**

Generally, the NRC issues final rules using the public notice and comment procedures set forth in the Administrative Procedure Act (APA). But under 5 U.S.C. 553, the NRC may dispense with those procedures where it finds for "good cause" that public procedures are "impracticable, unnecessary, or contrary to the public interest." In this case, notice-and-comment procedures are not required because the usual public rulemaking procedures are impracticable.

The individuals described in Section II of this document may under some circumstances need unescorted access to radioactive materials to ensure that a range of inspection, enforcement, planning, oversight, and response functions related to the security of nuclear materials continues uninterrupted during routine and emergency conditions. The only way to ensure that government personnel may be permitted unescorted access to radioactive materials or other property subject to regulation by the Commission without first subjecting them to unnecessary fingerprinting and criminal history records checks is to issue a final rule relieving those individuals from such checks. Delaying issuance of the final rule until after notice and comment would interfere with the ability of licensees to provide unescorted access to trustworthy and reliable government officials who may need it to perform their job functions in the interim. Therefore, under 5 U.S.C. 553, good cause exists to dispense with notice and comment procedures.

The Commission plans to publish a more comprehensive proposed rule governing requirements for unescorted access to radioactive materials and other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks. At that time, the public will be

able to comment on whether any additional categories of individuals should be relieved from the fingerprinting and criminal history check requirements of AEA section 149.

Finally, this rule is immediately effective upon publication in accordance with 5 U.S.C. 553(d)(1) because it is a substantive rule which grants an exemption or relieves a restriction. Specifically, the rule relieves certain individuals from the fingerprinting and criminal history records check requirements of AEA section 149.

#### **V. Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is granting relief from criminal history checks, including fingerprinting, for access to certain radioactive material and other property subject to regulation by the Commission by persons in certain occupational categories. This action does not involve the establishment of a standard that contains generally applicable requirements.

#### **VI. Finding of No Significant Impact: Availability**

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, that this final rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. As permitted by section 149.b. of the AEA, as amended, this rulemaking relieves individuals in certain occupational categories from the criminal history records check and fingerprinting requirements imposed by the Energy Policy Act of 2005. The final rule does not require individuals to take action that would have an environmental impact. A copy of the environmental assessment supporting this finding is available at <http://www.nrc.gov/reading-rm/pdr.html>.

#### **VII. Paperwork Reduction Act Statement**

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### **VIII. Regulatory Analysis**

A regulatory analysis has not been prepared for this regulation because it relieves restrictions and does not impose regulatory burdens on licensees.

#### **IX. Backfit Analysis**

No backfit analysis is required because the final rule does not modify or add to systems, structures, components, or the design of a facility, or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility. Therefore, the final rule does not impose a backfit as defined in 10 CFR 50.109(a)(1).

#### **X. Congressional Review Act**

This final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0002.

#### **Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

#### **List of Subjects in 10 CFR Part 73**

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

■ For the reasons stated in the preamble, and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Energy Policy Act of 2005, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 73.

#### **PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS**

■ 1. The authority citation for part 73 is revised to read as follows:

**Authority:** Secs. 53, 161, 149, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2169, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy

Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

■ 2. A new § 73.61 is added before the undesignated center heading “Physical Protection of Special Nuclear Material of Moderate and Low Strategic Significance,” to read as follows:

**§ 73.61. Relief from fingerprinting and criminal history records check for designated categories of individuals permitted unescorted access to certain radioactive materials or other property.**

Notwithstanding any other provision of the Commission’s regulations, fingerprinting and the identification and criminal history records checks required by section 149 of the Atomic Energy Act of 1954, as amended, are not required for the following individuals prior to granting unescorted access to radioactive materials or other property that the Commission determines by regulation or order to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks:

- (a) An employee of the Commission or of the Executive Branch of the U.S. Government who has undergone fingerprinting for a prior U.S. Government criminal history check;
- (b) A Member of Congress;
- (c) An employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. Government criminal history check;
- (d) The Governor of a State or his or her designated State employee representative;
- (e) Federal, State, or local law enforcement personnel;
- (f) State Radiation Control Program Directors and State Homeland Security Advisors or their designated State employee representatives;
- (g) Agreement State employees conducting security inspections on behalf of the NRC pursuant to an agreement executed under section 274.i. of the Atomic Energy Act;
- (h) Representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC.

Dated at Rockville, Maryland, this 22nd day of January, 2007.

For the Nuclear Regulatory Commission.

**Luis A. Reyes,**

*Executive Director for Operations.*

[FR Doc. E7–1730 Filed 2–1–07; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA–2007–27009; Directorate Identifier 2007–NE–02–AD; Amendment 39–14925; AD 2007–03–14]**

**RIN 2120–AA64**

#### **Airworthiness Directives; Turbomeca Arriel 2B1 Turboshaft Engines**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

This AD is prompted by several reported cases of rupture of the (hydro-mechanical metering unit (HMU)) constant delta pressure valve diaphragm on Arriel 2B1 engines, due to the wear of the delta P diaphragm fabric. Rupture can result in the loss of the automatic control mode of the helicopter, accompanied with a deterioration of the behavior of the auxiliary back-up mode (emergency mode).

The loss of automatic control mode coupled with the deteriorated performance of the backup mode can lead to the inability to continue safe flight, forced autorotation landing, or an accident. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** This AD becomes effective February 20, 2007.

We must receive comments on this AD by March 5, 2007.

**ADDRESSES:** You may send comments by any of the following methods:

- *DOT Docket Web Site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building,

Room PL–401, Washington, DC 20590–0001.

• *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

#### FOR FURTHER INFORMATION CONTACT:

Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7175, fax (781) 238–7199; e-mail: [christopher.spinney@faa.gov](mailto:christopher.spinney@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

#### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued Airworthiness Directive No. 2007–0006, dated January 9, 2007 (referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states that: