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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–032–3]

RIN 0579–AB48

Importation of Wood Packaging Material

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending 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. This change will affect all persons using wood packaging material in connection with importing goods into the United States.

EFFECTIVE DATE: September 16, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. William Aley, Senior Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–5057.

SUPPLEMENTARY INFORMATION:

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 risk presented by the importation of logs, lumber, or other unmanufactured wood articles.

The regulations restrict the importation of many types of wood articles, including wooden packaging material 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 material as solid wood packing material (SWPM), defined 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 *Tomicus piniperda* (Scolytidae) and the Asian longhorned beetle *Anaplophora glabripennis* (Cerambycidae) 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.

Beyond the threat to the United States, the introduction of pests associated with SWPM is a worldwide problem. Because SWPM is very often reused, recycled or remanufactured, 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. In the case of phytosanitary standards, the international standard-setting organization is the International Plant Protection Convention (IPPC).

In a proposed rule published in the **Federal Register** on May 20, 2003 (68 FR 27480–27491; Docket No. 02–032–2), the Animal and Plant Health Inspection Service (APHIS) proposed to amend the regulations to decrease the risk of SWPM introducing plant pests into the United States by adopting the international phytosanitary standard [1] for wood packaging material (referred to below as the IPPC Guidelines) that was approved by the IPPC on March 15, 2002. We proposed to apply the standard to wood packaging material from all places, including China, and to remove the special provisions for wood packaging material from China in 7 CFR 319.40–5(g) through (k).

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). We proposed to adopt the IPPC Guidelines because they represent the current international standard determined in 2002 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 U.S. 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

[1] ''International Standards for Phytosanitary Measures: Guidelines for Regulating Wood Packaging Material in International Trade,'' Secretariat of the International Plant Protection Convention, Food and Agriculture Organization of the United Nations, Rome: 2002.

all trading partners to take action on a similar timeline.

Furthermore, adopting a uniform international standard means that U.S. companies will not 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 to comply with differing requirements for different destinations. After this final rule takes effect, these companies will 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. Using SWPM that has been treated and marked in accordance with the Guidelines will also reduce the practice, common in trade today, of re-treating SWPM immediately prior to its reuse to assure the receiving country that treated SWPM is used with a shipment. This reduction in re-treatment will reduce costs to importers and procedural burdens for national plant protection agencies, and will also reduce unnecessary emissions of methyl bromide associated with such unnecessary re-treatment.

We accepted comments on the proposed rule for 60 days, ending July 21, 2003. We also accepted comments at three public hearings held in Seattle, WA, on June 23, 2003; in Long Beach, CA, on June 25, 2003; and in Washington, DC, on June 27, 2003. During the comment period we received approximately 970 comments on the proposal, including approximately 905 slight variants of a single e-mail form letter. The issues raised in these comments are discussed below.

As a result of our review of comments, we have decided to make the following changes from the proposal in this final rule:

- We are changing the term ''solid wood packing material'' to ''wood packaging material'' throughout the regulations; and
- We are excluding from the definition of wood packaging material, and thereby excluding from treatment requirements, pieces of wood that are less than 6 mm (0.24 in) in any dimension, because pieces of wood of this size are too thin to present any significant pest risk.

Comments have also led APHIS to make some changes in our plans and schedule for implementing the final rule. No changes to the text of the rule were necessary in response to these comments. Changes we made to the rule and to our implementation plans are discussed below in detail.

Summary and Analysis of Comments

More than 95 percent of the comments applauded the intent of APHIS to protect United States forest and agricultural resources against the danger represented by pests associated with wood packaging material. However, the same commenters were concerned that the proposed rule would not adequately protect our forests from plant pests like the Asian longhorned beetle and were concerned that the proposal would cause other harm to the environment, namely increased depletion of the ozone layer due to use of methyl bromide as a fumigant. These commenters urged APHIS not to adopt the proposed rule, but to look for alternatives that will fully protect the United States from wood-borne invasive species while not sacrificing the ozone layer. These commenters suggested that one option would be to phase out the use of wood packaging material and replace it with manufactured wood and plastic crates and pallets, which the commenters suggested would be free of pest dangers and could be reused for a long time.

A number of commenters supported adoption of the IPPC Guidelines, but suggested a variety of exemptions for particular articles, or modifications of import clearance procedures, in order to minimize adverse effects of implementing the IPPC Guidelines. Several commenters also suggested that the regulation should be implemented on a delayed basis, or on a scheduled phase-in with several incremental levels, in order to give importers and other businesses time to adjust to the new requirements.

Several commenters made comments about the effectiveness or availability of the fumigation and heat treatments contained in the IPPC Guidelines, or suggested alternative treatments.

Several commenters addressed the international standard mark that we proposed should be placed on every piece of wood packaging material that has been treated in accordance with the regulations. Some of these commenters suggested that it was not practical to apply the mark to all packaging materials, especially materials such as dunnage that are specially cut to support cargo.

APHIS has carefully considered all the comments, suggestions, requests for clarification, and concerns raised by commenters. Several modifications have been made in this final rule in response to the comments. In the next section we provide detailed responses to the issues raised by commenters, and explain the modifications made in response to these comments.

Terminology

Comment: APHIS regulations refer to the materials being regulated as solid wood packing materials (SWPM), but the IPPC Guidelines uses the term wood packaging material (WPM). It would be less confusing if APHIS used the term wood packaging material, since this is the preferred term in international commerce and in the IPPC Guidelines that many other countries are adopting.

Response: We agree, and throughout our regulations we are changing the term solid wood packing materials (SWPM) to wood packaging material (WPM).

In the proposal, APHIS did not use the term ''wood packaging material'' for two reasons. Our existing regulations have used the alternate term ''solid wood packing materials'' for more than 8 years, and persons applying our regulations are familiar with the term. Also, in the IPPC Guidelines the term wood packaging material is defined as ''Wood or wood products (excluding paper products) used in supporting, protecting or carrying a commodity (includes dunnage).'' This definition is broader than the APHIS term solid wood packing material. WPM as defined by the IPPC includes manufactured wood such as plywood, veneer, and fiberboard, as well as loose wood materials such as shavings and excelsior. The IPPC Guidelines then distinguish between types of WPM that should be regulated because they present a risk (*e.g.*, raw wood pallets and dunnage), and types that should not be regulated because they present little risk (*e.g.*, manufactured wood and shavings).

We thought this approach was ungainly when used in regulations, and that it would be better to use a different term (SWPM) that applied only to the types of wooden materials used in packing that we wanted to regulate. Upon further consideration, we agree that the benefits of using the term WPM outweigh the advantages of using the term SWPM. However, while the definition of WPM in our regulations will match the definition used in the IPPC Guidelines, we will also add a definition of *regulated wood packaging material.* The definition of this new term includes only the types of WPM we consider to be regulated articles. The new definition of regulated WPM closely resembles our current definition of SWPM, and reads as follows: ''Wood packing materials other than manufactured wood materials, loose

wood packing materials, and wood pieces less than 6 mm (0.24 in) thick in any dimension, that are used or that are for use with cargo to prevent damage, including, but not limited to, dunnage, crating, pallets, packing blocks, drums, cases, and skids.'' Therefore, in our regulations WPM refers to the type of articles covered by the IPPC Guidelines definition of WPM, and regulated WPM refers to the type of articles that the IPPC Guidelines refer to in their section on ''Regulated Wood Packaging Material.''

This definition of regulated WPM differs from the existing definition of SWPM in that it explicitly excludes manufactured wood materials, such as fiber board, plywood, whisky and wine barrels, and veneer. APHIS has never regulated such materials, but the definition of SWPM did not make that clear. The definition of regulated WPM also excludes pieces of wood that are less than 6 mm in any dimension. Pieces of wood of this size are excluded because they are too thin to present any significant pest risk, and because the IPPC Guidelines suggest the 6 mm threshold for excluding wood pieces from regulation. This exclusion will exempt from regulation many types of small boxes used to ship fruit or other articles.

Phasing Out WPM in Favor of Manufactured Materials

Comment: APHIS should look for alternatives that will fully protect the United States from wood-borne invasive species while not sacrificing the ozone layer by encouraging methyl bromide fumigation. One such option would be to phase out the use of WPM and replace it with manufactured wood and plastic crates and pallets, which would be free of pest dangers and could be re-used for a long time.

Response: APHIS has considered many alternatives to diminish pest risk from WPM. Many commenters have suggested that APHIS reduce worldwide methyl bromide emissions by relying instead on one of two pest reduction alternatives, either requiring heat treatment of WPM, or banning use of unmanufactured WPM and requiring use of manufactured wood, plastic, metal, or other alternative packing materials.

In keeping with our commitments to the objectives of the Montreal Protocol, APHIS actively cooperates with other agencies and institutions to identify and validate technically and economically feasible alternatives to methyl bromide. Also, as the agency responsible for representing the United States to the International Plant Protection Convention with respect to the international phytosanitary standards established by the IPPC, APHIS will work closely with current initiatives within the IPPC to develop alternative treatments to methyl bromide and will strive to have any validated treatments incorporated into future revisions of the IPPC Guidelines. APHIS will also be working independently to evaluate and consider treatment alternatives to methyl bromide, and communicate this information through the proper channels in IPPC for technical review and approval. Whenever either APHIS independent evaluations or revisions to IPPC Guidelines make such validated alternatives available, APHIS will make the necessary changes to its quarantine regulations and procedures to provide for their use.

