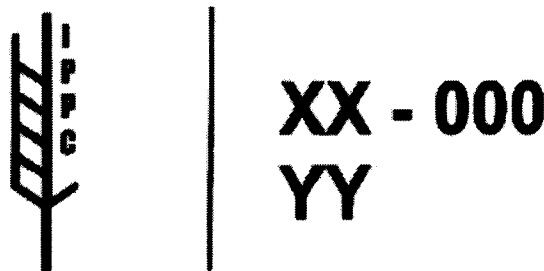


## **Operating Procedures for Trade Community Regarding Implementation of the Wood Packaging Materials (WPM) Regulation**

### **Background:**

The United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) has revised its import regulation for wood packaging materials (WPM), 7 CFR § 319. The final rule was posted in the Federal Register September 16, 2004, with an effective date of September 16, 2005.

The regulation requires regulated WPM used in international trade to be treated to kill harmful insects that may be present. WPM must be marked with the International Plant Protection Convention (IPPC) logo, the two-letter International Organization for Standardization (ISO) code for the country that treated the WPM, the treatment facility number assigned by the national plant protection organization, and either the abbreviation HT (heat treatment) or MB (methyl bromide). The rule states that regulated wood packaging materials must be marked in a visible location on each article, preferably on at least two opposite sides of the article, with a legible and permanent mark that indicates that the article meets the new requirements. Paper treatment certificates will no longer be required or accepted. An example of an acceptable WPM mark is:



**XX** represents the ISO country code.

**000** represents the unique number assigned by the national plant protection organization.

**YY** represents either HT for heat treatment or MB for methyl bromide fumigation.

The regulation restricts the importation of many types of wood articles, including wooden packaging materials such as pallets, crates, boxes, and pieces of wood used to support or brace cargo. The regulations currently refer to these types of wood packaging materials as solid wood packaging materials, defined as “wood packing material other than loose wood packing material, used or for use with cargo to prevent damage, including, but not limited to, dunnage, crating, pallets, packing blocks, drums, cases, and skids.” Effective September 16, 2005, the U.S. regulation allows non-compliant regulated WPM to be reexported. CBP recognizes that the usage of this term may be confusing. For purposes of CBP implementation of the USDA regulation, “reexport” will refer to the immediate

export of violative WPM and, where the violative WPM cannot be separated from the accompanying merchandise, the immediate export of the violative WPM and any accompanying merchandise. By regulation, no treatment options for WPM being imported into the United States are available.

For the purposes of this rule, WPM imported as cargo, such as a container or truckload of new or unused pallets, will still be considered WPM and subject to the rule. Its status as merchandise is irrelevant.

**Non-regulated and Exempt Wood and Wood Products:**

Regulated WPM do not include any manufactured items, such as worked wood items, even if those items are used to contain other non-regulated merchandise. Examples of such non-regulated manufactured items might include such things as carved or formed wooden bottle stoppers, ammo crates, wooden boxes built to house fuel gauges or armaments, *etc.* Wine crates for any vintage year prior to 2006, are also non-regulated; wine crates for vintage year 2006 and beyond are regulated.

Regulated WPM do not include any manufactured wood, such as fiberboard, plywood, polywood, whisky and wine barrels, strand board, and veneers, nor do they include "loose wood packing materials" as defined in 7 CFR § 319.40-1. Examples of loose wood packing materials include excelsior (wood wool), sawdust, and wood shavings, produced as a result of sawing or shaving wood into small, slender, and curved pieces. Dunnage is not always loose wood packing materials; when it is not, it is regulated.

The regulation allows importation without marking of otherwise-regulated WPM used by the U.S. Department of Defense to package non-regulated articles, including commercial shipments pursuant to a DOD contract.

