BILLING CODE: 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02-032-2]

RIN 0579-AB48

Importation of Solid Wood Packing Material

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and notice of public hearings.

SUMMARY: We are proposing to amend the regulations for the importation of unmanufactured wood articles to adopt an international standard entitled "Guidelines for Regulating Wood Packaging Material in International Trade" that was approved by the Interim Commission on Phytosanitary Measures of the International Plant Protection Convention on March 15, 2002. The standard calls for wood packaging material to be either heat treated or fumigated with methyl bromide, in accordance with the Guidelines, and marked with an approved international mark certifying treatment. We propose to adopt the IPPC Guidelines because they represent the current international standard determined to be necessary and effective for controlling pests in wood packaging material used in global trade, and because current United States requirements for wood packaging material are not fully effective, as shown by analyses of pest interceptions at ports that show an increase in pests associated with wood packaging material. This increase in pests was found in wood packaging material that does not meet the IPPC Guidelines (e.g., wood packaging material from everywhere except China, which must already be treated due to past

pest interceptions). There has been a decrease in pests associated with wood packaging material from China since we began requiring that material be treated prior to importation. This change would affect all persons using wood packaging material in connection with importing goods into the United States.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register]. We will also consider comments made at public hearings to be held in Seattle, WA, on June 23, 2003; Long Beach, CA, on June 25, 2003; and Washington, DC, on June 27, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-032-2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-032-2. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-032-2" on the subject line.

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.

APHIS documents published in the Federal Register, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Public hearings regarding this rule will be held at the following locations:

1. Seattle, WA: Renaissance Madison Hotel, 515 Madison Street, Seattle, WA.

2. Long Beach, CA: Hilton Long Beach, 701 W. Ocean Blvd., Long Beach, CA.

3. Washington, DC: United States Department of Agriculture, Jefferson Auditorium, South Building Wing 4, 1400 Independence Avenue S.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Nosbaum, Senior Regulatory Coordinator, PPQ, APHIS, 4700 River Road Unit 131, Riverdale, MD 20737-1231; (301) 734-6280.

SUPPLEMENTARY INFORMATION:

Public Hearings

We are advising the public that we are hosting three public hearings on this proposed rule. The first public hearing will be held in Seattle, WA, on Monday, June 23, 2003. The second public hearing will be held in Long Beach, CA, on Wednesday, June 25, 2003. The third public hearing will be held in Washington, DC, on Friday, June 27, 2003.

A representative of the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), will preside at the public hearings. Any interested person may appear and be heard in person, by attorney, or by other representative. Written statements may be submitted and will be made part of the hearing record. A transcript of the public hearings will be placed in the rulemaking record and will be available for public inspection.

The purpose of the hearings is to give interested persons an opportunity for presentation of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at the hearings, except to clarify or explain provisions of the proposed rule.

The public hearings will begin at 9 a.m. and are scheduled to end at 5 p.m., local time. The presiding officer may limit the time for each presentation so that all interested persons appearing at each hearing have an opportunity to participate. Each hearing may be terminated at any time if all persons desiring to speak have been heard.

Registration for the hearings may be accomplished by registering with the presiding officer between 8:30 a.m. and 9 a.m. on the day of the hearing. Persons who wish to speak at a hearing will be asked to sign in with their name and organization to establish a record for the hearing. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. Those who wish to form a panel to present their views will be asked to provide the name of each member of the panel and the organizations the panel members represent.

Persons or panels wishing to speak at one or more of the public hearings may register in advance by phone or e-mail. Persons wishing to register by phone should call the Regulatory Analysis and Development voice mail at (301) 734-8138. Callers must leave a message clearly stating (1) the location of the hearing the registrant wishes to speak at, (2) the registrant's name and organization, and, if registering for a panel, (3) the name of each member of the panel and the organization each panel member represents. Persons wishing to register by e-mail must send an e-mail with the same information described above to richard.r.kelly@usda.gov. Please write

"Public Hearing Registration" in the subject line of your e-mail. Advance registration for any hearing must be received by 3 p.m. on Thursday, June 19, 2003.