A comprehensive review of the IPPC Guidelines is due to be initiated under the IPPC by 2007. The United States intends to participate in, and bring to bear our technical and research expertise on, this review within the IPPC to ensure alternatives are continually examined and given due consideration. The IPPC Guidelines itself recognizes that phosphine and CPI methods are particularly worth revisiting with respect to the availability of data related to the efficacy of these methods in treating target pests for wood packaging material.

Methyl bromide as a class I ozone-depleting substance has been found to cause or contribute significantly to harmful effects on the stratospheric ozone layer and has adverse atmospheric effects substantially greater than those associated with the alternatives of heat treatment of WPM or use of alternative packing materials. Whenever APHIS advises on treatment alternatives, we encourage use of heat treatment or alternative packing materials in preference to methyl bromide fumigation. At present, it appears that manufacturers in many countries, including the European Union and the United States, prefer to use only heat treatment for the WPM they produce. Trends suggest substitution of heat treatment for methyl bromide will continue to grow. However, during development of the IPPC Guidelines some developing nations advised against allowing only heat treatment and not methyl bromide as an allowed treatment on the grounds that the higher cost of heat treatment makes it economically unfeasible for these countries at this time.

Regarding alternative packing materials, the final environmental impact statement (FEIS) concluded (pp. 79–80) that these would achieve the greatest possible reduction in risk from the introduction of pests and pathogens associated with WPM. While heat treating or fumigating WPM are also both highly efficacious in controlling risk, use of alternative packing materials reduces risk even more. The manufacture and use of alternative packing materials also generates only minimal amounts of ozone-depleting chemicals. However, fumigation of WPM with methyl bromide and heat treatment of WPM are currently the most economical means of producing safe packing materials. Alternative packing materials cost much more. In addition to a cost that is currently beyond the reach of exporters in many developing countries, recovery and reuse of alternative packing materials requires a more complex infrastructure than is required by reuse of WPM. Finally, there are some costs associated with the durability of alternative materials. While many metal, plastic, and manufactured wood alternatives are very durable and can be used for more shipments than typical WPM, some alternative packing materials, such as particle board, are limited in their ability to withstand the conditions that routinely occur during transport.

It is difficult to quantitatively compare the costs of requiring alternative packing materials to the benefits that would accrue from their use. The FEIS and the economic analysis for this rule do estimate costs to exporters of using substitute packing materials and compare these to the cost of heat treatment or methyl bromide fumigation. However, we are unable to realistically estimate the benefits that could result using substitute materials. None of the commenters suggested methods or provided data to do such analysis.

APHIS will continue to encourage use of alternative packing materials by exporters for whom they are economically feasible. There is incentive for the shipping industry to contain costs of packing material, and by requiring treatment of WPM, this rule will slightly increase the average cost of WPM. This increase in the cost of WPM may actually provide incentive to some exporters to seek cost-effective alternatives such as corrugated board, veneer, oriented strand board, and plywood.

In choosing among alternatives, APHIS looks for choices that are both technically and economically feasible. Since treated WPM does provide an acceptable level of protection against pests, we believe that it is not necessary to exclude unmanufactured wood from use as packaging material for imported

cargo. Properly treated WPM is a safe packaging material that can be reused many times and that causes minimal environmental impacts when disposed of or recycled.

On the other hand, prohibiting the use of unmanufactured wood as a packaging material would have significant negative consequences in economic and environmental arenas. Wood is often the only packaging material readily and cheaply available (either through domestic production or importation) in developing countries that export basic products without elaborate packaging. The major alternative materials for packaging are processed wood, plastic, and metal. Pallets or crates made from these materials cost from two to four times more than WPM.

Comment: The APHIS proposal is of uncertain effectiveness and will result in damage to the stratospheric ozone layer, and APHIS therefore should adopt a regulation that specifies a deadline by which all incoming packaging must be made from materials other than solid wood or boards. These commenters stated that this strategy would achieve all three national goals at stake in this rule: Accommodating rising trade volumes, protecting forests from exotic pests, and protecting the stratospheric ozone layer.

Several commenters also stated that APHIS should require use of manufactured alternatives to WPM because the cost of these alternative materials is easily offset by the reduction of inspection costs and speeding the movement of cargo through our ports. They stated this would also reduce the necessity for expensive government programs to control invasive species that come in as hitchhikers in solid wood built crates and containers.

A commenter who disagreed with those advocating that APHIS require manufactured alternatives stated that a preference for using these alternate materials is based on flawed and inaccurate arguments that assume that the IPPC Guidelines will result in an increased demand for wood products and thus translate into negative environmental effects. This commenter stated that overall life-cycle impacts show far greater negative environmental impacts from using nonwood substitute materials. Also, the commenter stated that an outright ban on the use of WPM, in favor of substitute materials, without credible and proven scientific justification would be inconsistent with the World Trade Organization agreements.

Response: Please also see the above response. This rule allows, but does not require, methyl bromide use, and also allows use of untreated alternative (manufactured) packing materials, and also offers heat treatment as an alternative to fumigation with methyl bromide. Heat treatment does not generate gases that could cause damage to the stratospheric ozone layer.

The commenters who suggested that the cost of using alternative materials would be offset by the reduction of inspection costs and speeding the movement of cargo did not offer data to support that theory. While inspectors do spend somewhat less time clearing manufactured packing materials compared to clearing WPM, APHIS doubts that the savings would come close to offsetting the costs, because many articles besides WPM must be inspected at ports (such as the regulated articles often packed in WPM). While faster cargo clearance would benefit importers, the value of this benefit is uncertain, and in any event, importers are free to use alternative packing materials if they perceive a benefit in doing so. We also note that importers can also achieve faster cargo clearance and fewer inspections by establishing a history of compliance for their shipments; if their WPM is consistently properly treated and marked, and free from pests of concern, their shipments may be cleared faster.

Regarding the commenter who stated that the rule will not result in an increase in the use of WPM versus alternative materials, we agree. As discussed above, the rule may actually act to increase the number of exporters choosing alternative materials, since the additional cost of treating WPM will bring its total cost closer to the cost of some alternative materials. We also agree with the commenter that overall life-cycle impacts show negative environmental impacts from using nonwood substitute materials, but we do not agree that these would be ''far greater'' than the environmental impacts from using treated WPM. We have not seen any quantitative data that supports the position that the environmental costs of using nonwood substitutes would likely be greater than those for using WPM. We agree that mandating use of alternative materials would not represent the least restrictive necessary action, and would have adverse effects throughout the international trade economy.

Comment: An adequate assessment of any adverse environmental impacts associated with use of WPM must include a comparison of substitute materials that would take the place of wood-based packaging material. On those terms, the results are crystal clear. By any water quality, air pollution, or energy use environmental measure, wood products are clearly environmental performance leaders. It takes between 33 and 47 percent less energy to produce a wood product than to produce a similar product made from competing materials such as concrete and steel, and producing WPM results in less carbon dioxide emissions.

Response: Alternative packaging materials do have higher production costs than WPM, including greater energy costs. When harvested under careful management, trees can be a replenishable resource, unlike petroleum or metal ores. When WPM has exhausted its useful life, it can be recycled into products like particle board at a lower fiscal and environmental cost than plastic or metal can be recycled. However, the need to treat WPM must be taken into account when assessing the environmental impacts associated with it. While we believe authorizing use of treated WPM is a reasonable balance among pest risk, economic, and environmental concerns, we do not conclude that WPM is the ''clear environmental performance leader.'' For further discussion of this issue, see the section of this document titled ''National Environmental Policy Act,'' and section IV(A)(5) of the FEIS, which states ''Wood has certain advantages from the environmental perspective. Renewability gives wood a large advantage over other materials. The manufacture of wood products requires substantially less energy than the production of substitute products. Wood product manufacture results in less greenhouse gas and other air pollutant emissions.''

Comment: If WPM were banned in favor of alternative materials, it would not only destroy an industry, it would significantly increase costs to shippers, which would be passed on to consumers. Metal pallets are too expensive and heavy. Plastic pallets, unlike WPM, are not biodegradable, and are a major and toxic fire hazard. More goods are coming into this country than are going out. Most of them are on pallets. Wooden pallets can be disassembled and recycled, if not as pallets then as landscape mulch or wood stove pellets. Pallets made of plastic or metal will begin to pile up in landfills across America. Landfills could expect to realize exponential growth of nonbiodegradable pallets.

Response: We partly agree with this comment, as discussed above. However, a minority of shippers already choose to use alternative pallet materials, which shows that the choice must be economically viable in some

circumstances. We also note that because this rule applies only to articles imported into the United States, neither the rule nor the alternative of requiring alternative materials would destroy the market for WPM produced in the United States. Untreated WPM could still be used in domestic commerce, or in exports to any country that has not implemented the IPPC Guidelines or a similar treatment requirements.

In addition, selection of the available alternate packaging materials does include the continuing use of processed wood. This includes plywood, corrugated packaging materials, etc. These are products of the wood industry that pose comparable disposal and recycling capability to that of WPM. Some are cost-competitive with WPM, and required treatment costs under adoption of the IPPC Guidelines could make the selection of some of these alternate packing materials more favorable to the shipping industry.

