

manually from a sample of the fruit as the fruit is loaded for in-transit cold treatment to verify that precooling was completed. If the pulp temperatures for the sample are 0.28 °C (0.5 °F) or more above the temperature at which the fruit will be treated, the pallet from which the sample was taken will be rejected and returned for additional precooling until the fruit reaches the treatment temperature. If fruit is pre-cooled in the treatment enclosure, or if treatment is conducted at a cold treatment facility in the United States, the fruit must be pre-cooled to the temperature at which it will be treated, as verified by an official authorized by APHIS, prior to beginning treatment.

(4) Breaks, damage, etc., in the treatment enclosure that preclude maintaining correct temperatures must be repaired before the enclosure is used. An official authorized by APHIS must approve loading of compartment, number and placement of temperature probes or sensors, and initial fruit temperature readings before beginning the treatment. Hanging decks and hatch coamings within vessels may not be used as enclosures for in-transit cold treatment without prior written approval from APHIS. Double-stacking of pallets is not allowed.

(5) Only the same type of fruit in the same type of package may be treated together in a container; no mixture of fruits in containers may be treated. A numbered seal must be placed on the doors of the loaded container and may be removed only at the port of destination by an official authorized by APHIS.

(6) Temperature recording devices used during treatment must be password-protected and tamperproof. The devices must be able to record the date, time, sensor number, and temperature during all calibrations and during treatment. If records of calibrations or treatments are found to have been manipulated, the vessel or container in which the treatment is performed may be suspended from conducting cold treatments until proper equipment is installed and an official authorized by APHIS has recertified it. APHIS' decision to recertify a vessel or container will take into account the severity of the infraction that led to suspension.

(7) A minimum of four temperature probes or sensors is required for vessel holds used as treatment enclosures. A minimum of three temperature probes or sensors is required for other treatment enclosures. An official authorized by APHIS will have the option to require that additional temperature probes or sensors be used,

depending on the size of the treatment enclosure.

(8) Fruit pulp temperatures must be maintained at the temperature specified in the treatment schedule with no more than a 0.39 °C (0.7 °F) variation in temperature between two consecutive hourly readings. Failure to comply with this requirement will result in invalidation of the treatment unless an official authorized by APHIS can verify that the pulp temperature was maintained at or below the treatment temperature for the duration of the treatment.

(9) The time required to complete the treatment begins when all temperature probes reach the prescribed cold treatment schedule temperature.

(10) Temperatures must be recorded at intervals no longer than 1 hour apart. Gaps of longer than 1 hour will invalidate the treatment or indicate treatment failure unless an official authorized by APHIS can verify that the pulp temperature was maintained at or below the treatment temperature for the duration of the treatment.

(11) Cold treatment is not completed until so declared by an official authorized by APHIS or the certifying official of the foreign country; shipments of treated commodities may not be discharged until APHIS clearance has been fully completed, including review and approval of treatment record charts.

(12) Cold treatment of fruits in break bulk vessels or containers must be initiated by an official authorized by APHIS if there is not a treatment technician who has been trained to initiate cold treatments for either break bulk vessels or containers.

(13) An official authorized by APHIS may perform audits to ensure that the treatment procedures comply with the regulations in this subpart. The official authorized by APHIS must be given the appropriate materials and access to the facility, container, or vessel necessary to perform the audits.

Done in Washington, DC, this 26th day of June 2007.

**Kevin Shea,**

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

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**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 353

[Docket No. APHIS-2006-0122]

RIN 0579-AC43

#### Export Certification for Wood Packaging Material

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

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

**SUMMARY:** We are amending the export certification regulations to clarify that an International Standards for Phytosanitary Measures No. 15 (ISPM 15) quality/treatment mark is an industry-issued certificate within the meaning of 7 CFR part 353 and thus may only be issued when the organization applying the certification mark has entered into an agreement with the Animal and Plant Health Inspection Service. We are also removing all references to a certificate of heat treatment from the regulations because those certificates have been replaced by the ISPM 15 quality/treatment mark. These changes are necessary in order to ensure the appropriate issuance of the ISPM 15 quality/treatment mark.

**DATES:** This interim rule is effective July 2, 2007. We will consider all comments that we receive on or before August 31, 2007.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click "Submit." In the Docket ID column, select APHIS-2006-0122 to submit or view public comments and to view supporting and related materials available electronically. Information on using [Regulations.gov](http://www.Regulations.gov), including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS-2006-0122, 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–2006–0122.

