

Rules and Regulations

Federal Register

Vol. 74, No. 96

Wednesday, May 20, 2009

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 Parts 305 and 319

[Docket No. APHIS–2007–0161]

RIN 0579–AC89

Importation of Longan From Taiwan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to allow the importation of commercial shipments of fresh longan with stems from Taiwan into the United States. As a condition of entry, the longan will be subject to cold treatment and special port-of-arrival inspection procedures for certain quarantine pests. In addition, the fruit will have to be accompanied by a phytosanitary certificate stating that the fruit was inspected and found to be free of certain quarantine pests, and the individual cartons or boxes in which the longan are shipped will be stamped or printed with a statement prohibiting their importation into or distribution in the State of Florida. This action will allow for the importation of commercial shipments of fresh longan with stems from Taiwan into the United States while continuing to provide protection against the introduction of quarantine pests into the United States.

DATES: *Effective Date:* June 19, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Alex Belano, Branch Chief, Regulations, Permits, and Manuals; Risk Management and Plants for Planting Policy, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart–Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–48, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

On November 7, 2008, we published in the **Federal Register** (73 FR 66200–66205, Docket No. APHIS–2007–0161) a proposal¹ to amend the regulations by allowing the importation of commercial shipments of fresh longan with stems from Taiwan into the United States. As a condition of entry, the longan would be subject to cold treatment and special port-of-arrival inspection procedures for certain quarantine pests. In addition, the fruit would have to be accompanied by a phytosanitary certificate stating that the fruit was inspected and found to be free of certain pests, and the individual cartons or boxes in which the longan are shipped would have to be stamped or printed with a statement prohibiting their importation into or distribution in the State of Florida. We proposed this action to allow for the importation of commercial shipments of fresh longan with stems from Taiwan into the United States while continuing to protect against the introduction of quarantine pests into the United States.

We solicited comments concerning our proposal for 60 days ending January 6, 2009. We received two comments by that date. They were from a research entomologist and from a private citizen. They are discussed below by topic.

One commenter stated that longan is not a host for the litchi rust mite (*Aceria litchi*), and that the mite should be removed from the list of pests of longan in the pest risk assessment. The commenter provided a reference to a scientific article that supported this statement. The commenter further stated that because longan is not a host of the litchi rust mite, we should not include in the final rule the prohibition against their importation and distribution into Florida, which we proposed to protect that State’s commercial litchi and

longan production from the litchi rust mite.

We have reviewed the article the commenter cited as well as other peer-reviewed scientific publications on the litchi rust mite and pests of longan. The majority of these materials indicate that longan may not be a major host of the litchi rust mite, but can be a minor host or a host under certain conditions. Furthermore, in its request to export longan to the United States, the Taiwanese Government included the mite in its list of pests associated with longan in Taiwan and reported it to have major economic significance. For these reasons, we continue to treat longan as a host for the litchi rust mite, and this final rule includes a prohibition against the importation or distribution of longan from Taiwan into Florida.

One commenter stated that, because Hawaii is also a longan-producing State, longan imported from Taiwan should be subject to the same distribution restrictions for Hawaii as we proposed to establish for Florida.

The importation or distribution of longan from Taiwan into Florida is prohibited to protect against the introduction of the litchi rust mite. This is consistent with other import programs in which shipments of litchis and longan from areas where litchi rust mite exists are prohibited from importation or distribution into Florida. However, the litchi rust mite is already established in Hawaii, so there is no additional plant health benefit to prohibiting the importation or distribution of longan from Taiwan into Hawaii. We are making no changes to the proposed rule in response to this comment.

One commenter expressed concern that domestic growers could suffer economically as a result of competition with cheaper imported longan.

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), we have the authority to prohibit or restrict the importation of plants and plant products only when necessary to prevent the introduction into or dissemination of plant pests or noxious weeds within the United States. We do not have the authority to restrict imports solely on the grounds of potential economic effects on domestic entities that could result from increased imports. We did, however, prepare an

¹To view the proposed rule and the comments we received, go to <http://www.regulations.gov/jdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0161>.

economic analysis of the potential economic effects of the rule, as required by the Regulatory Flexibility Act. Our analysis for this final rule is presented in the paragraphs that follow. Based on that analysis, we have determined that this rule will not have a significant economic impact on a substantial number of small entities.

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

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The 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.

After conducting an initial regulatory flexibility analysis for the proposed rule, APHIS has determined that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The following is a factual basis for this determination. No significant public comments were received in response to the initial regulatory flexibility analysis.