Treatment Effectiveness

Comment: The proposed treatment measures, especially methyl bromide fumigation, have not been proven effective against pathogens. While APHIS says that few pathogens are detected on wood packaging, the agency concedes in its draft environmental impact statement (DEIS) and other publications that inspectors have great difficulty detecting pathogens; therefore, it has not been proved that pathogens represent as minor a threat as APHIS now implies. Furthermore, the DEIS associated with this rulemaking states that some deep wood-borers also might not be killed by the proposed treatments. Our concerns about efficacy are heightened by the fact that the IPPC standard does not require debarking the wood before further treatment. Debarking is key to improving the already questionable ability of methyl bromide to penetrate the wood to kill deep wood pests.

Response: The basis for international acceptance of the efficacy provided by the IPPC Guidelines is the review by IPPC member countries of certain reference documents that are now posted in a link from the APHIS Web page at *http://www.aphis.usda.gov/ppq/swp/approved_guideline.html*. Historically, the pest risks of WPM were manageable by inspection when international trade was more limited. All commenters have acknowledged the need for increased protection of wood resources, but there are differences of opinion about the level of protection needed to mitigate pest risks.

Although some may contend that the regulations are overly protective, others are not satisfied with this level of protection. The approach taken by APHIS is to regulate according to demonstrated risk level. The adoption of the IPPC Guidelines would dramatically decrease the pest risk of concern to APHIS posed by importation of WPM. Selection of this regulatory approach does not prevent APHIS from further deliberation on more intensive regulation if the protection measures are determined to be inadequate for specific risks from pests of concern. Enforcement of the IPPC Guidelines could provide a baseline for determining any need for further protective measures.

Comment: The two treatment options allowed under the rule—heat treatment and methyl bromide fumigation—have an unacceptably high rate of failure to stop invasive pests traveling in solid wood packaging. In the DEIS, APHIS itself has questioned the efficacy of heat and methyl bromide treatments.

Response: There are differences of opinion among commenters regarding the effectiveness of treatments in the IPPC Guidelines to eliminate invasive pests in WPM. The DEIS does not question the efficacy of these treatment methods per se, but it does indicate the advantages and limitations of each treatment method to eliminate pest risks. The DEIS does not take a position as to whether the treatments in the IPPC Guidelines will be the ultimate solution or part of the ultimate solution, but the development of additional data about efficacy and pest exclusion for all potential pests and pathogens may lead to further consideration of these phytosanitary regulations by APHIS.

Comment: Instead of the proposed treatments, APHIS should require WPM to be subject to the documented effective treatment for wood products, heat treatment with or without moisture reduction as specified under the APHIS universal treatment option: 71 °C at the center of the material for 75 minutes. This treatment would substantially minimize the threat of introduction of injurious organisms. Until other efficacious wood treatments are sufficiently documented, this heat treatment provides the broadest and safest approach to the wood importation issue.

Response: The proposed treatment requirements for WPM would provide much more protection against pest risk than the current requirement of debarking and apparent freedom from pests. The 71.1 °C treatment was not established with SWPM in mind, but rather as a universal treatment option that would be certain to eliminate pests in all wood materials regardless of their risk level. As the 1995 final rule (60 FR 27666, May 25, 1995) that first established the regulations said, ''These universal options employ heat treatment and other conditions for importing logs and lumber not otherwise enterable. These universal options are relatively stringent, because they must eliminate the spectrum of potential plant pests and address risks that have not been characterized. The universal options are designed to give importers a way to import articles that would otherwise be prohibited until detailed plant pest risk assessments are completed. Whenever feasible, importers may choose to employ universal options while plant pest risk assessments and rulemaking are underway to establish less stringent requirements for the articles they wish to import.''

Also, as stated in the August 2000, ''Pest Risk Assessment for Importation of Solid Wood Packing Materials into the United States,'' APHIS is preparing a pest risk reduction analysis that will evaluate the effectiveness of various available treatments and potential mitigation alternatives for WPM. If information gathered during development of the pest risk reduction analysis suggests that the stringency of existing WPM treatment requirements should be either strengthened or lessened, APHIS will undertake rulemaking to do so.

Comment: Methyl bromide is ineffective against many deep-wood pathogens and pests because it does not penetrate to the center of thick boards or timbers. Its use cannot be verified at a later date, and it does not prevent reinfestation.

Response: While methyl bromide is ineffective against some deep wood pathogens, and a few deep wood pests, these pathogens and pests usually are not significant pests associated with the WPM pathway. Many treatments cannot be verified at a later date by physical analysis or examination at ports. That is one reason this rule requires marking of treated materials. The marking system, coupled with registration and monitoring/auditing of treatment facilities by national governments, is the means for ensuring treatment has occurred. Finally, while reinfestation of fumigated WPM is possible, the risk is low (beyond the level of hitchhiking pests that might attach to any kind of packaging).

Canada and Mexico

Comment: The current exemptions from the regulations for wood articles from Canada and from Mexican border states should be extended to include WPM that is imported into the United

States from the balance of Mexico. This action would be consistent with the North American Free Trade Agreement (NAFTA) and the North America Plant Protection Organization announcement dated April 25, 2003. It would avoid administrative complexities and the cost of a partial exemption from border States only, as well as avoid the production of additional export pallets from Mexico to the United States.

Response: APHIS took final action on this issue in a final rule titled ''Importation of Unmanufactured Wood Articles From Mexico'' that was published in the **Federal Register** on August 26, 2004 (69 FR 52409–52419, Docket No. 98–054–3). In that final rule, APHIS amended the regulations to remove the exemption for most unmanufactured wood, including WPM, imported into the United States from Mexican States adjacent to the United States/Mexico border. The only exemption that continues for Mexican border States covers firewood, mesquite wood for cooking, and small, noncommercial packages of unmanufactured wood for personal cooking or personal medicinal purposes. The effect of that change was that all WPM from Mexico will be subject to the same requirements in § 319.40–3(b) that apply to WPM from any place except Canada.

Comment: The United States and Canada must work together to curtail the disproportionate numbers of introductions of forest pests that are occurring in the Great Lakes region. They are far out of proportion to the volume of foreign shipping in that region or to the volume of interceptions by Federal inspectors. It is equally important that APHIS quickly complete the separate rulemaking to close the loophole that allows untreated WPM to enter the country from northern Mexican states.

Response: Please see the response above. APHIS is actively working with the Canadian Food Inspection Agency to curtail pest introductions. Most of these introductions are pests not of Canadian origin that arrive via transshipped materials. We expect their level to decrease as Canada implements its own regulations requiring WPM imported into Canada to be treated in accordance with the IPPC Guidelines. Also, APHIS is currently developing a pest risk assessment for wood from Canada, and if we identify any significant risks that have not been addressed by current regulations, we will take appropriate rulemaking action.

Methyl Bromide—Montreal Protocol

Comment: The proposed use of methyl bromide would violate the spirit and intent of the Montreal Protocol. It would exceed the intent of the quarantine exemption. It is inconsistent with Protocol Decisions that were adopted by the Montreal Protocol parties with the consent of the United States. Decision VI/11 of the Meeting of the Parties to the Montreal Protocol, for instance, states that developed country parties ''are urged to refrain from use of methyl bromide and to use non-ozone depleting technologies wherever possible.'' The U.S. Environmental Protection Agency (EPA) wrote in its comment on the proposed rule regarding wood imports from Mexico (June 11, 1999, 64 FR 31512–31518) that because of the need to honor the Montreal Protocol and protect the ozone layer, ''allowing the use of methyl bromide in quarantine treatment of Mexican wood articles where other effective treatments exist would be inconsistent'' with Protocol Decisions.

Response: APHIS is committed to finding environmentally acceptable alternative treatments to methyl bromide fumigation. At the current time, methyl bromide is an efficacious and economically feasible quarantine treatment to control pests in WPM, and we have determined that allowing it as an alternative treatment for WPM in the context of this rule will provide the necessary level of pest protection while minimizing impact on the environment given the absence, in many cases, of technically and economically feasible alternatives. This determination is supported by the FEIS, as discussed below in the section titled ''National Environmental Policy Act.''

As discussed above, APHIS actively cooperates with other agencies and to identify and validate technically and economically feasible alternatives to methyl bromide. APHIS will continue to work cooperatively with the IPPC as APHIS explores alternative treatments to methyl bromide and incorporates validated, economically feasible alternatives into our quarantine regulations.

Comment: The U.S. Department of Agriculture (USDA) estimate that methyl bromide emissions will increase by 5,145 metric tons, increasing total world usage by more than 10 percent, is a vast underestimate because it was based on the assumption that WPM would be fumigated before use. From experience in China, fumigation occurs at port facilities, after goods are packed in raw wood materials. USDA even states in the proposal that most wood packaging fumigation consist of about 35 percent WPM and 65 percent cargo. The USDA FEIS on wood from Mexico predicts a massive increase in methyl bromide use of more than 102,000 tons per year. That would increase current world use for quarantine purposes by 10 times. It would triple total world use of methyl bromide for all purposes. Under these circumstances, USDA has not complied with its obligations to present a rational basis for its proposed action under the National Environmental Policy Act (NEPA), the Plant Protection Act, or the Administrative Procedure Act.

