

# Proposed Rules

Federal Register

Vol. 68, No. 97

Tuesday, May 20, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 02-032-2]

RIN 0579-AB48

#### Importation of Solid Wood Packing Material

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

**ACTION:** Proposed rule and notice of public hearings.

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

began requiring that material be treated prior to importation. This change would affect all persons using wood packaging material in connection with importing goods into the United States.

**DATES:** We will consider all comments that we receive on or before July 21, 2003. We will also consider comments made at public hearings to be held in Seattle, WA, on June 23, 2003; Long Beach, CA, on June 25, 2003; and Washington, DC, on June 27, 2003.

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

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

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

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

1. Seattle, WA: Renaissance Madison Hotel, 515 Madison Street, Seattle, WA.
2. Long Beach, CA: Hilton Long Beach, 701 W. Ocean Blvd., Long Beach, CA.
3. Washington, DC: United States Department of Agriculture, Jefferson Auditorium, South Building Wing 4, 1400 Independence Avenue SW., Washington, DC.

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

#### SUPPLEMENTARY INFORMATION:

##### Public Hearings

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

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

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

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

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

their views will be asked to provide the name of each member of the panel and the organizations the panel members represent.

Persons or panels wishing to speak at one or more of the public hearings may register in advance by phone or e-mail. Persons wishing to register by phone should call the Regulatory Analysis and Development voice mail at (301) 734-8138. Callers must leave a message clearly stating (1) the location of the hearing the registrant wishes to speak at, (2) the registrant's name and organization, and, if registering for a panel, (3) the name of each member of the panel and the organization each panel member represents. Persons wishing to register by e-mail must send an e-mail with the same information described above to [richard.r.kelly@usda.gov](mailto:richard.r.kelly@usda.gov). Please write "Public Hearing Registration" in the subject line of your e-mail. Advance registration for any hearing must be received by 3 p.m. on Thursday, June 19, 2003.

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

### Background

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

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

The introduction of pests associated with SWPM is a worldwide problem.<sup>1</sup> Because SWPM is very often re-used, recycled or re-manufactured, the true origin of any piece of SWPM is difficult to determine and thus its phytosanitary status cannot be ascertained. This often precludes national plant protection organizations from conducting useful specific risk analyses focused on the pests associated with SWPM of a particular type or place of origin, and imposing particular mitigation measures based on the results of such analysis. For this reason, there is a need to develop globally accepted measures that may be applied to SWPM by all countries to practically eliminate the risk for most quarantine pests and significantly reduce the risk from other pests that may be associated with the SWPM.

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

<sup>1</sup> Problems with pests associated with SWPM have also been addressed on a regional level, e.g., when the North American Plant Protection Organization, acting on behalf of the United States, Canada, and Mexico, approved the document "NAPPO Standards for Phytosanitary Measures: Import Requirements for Wood Dunnage and Other Wood Packing Materials into a NAPPO Member Country." The Secretariat of the North American Plant Protection Organization, Ottawa, August 12, 2001. Also, the three NAPPO countries have agreed to a target date of June 1, 2003, to implement the IPPC Guidelines among them; this announcement is on the NAPPO Web site at <http://www.nappo.org/Standards/Desicions-e.htm>.

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

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

<sup>2</sup> "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.

<sup>3</sup> Regarding "guidelines" vs. "standards": While the IPPC document refers to itself as "Guidelines" in the title, it refers to itself as a "standard" throughout its body. The distinction does not appear to be meaningful; cf. IPPC Convention, Art. 3, "Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist \* \* \*."

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

#### *Basis of the IPPC Guidelines*

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

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

The eight-step process by which the IPPC develops new phytosanitary standards is described in detail in a notice APHIS published in the **Federal Register** on August 23, 2002 (Docket No. 02-051-1, 67 FR 54615-54621). APHIS technical experts were deeply involved throughout the process used to develop the IPPC Guidelines for wood packaging materials. A team of international experts studied all published data available at the time and recommended the treatment schedules that are in the IPPC Guidelines. Scientific studies evaluated during this process documented the risks associated with SWPM, the need to treat it, and the efficacy of the treatments included in the IPPC Guidelines (see, e.g., [http://www.aphis.usda.gov/ppq/swp/heat\\_treatment.pdf](http://www.aphis.usda.gov/ppq/swp/heat_treatment.pdf)).

