

# Proposed Rules

Federal Register

Vol. 75, No. 184

Thursday, September 23, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS-2007-0117]

RIN 0579-AC90

#### Importation of Wooden Handicrafts from China

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

**ACTION:** Proposed rule; supplemental.

**SUMMARY:** We are proposing a change related to our proposed rule published in the **Federal Register** on April 9, 2009, that would amend the regulations to provide for the importation of wooden handicrafts from China under certain conditions. One of those conditions would have required that, unless the handicrafts are under 6 inches in diameter and treated with methyl bromide, they must be treated with heat treatment or heat treatment with moisture reduction that raises the temperature at the center of the handicraft to at least 71.1 °C and maintains the handicraft at that center temperature for at least 75 minutes. Based on a recently published article, in this supplemental proposed rule we are proposing measures that would modify this requirement to a temperature at the center of at least 60 °C for a duration of at least 60 minutes.

**DATES:** We will consider all comments that we receive on or before November 22, 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-2007-0117>) 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-2007-0117,

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-2007-0117.

**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:** Mr. John Tyrone Jones, Trade Director (Forestry Products), Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1231; (301) 734-8860.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in “Subpart-Logs, Lumber, and Other Unmanufactured Wood Articles” (7 CFR 319.40-1 through 319.40-11, referred to below as the regulations) govern the importation of various logs, lumber, and other unmanufactured wood products into the United States. Under § 319.40-9 of the regulations, all regulated articles must be inspected at the port of first arrival. If a regulated article shows any signs of pest infestation, the inspector may require treatment, if an approved treatment exists, or refuse entry of the consignment.

Prior to 2005, wood decorative items and craft products (wooden handicrafts) from China had been entering the United States in increasing quantities. However, between 2002 and 2005, the Animal and Plant Health Inspection Service (APHIS) issued more than 300 emergency action notices for wooden handicrafts from China, including artificial trees manufactured from a composite of natural and synthetic materials, garden trellis towers, home and garden wood décor, and craft items. Moreover, in 2004, the United States Department of Agriculture (USDA) intercepted live wood boring beetles,

*Callidiellum villosulum* (Coleoptera: Cerambycidae), on artificial trees manufactured from wood components and on other craft products imported from China. Subsequent to these interceptions, shipments of the articles were recalled from retail stores. Based on these pest interceptions, in 2005, we suspended the importation of most wooden handicrafts (i.e., all handicrafts made from wooden logs, limbs, branches, or twigs greater than 1 centimeter in diameter) from China until a more thorough evaluation of the pest risks associated with those articles could be conducted.

APHIS prepared a pest risk assessment, titled “Pests and mitigations for manufactured wood décor and craft products from China for importation into the United States,” to evaluate the risks associated with the importation of such wooden handicrafts into the United States from China. We also prepared a risk management document, titled “Pests and mitigations for manufactured wood décor and craft products from China for importation into the United States,” to determine mitigations necessary to prevent pest entry, introduction, or establishment associated with imported wooden handicrafts from China. Based on the conclusions in the pest risk assessment and the accompanying risk management document, we determined that wooden handicrafts could be imported from China provided they met certain requirements for treatment, issuance of a phytosanitary certificate, inspection, and box identification.

Accordingly, on April 9, 2009, we published in the **Federal Register** (74 FR 16146-16151, Docket No. APHIS-2007-0117) a proposal<sup>1</sup> to authorize the importation of wooden handicrafts from China under those conditions. We solicited comments concerning the proposed rule for 60 days ending June 8, 2009. We received eight comments by that date. They were from the national plant protection organization (NPPO) of China, a State department of agriculture, manufacturers of Chinese wooden handicrafts, a public advocacy organization, and private citizens.

One of the commenters urged us to finalize the proposed rule without

<sup>1</sup> To view the proposed rule, supporting documents, or the comments we received, go to (<http://www.regulations.gov/search/Regs/home.html#docketDetail?R=APHIS-2007-0117>).

change. The remaining commenters provided comments on the rule in general, and requested modifications to certain of its provisions.

One commenter disagreed with our proposed requirement that would have required that, unless the wooden handicraft is 6 inches or less and treated with methyl bromide, it must be treated with heat treatment in accordance with § 319.40-7(c) or heat treatment with moisture reduction in accordance with § 319.40-7(d). At the time our proposed rule was published, paragraph (c) of § 319.40-7 provided that, if heat treatment is required for a regulated article, any heat treatment procedure may be employed that raises the temperature at the center of the regulated article to at least 71.1 °C and maintains the regulated article at that center temperature for at least 75 minutes. Similarly, paragraph (d) provided that, if heat treatment with moisture reduction is required for a regulated article, unless the article is treated with kiln drying conducted in accordance with the schedules prescribed for the article in the Dry Kin Operator's Manual, Agriculture Handbook 188, it must be treated with a method that raises the temperature at the center of the article to at least 71.1 °C and maintains the regulated article at that center temperature for at least 75 minutes.

