

## SAMPLE NOTICE OF VIOLATION

TO: Importer

FROM: U.S. Customs & Border Protection Port Director

SUBJECT: Violative Wood Packaging Materials

USDA has revised its import regulation for wood packaging materials (WPM). Effective, **September 16, 2005**, WPM coming into the U.S. must to be treated and marked. Paper certificates of treatment or fumigation are no longer acceptable. The approved treatments are either heat treatment to a minimum wood core temperature of 56° C for a minimum of 30 minutes or fumigation with methyl bromide (MB).

An acceptable mark is determined by the national plant protection agency of each country and must include the trademarked ISPM-15 stamp. Contact information for representatives of national plant protection organizations can be accessed at: <https://www.ippc.int/IPP/En/nppo.jsp>

CBP has tentatively determined that this shipment is not in compliance with the USDA requirement.

In cases of noncompliance, a CBP Officer or Agriculture Specialist at the port of first arrival may order the immediate export of regulated wood packaging materials (along with the accompanying cargo) at your expense. Please ensure your shipper's compliance, as this will affect whether you receive your goods in a timely manner.

**For this shipment CBP is using its enforcement discretion and is not ordering this shipment to be exported. This discretionary enforcement period will cease on February 1, 2006. On or after February 1, 2006, non-compliant WPM detected by CBP Officers or Agriculture Specialists will be subject to immediate exportation AT YOUR EXPENSE.**

**Please ensure that your suppliers are aware of this requirement.**

There are certain exceptions to the new requirements. More information is available from USDA at 1-866-738-8197 during the months of September and October or at [www.cbp.gov](http://www.cbp.gov).

## **Procedure for Separation of Non-Compliant WPM**

1. The rule does not authorize domestic destruction of non-compliant WPM. The rule does not authorize fumigation in lieu of proper marking for WPM. Exportation of non-compliant WPM is the only recourse under the U.S. regulation.
2. Separation of non-compliant WPM from compliant WPM or associated merchandise is not an absolute right; it is an option left to the government's discretion. All expenses related to the movement, inspection, separation, safeguarding, storage, and ultimate disposition of non-compliant WPM are at the expense of the importer or party of interest.
3. When a shipment is held by CBP for non-compliance with the WPM rule, the importer, or their representative or other party of interest, may make a request to CBP for the ability to separate WPM from the imported commodities. The requesting party shall submit a completed CBP 3499 — Application and Approval to Manipulate, Examine, Sample or Transfer Merchandise, to the CBP Port Office within one business day after the hold has been placed. In the case of a consolidated shipment, any affected importer or party of interest may make application under the guidelines of this protocol. All appropriate forms and evidentiary materials required by this Appendix must be presented to the Port Director, and all expense will accrue to the applicant.
4. The importer, or their representative or other party of interest, must submit to the Port Director evidence of their commitment to export the non-compliant WPM that are separated from the merchandise referenced in the CBP 3499. This evidence must be presented at the time of submission of the CBP 3499 and may consist of various elements, but will usually include the participation of a carrier. This requirement is critical, as the Port Director must ensure that the non-compliant WPM are properly exported and the government does not incur any expense.
5. Other parties of interest may apply to CBP for the WPM separation process only if the importer has no U.S. presence. These other parties must clearly define for CBP their interest in the merchandise. Carriers may not apply for the WPM separation process solely based on recovering or repositioning their property (containers). All parties applying for WPM separation must provide for the continuity of the cargo and the prompt and proper exportation of the non-compliant WPM.
6. The Port Director will determine whether to approve the CBP 3499. Once the decision is made, the Port Director will notify the importer. The decision of the Port Director is final.

7. If the decision is made to approve the separation request, the Port Director will determine the time, place, and supervision requirements of the separation.
8. If the separation request is granted, the process should commence under CBP supervision as soon as practical.
9. CBP may assign an Agriculture Specialist or CBP Officer to supervise the separation because the non-compliant WPM may present a pest risk.
10. If WPM are to be exported due to non-compliance with the WPM rule, the WPM lose the entry status of an instrument of international traffic. An IE or T&E entry will be filed with CBP, and the WPM should be fully described with an additional caption that "The material is non-compliant with the ISPM-15 Standard."
11. Under normal circumstances, services performed under a CBP 3499 may only be performed at CBP Bonded Warehouses. For the purposes of this application, the services may be performed at any location that the Port Director deems appropriate for that purpose. This will usually be where CBP Officers or Agriculture Specialists perform examination work, such as a CES, carrier facility, or bonded warehouse.
12. After the cargo is successfully separated from the non-conforming WPM, the CBP Officer or Agriculture Specialist will be responsible for removing the hold and completing any entry-related processing that would normally occur to release the merchandise from CBP custody.
13. CBP will bill the importers or other party of interest for their services.
14. Considering the restrictions above, the importer (or their representative or other party of interest) must consider that in many cases it may be cost prohibitive or logistically impractical to do request WPM separation.
15. If the decision is made to disapprove the separation request, the importer must make arrangements with the importing carrier to export the entire shipment at the first available opportunity. If the importer fails to make those arrangements, CBP and/or USDA will make the arrangements for the importer, and the importer will be billed accordingly. Because CBP and USDA are not in the shipping business, USDA's subsequent billing to the importer for these logistics services may be exceptionally significant.
16. Shipments will not be authorized to move in bond to another port for separation consideration under the WPM program.