#### *Terms Used in the IPPC Guidelines and in APHIS Regulations*

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

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

#### *The IPPC Guidelines Compared to Current APHIS Requirements*

The IPPC Guidelines require SWPM to be heat treated or fumigated with methyl bromide. These two treatments are efficacious in treating the target

pests named in the IPPC Guidelines, i.e., bark beetles, wood borers, and certain nematodes. These pests represent over 95 percent of all of the pests that APHIS intercepted in association with imported SWPM in 2000 and 2001.

#### Target Pest Groups of the IPPC Guidelines

##### Insects

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

##### *Bursaphelenchus xylophilus*

Currently, the regulations allow, subject to certain restrictions, SWPM to be imported into the United States from any country. In § 319.40-3, paragraph (b)(1) provides that bark-free SWPM used with nonregulated wood articles is subject to inspection upon arrival, but treatment is not required. Paragraph (b)(4) of § 319.40-3 provides that bark-free pallets moved as cargo are subject to inspection upon arrival, but, in general, treatment is not required. Paragraphs (b)(2) and (b)(3) of § 319.40-3 require, in general, that bark-free SWPM used with regulated wood articles or SWPM not free of bark be heat treated, fumigated, or treated with preservatives. Likewise, as of the end of 1998, SWPM from China, including Hong Kong, is subject to stricter regulation in that it also must be heat treated, fumigated, or treated with preservatives, in accordance with § 319.40-5, paragraphs (g) and (i). The treatment schedules for SWPM in the current regulations have an effectiveness against target pests for SWPM that is very similar to that provided by the treatments in the IPPC Guidelines. We are proposing to adopt the IPPC Guidelines in lieu of all the current requirements for SWPM described in this paragraph.

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

irradiation, and treatment in controlled atmosphere.

The IPPC Guidelines state, with respect to heat treatment, that SWPM should be heated in accordance with a specific time-temperature schedule that achieves a minimum wood core temperature of 56 °C for a minimum of

30 minutes. It notes that kiln-drying, chemical pressure impregnation (CPI), or other treatments may be considered heat treatments to the extent that these meet the heat treatment specifications. For example, CPI may meet the specification through the use of steam, hot water, or dry heat.

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

Temperature	Initial dose (g/m <sup>3</sup> )	Minimum required concentration (g/m <sup>3</sup> ) after:			
		0.5 hrs.	2 hrs.	4 hrs.	16 hrs.
21 °C or above .....	48	36	24	17	14
16 °C or above .....	56	42	28	20	17
11 °C or above .....	64	48	32	22	19

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

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

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

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

There is worldwide consensus among national plant protection organizations that pest interceptions associated with SWPM indicate a serious problem in which the movement of certain dangerous pests is not sufficiently controlled by current restrictions on SWPM. There is ample data indicating that the United States is at particular risk with regard to this problem. For

many years, pests associated with SWPM, including highly destructive wood borers and beetles, have been intercepted at U.S. ports. Pests of these types are often well-concealed inside SWPM, in larval forms or dormant stages that increase their survival potential. These pests may easily survive movement to the final destination or to cargo redistribution sites, many of which are vulnerable, heavily forested regions. About one-third of the land area of the United States is forest land, and there are millions of acres of urban, suburban, and ornamental trees as well. There are many areas where the climate, tree species, and lack of natural predators would allow introduced pests to flourish and become established.

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

From 1996 through 1998, PIN–309 reported<sup>5</sup> an average of 402 live pests

<sup>4</sup> “Quarantine pest”: A pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled. (FAO, 1990; revised FAO, 1995; IPPC, 1997).