Response: The draft and final EIS projections are based upon ongoing review of actual usage data and observations of activities at Chinese ports by APHIS personnel. The initial usage analyses were based upon the limited available time for exporters and shippers to prepare to treat WPM as required by APHIS in an interim rule published on September 18, 1998 (63 FR 50099–50111, Docket No. 98–087–1). These analyses considered the fumigation of WPM with already loaded cargo rather than fumigation of WPM before loading. Although there was primarily fumigation of WPM with loaded cargo by the exporters and shippers in China initially, this approach to WPM treatments did not continue. Many shippers and exporters from China began fumigating WPM prior to loading, for at least three reasons. The cost savings to the shippers and exporters from less use of methyl bromide in fumigations of WPM prior to loading were substantial. Also, many agricultural commodities lack a tolerance for the bromine residues imparted by fumigation with methyl bromide. Finally, fumigation after loading could make food commodities illegal for human consumption in the United States and could damage certain other commodities (*e.g.,* leather goods and some electronic parts).

Unlike the limited time exporters and shippers in China had to prepare for the September 18, 1998, interim rule, shippers and exporters throughout the world are aware of the IPPC Guidelines and have had time to prepare for these regulations. In addition, the IPPC Guidelines require marking the wood used in WPM, and it is easier and less expensive to treat and mark prior to loading than to unload after treatment to place markings on the treated WPM and then reload. Based upon this, it is reasonable to expect most exporters and shippers to fumigate WPM before loading. The fact that the projection in the FEIS assumes fumigation as the method of treatment for all WPM

indicates that it is actually a high estimate because we know that many developed nations will actually use heat treatment rather than fumigation for compliance with IPPC Guidelines.

We expect fumigation of WPM to decline over time as shippers build a stockpile of treated pallets, which normally can be used for up to 3 years. We also expect heat treatment to substitute for fumigation in some additional locations as more facilities are built.

Comment: The final rule should explain more about the EPA's plans to phase out methyl bromide, particularly its intent to publish a plan and timeline in the **Federal Register** about December 2003.

Response: Since the EPA is continuing to develop its plans and timeline for this issue, APHIS cannot provide conclusive information about them. We suggest that readers interested in the EPA's actions concerning methyl bromide follow EPA publications in the **Federal Register**.

Methyl Bromide—Other Issues

Comment: Methyl bromide fumigation and heat treatment facilities are generally unavailable in many parts of Africa and Indonesia. Rubber exports from these areas have been shipped without risk using WPM treated with Borax as per the Rubber Research Institute of Malaysia No. 122 method, or with a fungicide and insecticide called Xylolit B4.

Response: Neither of these are approved treatments for WPM under APHIS regulations, and neither has been documented to be as effective as methyl bromide and heat treatment against target pests. APHIS is willing to review any scientific data regarding other treatments, and to consider adding treatments that are proven effective. However, when this rule goes into effect we will only accept WPM treated according to the new regulations, which do not authorize borax or insecticide/fungicide treatments. We recognize that some importers may have to make substantial adjustments to their business practices and packing material suppliers to comply with the regulations, but we believe the pest risk associated with WPM justifies the new requirements.

Exempt Certain Articles From Regulation

Comment: The treatment requirements of the proposal should not apply to the WPM containers of imported fresh fruits and vegetables. Specifically, APHIS should exempt typical small fruit and vegetable crates in common use. These crates are made of mixed plywood and natural wood, and are about $12'' \times 7'' \times 4''$ high, with $1.1'' \times 1.1'' \times 4''$ high natural wood corner supports. WPM used in the international trade of regulated goods, such as fresh fruits and vegetables that are documented by an official phytosanitary certificate of the country of origin, presents a phytosanitary risk significantly lower than WPM in general. Phytosanitary certificates apply to both the commodity being exported and the WPM used in their transportation.

Response: APHIS interceptions records from 1996–2001 show an increasing number of pests associated with WPM, including in containers for fresh fruits and vegetables. Based on interceptions at ports, WPM used for the shipment of fruits and vegetables can pose a significant risk. Importers of these products may be able to avoid having their containers considered to be regulated articles by redesigning them to eliminate the thicker pieces of raw wood often used as corner supports. Containers that use pieces of raw wood less than 6 mm (0.24 in) thick and containers made wholly of manufactured wood would be exempt from regulation. For the specific crates to be exempted, the corner supports would have to be replaced with exempt materials (plywood, particle board, veneer, etc.) or with bundled pieces of raw wood each of which is no more than 6 mm (0.24 in) thick.

Comment: We request that APHIS address compliance requirements for WPM originating in the United States, shipped to a foreign location and then exported back to this country. It seems unlikely that WPM exported from the United States will be marked according to the IPPC Guidelines until all other countries have adopted those Guidelines. Consequently WPM originating in the United States that is exported and then returned would not satisfy the IPPC Guidelines unless an interim marking mechanism is established and used. Will APHIS allow U.S.-origin WPM that is exported and reimported into the United States to be marked according to requirements established by relevant foreign jurisdictions on an interim basis until all other countries adopt the IPPC Guidelines?

Response: We are not adopting the suggested approach because using additional markings to indicate that WPM originated in the United States would require a major regulatory program to ensure the validity of such markings. It would be expensive, inconvenient, and a drain on APHIS resources that can be employed more usefully elsewhere. It would also be confusing to foreign governments that are just getting used to the markings in the IPPC Guidelines. There are already many sources of treated WPM in the United States, and APHIS, as the national plant protection organization of the United States, is currently developing procedures to meet its responsibilities under the IPPC Guidelines to inspect, monitor, accredit, and audit commercial companies that treat WPM and apply the official mark to it that indicates treatment. There are also many foreign sources of WPM treated in accordance with the regulations, and many U.S. shippers doing business with Canada already obtain their WPM from foreign sources.

Dunnage and Small Wood Pieces

Comment: Does the proposed marking requirement mean that every piece of the 40 to 80 tons of dunnage that may be carried on board a steel transport ship could be subject to inspection prior to discharge? This is a serious problem because dunnage is used under the steel since it is intended to prevent movement of the cargo during the voyage. Long steel products are carried stowed in a fore-and-aft direction in ships' holds. Dunnage is used athwartship. In such a correctly stowed hold there should be little or no dunnage showing on completion of loading, so that marking may not make a difference as far as inspection prior to discharge is concerned. Also, sometimes ships meet with such bad weather during their sea voyage that part of the dunnage is crushed or broken. As a result, there will then be pieces of dunnage unmarked. What measures are then intended?

Response: We recognize the difficulty in ensuring that required treatment marks are present on some dunnage that is custom cut to brace or fill gaps in a particular load. However, dunnage is frequently made from the type of low quality wood that poses the greatest pest risk, and it is therefore necessary that dunnage be treated and marked the same way as any other regulated WPM. The fact that the nature of some cargoes makes it impossible to inspect the associated dunnage aboard ship is not particularly relevant because dunnage inspection is normally done following cargo discharge.

Alternatives to Marking WPM

Comment: To speed port clearance and aid enforcement, we support using very simple self-declarations of compliance to accompany any and all international shipments, even those totally free of solid wood packaging.

The self-declaration would affirm that all packaging in the shipment complies with the provisions of the IPPC Guidelines. This is vital information and therefore should be repeated in key shipping documents such as bills of lading, invoices, and so on.

Response: We welcome the use of electronic records for many port operations purposes, and we are working with the U.S. Department of Homeland Security (DHS) on projects in that area. However, APHIS has decided that the system of authorized WPM markings applied by facilities operating under the supervision of national governments is more reliable than a system where individual invoices and shipping documents affirm compliance. Affirmations in shipping documents about whether or not cargoes contain WPM, and whether or not the WPM has been treated, are frequently unreliable. Our experience clearing shipments from China showed frequent incidents where shipping documents contained an affirmation that no WPM was in the cargo, despite its presence. Under this final rule, inspectors can tell directly from observation of the WPM whether or not it is in compliance (barring fraudulent misuse of the mark, which will be addressed by auditing and monitoring). This process does not need to be significantly slower than using shipping documents. Importers that establish a record of compliance over a number of shipments generally will be subject to less inspection. Clearance time will also decrease as importers and exporting countries gain experience with the new requirements and acquire a history of moving shipments without inspectors finding pests of concern associated with them.

Comment: Clearing WPM at ports based on physical inspection to see if it is marked will cause significant delays in the clearance of imports without commensurate benefits. Containers and air cargo will have to be unloaded individually and each pallet, crate, or other regulated item inspected. This is highly burdensome and costly for both importers and the government, and will cause major disruptions to importers' supply chains, many of which are part of just-in-time inventory management systems. For the government these inspections will divert inspectors of the U.S. Bureau of Customs and Border Protection (CBP), DHS, from their primary cargo security mission.

We urge APHIS to offer an alternative that would be consistent with the best practices being implemented throughout the regulatory realm, which allow for electronic filing of compliance information. In an electronic system, importers would be allowed to transmit a compliance code to the CBP, by which code they would certify that the WPM is compliant or that there is no WPM contained in the shipment. This is how compliance certifications are presented to other government agencies such as the Federal Communications Commission and the Food and Drug Administration. A paper alternative, such as a stamped statement on a bill of lading or invoice, should be available for situations in which electronic certification is not practical.

Additionally, we recommend that APHIS consider providing for a blanket certification for importers who can assure to the satisfaction of APHIS that their WPM is routinely compliant. In the electronic environment, this would consist of importer information established as part of its CBP account profile. CBP is developing these profiles as part of its Automated Commercial Environment architecture. We urge APHIS to work closely with CBP to implement the necessary interfaces between CBP's system and APHIS. In the interim, we request that APHIS accept blanket paper certificates of compliance by which importers certify that for a designated period of time all imports of WPM into the United States are compliant.