The commenter stated that the two paragraphs require regulated articles to be treated at a significantly higher temperature and for a longer duration than the temperature and duration recommended by International Standard for Phytosanitary Measures (ISPM) 15, which recommends that wood packaging material (WPM) be treated according to a heat treatment schedule that raises the temperature at the center of the WPM to at least 56 °C and maintains the WPM at that center temperature for at least 30 minutes.<sup>2</sup> The commenter suggested that we should modify the proposed heat treatment requirement for Chinese wooden handicrafts to make it consistent with ISPM 15.

Because the composition of WPM often differs from that of wooden handicrafts—for example, WPM is almost always debarked, while wooden handicrafts often are not—the plant pest risks associated with these classes of articles also often differ, and we therefore determined that we could not summarily modify the heat treatment

requirement in the manner suggested by the commenter. Rather, we reexamined the findings of the pest risk assessment that accompanied the proposed rule to determine whether treatment in accordance with ISPM 15 would neutralize the pests of greatest concern identified in the pest risk assessment as likely to follow the pathway on imported wooden handicrafts from China.

These pests were wood-boring beetles in the families Buprestidae, Cerambycidae, and Scolytidae. Based on a review of the relevant scientific literature and on efficacy studies conducted by the Center for Plant Health Science and Technology of APHIS' Plant Protection and Quarantine division, we determined that heat treatment of Chinese wooden handicrafts at the temperature and duration recommended by ISPM 15 would be effective in neutralizing all pests in these families except Emerald Ash Borer (EAB). EAB is an extremely destructive pest; the mortality rate for infested trees is 100 percent, and EAB has already killed more than 20 million ash trees in the United States since it was first discovered in Michigan in the summer of 2002. It was therefore our intent to retain the heat treatment requirements of the proposed rule in issuing a follow-up regulatory action.

However, in the December 2009 issue of *Journal of Economic Entomology*, an article titled "Evaluation of Heat Treatment Schedules for Emerald Ash Borer (Coleoptera: Buprestidae)" documents four recent independent experiments to determine the minimum core temperature and time duration necessary to neutralize EAB on firewood via heat treatment or heat treatment with moisture reduction. As part of the experiments, researchers obtained ash wood from trees showing visible signs of EAB infestation, split the wood, and stored it. They then heat-treated the articles in laboratory facilities (a drying oven and an environmental chamber) at temperatures and durations ranging from 45 to 65 °C and 15 to 60 minutes, respectively.

The experiments suggested that "a minimum heat treatment of 60 °C for 60 minutes... would provide >99.9% control (for EAB) based on probit estimates."<sup>3</sup>

Based on this article, we have reason to believe that heat treatment or heat treatment with moisture reduction methods that raise the center of wooden

handicrafts from China to at least 60 °C and maintain the handicrafts at that center temperature for at least 60 minutes will neutralize all the pests of greatest concern identified in the pest risk assessment as likely to follow the pathway on imported Chinese wooden handicrafts.

On January 26, 2010, we published in the **Federal Register** a final rule (75 FR 4228-4253, Docket No. APHIS-2008-0022) that, among other things, removed all treatment schedules found in 7 CFR chapter III, including those in § 319.40-7(c) and (d). It replaced all such schedules with a reference to 7 CFR part 305, which contains our regulations governing phytosanitary treatments. Finally, it amended 7 CFR part 305 itself to state that all approved treatment schedules for regulated articles are now found, not in the regulations, but in the PPQ Treatment Manual, and to establish a process for adding new treatment schedules for regulated articles to the Treatment Manual.<sup>4</sup>

Under this process, when we are proposing to add a new treatment schedule to the Treatment Manual, we will publish a notice in the **Federal Register** describing the reasons we have determined that it is necessary to add the treatment schedule to the manual and providing for a public comment period on the new treatment schedule. If we prepare documentation to support the proposed change to the Treatment Manual, we will also announce its availability via this notice.

Consistent with this process, we have prepared a treatment evaluation document (TED) to accompany this proposed rule. The TED provides information regarding why the findings of the December 2009 article, which pertain to firewood, also apply to Chinese wooden handicrafts, and why we believe that heat treatment methods that raise the center of the wooden handicrafts to at least 60 °C and maintain the handicrafts at that center temperature for at least 60 minutes will neutralize all the pests of greatest concern likely to follow the pathway on those handicrafts. The TED is available from the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for a link to Regulations.gov).

In our proposed rule, proposed paragraph (o)(1)(i) of § 319.40-5 would have required that wooden handicrafts from China be treated with heat

<sup>2</sup> To view ISPM 15, go to: ([https://www.ippc.int/index.php?id=13399&tx\\_publication\\_pi1\[showUId\]=133703&frompage=13399&type=publication&subtype=&L=0#item](https://www.ippc.int/index.php?id=13399&tx_publication_pi1[showUId]=133703&frompage=13399&type=publication&subtype=&L=0#item)).

<sup>3</sup> Myers, Scott, Ivich Fraser, and Victor Mastro, "Evaluation of Heat Treatment Schedules for Emerald Ash Borer (Coleoptera: Buprestidae)", *Journal of Economic Entomology*, 102:6 (December 2009), 2048-2055.