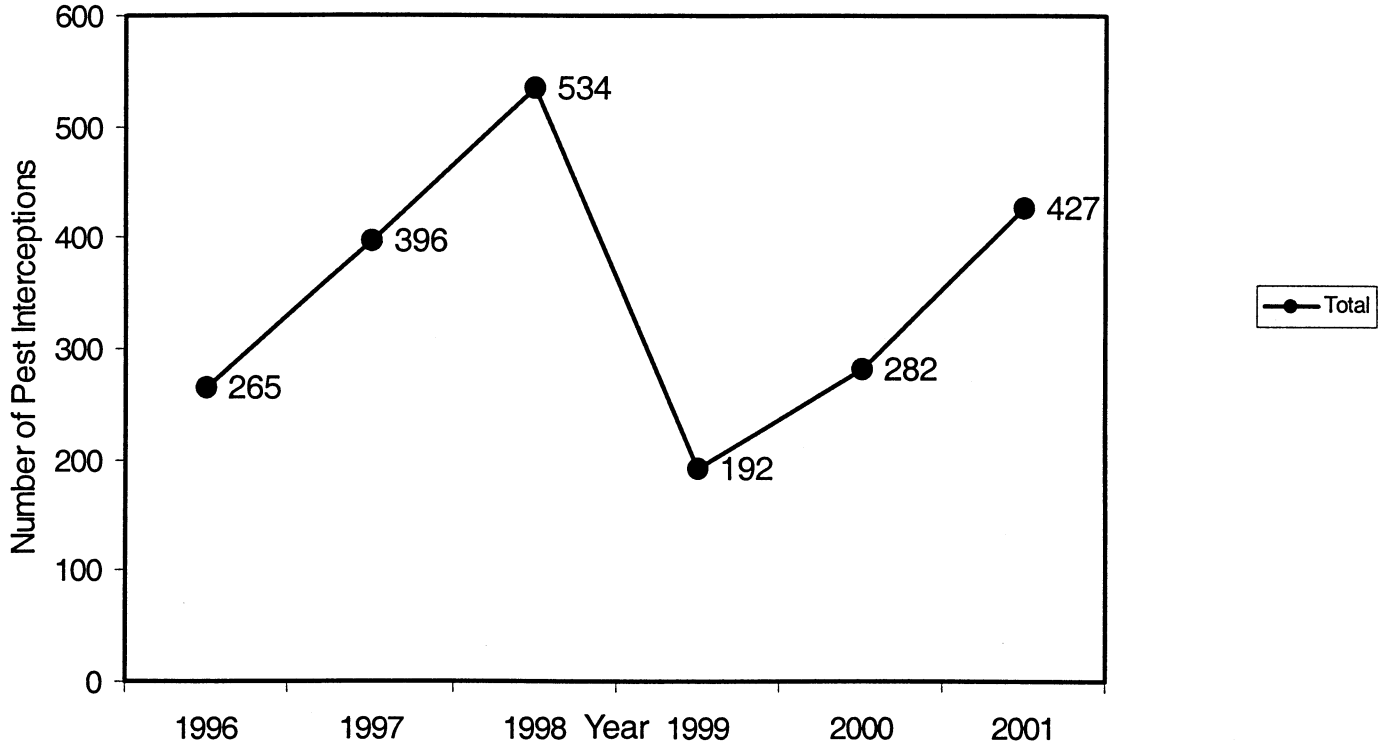
<sup>5</sup> The scope and limits of PIN–309 data suggest that many more pests associated with SWPM went unreported. First, PIN–309 reports are made by inspectors, who inspect less than 1 percent of the more than 4 million wood pallets and other SWPM

per year associated with SWPM were intercepted at U.S. ports of entry; of these, 156, or 39 percent, were from China. Starting at the end of 1998, APHIS began requiring that SWPM from

China be heat treated, fumigated, or pressure treated. This caused a marked decline in pest interceptions associated with SWPM from China, but interceptions from other countries have

increased. For 2000–2001, an average of 355 pests per year associated with SWPM were intercepted at U.S. ports of entry; of these, 24, or 7 percent, were from China.

Chart 1. Interceptions of pests associated with Solid Wood Packaging Materials (1996 - 2001) based on the PIN-309 (Pest Interception Network database, USDA / APHIS).