Response: See the response to the previous comment.

Inspection Procedures

Comment: Because not all WPM poses equal risks, APHIS should use risk management to avoid unnecessary shipment delays caused by ineffective random inspections. Take advantage of data from existing importers quality control procedures and compliance programs. Highly compliant importers, as verified by valid statistical sampling of imports, should be subject to a lower rate of physical inspections than unknown or noncompliant importers.

Response: APHIS intends to use risk management techniques and data from a variety of sources to target its inspection activities and its monitoring and auditing activities for facilities conducting treatments.

Delayed Effective Date and Noncompliant Shipments

Comment: Instead of immediately starting to order the reexport of unmarked WPM, we request a 2-year transitional period to phase out old WPM with previously acceptable marking (for example, ''HT'' without the IPPC symbol) provided the treatment requirements prescribed by the proposed rule are satisfied.

Response: APHIS received a number of comments stating that exporting countries and shippers would need time to adapt to the new requirements of the rule and to change some of their business practices and WPM sources. We agree, and in response we have set the effective date for this final rule at a date 1 year after its publication date. We believe affected parties will be able to prepare for the new requirements during this period. APHIS will also conduct a very active information campaign during this period to ensure that affected parties are aware of the new regulatory requirements. Consistent with parties' commitments under the Montreal Protocol, this campaign will also stress to affected parties that use of alternate packing materials or heat treatment of WPM are environmentally preferable alternatives for meeting the requirements, as documented by the FEIS. As part of this campaign, APHIS inspectors at ports will focus on imported WPM shipments that do not meet the new requirements, and will give the importers official notice explaining what they must do for future shipments (*i.e.*, those arriving after the effective date of this final rule) to comply with the new requirements.

Comment: In case of noncompliance, the proposal would require reexport after separating the cargo, if possible. Why not allow the other measures explained in item 6.1 of the IPPC Guidelines, such as incineration, processing or treatment, etc.?

Response: Reexportation is necessary because we need to achieve compliance (treatment and marking of WPM before arrival) in order to fully protect against the introduction of plant pests. In recent years, several destructive plant pests, including the Asian longhorned beetle and the emerald ash borer, have been introduced into the United States. We believe that these pests have entered the United States in WPM at ports of entry. Therefore, we believe that proper treatment of WPM, prior to importation into the United States, is essential to safeguard our agricultural resources from further pest introductions. We believe requiring the reexportation of noncompliant WPM is the only option that will ensure that WPM is properly treated prior to its arrival in the United States. Also, allowing post-entry treatment is not feasible because space and services at ports are limited and ports cannot be burdened with vast quantities of noncompliant materials awaiting treatment or incineration. Further, allowing post-entry treatment would place an additional burden on already scarce port resources since it would be necessary to track shipments

to ensure proper treatment. Finally, the reexportation requirement is consistent with the approach adopted by other IPPC member countries, such as Canada.

Comment: The requirement to reexport noncompliant imports is too stringent. Some WPM might not be stamped due to simple error. In cases where marking is absent but no pests have been intercepted, the cargo should be accepted. Even if pests are found WPM could be fumigated or treated appropriately at the expense of the importer in the routine manner for other noncompliant goods. Equivalent measures should be explored. The national plant protection organization (NPPO) of the exporting country could then be informed about the non-compliance with the details of the exporter so that the NPPO could monitor that exporter.

Response: Please see the above responses about the 1-year delay in the effective date of this rule, which will give affected parties time to comply with the new requirements. We intend to inform the NPPO's of exporting countries about noncompliance in shipments from their countries, but this is in addition to, not a substitute for, enforcement action by APHIS.

Comment: When imported WPM is not in compliance, APHIS should require both the WPM and cargo to be treated at the port of entry. Separating the cargo from the WPM without treatment could result in the introduction of wood borers into the environment. Similarly, any properly marked WPM that proves infested should be required to be treated at the port of arrival. Fumigators at the ports of entries have years of experience treating cargo upon arrival and have the expertise to ensure that any destructive pests are destroyed and that the free flow of trade is not impeded. Requiring the reexport of WPM and associated cargo will impede international trade and hurt the U.S. economy.

Response: As discussed above, the reexport option will be necessary to achieve compliance (treatment and marking of WPM before arrival), and also because space and services at ports are limited. In some cases, APHIS inspectors at a port of entry may discover signs of pests in a shipment that is apparently in compliance and order treatment in accordance with § 319.40–9. APHIS is committed to protecting U.S. agricultural resources and will ensure that any treatment after arrival is done under safeguards adequate to prevent the spread of pests. Sometimes this will involve treating cargo along with WPM, and sometimes it will not, based on the type of cargo and the nature of any pests that are identified.

Economic Impacts on WPM Producers

Comment: Forty percent of all hardwood lumber manufactured in the United States, and a goodly portion of the softwood as well, go into the manufacture of WPM like dunnage, crating, pallets, packing blocks, drums, cases, and skids. It is absolutely essential for the hardwood industry and very important to the softwood industry to preserve this huge market for their lowest quality lumber. Also, unloading containers in transit to verify whether the packing material has really been treated would greatly endanger certain products being transported (*e.g.,* fragile wood veneers), in addition to adding more time to the transportation.

Response: The problem is that the use of low grade, untreated wood in international WPM is exactly the practice that must be ended to protect U.S. resources against foreign plant pests. We do not see any alternative that would allow continued use of untreated WPM and also protect against these risks. With regard to unloading cargoes for inspection purposes, CBP inspectors at ports are experienced and well trained and deal professionally with any shipments. APHIS is developing new operational procedures to minimize delays caused by WPM inspections at ports. We also expect that the need for substantial unloading and inspection will decline over time as shippers and exporting countries become familiar with the new requirements and develop a history in which no pests of concern are found associated with their shipments.

Comment: Nearly 7,000 U.S. facilities produce pallets nationwide and are a vital utilizer for low grade wood which would otherwise have to be burned at high temperature for lack of other use. This, in turn, would considerably increase the cost of marketing high quality wood products like veneer, lumber, flooring, plywood, and particle board as well as other engineered wood products.

Response: We recognize that this rule will have some adverse economic effects, as discussed below in the section ''Executive Order 12866 and Regulatory Flexibility Act.'' Such effects are sometimes unavoidable when APHIS takes steps to protect agricultural resources against plant pest risk. There will still be a market for domestically produced pallets because untreated WPM could still be used in domestic commerce or in exports to any country that has not implemented the IPPC Guidelines or similar treatment requirements.

Economic Impacts on U.S. Fumigators at Ports

Comment: The rule would reduce fumigation at ports of arrival, financially hurting quarantine fumigators that often are small family-owned businesses. These economic losses would be on top of significant revenue losses that fumigators incurred when APHIS implemented its interim rule on WPM from China.

Response: APHIS' main goal is protecting against any possible infestation that might be associated with imported WPM. There is a general trend throughout the world to reduce methyl bromide usage. While this final rule may result in reduced fumigation of wood products at U.S. ports of arrival, the 1-year delay in the effective date should give fumigation businesses time to adjust business plans. Also, as discussed above, APHIS may discover signs of pests in a shipment that is properly marked and may order treatment of either the WPM, the cargo, or both, as appropriate.

Implementation Schedule

Comment: The effective date of the final rule should be at least 1 year after publication, to allow developing countries to implement the necessary means and conditions, including national systems of treatment, inspection, registration or accreditation, and auditing of WPM to be shipped to the United States, thus avoiding an obstacle to international trade.

Response: We agree, as discussed above, and have delayed the effective date for 1 year. In general, APHIS has communicated very well with its trading partners, which should allow them to implement the needed systems within 1 year. After the effective date, we will enforce compliance with the new requirements.

Comment: We seriously doubt that any country outside of North America will be prepared to fully implement the standard by January 2004. We encourage the USDA to adopt the standard but also apply a generous grace period to allow importing countries to get up to speed on the marking systems and underlying audit programs. Otherwise, we will end up seeing a lot of ''IPPC symbols'' on pallets which may not have been treated to the same degree of quality and control as we would expect in the United States, thereby casting doubt on the efficacy of the whole program.

Response: Please see the responses above about the 1-year delay in the effective date. CBP will audit all

material shipped, as well as records for facilities treating WPM and applying the mark. Shipments from countries with high levels of noncompliance will face higher levels of inspection.

Miscellaneous Comments

Comment: The IPPC Guidelines do not specifically require that WPM be free of bark. Does APHIS intend to specify a bark-free requirement for WPM in the final rule?

Response: No, APHIS will not require the wood to be bark free, as long as it has been properly treated. Currently available data shows that treatment alone will adequately kill the pests of concern.

Comment: There is no provision in the proposed rule describing what mark should be used by non-IPPC member countries. There will be trademark registration on the IPPC mark so non-IPPC member countries may not be entitled to use this marking.

Response: APHIS is not responsible for any country's decision on whether or not to join the IPPC, or for how any country addresses trademark issues. We do note that the IPPC is in the process of registering the mark in many countries at this time for use on materials treated in accordance with the IPPC Guidelines. We also note that, even if a country cannot establish treatment facilities authorized to apply the mark in their own country, they can readily obtain treated and marked WPM from other countries, or they can use alternative materials to WPM.

