

# Rules and Regulations

Federal Register

Vol. 75, No. 135

Thursday, July 15, 2010

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. APHIS–2010–0037]

#### South American Cactus Moth Regulations; Quarantined Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the South American cactus moth regulations by adding the State of Louisiana to the list of areas quarantined because of South American cactus moth. As a result of this action, the interstate movement of regulated articles from Louisiana is restricted. This action is necessary to prevent the artificial spread of the South American cactus moth from infested areas in the State of Louisiana into noninfested areas of the United States.

**DATES:** This interim rule is effective July 15, 2010. We will consider all comments that we receive on or before September 13, 2010.

**ADDRESSES:** You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (<http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0037>) to submit or view comments and to view supporting and related materials available electronically.

- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS–2010–0037, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0037.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

**Other Information:** Additional information about APHIS and its programs is available on the Internet at (<http://www.aphis.usda.gov>).

**FOR FURTHER INFORMATION CONTACT:** Dr. Robyn Rose, South American Cactus Moth National Program Manager, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737–1236; (301) 734–7121.

#### SUPPLEMENTARY INFORMATION:

##### Background

The South American cactus moth (*Cactoblastis cactorum*) is a grayish-brown moth with a wingspan of 22 to 35 millimeters (approximately 0.86 to 1.4 inches) that is indigenous to Argentina, southern Brazil, Paraguay, and Uruguay. It is a serious quarantine pest of *Opuntia* spp., and an occasional pest of *Nopalea* spp., *Cylindropuntia* spp., and *Consolea* spp., four closely related genera of the family *Cactaceae*. After an incubation period following mating, the female South American cactus moth deposits an egg stick resembling a cactus spine on the host plant. The egg stick, which consists of 70 to 90 eggs, hatches in 25 to 30 days and the larvae bore into the cactus pad to feed, eventually hollowing it out and killing the plant. Within a short period of time, the South American cactus moth can destroy whole stands of cactus.

The South American cactus regulations in 7 CFR 301.55 through 301.55–9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of South American cactus moth to noninfested areas of the United States. The States of Alabama, Florida, Georgia, Mississippi, and South Carolina have already been designated as quarantined areas.

The regulations in § 301.55–3(a) provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, where South American cactus moth has been found by an inspector, where the Administrator has reason to believe that South American cactus moth is present, or where the Administrator considers regulation necessary because of its inseparability for quarantine enforcement purposes from localities where South American cactus moth has been found.

In addition, the regulations in § 301.55–3(b) provide that the Administrator or inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria in § 301.55–3(a) and will provide written notice to the owner, person in possession, or person responsible for the management of the land to be designated. As soon as practicable, the area will be added to the list of quarantined areas in § 301.55–3(c) or the designation will be terminated by the Administrator or by an inspector.

In accordance with these criteria and the recent South American cactus moth findings, we are amending § 301.55–3(c) to add the State of Louisiana to the list of quarantined areas.

##### Emergency Action

This rulemaking is necessary on an emergency basis to help prevent the spread of South American cactus moth to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

##### Executive Order 12866 and Regulatory Flexibility Act

This proposed rule is subject to Executive Order 12866. However, for this action, the Office of Management

and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

South American cactus moth is a pest that attacks primarily prickly pear cacti in arid and coastal areas. In the continental United States, the South American cactus moth has been found in Florida, Georgia, South Carolina, Alabama, and Mississippi. It has also been found in Hawaii, Puerto Rico, and the U.S. Virgin Islands, as well as more than 30 foreign countries. The pest attacks various cactus genera. The species that are most threatened in the United States belong to the genus *Opuntia*, also known as the prickly pear cactus.

*Opuntia* cactus is valued as an ornamental plant material for landscaping projects and as a food crop. Other uses are as emergency forage for cattle during periods of drought and as wildlife feed for game animals. This rule amends the regulations by adding the State of Louisiana to the list of quarantined areas. The regulations restrict the interstate movement of host material from quarantined areas to non-quarantined areas to prevent the artificial spread of this pest. However, there are currently no nurseries in Louisiana known to propagate *Opuntia* or other host genera of *C. cactorum* for retail sale or interstate shipment. Therefore, there are no small-entity nurseries in Louisiana that will be affected by this interim rule.

Inclusion of Louisiana in the *C. cactorum* quarantine is important in preventing the further expansion of this pest to Texas and other Western States and to Mexico, where *Opuntia* species are environmentally and economically significant.

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.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are

inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

This interim rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 7 CFR Part 301

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

■ Accordingly, we are amending 7 CFR part 301 as follows:

#### PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

#### § 301.55–3 [Amended]

■ 2. In § 301.55–3, paragraph (c) is amended by adding the word “Louisiana,” after the word “Georgia.” Done in Washington, DC, this 9<sup>th</sup> day of July 2010.

**Kevin Shea**

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

[FR Doc. 2010–17276 Filed 7–14–10; 10:29 am]

**BILLING CODE:** 3410–34–S

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2009–1105; Airspace Docket No. 09–ANM–23]

#### Amendment of Class D and E Airspace; Everett, WA

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

**ACTION:** Final rule.

**SUMMARY:** This action will amend Class D and E airspace at Snohomish County Airport (Paine Field), Everett, WA, by updating the geographic coordinates of the airport, and removes the operating

hours established by a Notice to Airmen (NOTAM) for the Class E surface area airspace. This action enhances the safety and management of Instrument Flight Rules (IFR) operations at Snohomish County Airport (Paine Field).

**DATES:** Effective date: 0901 UTC, September 23, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA, 98057; telephone (425) 203–4537.

#### SUPPLEMENTARY INFORMATION:

##### History

On February 4, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class D and E airspace at Everett, WA (75 FR 5702). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Subsequent to publication, the FAA found that the operating hours for the Class D airspace had not changed and, therefore, will continue the operating hours to be effective during the specific dates and times established in advance by NOTAM.

With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

Class D and Class E airspace designations are published in paragraph 5000 and 6002, respectively, of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in that Order.

##### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class D airspace, updating the geographic coordinates for Snohomish County Airport (Paine Field), Everett, WA, and continues the operating hours to be effective during specific dates and times established in advance by NOTAM. The Class E surface area airspace at Snohomish County Airport (Paine Field) will be continuous 24 hours, and no longer effective during specific dates and times established in