If we subtract the China data from the PIN-309 reports, there was an average of 246 interceptions associated with SWPM from the rest of the world (ROW) each year from 1996–1998; this has risen to an average of 331 for each year from 2000–2001. APHIS believes that

the increase in pest interceptions associated with ROW shipments is due to a real increase in pests associated with them, probably due to increased volume of trade that required increased sources of SWPM, causing shippers to use SWPM of lesser quality that is more

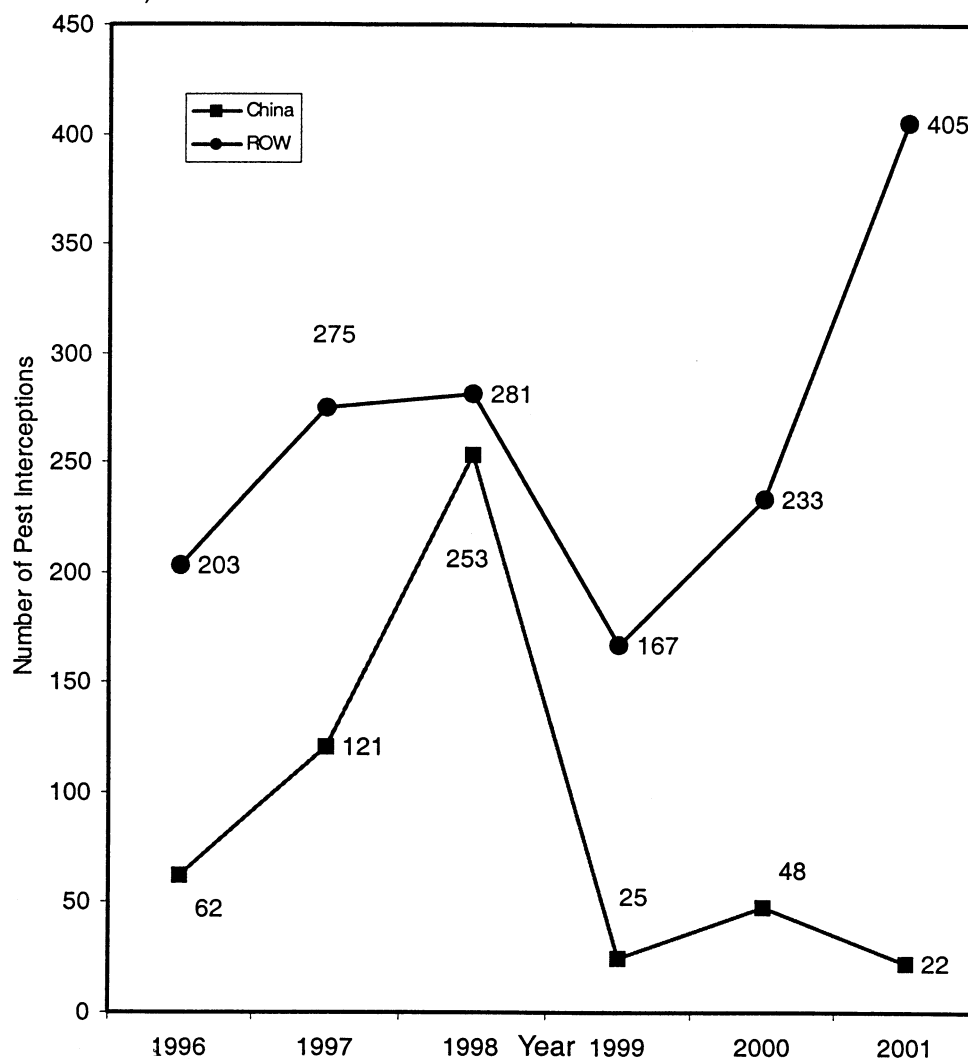
likely to have pests associated with it. In discussions with APHIS, other countries have also indicated concern that increased trade has lead to use of riskier SWPM, and have endorsed the IPPC Guidelines as a means to address this phenomenon.

articles imported each year. Second, usually when inspectors find the first actionable pest in a

shipment, they order treatment or re-export; they do

not inspect the remainder of the shipment for more pests, which therefore are not recorded in PIN-309.