Miscellaneous Editorial Changes

In addition to the changes discussed above, we are making some minor changes for clarity and consistency. We are removing the definitions of *exporter statement*, *importer statement*, and *solid wood packing material* because these terms are no longer used in the regulations. We are slightly editing the table in § 319.40–3(b)(1)(ii) that provides the methyl bromide treatment schedule so that it provides concentrations in lbs./1,000 c.f., as well as in g/m^3. We are also adding a graphic and description of the approved IPPC mark to § 319.40–3(b)(2).

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Below is a summary of the economic analysis for the changes in WPM import requirements in this document. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act. A copy of the full economic analysis is available for review at the location listed in the **ADDRESSES** section at the beginning of this document, or on the Internet at *http://www.aphis.usda.gov/ppq/swp/*.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is set out below, regarding the effects of this rule on small entities. The initial regulatory flexibility analysis in our proposed rule stated that we did not have all the data necessary for a comprehensive analysis of the potential effects of this rule on small entities. Therefore, we invited comments concerning potential economic effects, particularly the number and kind of small entities that might incur benefits or costs. We did not receive any comments providing the specific data we requested, but we did receive several comments stating that some small business will be adversely affected by the rule, including importers with substantial inventories of WPM on hand in foreign countries, which they would no longer be able to use for shipments to the United States, and fumigators at U.S. ports that currently treat large volumes of WPM upon arrival and expect to lose much of this business after the rule is implemented. Several commenters also suggested that domestic WPM manufacturers faced indirect effects that could result when other countries adopt the IPPC Guidelines, reducing the demand for untreated WPM.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of injurious plant pests.

This analysis evaluates a final rule adopting the IPPC standards on wood packaging material, the International Standard for Phytosanitary Measures No. 15. This standard contains globally accepted measures that may be applied to WPM to reduce the entry of pests via this pathway. The IPPC Guidelines require WPM to be heat treated at 56 °C for 30 minutes, or fumigated with methyl bromide.

Alternatives considered and rejected included the alternative of taking no action. This alternative was rejected because recent interceptions of pests at ports of entry show a steady increase in serious pests associated with WPM from everywhere except China, whose WPM must already be treated due to past pest interceptions. If left unchecked, pests introduced by imported WPM have the potential to cause significant economic damage to the agricultural and forest resources of the United States.

We also rejected the alternative of extending the China interim rule to all WPM worldwide, because that would not ensure long-term exclusion of some wood pests of quarantine concern, such as certain deep wood-borers, fungi, rots, and wilts. The adoption of the IPPC treatment standards for all importing countries will address pest threats posed not only by Cerambycidae, which was the primary target of the China interim rule, but nine other pest families as well. Additionally, adoption of the China interim rule requirements would result in the greatest additional use of methyl bromide of all the alternatives.

Another alternative not adopted was a comprehensive risk reduction program allowing differing, circumstance-dependent risk mitigation strategies that include various options for complying with United States import requirements. A comprehensive risk reduction program would consist of an array of mitigation methods (*e.g.*, inspection, various heat treatments, various fumigants and other chemical treatments, irradiation, etc.) that is more extensive than that contained in either the China Interim Rule or the IPPC Guidelines. Many of the treatment methods being considered as components of a comprehensive risk reduction program require more research and development to demonstrate that they could be used effectively and economically to treat the required range of WPM products. Some of the remaining issues include inadequate control, incomplete efficacy data, safety issues, and lack of adequate facilities or supplies. Therefore, while comprehensive risk reduction is still considered a possible future approach for WPM import requirements, it is not practical to adopt it at this time.

Another alternative, substitution of other packing materials, was rejected because it requires use of materials the cost of which exceed the likely costs of SWPM that is either heat treated or fumigated with methyl bromide.

We believe it is appropriate and necessary to adopt the IPPC Guidelines because they were developed as an international standard to control pests associated with WPM. The types of pests the IPPC Guidelines were developed to control have been

intercepted at U.S. ports for many years and pose significant risks to U.S. resources. The damage they cause could be similar in magnitude to the recent introduction of the Asian longhorned beetle (ALB) *Anaplophora glabripennis* (Coleoptera: Cerambycidae). Our regulations have already been changed to prevent further introductions of ALB from China, but adopting the IPPC guidelines could prevent the introduction of ALB or similar wood borers from other parts of the world, as well as prevent the introduction of other types of pests such as woodwasps and bark beetles. Imposing the IPPC Guidelines' treatment and other requirements to prevent these introductions will yield net benefits. The benefits (avoided losses) that can be gained by preventing introduction of these pest types are discussed below. The actual magnitude of the benefits cannot be definitively ascertained, but they are likely to be much larger than the associated costs.

As an indicator of the damage ALB or similar wood borers could cause if introduced again in the future, consider the costs of the ALB introduction from China. The ALB, first discovered in New York, NY, in 1996 and in Chicago, IL, in 1998, was most likely introduced on wood packing material from China. The present value of urban trees at risk in the two affected cities is estimated at $59 million over some 50 years. About $6 million of urban trees have been destroyed due to pest infestation and eradication efforts since the introduction of ALB. So far, APHIS and State and local governments have spent over $59 million in eradicating the pest in the two localities. If only New York City and Chicago were considered, it would appear that the current eradication program has spent an amount equal to the value of the resource being protected. However, the eradication and quarantine activities have slowed the spread within New York and Chicago. Without these activities, the faster spread in these cities would increase the net present value because the resources would be lost in a much shorter amount of time. The eradication and quarantine activities are also the reason the pest has been confined to the two cities where it was initially detected. The potential damages from ALB spread to other areas can be gleaned from the Nowak *et al.* study that estimated losses to seven other cities. The present value of damage to urban trees in Baltimore, MD, alone, not allowing for intervention, was estimated to be $399 million. Additionally, without governmental intervention, forest resources would also be at risk.

Wood borers such as ALB could cause the most damage of all types of pests associated with WPM, but we have also projected that other types of pests could cause substantial damage. These include the Sirex woodwasp (Family: Siricidae) and the Eurasian spruce bark beetle *Ips typographus* (Family: Scolytidae). Projections of physical damages that can be caused by these types of pests range up to $48–$607 million and $208 million, respectively. Perhaps the greatest devastation posed by these pests that cannot be fully captured monetarily is their potential to cause irreversible loss to native tree species and consequential alterations to the environment and ecosystem.

The recent introduction of the emerald ash borer (EAB), *Agrilus planipennis* (Coleoptera: Buprestidae), a pest of ash trees, in Michigan and parts of Canada in June 2002 is a reminder of this threat. It is not known how the pest arrived in North America but, as with other exotic beetles, infested WPM from Asia is suspected. The pest may have arrived some 6 years ago, before the interim rule on China was implemented in September 1998 (63 FR 50099–50111, Docket No. 98–087–1). Ironically, many of the large ash trees favored by the pest were originally planted to replace elm trees killed by Dutch elm disease caused by yet another exotic pathogen. A preliminary assessment of the potential impact of the EAB on urban and timberland ash trees in the six counties originally quarantined by Michigan comes to about $11 billion in replacement costs alone. The nursery stock industry in the affected counties reported a loss in sales so far of $2 million. These estimates serve to highlight the potential magnitude of damage that could be caused by one outbreak alone of a pest on the targeted list.

The adoption of the IPPC treatment standards for all importing countries will address pest threats posed not only by Cerambycidae, which was the primary target of the China interim rule, but nine other pest families as well. Approximately 95 percent of pests intercepted by APHIS inspectors in shipments worldwide are pests on the IPPC target pest list.

The treatment requirements in this rule are not expected to completely eliminate all pest interceptions related to WPM. As evident from data reported between 2000 and 2001, 2 years following the implementation of the China rule, 7 percent of pest interceptions was still associated with China imports. To the extent that pest interceptions will be reduced, the risk of an outbreak will also be lower than in the absence of the rule. However, because pests continue to be intercepted albeit at a lower rate, benefits need to be correspondingly adjusted to reflect the risk.

In discussing the costs that might result from adopting this rule, it is essential to recognize that to some degree these costs will accrue when other countries adopt the IPPC Guidelines, whether or not the United States also adopts them. As other countries impose IPPC treatment requirements on imports containing WPM the global WPM market will be greatly affected, likely causing a broader impact on the domestic wood packaging industry than the provisions of this rule.

Adopting this rule may also cause general societal costs due to human health issues (increases in skin cancer, cataracts, and other conditions) and reduction in crop yields that may result if increased use of methyl bromide as a result of this rule delays recovery of the ozone layer. It is impossible to confirm or estimate such costs at the present time.

The effects of this rule will fall largely on foreign manufacturers of pallets. The increased treatment cost may add to the cost of packaging and transporting of goods which, in turn, will affect importers of commodities transported on pallets and final consumers of those goods are potentially affected by this rule. The required treatments will add to the cost of packaging and transport of goods. Due to the very large number of pallets that are used to assist imported cargo, the overall cost may be substantial. The extent of the impact on U.S. consumers will depend on the ability of importers to pass on the additional costs to respective buyers. It is expected that most of the cost of treating pallets will be borne by foreign pallet manufacturers. Furthermore, given the small value of pallets as compared to the value of trade, increases in pallet prices are not expected to have a measurable effect on domestic consumers or on trade.