If you require special accommodations, such as a sign language interpreter, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Background

Logs, lumber, and other unmanufactured wood articles imported into the United States pose a significant hazard of introducing plant pests, including pathogens, detrimental to agriculture and to natural, cultivated, and urban forest resources. The regulations in 7 CFR 319.40-1 through 319.40-11 (referred to below as the regulations) contain provisions to mitigate plant pest risks presented by the importation of logs, lumber, and other unmanufactured wood articles.

The Animal and Plant Health Inspection Service (APHIS) is proposing to amend the regulations to decrease the risk of solid wood packing material (SWPM) introducing plant pests into the United States. SWPM is defined in the regulations as "[w]ood packing materials other than loose wood packing materials, used or for use with cargo to prevent damage, including, but not limited to, dunnage, crating, pallets, packing blocks, drums, cases, and skids." Introductions into the United States of exotic plant pests such as the pine shoot beetle and the Asian longhorned beetle have been linked to the importation of SWPM. These and other plant pests that are carried by some imported SWPM pose a serious threat to U.S. agriculture and to natural, cultivated, and urban forests.

The introduction of pests associated with SWPM is a worldwide problem[1]. Because

SWPM is very often re-used, recycled or re-manufactured, the true origin of any piece of SWPM is difficult to determine and thus its phytosanitary status cannot be ascertained. This often precludes national plant protection organizations from conducting useful specific risk analyses focused on the pests associated with SWPM of a particular type or place of origin, and imposing particular mitigation measures based on the results of such analysis. For this reason, there is a need to develop globally accepted measures that may be applied to SWPM by all countries to practically eliminate the risk for most quarantine pests and significantly reduce the risk from other pests that may be associated with the SWPM.

Such issues are generally addressed under the World Trade Organization's Agreement on the Application of Sanitary and Phytosanitary Measures (1994, World Trade Organization, Geneva) (the Agreement). The Agreement fosters the use of harmonized sanitary and phytosanitary measures developed by international standards organizations. In the case of phytosanitary standards, the authorized standard-setting organization is the International Plant Protection Convention (IPPC). Article 3 of the Agreement states, "To harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist," except when Members opt to impose a higher level of sanitary or phytosanitary protection than the international standards provide. The same Article also states, "Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this Agreement and of GATT 1994."

We propose to adopt the international standard[2] approved by the IPPC on March 15, 2002 (referred to below as the IPPC Guidelines)[3] . The IPPC Guidelines were developed after the IPPC determined that worldwide, the movement of SWPM made of unprocessed raw wood is a pathway for the introduction and spread of a variety of pests (IPPC Guidelines, p. 5). The IPPC Guidelines list the major categories of these pests, and establish a heat treatment and a fumigation treatment determined to be effective against them (IPPC Guidelines, p. 10). As many of these pests have been associated with SWPM inspected at U.S. ports, we propose to adopt the IPPC Guidelines because they represent the current international standard determined to be necessary and effective for controlling pests in SWPM. The need to adopt the IPPC Guidelines is further supported by analysis of pest interceptions at ports that show an increase in dangerous pests associated with certain SWPM. This increase in pests was found in SWPM that does not meet the IPPC Guidelines (e.g., SWPM from everywhere except China). There has been a decrease in pests associated with SWPM material from China since we began requiring that material be treated prior to importation.