Chart 2. Interceptions of pests associated with Solid Wood Packaging Materials (1996 - 2001) from China versus Rest of the World (ROW) based on the PIN-309 (Pest Interception Network database, USDA/APHIS)



The types of pests intercepted include many that could cause significant damage if established. They included Coleoptera: Scolytidae (bark beetles); Hemiptera: Heteroptera, Coleoptera: Buprestidae, and Cerambycidae, (wood borers). Some pests had already moved beyond ports of entry when found; *Hylurgops palliatus*, a Palearctic bark beetle, was found beyond the port in Erie, PA, in May and June 2001, and *Hylurgus ligniperda Fabricus*, a red haired pine bark beetle, was found on a Christmas tree plantation in Rochester, NY, in November 2000. These two bark beetles were likely introduced into the United States with SWPM from Europe.

Many of these pests have the potential to cause damage comparable to that demonstrated by other recent introductions, e.g., the Asian longhorned beetle (ALB) and the pine shoot beetle (PSB). The ALB was discovered in New York in 1996 and in

Illinois in 1998, and since then APHIS has spent over \$50 million on surveys, destruction and replacement of infested trees, treatment of surrounding trees, and other control activities. The State and local governments of Illinois and New York together have spent approximately \$9 million. While containment efforts are expected to succeed, if they fail, ALB could devastate forests covering more than 100 million acres—the maple-dominated forests stretching from New England to the Midwest, with additional range in Canada; and the aspens of the Great Lakes region, central Canada, and the Rocky Mountains. APHIS has also spent millions of dollars to control the PSB since its discovery near Cleveland, OH, in 1992, after which it spread to nine Midwestern and Eastern States, as well as Ontario. It is continuing to spread to new areas within some affected States,

and may spread to additional States. One recent study<sup>6</sup> estimated the value of urban trees at risk from ALB in nine cities. The resources at risk ranged from \$72 million for Jersey City, NJ to \$2.3 billion for New York City.

Another recent example of a pest apparently introduced through SWPM movement is the emerald ash borer. This Buprestid beetle was recently discovered feeding on ash (*Fraxinus* sp.) trees in southeastern Michigan; it was positively identified in July 2002 as *Agrilus planipennis* Fairmaire, an insect that is indigenous to Asia, with large populations in ash forests in China and eastern Russia. Evidence suggests that *A. planipennis* has been established in

<sup>6</sup>Nowak, David, J., Judith E. Pasek, Ronald A. Sequeira, Daniel E. Crane, and Victor C. Mastro, 2001. "Potential Effect of *Anaplophora glabripennis* (Coleoptera:Cerambycidae) on Urban Trees in the U.S." *Journal of Economic Entomology* 94(1): 116-122 (2001).

Michigan for at least 5 years. The State of Michigan has imposed a quarantine to restrict movement of ash trees, firewood, nursery stock, and other articles that could spread the pest to new areas. Surveys to determine the extent of the infested area are underway.

The emerald ash borer attacks green, black and white ash trees, which are widely planted shade trees in the Midwest. It frequently kills nearly all the ash trees in areas where it lacks natural predators. The insect's larvae tunnel under the bark in late summer and fall, disrupting the phloem layer and often causing death within 2 to 3 years.

To control these substantial, recently analyzed pest risks, we propose to adopt the IPPC Guidelines. Taking this action would promptly address a weakness in our current regulations and improve protection of our natural and agricultural wood resources. It would also make U.S. SWPM requirements consistent with those of our major trading partners, who intend to adopt the IPPC Guidelines soon.

#### *Efficacy of the IPPC Guidelines Treatments*

The IPPC standard-setting process, discussed earlier, established the efficacy of the treatment standards recommended by the IPPC Guidelines. A great deal of research also supports the effectiveness of the treatments in the IPPC Guidelines for controlling risks associated with target pests than can move with SWPM.