By reciprocal regulations, WPM made from Canadian origin wood or U.S. origin wood (or a combination of Canadian origin wood and U.S. origin wood) will be exempt from treatment and marking under this regulation when used in trade between these two countries. For purposes of enforcement of this exception, and absent acceptable proof to the contrary, U.S. Customs and Border Protection (CBP) will consider the country of origin of merchandise coming from Canada to be the country of origin of the accompanying WPM.

The only remaining exemption for imports from Mexico permits importation of unmarked firewood, mesquite wood for cooking, and small, noncommercial packages of un-manufactured wood for personal cooking or personal medicinal purposes as long as these items arrive directly from Mexican Border States.

## **Phased Compliance:**

CBP conducted a special operation during the month of July 2005 to determine the baseline level of WPM compliance. Based on examination results, CBP will perform phased-in compliance enforcement of the USDA WPM regulation.

**Phase I**, beginning September 16, 2005, will be an informed compliance period, with no stoppage or reexport of shipments for non-compliant WPM. During this phase, all visual exams of cargo performed by CBP Officers or Agriculture Specialists will include a WPM component. If WPM are present and are not marked as having been treated, the broker and the importer will be informed of the non-compliance and given further information. (See "Sample Notice of Violation", attached)

**Phase II**, beginning February 1, 2006, will continue informed compliance measures on all regulated WPM except pallets and crates. CBP will begin full enforcement of the ban on violative pallets and crates. Beginning with Phase II, reexport of all shipments containing violative pallets or crates will be ordered if the Port Director determines that it is not feasible to separate merchandise from the violative WPM. IT and T&E shipments found to contain violative WPM will not be permitted to transit. All expenses incurred for the services of CBP Officers and Agriculture Specialists involved in the separation of cargo will be billed to the importer or other party of interest. WPM and associated merchandise will be exported at the expense of the importer or other party of interest.

**Phase III**, beginning July 5, 2006, will represent full enforcement of the WPM ban regulated by 7 CFR § 319. CBP will no longer conduct informed compliance at the shipment level. In Phase III, reexport of all shipments containing violative WPM will be ordered if the Port Director determines that it is not feasible to separate merchandise from the violative WPM. IT and T&E shipments found to contain violative WPM will not be permitted to transit. All expenses incurred for the services of CBP Officers and Agriculture Specialists involved in the separation of cargo will be billed to the importer or other party of interest. WPM and associated merchandise will be exported at the expense of the importer or other party of interest.

**Phase I**  
**Informed Compliance**  
**September 16, 2005 through January 31, 2006**

1. Phase I of the WPM implementation will consist of an informed compliance initiative relative to CBP efforts to implement and enforce the WPM rule.
2. During Phase I, if CBP discovers WPM that are not properly marked (that is, lacking the proper IPPC logo) during the course of any visual examination of any cargo, a Notice of Violation will be posted in a prominent location on the goods. A copy will also be included in the entry packet where possible. The intent of these steps is to notify the broker and the recipient that a violation has occurred and that CBP has chosen to temporarily exercise its enforcement discretion. These discoveries are considered violations of the WPM rule.
3. The enforcement of WPM requirements is a separate process from the normal course of pest interdiction duties conducted by CBP Agriculture Specialists. In every case of the discovery of a pest infestation, the protocol associated with safeguarding or eradication of the pest threat will supersede WPM enforcement. Once a pest threat has been eliminated, the WPM enforcement will be applied.
4. National and port account managers will work with their accounts to answer questions and encourage compliance with the regulation.

**Phase II**  
**Wooden Pallets and Crates**  
**February 1 through July 4, 2006**

1. Phase II continues informed compliance efforts started in Phase I. However, enforcement of the rule will begin to impact cargo shipments that have non-compliant wooden pallets or crates.