Another reason to adopt the IPPC Guidelines at this time is that adopting them would simplify and standardize trade requirements. China, Canada, the European Union, and many other countries are preparing to implement the IPPC Guidelines requirements. Given the difficulty of identifying the source of SWPM and the recycling of SWPM in trade, successful reduction of the pest risk posed by SWPM requires all trading partners to take action on a similar timeline. Furthermore, if the United States does not do so, U.S. companies will need to comply with one set of SWPM requirements for goods exported from the United States and another set of requirements for goods imported into the United States. Companies engaged in both import

and export would have particular difficulties in ensuring that their SWPM supply chain is sorted and routed for use for appropriate destinations. If the United States adopts the IPPC Guidelines, these companies would be able to use SWPM that complies with the Guidelines for both import and export purposes, leveling the trade playing field with regard to SWPM.

Basis of the IPPC Guidelines

The IPPC is a multilateral convention adopted in 1952 for the purpose of securing common and effective action to prevent the spread and introduction of pests of plants and plant products and to promote appropriate measures for their control. The IPPC is placed under the authority of the Food and Agriculture Organization (FAO) of the United Nations, and the members of the Secretariat of the IPPC are appointed by the FAO. The IPPC is implemented by national plant protection organizations, including APHIS, in cooperation with regional plant protection organizations, the Interim Commission on Phytosanitary Measures (ICPM), and the Secretariat of the IPPC. The United States plays a major role in all standard-setting activities under the IPPC and has representation on FAO's highest governing body, the FAO Conference.

The United States became a contracting party to the IPPC in 1972 and has been actively involved in furthering the work of the IPPC ever since. The IPPC was amended in 1997 to update phytosanitary concepts and formalize the standard-setting structure within the IPPC. The U.S. Senate gave its advice and consent to acceptance of the newly revised IPPC on October 18, 2000. The President submitted the official letter of acceptance to the FAO Director General on October 4, 2001.

The eight-step process by which the IPPC develops new phytosanitary standards is described in detail in a notice APHIS published in the Federal Register on August 23, 2002

(Docket No. 02-051-1, 67 FR 54615-54621). APHIS technical experts were deeply involved throughout the process used to develop the IPPC Guidelines for wood packaging materials. A team of international experts studied all published data available at the time and recommended the treatment schedules that are in the IPPC Guidelines. Scientific studies evaluated during this process documented the risks associated with SWPM, the need to treat it, and the efficacy of the treatments included in the IPPC Guidelines (see, e.g., http://www.aphis.usda.gov/ppq/swp/heat_treatment.pdf).

Terms Used in the IPPC Guidelines and in APHIS Regulations

The IPPC Guidelines employ the term "wood packaging material," which the Guidelines define as "wood or wood products (excluding paper products) used in supporting, protecting or carrying a commodity (includes dunnage)." Later, in a discussion of issues, the IPPC Guidelines state that wood packaging material includes "coniferous and non-coniferous raw wood packaging material that may serve as a pathway for plant pests posing a threat mainly to living trees. They cover wood packaging material such as pallets, dunnage, crating, packing blocks, drums, cases, load boards, pallet collars, and skids...Wood packaging made wholly of wood-based products such as plywood, particle board, oriented strand board or veneer that have been created using glue, heat and pressure or a combination thereof should be considered sufficiently processed to have eliminated the risk associated with the raw wood. It is unlikely to be infested by raw wood pests during its use and therefore should not be regulated for these pests. Wood packaging material such as veneer peeler cores , sawdust, wood wool, and shavings, and raw wood cut into thin pieces may not be pathways for introduction of quarantine pests and should not be regulated

unless technically justified." APHIS uses the term "solid wood packing material" in its regulations to cover the same class of materials.

In this document, and in our regulations, we have elected to continue using the term solid wood packing material (SWPM) rather than the IPPC term wood packaging material. We do so for reasons of enforcement and history. Unlike the IPPC Guidelines, our regulations must be enforced daily in a wide variety of situations, dealing with many regulated parties. To enforce our regulations, we need to precisely define terms in a manner consistent with the entire body of our regulations. Our definition of SWPM meets these needs. Also, for over 10 years, APHIS has published a large number of informational guides, agreements, certificates, and other documents employing the SWPM term, and we believe it would be confusing rather than helpful to change to another term.