#### *Evidence of Effectiveness of the Heat Treatment in the IPPC Guidelines*

The Asian longhorned beetle (*Anoplophora glabripennis*) or ALB is often used as a representative species for detailed assessment of the effectiveness of heat treatment. Recently completed and ongoing studies on both ALB and *Monochamus* species (a species of similar size and life cycle used as a surrogate for ALB) have confirmed that heat treatment to a 56 °C core temperature for 30 minutes is 100 percent effective against ALB larvae in wood.

Early experiments on heat treatment to a 56 °C core temperature for 30 minutes focused on eradication of pinewood nematode (Dwinell 1995, 1997). Dwinell (1997) cites a trilateral study involving Canada, the United States, and the European Union (EOLAS, 1991), which concluded that heat treating unseasoned lumber to a core temperature of 56 °C for 30 minutes eradicates the pinewood nematode and pine sawyer beetles.

Heating lumber from many species of wood at a core temperature of 56 °C for 30 minutes eradicated the pinewood nematode and pine sawyer beetles (Family *Cerambycidae: Monochamus*) (USDA, 1994). The genus *Monochamus* is a host of the pinewood nematode.

Pine sawyer beetle, *Monochamus* spp., belongs to the Family *Cerambycidae*, the same family that contains the ALB. Dwinell (1997) also indicated that heating infested Virginia pine logs to a core temperature of 53 °C for 30 minutes killed all pine sawyer beetles and all pine wood nematodes.

#### *Evidence of Effectiveness of the Methyl Bromide Fumigation Treatment in the IPPC Guidelines*

There are differences between the methyl bromide dosages over time required by the IPPC Guidelines and those currently required by the APHIS Plant Protection and Quarantine Treatment Manual. The dosage the Treatment Manual requires to be maintained over a 16-hour period is consistently higher than that required in the IPPC Guidelines. However, both treatment schedules effectively destroy the target pests for SWPM.

The U.S. Department of Agriculture (USDA), in collaboration with China, performed studies of methyl bromide fumigation of the Asian longhorned beetle that demonstrated 100 percent mortality of ALB larvae and pupae (Mack, 2002 per. comm). These studies used 10 cm square by 1.15 meter long wood timbers of *Populus* spp. exposed to methyl bromide for 24 hours at four concentration-temperature combinations: 80 mg/l @ 4.4 °C; 64 mg/l @ 10.0 °C; 56 mg/l @ 15.6 °C; and 48 mg/l @ 21.1 °C. In all cases, 100 percent mortality of ALB larvae and pupae was observed. The methyl bromide dose in these studies was greater than the one in the IPPC Guidelines. However, a prediction of the level of mortality of ALB using a Polo Probit 9 computer routine (Robertson 1997) indicated that 99.714 percent of ALB larvae would be killed after 16 hours at 15.6 °C with a cumulative CT (concentration x time) of 347. This is very close to the IPPC standard of a cumulative CT of 388 at 16 °C and 16 hours exposure; it is considered biologically equivalent. At 21.1 °C at 16 hours exposure and a cumulative CT of 293 (*i.e.*, the IPPC Standard), the predicted mortality level using the Polo Probit 9 computer routine (Robertson 1997) was 99.984 percent. Experiments by USDA at lower temperatures (*e.g.*, at 11 °C) confirm the effectiveness of the full range of optional IPPC temperature levels.

Also, although the above studies employed a methyl bromide dose greater than the IPPC Guidelines, the experiments were performed using a "most risk scenario." For example, the wood was in larger pieces than is typical of SWPM, and was green wood, with a much higher moisture content than typical SWPM. Increased moisture and size both cause significant resistance to fumigant penetration. Also, in these studies, only wood was fumigated in the chamber, while most SWPM fumigations consist of about 35 percent SWPM and 65 percent cargo. The cargo is usually non-sorbitive materials, which increases the exposure of the SWPM to methyl bromide and increases the effectiveness of the treatment. These experiments provide evidence that fumigation with methyl bromide over the IPPC temperature and dosage ranges is effective against ALB in wood (Barak, 2002 per. comm). Other experimental evidence includes McMullen (1952), Michelsen (1964), Hanula and Berisford (1982), and Yu *et al.* (1984), among others.