Since publication of the proposed rule, APHIS has obtained updated data on the production of fresh longan in the United States. The United States is not a major producer of longan. Latest estimates indicate that the United States annually produces around 5 million pounds of longan in California, Hawaii, and Florida, with most production occurring in south Florida.²

In California, longan is considered an experimental crop that is rarely available to consumers.³ Although there are some private gardens in southern California that grow longan, reportedly less than 25 acres are planted for commercial production.⁴

In 2007, 75 Hawaiian farms harvested 160 acres of longan yielding 263,000 pounds valued at \$784,000.⁵ It is estimated that 99 percent of the fruit is

sold fresh, 40 percent of which is irradiated and shipped to mainland metropolitan areas such as Chicago, IL, and San Francisco, CA. Hawaii's remaining longan is sold within that State at resort hotels, farmers' markets, and in Honolulu's Chinatown.⁶

In 1996, 91 percent of Florida's longan production was located in Miami-Dade County.⁷ Revenue reports from 1998, the most recent revenue data available on Florida's longan production, show that 275 acres of longan yielded a value of \$8.9 million.⁸ These data imply average revenue per acre of over \$32,300, which is many times larger than the average revenue per acre, \$4,900, for Hawaii's longan producers. Assuming that not more than 300,000 pounds of longan are produced in California and Hawaii, then at least 94 percent (4,700,000 pounds) of U.S. longan production takes place in Florida. While Florida does not report the destination of longan leaving Miami-Dade County, principal demand for the longan as a minor tropical fruit is geographically limited, with most of the crop sold on the local fresh market.⁹ Although U.S. production of longan has increased over the past 5 years, there is still limited demand for this fruit.¹⁰

Major foreign producers of fresh longan include China, Thailand, and Taiwan. Both China and Thailand are allowed to export fresh longan fruit to the United States, excluding Florida. In 2007, China's production was around 2.8 billion pounds of longan, 3.1 million pounds of which was exported fresh to the United States.¹¹ Thailand's production was around 1.1 billion pounds¹² and exports totaled 354

million pounds to China, Indonesia, Hong Kong, Singapore, and the Philippines. Since the publication of final rule allowing the importation of fruit from Thailand (72 FR 34163–34176, published June 21, 2007, effective July 23, 2007, Docket No. APHIS–2006–0040), PPQ has reported 164 shipments with a total of 326,383 boxes of fresh longan imported into the United States from Thailand between November 2007 and March 2009.

Taiwan is a major producer of longan. In 2002, Taiwan produced over 242 million pounds, on over 29,000 acres.¹³ The Taiwanese Government estimates that annual fresh longan exports to the United States will total around 397,000 pounds, a quantity equivalent to about 13 percent of U.S. longan imports from China and about 8 percent of U.S. production. Fresh longan fruit with stems is currently admissible from other countries besides China and Thailand, including the Bahamas, Bermuda, Dominican Republic, Haiti, and Jamaica.

While longan imports from Taiwan will compete with U.S.-produced longan, we expect that they will also compete with and substitute for longan imports from other countries, especially China, as well as help meet the expanding U.S. demand for exotic fruits. Displacement of other imports and an expanding market will moderate adverse effects of this rule for U.S. producers.

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 12988

This final rule allows fresh longan with stems to be imported into the United States from Taiwan. State and local laws and regulations regarding fresh longan imported under this rule will be preempted while the fruit is in foreign commerce. Fresh longan are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

www.oae.go.th/statistic/yearbook50/section5/sec546294773.pdf.

¹³ Yen, C.R. "Longan Production in Taiwan." ACTA Agriculture vol: Jan 2005, no. 665 p. 61–66.

² University of Florida Institute of Food and Agricultural Sciences Extension. "Importation of Tropical Fruits from Thailand." E. Evans and S. Nalampang. August 2008. http://edis.ifas.ufl.edu/document_fe719.

³ Ventura County Cooperative Extension. University of California, Agriculture and Natural Resources. "Longan". <http://ceventura.ucdavis.edu/Agriculture265/Longan.htm> 2009.

⁴ Mark Gaskell, University of California cooperative extension advisor for San Luis Obispo and Santa Barbara counties, personal communication. March 4, 2008.

⁵ USDA, National Agricultural Statistics Service. "Hawaii Specialty Fruits." August 2008. http://www.nass.usda.gov/Statistics_by_State/Hawaii/Publications/Fruits_and_Nuts/tropfrt.pdf.

⁶ Love, Ken. West Hawaii Director for the Hawaii Tropical Growers Association, personal communication, April 15, 2008.

⁷ University of Florida, IFAS Extension. "Florida Crop/Pest Management Profile: Lychee and Longan." Mark Mossler and O. Norman Nesheim. March 2002. <http://edis.ifas.ufl.edu/pdffiles/PI/PI05000.pdf>.

⁸ Florida Agricultural Market Research Center, IFAS. Miami-Dade Agricultural Land Retention Study. Economic Issues Vol 3. p. 4. April 2002. <http://www.agmarketing.ifas.ufl.edu/dlfiles/DadeAgLandRetentionAppendixVolumeB.pdf>.

⁹ Florida Department of Agriculture and Consumer Services. Charles H. Bronson. Florida Agriculture Statistical Directory. http://www.florida-agriculture.com/pubs/pubform/pdf/Florida_Agricultural_Statistical_Directory.pdf pg. 29. May 19, 2008.