The IPPC Guidelines Compared to Current APHIS Requirements

The IPPC Guidelines require SWPM to be heat treated or fumigated with methyl bromide. These two treatments are efficacious in treating the target pests named in the IPPC Guidelines, i.e., bark beetles, wood borers, and certain nematodes. These pests represent over 95 percent of all of the pests that APHIS intercepted in association with imported SWPM in 2000 and 2001.

Target Pest Groups of the IPPC Guidelines
Insects
Anobiidae
Bostrichidae

Buprestidae
Cerambycidae
Curculionidae
Isoptera
Lyctidae (with some exceptions for HT)
Oedemeridae
Scolytidae
Siricidae
Nematodes
Bursaphelenchus xylophilus

Currently, the regulations allow, subject to certain restrictions, SWPM to be imported into the United States from any country. In § 319.40-3, paragraph (b)(1) provides that bark-free SWPM used with nonregulated wood articles is subject to inspection upon arrival, but treatment is not required. Paragraph (b)(4) of § 319.40-3 provides that bark-free pallets moved as cargo are subject to inspection upon arrival, but, in general, treatment is not required. Paragraphs (b)(2) and (b)(3) of § 319.40-3 require, in general, that bark-free SWPM used with regulated wood articles or SWPM not free of bark be heat treated, fumigated, or treated with preservatives. Likewise, as of the end of 1998, SWPM from China, including Hong Kong, is subject to stricter regulation in that it also must be heat treated, fumigated, or treated with preservatives, in accordance with § 319.40-5, paragraphs (g) and (i). The treatment schedules for SWPM in the

current regulations have an effectiveness against target pests for SWPM that is very similar to that provided by the treatments in the IPPC Guidelines. We are proposing to adopt the IPPC Guidelines in lieu of all the current requirements for SWPM described in this paragraph.

The treatments authorized by the IPPC Guidelines include a heat treatment schedule and a methyl bromide fumigation schedule. The IPPC Guidelines also acknowledge that other treatments currently under laboratory evaluation for their effectiveness may be added to the IPPC Guidelines in the future. These possible additional treatments include fumigation with chemicals other than methyl bromide, chemical pressure impregnation, irradiation, and treatment in controlled atmosphere.

The IPPC Guidelines state, with respect to heat treatment, that SWPM should be heated in accordance with a specific time-temperature schedule that achieves a minimum wood core temperature of 56 ^{o}C for a minimum of 30 minutes. It notes that kiln-drying, chemical pressure impregnation (CPI), or other treatments may be considered heat treatments to the extent that these meet the heat treatment specifications. For example, CPI may meet the specification through the use of steam, hot water, or dry heat.

The IPPC Guidelines state, with respect to methyl bromide fumigation, that the SWPM should be fumigated in an enclosed area for at least 16 hours at the following dosage, stated in terms of grams of methyl bromide per cubic meter of the enclosure being fumigated:

Temperature	Initial dose (g/m^3)	Minimum required concentration (g/m^3) after:			
		0.5 hrs.	2 hrs.	4 hrs.	16 hrs.
21 ^{o}C or above	48	36	24	17	14