**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 II, Export Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231; (301) 734–8860.

#### SUPPLEMENTARY INFORMATION:

##### Background

The export certification regulations in 7 CFR part 353 (referred to below as the regulations) contain provisions for export certification of plant and plant products. The export certification program does not require certification of any exports, but does provide for certification of plants and plant products as a service to exporters. After assessing the phytosanitary condition of the plants or plant products intended for export relative to the receiving country's regulations, an inspector issues an internationally recognized phytosanitary certificate (PPQ Form 577), a phytosanitary certificate for reexport (PPQ Form 579), an export certificate for processed plant products (PPQ Form 578), or a certificate of heat treatment (PPQ Form 553), if warranted.

The regulations in § 353.7(d) also provide for industry-issued certification of certain plant products under the terms of a written agreement between the concerned agricultural or forestry company and Animal and Plant Health Inspection Service (APHIS). Each agreement specifies the articles subject to the agreement and the measures necessary to prevent the introduction of specified plant pests into the foreign countries specified in the agreement.

One form of an industry-issued certificate that is being issued under these regulations is an approved international quality/treatment mark that certifies wood packaging material as having been either heat treated or fumigated with methyl bromide in accordance with the guidelines contained in International Standards for

Phytosanitary Measures No. 15 (ISPM 15), "Guidelines for Regulating Wood Packaging Material in International Trade." ISPM 15 is a standard that describes the application of phytosanitary measures to reduce the risk of introduction and dissemination of quarantine pests associated with wood packaging material (including dunnage) made of coniferous and non-coniferous raw wood that is in use in international trade.

As the national plant protection organization (NPPO) of the United States, APHIS is responsible for ISPM 15 certification of wood packaging material that is exported from the United States. As provided for under the regulations in § 353.7(d), APHIS currently has agreements with two private organizations to issue certificates of compliance with ISPM 15 for wood packaging material for export. Certification of compliance with ISPM 15 comes in the form of a quality/treatment mark that is applied to each regulated article.

Since the adoption of ISPM 15, we have encountered several cases where private firms have developed and applied ISPM 15 quality/treatment marks to wood packaging material for export without entering into an agreement with APHIS and, it appears, without applying the treatments that are required under ISPM 15. These companies have developed a mark similar to what is described and pictured in ISPM 15 and are using this mark outside of the export certification regulatory program. Although we acknowledge that the regulations do not explicitly state that the certification of compliance with ISPM 15 (the mark) is an industry-issued certificate, this practice is clearly not in conformity with the purpose and intent of the regulations.

In order to ensure integrity of our export certification program and to fulfill our responsibilities under the Plant Protection Act and our international obligations as the NPPO of the United States, we are amending the regulations in part 353 to make it clear that certificates of compliance with ISPM 15 are *industry-issued certificates* and thus may only be issued when the person, company, or entity applying the certification mark has first entered into a written agreement with APHIS and applies the mark in accordance with all applicable requirements. Specifically, we are amending § 353.1, the definition for *industry-issued certificate*; § 353.2; and § 353.7(d) by adding the following sentence to each: "An industry-issued certificate includes an ISPM 15 quality/treatment mark."

Now that the ISPM 15 quality/treatment mark is the international standard for confirming that wood packaging material has been treated, we no longer issue a certificate of heat treatment (PPQ Form 553). This form is, therefore, obsolete, so we are amending the regulations to remove all references to PPQ Form 553.

##### Immediate Action

Immediate action is necessary to ensure the integrity of our export certification program and to fulfill our responsibilities under the Plant Protection Act and our international obligations as the NPPO for 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 action 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 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.

We are amending the export certification regulations to clarify that an ISPM 15 quality/treatment mark is an industry-issued certificate within the meaning of our export certification regulations and thus may only be issued when the organization applying the certification mark has entered into an agreement with APHIS and applies the mark in accordance with all applicable requirements. We are also removing all references to a certificate of heat treatment from the regulations because those certificates have been replaced by the ISPM 15 quality/treatment mark. These changes are necessary in order to ensure the appropriate issuance of the ISPM 15 quality/treatment mark.