¹⁰ University of Florida IFAS Extension. "Importation of Tropical Fruits from Thailand." Edward Evans and Sikavas Nalampang. August 2008. http://edis.ifas.ufl.edu/document_fe719.

¹¹ USDA Foreign Agricultural Service. "GAIN Report. Tropical Fruit in China 2008." May 28, 2008. <http://www.fas.usda.gov/gainfiles/200805/146294773.pdf>.

¹² Office of Agricultural Economics. Agricultural Statistics of Thailand. Table 61, Longan. <http://>

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0351.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to

E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

List of Subjects

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

7 CFR Part 319

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

■ Accordingly, we are amending 7 CFR parts 305 and 319 as follows:

PART 305—PHYTOSANITARY TREATMENTS

■ 1. The authority citation for part 305 continues to read as follows:

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

■ 2. In § 305.2, the table in paragraph (h)(2)(i) is amended by adding, in alphabetical order, under Taiwan, a new entry for longan to read as follows:

§ 305.2 Approved treatments.

*	*	*	*	*
(h)	*	*	*	*
(2)	*	*	*	*
(i)	*	*	*	*

Location	Commodity	Pest	Treatment schedule
Taiwan:			
	Longan	<i>Bactrocera dorsalis</i> , <i>B. cucurbitae</i> , <i>Conopomorpha sinensis</i> .	CT T107-h.

* * * * *

■ 3. In § 305.16, the table is amended by revising the entries for treatment

schedules T107-h and T107-j to read as follows:

§ 305.16 Cold treatment schedules.

Treatment schedule	Temperature (°F)	Exposure period
T107-h	33.8 or below	17 days
	34.5 or below	20 days.
T107-j	33.8 or below	15 days.
	34.5 or below	18 days.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

■ 4. 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.

■ 5. Section 319.56-13 is amended as follows:

■ a. In paragraph (a), in the table, by adding, in alphabetical order, under Taiwan, a new entry for longan to read as set forth below.

■ b. By adding a new paragraph (b)(5)(xvii) to read as set forth below.

■ c. By revising the OMB citation at the end of the section to read as set forth below.

§ 319.56-13 Fruits and vegetables allowed importation subject to specified conditions.

(a) * * *

Country/locality of origin	Common name	Botanical name	Plant part(s)	Additional requirements
Taiwan:				
	Longan	<i>Dimocarpus longan</i>	Fruit and stems	(b)(2)(v), (b)(3), (b)(5)(xv), (b)(5)(xvii).

* * * * *

(b) * * *

(5) * * *

(xvii) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the exporting country of origin with an additional declaration stating that the fruit is free of *Conogethes punctiferalis*, *Cryptophlebia ombrodelta*, and *Rhipiphorothrips cruentatus*.

(Approved by the Office of Management and Budget under control numbers 0579-0049, 0579-0236, 0579-0264, 0579-0316, and 0579-0351)

Done in Washington, DC, this 14th day of May 2009.

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

[FR Doc. E9-11735 Filed 5-19-09; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM404; Special Conditions No. 25-382-SC]

Special Conditions: Boeing Model 757 Series Airplanes; Seats with Non-Traditional, Large, Non-Metallic Panels

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 757 series airplanes. These airplanes, as modified by Northwest Aerospace Technologies, Inc., will have a novel or unusual design feature associated with seats that include non-traditional, large, non-metallic panels that would affect survivability during a post-crash fire event. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers

necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is May 11, 2009. We must receive your comments by July 6, 2009.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-113), Docket No. NM404, 1601 Lind Avenue, SW., Renton, Washington 98057-3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM404. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: John Sheldon, FAA, Airframe/Cabin Safety Branch, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2785; facsimile (425) 227-1232.

SUPPLEMENTARY INFORMATION:

Future Requests for Installation of Seats With Non-Traditional, Large, Non-Metallic Panels

The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus return to service of the affected aircraft. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

We anticipate that seats with non-traditional, large, non-metallic panels will be installed in other makes and models of airplanes. We have made the determination to require special conditions for all applications requesting the installation of seats with non-traditional, large, non-metallic panels until the airworthiness requirements can be revised to address this issue. Having the same standards

across the range of airplane makes and models will ensure consistent ruling for the aviation industry.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on these special conditions, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On March 6, 2008, Northwest Aerospace Technologies, Inc. (NAT), 2210 Hewitt Avenue, Suite 300, Everett, WA 98201, applied for a supplemental type certificate for installing seats that include non-traditional, large, non-metallic panels in a Boeing Model 757 series airplane. The Boeing Model 757 series airplanes, currently approved under Type Certificate No. A2NM, are swept-wing, conventional-tail, twin-engine, turbofan-powered, single-aisle, medium-sized, transport-category airplanes.

The applicable regulations to airplanes currently approved under