We also expect this rule to affect U.S. purchasers of imported pallets, crates and boxes. Between 1999 and 2001, an average of 38 million pallets was imported into the United States, over 80 percent of which came from Canada. Imported WPM was valued at $150 million during this time period. At approximately $3.95 per piece, imported pallets are less expensive than domestic pallets where the average price ranges between $8 and $12 per pallet. Canadian pallets are primarily used by industries close to the U.S. and

Canadian border. The wood pallet market is highly competitive, and the demand for imported pallets can be characterized as elastic. While pallets made of alternative materials such as plastic, corrugated fiberboard, or processed wood are imperfect substitutes for wood, one wood pallet can easily substitute for another wood pallet.

Assuming a perfectly elastic supply and perfectly inelastic demand for imported pallets, and assuming a treatment cost that adds about $2 on average to a pallet, U.S. purchasers of imported pallets could lose an estimated $76 million in higher costs. The true extent of the impact, however, will be lower than this amount because demand is likely to be elastic and foreign importers are expected to share a greater burden of the cost increase. We do not know treatment costs for foreign pallet producers, but given the availability of substitutable domestic wood pallets, we do not expect U.S. purchasers of imported pallets to be significantly affected.

Recent and forthcoming decisions by other countries to adopt the IPPC standard, while not an effect of this rule, represent an associated issue that will indirectly affect manufacturers who sell pallets, crates, and boxes to foreign buyers. There are an estimated 3,000 manufacturers of pallets and containers in the United States. The primary importers of these items are Canada and Mexico. As these two countries prepare to implement the IPPC standard, only treated wood packaging material will likely be in demand for export. The extent of the impact on pallet and container manufacturers will depend on the ability of individual firms to put in place the necessary infrastructure for conducting treatments as required by the international standard. The number of U.S. firms that export WPM and will therefore be affected is unknown. Regardless, the impact on the overall WPM industry is expected to be small as the quantity of total pallets exported, estimated at about 10 million units, comprises only 2.5 percent of the 400 to 500 million pallets in production in the United States each year.

Domestic manufacturers of wood pallets may be indirectly affected in one other way. Because of the increasing trend in recycling of pallets for cost-cutting purposes, manufacturers may be faced with new demands for treated WPM from domestic exporters who reuse pallets and wood containers to ship goods back from foreign countries.

Effects on Small Businesses

The provisions of this rule are not expected to directly affect U.S. manufacturers of wood packaging material. There may be some decrease in the demand for pallets if some exporters decide to use alternate packing materials rather than WPM due to treatment costs for WPM. However, this should be more than balanced by new purchases of treated pallets by exporter/importers, who must now use treated pallets when they reuse pallets used to ship goods overseas to subsequently ship goods back to the United States. This may create an increased demand by exporters for treated pallets. Also, some U.S. pallet makers also make alternative packing materials (plywood, particle board) and could maintain their business levels even if there is a small demand shift from one category to the other.

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 United States. Most firms sell their products within a 350 mile radius. The average number of employees in 1997 was 17. Thirty two percent of the firms had fewer than five employees. The average sales were $1.5 million.

The Small Business Administration (SBA) classifies wood container and pallet manufacturers as small businesses if they have 500 or fewer employees. According to the U.S. Census Bureau, 1997 Economic Census, all pallet manufacturers are considered small businesses.

Fumigation services are currently available at several dozen ports of entry on a permanent or ad hoc basis. In most cases these fumigation services are provided by large businesses that serve a number of ports. Two commenters on the proposed rule stated that several fumigators at ports were small businesses that could be adversely affected if the demand for fumigation upon arrival decreases, but these commenters did not provide any specific data on the number or location of these businesses or the scope of the potential impacts.

While decisions by other countries to adopt the IPPC standard are independent actions not directly resulting from adoption of this rule, those decisions do raise the associated issue that the international WPM market will adjust as Canada, Mexico, and other countries adopt the IPPC standard. Small businesses such as pallet manufacturers and fumigators at ports may be adversely affected by those countries' decisions if they are unable to adapt to the increased demand for treated pallets. The number of small businesses potentially affected by other countries' decisions to adopt the IPPC standard is unknown. However, the adoption of the treatment standards by IPPC member countries that will then apply to U.S. exports will likely create a broader impact on the domestic wood packaging industry (small and large businesses alike) than the provisions of this rule.

Conclusion

This rule will affect foreign manufacturers of pallets which may, in turn, affect importers and final consumers of goods transported on pallets. Because the cost of a pallet is a very small share of the bundle of goods transported on pallets, cost increases due to the treatment requirements are not expected to significantly affect domestic consumers and thus will not have a measurable impact on the flow of trade. This rule is not expected to reduce the amount of goods shipped internationally as is evident from observing trends in imports from China since implementation of the interim rule in 1999.

This rule will also affect U.S. consumers of imported pallets. Given the substitutability of wood pallets, the impact on consumers is expected to be small due to the availability of wood pallets. Foreign importers are likely to absorb a greater share of the cost increase.

The simultaneous adoption of the treatment standards by IPPC member countries that is directed at U.S. exports will likely create a broader impact on the domestic wood packaging industry than the provisions of this rule.

This rule contains information collection requirements, which have been approved by the Office of Management and Budget (see ''Paperwork Reduction Act'' below.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

On September 19, 2003, the U.S. Environmental Protection Agency (EPA) published in the **Federal Register** (68 FR 54900–54901) a notice of availability of the final environmental impact statement titled ''Importation of Solid Wood Packing Material.'' The FEIS considers the environmental impacts from importation of wood packaging material that could result from our adoption of the proposed rule as a final rule.[2] The FEIS was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Pursuant to the implementing regulations for NEPA, in cases requiring an EIS, APHIS must prepare a record of decision at the time of its decision. This final rule constitutes the required record of decision for the FEIS.

The NEPA implementing regulations require that a record of decision state what decision is being made; identify alternatives considered in the environmental impact statement process; specify the environmentally preferable alternative; discuss preferences based on relevant factors—economic and technical considerations, as well as national policy considerations, where applicable; and state how all of the factors discussed entered into the decision. In addition, the record of decision must indicate whether the ultimate decision has been designed to avoid or minimize environmental harm and, if not, why not.

The Decision

APHIS has decided, in this final rule, to amend its regulations to provide that wood packaging material imported into the United States from other countries will be subject to the requirements stipulated in the IPPC Guidelines. This includes specific treatment requirements for either heat treatment or fumigation with methyl bromide of the wood packaging material.

Alternatives Considered in the Impact Statement Process

The FEIS focuses mainly on pest risk issues from the use of wood packaging material, potential impacts from treatments with methyl bromide, and potential impacts from use of substitute packaging made from materials other than unmanufactured solid wood. The FEIS considers a reasonable range of alternatives, including: (1) No action, essentially maintaining the exemption from treatment requirements for importation of wood packaging material from foreign countries except as regulated under the September 18, 1998, interim rule that required treatment of WPM from China (China interim rule, 63 FR 50099–50111, Docket No. 98–087–1), (2) extension to all countries of the treatments in the China interim rule, (3) adoption of the IPPC Guidelines, (4) establishment of a comprehensive risk reduction program, and (5) use of substitute (non-solid wood) packaging material only.

Environmentally Preferable Alternative

The environmentally preferable alternative would be to prohibit importation of wood packaging material, which would virtually eliminate all associated pest risks, as well as the need for quarantine treatments. This regulatory approach (alternative 5 above) would require all commodities that are to be imported to the United States to be transported with only substitute packaging material, which at the current time would be technically and economically infeasible for many exporters, especially in developing countries.

Preferences Among Alternatives

There is a preference for the approach taken in this final rule, which we adopt herein (alternative (3), above). The preference for this alternative is based principally on the determination that it meets the Agency's obligations under the Plant Protection Act (PPA), and other legislation such as NEPA and the Clean Air Act.

The no action alterative (alternative 1 above) was rejected because recent interceptions of pests at ports of entry show a steady increase in serious pests associated with WPM from everywhere except China, whose WPM must already be treated due to past pest interceptions. If left unchecked, pests introduced by imported WPM have the potential to cause significant economic damage to the agricultural and forest resources of the United States.

The alternative of extending the China interim rule to all WPM worldwide (alternative 2 above) would not ensure long-term exclusion of some wood pests of quarantine concern, such as certain deep wood-borers, fungi, rots, and wilts. The adoption of the IPPC treatment standards for all importing countries will address pest threats posed not only by Cerambycidae, which was the primary target of the China interim rule, but nine other pest families as well. Additionally, adoption of the China interim rule requirements would result in the greatest additional use of methyl bromide of all the alternatives.

The comprehensive risk reduction program (alternative 4 above) would consist of an array of mitigation methods (*e.g.*, inspection, various heat treatments, various fumigants and other chemical treatments, irradiation, etc.) that is more extensive than that contained in either the China Interim Rule or the IPPC Guidelines. Many of the methods are in various phases of research and development that do not provide adequate basis for any final decisions about program usage.

Substitution of other packing materials (alternative 5 above) requires use of materials the cost of which exceed the likely costs of SWPM that is either heat treated or fumigated with methyl bromide.

Please see the FEIS for a full discussion of the reasons why adopting the IPPC standard was considered the preferred alternative.