The pallet industry in the United States is characterized by many small firms and a few larger firms. No one firm is able to dominate the market. U.S. Census data show that there are approximately 3,000 firms in the wood pallet and container industry. Other estimates of the number of firms in the

industry range up to 3,500 pallet manufacturers in the U.S. National Wooden Pallet and Container Association. Most firms sell their products within a 350-mile radius. The average number of employees is fewer than 20. Thirty-two percent of the firms had fewer than five employees. The average yearly sales were \$1.7 million.

The Small Business Administration (SBA) classifies wood container and pallet manufacturers as small businesses if they have fewer than 500 employees. According to the U.S. Census Bureau, 2002 Economic Census (the most recent one available), all pallet manufacturers are considered small businesses. In 2002, there were 2,948 establishments that produced wooden containers and pallets employing 51,003 persons. The total value of shipments was \$5.5 billion dollars.

This rule will affect only those firms that have been using an ISPM 15 compliance mark without entering into an agreement with APHIS in accordance with the export certification regulations of 7 CFR part 353. There have been cases where the mark has been applied in these circumstances. Given that there are nearly 3,000 firms that produce wooden containers and pallets, only a very small percentage will be affected by this interim rule. This rule will not have a significant economic impact nor will it affect a substantial number of small entities.

This rule does not impose any additional costs on firms; it only clarifies that the ISPM 15 quality/treatment mark may be applied only in accordance with the requirements of the regulations regarding the use of industry-issued certificates. The benefits of this rule are derived from ensuring APHIS' ability to fulfill its responsibilities under the Plant Protection Act and its international obligations as the NPPO of the United States and the reduced risk due to better compliance with existing international standards. We do not expect to see any measurable adverse economic impact as a result of this rule.

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 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 353

Exports, Plant diseases and pests, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 7 CFR part 353 as follows:

#### PART 353—EXPORT CERTIFICATION

■ 1. The authority citation for part 353 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.

##### § 353.1 [Amended]

■ 2. In § 353.1, the definition for *certificate of heat treatment* is removed and the definition for *industry-issued certificate* is amended by adding the sentence “An industry-issued certificate includes an ISPM 15 quality/treatment mark.” after the last sentence.

##### § 353.2 [Amended]

■ 3. Section 353.2 is amended by adding the word “or” before the words “an export”; by removing the words “, or a certificate of heat treatment (PPQ Form 553)”; and by adding the sentence “An industry-issued certificate includes an ISPM 15 quality/treatment mark.” after the last sentence.

■ 4. In § 353.5, paragraph (a) is revised to read as follows:

##### § 353.5 Application for certification.

(a) To request the services of an inspector, a written application (PPQ Form 572) shall be made as far in advance as possible, and shall be filed in the office of inspection at the port of certification.

\* \* \* \*

##### § 353.7 [Amended]

■ 5. Section 353.7 is amended as follows:

■ a. In the introductory text of paragraph (d), by adding the sentence “An industry-issued certificate includes

an ISPM 15 quality/treatment mark.” immediately before the last sentence.

■ b. By removing paragraph (e).

Done in Washington, DC, this 26th day of June 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–12770 Filed 6–29–07; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 73

[Docket No. FAA–2004–17774; Airspace Docket No. 04–ACE–32]

RIN 2120–AA66

#### Modification of Restricted Areas 3601A and 3601B; Brookville, KS

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

**ACTION:** Final rule.

**SUMMARY:** This action revises Restricted Areas 3601A (R–3601A) and 3601B (R–3601B), at Brookville, KS, in response to a request from the United States Air Force (USAF). Specifically, this action revises R–3601A and R–3601B by combining their lateral boundaries, expanding the ceiling to flight level 230 (FL230), and re-designating the lower portion of the combined area as R–3601A and the upper portion as R–3601B. Additionally, this action changes the using agency of R–3601A and R–3601B from “Commander, Kansas ANG, McConnell AFB, KS” to “Air National Guard, 184th Air Refueling Wing, Detachment 1, Smoky Hill ANG Range, Salina, KS.” These revisions will fulfill new USAF requirements for high altitude release bomb training for fighter aircraft and medium-to-high altitude release bomb training for bombers.

**EFFECTIVE DATE:** 0901 UTC, August 30, 2007.

#### FOR FURTHER INFORMATION CONTACT:

Steve Rohring, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

#### SUPPLEMENTARY INFORMATION:

#### History

On July 21, 2004, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify the ceiling and lateral boundaries, and change the using agency of R–3601A