#### *Proposed Changes to the Regulations to Adopt the IPPC Guidelines*

In order to incorporate the IPPC Guidelines into our regulations, we propose to amend "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles" (7 CFR 319.40–1 through 319.40–11), as follows.

We do not propose to make any changes in the definitions in § 319.40–1. The definition of *solid wood packing material* would remain unchanged, and SWPM would continue to be included in the definition of *regulated article*. This means that SWPM, except for types that have received more than primary processing (*e.g.*, plywood, particle board, oriented strand board, veneer, or other processed types of SWPM), would continue to be subject to the regulations.

We do not propose to make any changes to § 319.40–3(a), which exempts SWPM (and other regulated articles) from Canada and border States in Mexico adjacent to the United States from most of the requirements of the regulations.<sup>7</sup> The Canadian exemption

<sup>7</sup> On June 11, 1999, APHIS published a proposed rule in the *Federal Register* (Docket No. 98–054–1, 64 FR 31512–31518) to eliminate this exemption for many types of regulated articles, including SWPM, from Mexican border States. This proposal was based on a recent pest risk assessment that challenged the premise that, because forests in the United States share a common forested boundary with adjacent States in Mexico, the two countries' forests share, to a reasonable degree, the same forest pests. The pest risk assessment concluded that a significant pest risk exists in the movement of raw wood material into the United States from the adjacent States of Mexico, because certain forests in

exists because there are no significant pests associated with Canadian-origin SWPM. There has been some concern that SWPM from other countries imported into Canada could harbor pests, and could then be moved to the United States, spreading pests. However, Canada has signed an agreement to implement regulations in the near future requiring that all SWPM imported into Canada meet the conditions of the IPPC Guidelines. Also, heat treatment of pallets is rapidly becoming a standard throughout North America, and we expect that even before Canada formally complies with the IPPC Guidelines, a substantial portion of the wood pallets and wood crating imported from Canada will meet the provisions of the IPPC Guidelines.

We propose to make substantial changes to § 319.40–3(b), which sets forth the conditions under which SWPM may be imported under general permit. Currently, § 319.40–3(b) imposes varying restrictions on imported SWPM based on whether it is free of bark or not; whether it is used to pack regulated or nonregulated articles; and whether it is in actual use as packing or is moved as cargo. It appears that these distinctions would be unnecessary under the IPPC Guidelines, where all SWPM would be heat treated or fumigated with methyl bromide, and marked with an official mark to document the treatment. Therefore, we propose to replace § 319.40–3(b) with the following requirements.

SWPM, 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) The SWPM must have been:
  - 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
  - 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 of the enclosure being fumigated:

Temperature	Initial dose (g/m <sup>3</sup> )	Minimum required concentration (g/m <sup>3</sup> ) after:			
		0.5 hrs.	2 hrs.	4 hrs.	16 hrs.
21 °C or above .....	48	36	24	17	14
16 °C or above .....	56	42	28	20	17
11 °C or above .....	64	48	32	22	19

- 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. As noted in other APHIS regulations (*e.g.*, those for importing SWPM from China), when articles are fumigated, the articles must be aerated afterward to ensure that the articles are safe for handling, storage, and transportation. Aeration is required by the Environmental Protection Agency (EPA) in EPA-approved label instructions for all fumigants utilized pursuant to the regulations. Also, Occupational Safety and Health Administration (OSHA) regulations contained in title 29 of the Code of Federal Regulations require employers of cargo handlers to determine that the concentration of fumigants is below the level specified as hazardous before the cargo is loaded or discharged.

(2) The SWPM 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 has been treated as required. 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 SWPM, a unique number assigned by the national plant protection agency of that country to the producer of the SWPM, and an abbreviation disclosing the type of treatment (*e.g.*, HT for heat treatment or MB for methyl bromide fumigation).

Importation under a general permit means that no paperwork, certificate, or importer document needs to accompany the SWPM. The mark required by the regulations would be applied by treatment facilities treating SWPM, and the contents of the mark (*i.e.*, the country and producer codes) would allow APHIS to trace SWPM back to its producer if necessary—for example, if APHIS finds that SWPM is not treated properly. We propose that the mark should be applied “preferably on at least two opposite sides of the article” because multiple marks would make inspection and enforcement easier and reduce the need to shift cargo in order to see marks. While a single mark would meet the minimum legal requirement, shippers may want to use SWPM with multiple marks to speed the inspection and clearance of their cargo.