<sup>4</sup> The Treatment Manual is available on the Internet at ([http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/treatment.shtml](http://www.aphis.usda.gov/import_export/plants/manuals/ports/treatment.shtml)).

treatment in accordance with § 319.40-7(c) or with heat treatment with moisture reduction in accordance with § 319.40-7(d). However, as we mentioned above, these paragraphs no longer contain heat treatment schedules; all approved schedules now are listed only in the PPQ Treatment Manual. Accordingly, under this supplemental proposal, paragraph (o)(1)(i) would now require that wooden handicrafts be treated with heat treatment or heat treatment with moisture reduction as specified in the PPQ Treatment Manual, in accordance with 7 CFR part 305. If we finalize our April 2009 proposed rule and this supplemental proposal, we would add heat treatment that raises the center of Chinese wooden handicrafts to at least 60 °C and maintains the handicrafts at that center temperature for at least 60 minutes to the PPQ Treatment Manual as an approved treatment for these handicrafts, and modified paragraph (o)(1)(i) would require such a treatment.

#### Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

This action supplements a proposed rule published in the **Federal Register** on April 9, 2009. We prepared an initial regulatory flexibility analysis for the proposed rule that considered the potential effects of the rule on small entities. The analysis identified individuals engaged in wood product manufacturing, importing of the regulated articles, or furniture and related products manufacturing as the entities most likely to be affected by the proposed rule.

The analysis took into consideration that the cost of treating Chinese handicrafts could be passed on to certain of these entities. However, it also noted that China already has in place the heat treatment facilities necessary to conduct treatment, and expected that, because of this, any increase in prices due to individual treatments would not be significant.

In assessing the possible cost of heat treatment, we determined that, because China already has heat treatment facilities at their disposal, a range of treatment schedules and durations would cost approximately the same amount per treatment, and would accordingly result in the same cost pass-through. The treatment schedule that we would authorize in this supplemental proposal—one that raises the center of Chinese wooden handicrafts to at least

60 °C and maintains the handicrafts at that center temperature for at least 60 minutes—falls within this range.

Therefore, we believe that the findings of the initial regulatory flexibility analysis prepared for the proposed rule are still accurate and appropriate.

That analysis was included in the proposed rule in its entirety, and is available on the Internet at the Regulations.gov Web site (see **ADDRESSES** at the beginning of this document for a link to Regulations.gov).

#### Paperwork Reduction Act

This action supplements a proposed rule published in the **Federal Register** on April 9, 2009, that would amend the regulations to provide for the importation of wooden handicrafts from China under certain conditions. That proposed rule would necessitate the use of certain information collection activities, including the completion of phytosanitary certificates and identification tags of packages of wooden handicrafts.

This supplemental proposed 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 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ For the reasons set forth in the preamble, we propose to amend 7 CFR part 319 as set out in the proposed rule published on April 9, 2009 (74 FR 16146-16151, Docket No. APHIS-2007-0117), as follows:

#### PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 319.40-5, paragraph (o)(1)(i) is revised to read as follows:

#### § 319.40-5 Importation and entry requirements for specified articles.

\* \* \* \* \*

(o) \* \* \*

(1) \* \* \*

(i) Wooden handicrafts must be treated with heat treatment or heat treatment with moisture reduction as specified in the PPQ Treatment Manual in accordance with part 305 of this chapter.

\* \* \* \* \*

Done in Washington, DC, this 17th day of September 2010.

**Kevin Shea,**

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

[FR Doc. 2010-23817 Filed 9-22-10; 8:45 am]

**BILLING CODE 3410-34-S**

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Parts 761, 763, and 764

RIN 0560-AI03

#### Farm Loan Programs Loan Making Activities

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Farm Service Agency (FSA) is proposing to amend the Farm Loan Programs (FLP) loan making regulations to implement four provisions of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). The first proposed amendment renames, expands, and makes the Beginning Farmer and Rancher Land Contract Guarantee Pilot Program permanent. The next two proposed amendments change the farm experience requirements in the regulations for direct Farm Operating Loans (OL) and direct Farm Ownership Loans (FO). The fourth proposed amendment makes some equine farmers and certain equine losses eligible for Emergency Loans (EM).

**DATES:** We will consider comments on the rule that we receive by November 22, 2010.

**ADDRESSES:** We invite you to submit written comments to this proposed rule and information collection. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may also send comments about the information collection to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. You may submit comments by any of the following methods:

- *E-mail:*  
[connie.holman@wdc.usda.gov](mailto:connie.holman@wdc.usda.gov).
- *Fax:* (202) 720-6797.
- *Mail:* Director, Loan Making Division (LMD), FSA, USDA, 1400 Independence Avenue, SW., Stop 0522, Washington, DC 20250-0522.
- *Hand Delivery or Courier:* Deliver comments to FSA, LMD, 1280 Maryland Avenue, SW., Suite 240, Washington, DC 20024.