16 ^{o}C or above	56	42	28	20	17
11 ^{o}C or above	64	48	32	22	19

The methyl bromide fumigation schedule in the IPPC Guidelines parallels, though it is not identical to, the schedules APHIS requires for fumigation of SWPM (e.g., for shipments from China). The heat treatment schedule in the IPPC Guidelines has a lesser time-temperature requirement than the existing APHIS heat treatment schedule in § 319.40-7(c), which requires maintaining a core temperature of at least 71.1 ^{o}C for a minimum of 75 minutes. However, it is generally acknowledged, and supported by research discussed below, that the APHIS heat treatment schedule in § 319.40-7(c) exceeds the treatment level necessary to control the IPPC target pests in SWPM. The time-temperature combination in § 319.40-7(c) was set to ensure destruction of a wide variety of pests and pathogens, some of which are not target pests for SWPM, in wood articles of a variety of sizes and shapes, some of which, being thicker and larger, require more stringent treatments than does SWPM. It is not certain whether the heat and methyl bromide treatments we are proposing may provide less mitigation of all possible pest risks than the more stringent treatments currently required for SWPM from China. The proposed treatments should be just as effective with regard to the target pests identified in this rule and in the IPPC Guidelines. Approximately 95 percent of pests our inspectors intercept on shipments worldwide are pests on the IPPC target pest list, and research demonstrates the IPPC standard treatments are effective against these pests. For the remaining 5 percent of pests we intercept -- primarily defoliators and rarely sapsucking insects, pathogens, or nematodes – limited data supports a conclusion that most are likely to be effectively mitigated by the treatments in the IPPC standard. If there are any remaining pests not effectively mitigated by the IPPC standard treatments, we do not have conclusive scientific evidence that the treatments currently required for SWPM from China would be more effective against them than the IPPC standard treatments.

Such a conclusion would be conjectural, that the additional heat treatment or fumigation would be enough to destroy the pest. Instead of retaining the China treatments merely because they require higher doses that might be effective against pests with unknown tolerances, APHIS intends to develop more information about such pests and address them when we can verify effective treatment. As stated in the IPPC Guidelines, APHIS or other nations' plant protection agencies may promulgate additional rules as needed to address additional pest risks on a case-by-case basis.

In addition to describing heat and methyl bromide treatment schedules and an approved international mark for SWPM, the IPPC Guidelines require that a country's national plant protection organization develop procedures to ensure that SWPM treated and marked in that country for export complies with the IPPC Guidelines. Countries must monitor the SWPM certification and marking systems that verify compliance and must establish procedures to inspect, register or accredit, and audit commercial companies that apply the SWPM treatments.

Risks to U.S. Resources, Recent Pest Interceptions, and Other Data Supporting Adoption of the IPPC Guidelines

There is worldwide consensus among national plant protection organizations that pest interceptions associated with SWPM indicate a serious problem in which the movement of certain dangerous pests is not sufficiently controlled by current restrictions on SWPM. There is ample data indicating that the United States is at particular risk with regard to this problem. For many years, pests associated with SWPM, including highly destructive wood borers and beetles, have been intercepted at U.S. ports. Pests of these types are often well-concealed inside SWPM, in larval forms or dormant stages that increase their survival potential. These pests may easily

survive movement to the final destination or to cargo redistribution sites, many of which are vulnerable, heavily forested regions. About one-third of the land area of the United States is forest land, and there are millions of acres of urban, suburban, and ornamental trees as well. There are many areas where the climate, tree species, and lack of natural predators would allow introduced pests to flourish and become established.

One confirmation of the SWPM pest problem can be seen using an APHIS database, the Port Information Network (PIN-309), which records interceptions of quarantine pests[4] found in cargo arriving at United States ports. These reports of interceptions are based on sampling inspections conducted by APHIS inspectors at U.S. ports. For many years the PIN-309 reports have recorded interceptions in imported SWPM of the types of pests the IPPC Guidelines were developed to control. In recent years PIN-309 data has shown increasing levels of pests of concern, in addition to recording evidence that the treatments contained in the IPPC Guidelines are effective when they are applied.

From 1996 through 1998, PIN-309 reported[5] an average of 402 live pests per year associated with SWPM were intercepted at U.S. ports of entry; of these, 156, or 39 percent, were from China. Starting at the end of 1998, APHIS began requiring that SWPM from China be heat treated, fumigated, or pressure treated. This caused a marked decline in pest interceptions associated with SWPM from China, but interceptions from other countries have increased. For 2000-2001, an average of 355 pests per year associated with SWPM were intercepted at U.S. ports of entry; of these, 24, or 7 percent, were from China.