Factors in the Decision

APHIS' mission is guided by the PPA, under which the detection, control, eradication, suppression, prevention, and retardation of the spread of plant pests or noxious weeds have been determined by Congress to be necessary and appropriate for the protection of the agriculture, environment, and economy of the United States. The PPA also has been designed to facilitate exports, imports, and interstate commerce in agricultural products and other commodities. In order to achieve these objectives, use of pesticides, including methyl bromide, has often been prescribed.

Methyl bromide is an ozone depleting substance that is strictly regulated under the Montreal Protocol and the Clean Air Act. While the goal of these authorities and agreements is to limit and ultimately phase out all ozone depleting substances, certain exemptions and exclusions are recognized, including an exemption for methyl bromide use for plant quarantine and preshipment purposes, including the purposes provided for in this final rule. The

[2] Copies of the FEIS are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, the FEIS may be viewed from the APHIS Internet site at *http://www.aphis.usda.gov/ppd/es/swpm.html*, and copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

exemption is not unconditional, however. The United States, like other signatories to the Montreal Protocol, must review its national plant health regulations with a view to removing the requirement for the use of methyl bromide for quarantine and preshipment applications where technically and economically feasible alternatives exist.

This rule authorizes the use of methyl bromide, as well as heat treatment, to treat WPM imported from other countries in order to meet the mandates of the PPA. In addition, the Agency is working to promote environmental quality with ongoing work to identify and add to our regulations valid technically and economically feasible alternatives to methyl bromide.

Avoid or Minimize Environmental Harm

The environment can be harmed by using methyl bromide, in which case recovery of the ozone layer may be delayed, or by not using methyl bromide, in which case agriculture and forested ecosystems, among other aspects of environmental quality, could be devastated unless other equally or more effective alternatives were strictly enforced (*i.e.*, heat treatment or use of substitute packing materials). By assuring that use of methyl bromide is limited, the Agency strikes a proper balance in its efforts to minimize environmental harm. APHIS is committed to monitoring these efforts through the NEPA process, and otherwise. Furthermore, where appropriate, measures—gas recapture technology, for example—to minimize harm to environmental quality caused by methyl bromide emissions have been, and will continue to be, encouraged by APHIS. The prudent use of heat treatment and substitute packaging materials by developed nations is expected to promote this regulatory approach in developing countries as their trade opportunities expand.

Other

Methyl bromide used in quarantine applications prescribed by the United States contributes just a small fraction of total anthropogenic bromine released into the atmosphere. Nevertheless, the Montreal Protocol is action-forcing in the sense that signatories must review their national plant health regulations with a view to finding alternatives to exempted uses of methyl bromide. The EPA has also cautioned that, regardless of the incremental contribution, it is important to recognize that any additional methyl bromide releases would delay recovery of the ozone layer.

A considerable amount of research and development on methyl bromide alternatives has been conducted within the USDA and continues today. Under the Clean Air Act, EPA has also established a program to identify alternatives to ozone depleting substances, including methyl bromide, but EPA's listing of an acceptable alternative does not always adequately address its suitability for a particular use. We must not put agriculture and ecosystems at risk based on unproven technology.

APHIS is firmly committed to the objectives of the Montreal Protocol to reduce and ultimately eliminate reliance on methyl bromide for quarantine uses, consistent with its responsibilities to safeguard this country's agriculture and ecosystems. Achieving the objectives of both reducing (and ultimately eliminating) methyl bromide emissions as well as safeguarding agriculture and ecosystems in the most expeditious, cost-effective way possible, requires close coordination within the Federal Government of research, development, and testing efforts. APHIS is determined to cooperate actively with the Agricultural Research Service, EPA, the Office of Management and Budget, and others involved in this effort to find effective alternatives to quarantine methyl bromide uses.

In a notice summarizing EPA comments on recent environmental impact statements and proposed regulations that was published in the **Federal Register** on January 17, 2003 (68 FR 2539), EPA expressed no objection to the draft EIS and the APHIS proposed rule.

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 0579–0225.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

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

■ Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 319.40–1, the definitions for *Exporter statement*, *Importer statement*, and *Solid wood packing material* are removed, and two definitions are added in alphabetical order to read as follows:

§ 319.40–1 Definitions.

* * * * *

Regulated wood packaging material. Wood packaging material other than manufactured wood materials, loose wood packing materials, and wood pieces 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.

* * * * *

Wood packaging material. Wood or wood products (excluding paper products) used in supporting, protecting or carrying a commodity (includes dunnage).

■ 3. In § 319.40–3, paragraph (b) is revised to read as follows:

§ 319.40–3 General permits; articles that may be imported without a specific permit; articles that may be imported without either a specific permit or an importer document.

* * * * *

(b) *Regulated wood packaging material.* Regulated wood packaging material, whether in actual use as packing for regulated or nonregulated articles or imported as cargo, may be imported into the United States under a general permit in accordance with the following conditions:

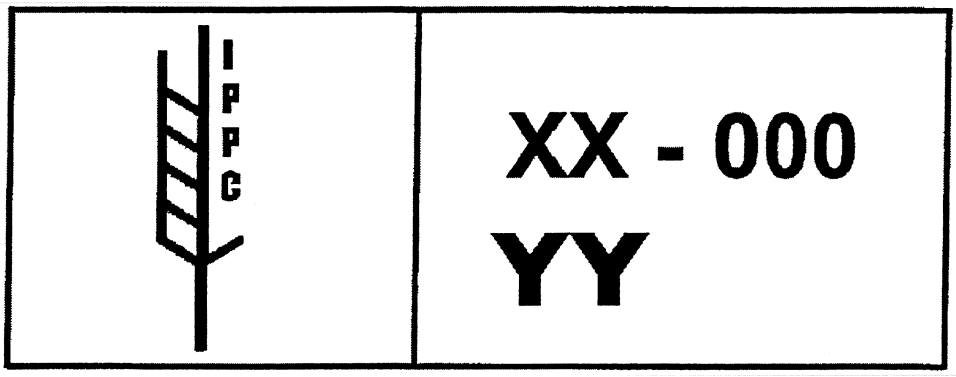
(1) *Treatment.* The wood packaging material must have been:

(i) Heat treated to achieve a minimum wood core temperature of 56 °C for a minimum of 30 minutes. Such treatment may employ kiln-drying, chemical pressure impregnation, or other treatments that achieve this specification through the use of steam, hot water, or dry heat; or,

(ii) Fumigated with methyl bromide in an enclosed area for at least 16 hours at the following dosage, stated in terms of grams of methyl bromide per cubic meter or pounds per 1,000 cubic feet of the enclosure being fumigated. Following fumigation, fumigated products must be aerated to reduce the concentration of fumigant below hazardous levels, in accordance with label instructions approved by the U.S. Environmental Protection Agency:

Temperature (°C/°F)	Initial dose g/m³ and lbs./ 1,000 c.f)	Minimum required concentration g/m³ and lbs./1,000 c.f.) after:			
		0.5 hrs	2 hrs.	4 hrs.	16 hrs.
21/70 or above	48/3.0	36/2.25	24/1.5	17/1.06	14/0.875
16/61 or above	56/3.5	42/2.63	28/1.75	20/1.25	17/1.06
11/52 or above	64/4.0	48/3.0	32/2.0	22/1.38	19/1.19

(2) *Marking.* The wood packaging material 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 requirements of this paragraph. The mark must be approved by the International Plant Protection Convention in its International Standards for Phytosanitary Measures to certify that wood packaging material has been subjected to an approved measure, and must include a unique graphic symbol, the ISO two-letter country code for the country that produced the wood packaging material, a unique number assigned by the national plant protection agency of that country to the producer of the wood packaging material, and an abbreviation disclosing the type of treatment (*e.g.*, HT for heat treatment or MB for methyl bromide fumigation). The currently approved format for the mark is as follows, where XX would be replaced by the country code, 000 by the producer number, and YY by the treatment type (HT or MB):



(3) *Immediate reexport of regulated wood packaging material without required mark.* An inspector at the port of first arrival may order the immediate reexport of regulated wood packaging material that is imported without the mark required by paragraph (b)(2) of this section, in addition to or in lieu of any port of first arrival procedures required by § 319.40–9 of this part.

(4) *Exception for Department of Defense.* Regulated wood packaging material used by the Department of Defense (DOD) of the U.S. Government to package nonregulated articles, including commercial shipments pursuant to a DOD contract, may be imported into the United States without the mark required by paragraph (b)(2) of this section.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579–0049 and 0579–0225.)

§ 319.40–5 [Amended]

■ 3. In § 319.40–5, paragraphs (b)(1)(i)(C), (b)(2), and (b)(2)(i), the words ''solid wood packing materials'' are removed each time they occur and the words ''regulated wood packaging material'' are added in their place, and paragraphs (g) through (k) are removed.

§ 319.40–10 [Amended]

■ 4. In § 319.40–10, footnote 6, the words ''without a complete certificate or exporter statement'' are removed and the words ''without meeting the requirements of this subpart'' are added in their place.

Done in Washington, DC, this 9th day of September 2004.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 04–20763 Filed 9–15–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV04–920–2 IFR]

Kiwifruit Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate and changes the assessable unit from $0.045 per 22-pound, volume-fill container or container equivalent to $0.002 per pound of kiwifruit established for the Kiwifruit Administrative Committee (committee) for the 2004–05 and subsequent fiscal periods. The assessment rate of $0.002 per pound of kiwifruit is $0.000045 per pound less than the assessment rate currently in