The term "pallets", when used in this document, will include single wooden pallets and all pallets that are part of a unitized packaging container, such as wooden pallets that comprise the base of a carton or crate (for example, in shipments of motorcycles, machinery parts, pipe fittings, etc.) Wooden crates or lift vans constructed solely of manufactured wood (for example, plywood) are not regulated by the WPM rule. However, if other lumber is used in these crates, those pieces are covered by the WPM rule. (See also "WPM--Specific Exemptions", attached)

2. During Phase II, if CBP discovers WPM (other than pallets or crates) that are not properly marked (that is, lacking the proper IPPC logo) during the course of any visual examination of any cargo, a Notice of Violation will be posted in a prominent location on the goods. A copy will also be included in the entry packet where possible. The intent of these steps is to notify the broker and the recipient that a violation has occurred and that CBP has chosen to temporarily exercise its enforcement discretion. These discoveries are considered violations of the WPM rule.

**Shipments Containing Non-Compliant Wood Pallets or Crates**

- a. The shipment will be held and will not be released. IT and T&E shipments found to contain violative WPM will not be permitted to transit.
- b. The Agriculture Specialist will complete a USDA Emergency Action (EAN) Notification (PPQ-523) on the violative materials. The Agriculture Specialist will follow the general guidelines for completing actions under the EAN procedures.
- c. The importer, or the importer's representative (if one is available), will be notified by CBP of the situation.
- d. The importer or other party of interest may request separation of the imported merchandise from the violative WPM.

3. If the Port Director determines that separation of the non-compliant crates from the cargo is **not feasible**, or if separation is not requested, then the entire shipment (violative WPM, compliant WPM, and merchandise) shall be ordered exported from the U.S. in accordance with the rule.
  - a. The Port Director shall order the shipment to be exported from the U.S. at the importers' or party of interest's expense. It is irrelevant if the shipment contains a mixture of compliant and violative WPM.
  - b. The authority to order exportation of violative WPM is contained in the USDA regulations at 7 CFR § 319.40.
  - c. If the entire shipment is ordered exported, any original entry must be cancelled and an Immediate Exportation entry (entry type 63) must be executed and provided to the Port Director to document the export movement.
  - d. If movement outside of the original U.S. port becomes necessary to cause the ordered exportation, it will be on a restrictive Transportation and Exportation entry (entry type 62) in conjunction with an appropriately executed USDA Emergency Action Notification (EAN) (PPQ-523). The EAN will provide and document restrictions as to routing, diversion and authorized timeframe to complete the restricted transportation and exportation movement.
  - e. In the event that the identity of the importer is unknown or otherwise not available to CBP, the importing carrier may be held liable for expenses related to the costs of exportation of the non-compliant WPM and associated cargo.
  - f. In the event that the merchandise is abandoned, the shipment will go to General Order (G.O.) and be handled under established procedures. If G.O. merchandise is ultimately auctioned, all noncompliant WPM must be exported at the expense of the successful bidder.
4. If the Port Director determines that separation of the violative WPM from the cargo is **feasible**, then the cargo will be separated at the importer's expense at a time and place determined by the Port Director.
  - a. After separation, the Port Director will order violative WPM to be exported per 7 CFR § 319.40 at the importers' or party of interest's expense.
  - b. If only the violative WPM is to be exported, the importer or party of interest (working in conjunction with the exporting carrier) must supply evidence sufficient to Port Director's satisfaction that the non-compliant WPM will be

removed from the U.S. This proof may include, but is not limited to, a bill of lading, statement on carrier letterhead, U.S. export or foreign entry documents, *etc.*

- c. In the event that the identity of the importer is unknown or otherwise not available to CBP, the importing carrier may be held liable for expenses related to the costs of exportation of the non-compliant WPM.

**Phase III**  
**Full Enforcement**  
**July 5, 2006, and beyond**

1. All informed compliance efforts at the shipment level under the WPM rule are discontinued.
2. During Phase III, if CBP discovers any WPM that are not properly marked (that is, lacking the proper IPPC logo) during the course of any visual examination of any cargo, the shipment will be considered in violation of the WPM rule.
3. All other operational elements of Phase II remain in effect.