## **WPM--Specific Exemptions**

The USDA import regulation for wood packaging materials (WPM), 7 CFR § 319, offers the following definition of regulated wood packaging materials: wood or wood products (excluding paper products) used in supporting, protecting or carrying a commodity, including dunnage, other than:

- manufactured wood materials,
- loose wood packing materials (defined as excelsior [wood wool], sawdust, and wood shavings, produced as a result of sawing or shaving wood into small, slender, and curved pieces), and
- pieces of wood that are less than 6 mm thick in any dimension,

that are used or for use with cargo to prevent damage, including, but not limited to, dunnage, crating, pallets, packing blocks, drums, cases, and skids, whether in actual use as packing for regulated or non-regulated articles or imported as cargo.

Regulated WPM may be imported into the United States under a general permit in accordance with the following conditions:

- The WPM must have been either heat treated to achieve a minimum wood core temperature of 56° C for a minimum of 30 minutes or fumigated with methyl bromide in an enclosed area for at least 16 hours at approved dosages and then aerated to reduce the concentration of fumigant below hazardous levels.
- The 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 treatment requirements.

**There are specific exceptions for some WPM.** These exceptions are:

1. Manufactured wood materials such as fiber board, plywood, whisky and wine barrels, and veneer,
2. Loose wood materials as defined above,
3. Pieces of wood that are less than 6 mm (0.24 in) in any dimension,
4. WPM used by the U.S. Department of Defense (DOD) to package non-regulated articles, including commercial shipments pursuant to a DOD contract, and
5. Firewood, mesquite wood for cooking, and small, noncommercial packages of unmanufactured wood for personal cooking or personal medicinal purposes coming directly from Mexican border states.

By reciprocal regulations in Canada and the U.S, WPM made entirely from Canadian origin wood or U.S. origin wood are exempt from the treatment and marking requirements when accompanying shipments being shipped in either direction between these two countries.

USDA has grandfathered in all wine crates for vintage years preceding 2006. This means that wine crates for any wine with a vintage year through 2005 are exempt from treatment and marking requirements. Wines of vintage year 2006 and beyond will be required to be in crates that have been treated and marked.

Articles of wood that are manufactured to transport a specific non-regulated commodity (for example, fuel gauges, armaments, *etc.*) are not considered WPM and are not required to be treated and marked.

WPM that are part of any bundle of imported lumber are excepted from the rule. Other WPM used in the transport of bundled lumber (for example, pallets or planks) are not exempted and are regulated WPM.

## **Procedures for Processing Returning WPM**

Since the regulation of WPM is an international standard with 138 signatory countries actively participating in its enforcement, it is likely that some shipments of U.S. exports will contain WPM that are not compliant with the standard that may be detected by our counterparts in other countries. They may determine the WPM to be inadmissible and order that non-compliant WPM be re-exported to the United States. Not all signatory countries are phasing in their WPM requirements.

Further information on the requirements of any country may be received from the appropriate official listed at <https://www.ippc.int/IPP/En/nppo.jsp>.

If CBP Officers or Agriculture Specialists encounter a shipment of returned U.S. merchandise that contains non-compliant WPM, CBP will provide a sectional release for the merchandise and WPM upon reasonable submission of proof that the merchandise did not enter the commerce of any other country as provided for under 19 CFR 4.35(g).

### **Returns To or From Canada & Mexico**

CBP continues to work very closely with counterparts in both Canada and Mexico to develop the most effective methodology for implementing this WPM initiative. Since we share common land borders and high traffic volume in both directions it was decided among the customs administrations that none of the three countries would implement their WPM action plan unilaterally. All three countries have agreed to implement their WPM initiatives modeled on U.S. CBP's phased implementation approach.

Because some exemptions exist for Canadian origin WPM that do not exist for Mexican origin material, we anticipate more instances of returned WPM on our southern border. At this time CBP is still in discussion with colleagues in both Canada and Mexico on the best way to implement returns of non-compliant WPM. Detailed instructions on this aspect of our WPM implementation will be issued during Phase I, for implementation in Phase II.

**Implementation Matrix for  
USDA Wood Packing Materials Rule**

Phase I	Phase II	Phase III
September 16, 2005-January 31, 2006  Informed Compliance via account managers and notices posted in cargo with noncompliant WPM	February 1, 2006-July 4, 2006  Enforcement of requirement for violative crates and pallets via re-exportation  Informed Compliance via account managers and notices posted in cargo with other types of noncompliant WPM	Beginning July 5, 2006  Full enforcement on all types of WPM

Wood Packaging Material found to be infested with pests is outside the scope of the phase-in implementation. If pests are detected, established safeguarding and/or treatment will be used to mitigate the pest risk.  
Once a pest threat has been eliminated, WPM enforcement will be applied.