The “unique graphic symbol” portion of this mark is not available at this time, but the IPPC should have approved such

a symbol by the time this action reaches the final rule stage. The IPPC Guidelines contain such a symbol, but its use has been suspended because the Food and Agriculture Organization has not been able to legally protect the symbol for use according to the IPPC Guidelines. Legal registration of a substitute symbol is underway.

We are proposing that APHIS inspectors at the port of first arrival could order the immediate reexport of SWPM articles that arrive without the mark required by § 319.40–3(b)(2) that indicates required treatment. In most cases involving SWPM that is not properly marked, APHIS would order such shipments to be immediately reexported, because it is not practical to treat large volumes of SWPM after arrival. Not only are the facilities for such treatment lacking, but the untreated SWPM would represent an unacceptable pest risk while it is in storage at a port awaiting treatment. Therefore, we propose to specifically authorize inspectors to order the immediate reexport of unmarked SWPM. In some cases it would also be necessary to order the reexport of the cargo associated with the SWPM, although in most cases the cargo could be separated from the SWPM at the port and moved to its destination under safeguards—with the importer charged for the costs of these services. It would

these Mexican States should be viewed as biological islands containing their own unique combination of

forest pests, not as an extension of the U.S. forest

ecosystem. APHIS has not yet taken final action on this proposal.



be necessary to order the reexport of the cargo as well as the SWPM associated in cases where it is impossible to safely separate cargo from SWPM without substantial risk that pests would be spread during the process, or when pests would likely move with the cargo even after it is separated from the SWPM. This authority would be in addition to the authority inspectors already have in accordance with § 319.40–9 to inspect regulated articles, order their cleaning or treatment, and refuse them entry under certain conditions.

We are proposing special conditions for SWPM used by the Department of Defense (DOD) to move material from foreign locations into the United States. DOD often moves material in SWPM fashioned by its own woodworkers, rather than SWPM produced at the type of facilities that produce and treat SWPM for general commercial use. Also, DOD must often produce unusual or unique SWPM to safely pack its material. For reasons of security, practicality, and timeliness, it would be inappropriate to require DOD to use only SWPM that was produced and treated commercially and marked as meeting the IPPC Guidelines. Instead, we propose that SWPM used by DOD must meet the heat treatment or fumigation requirements of the IPPC Guidelines, but need not bear the proposed mark. We believe that this requirement will be as effective as the IPPC Guidelines with regard to SWPM used by DOD. While we do not propose to require a marking on such DOD SWPM, we would employ APHIS inspectors who already work in concert with DOD to monitor their use of SWPM and ensure that it is properly heat treated or fumigated.

In § 319.40–5, “Importation and entry requirements for specified articles,” we propose to remove paragraphs (g) through (k). This would remove all of the requirements established in 1998 and 1999 for importation of SWPM from the People’s Republic of China, including Hong Kong, since the new requirements for complying with the IPPC Guidelines would apply to the People’s Republic of China, including Hong Kong, as well as the rest of the world.

Finally, current § 319.40–9 describes inspection and other requirements at the port of first arrival. This proposal would not change this section, but it should be noted that this section has implications for anyone who imports SWPM that has not been properly treated and marked in accordance with § 319.40–3(b) of this proposed rule. APHIS inspectors at ports would examine SWPM for the

IPPC-approved international mark required by the regulations. In accordance with the IPPC Guidelines, each national plant protection organization is expected to develop procedures to ensure that SWPM treated and marked in each country complies with the IPPC Guidelines. Therefore, the international mark is, in effect, a certificate verifying proper treatment. Persons who forge, alter, or fraudulently use the mark would be subject to administrative or criminal penalties.

#### References

- Barak, Al 2002. Personal communication. USDA, APHIS, PPQ, CPHST, Otis Laboratory, Otis MA.
- Dwinell, L.D. 1995. Colonization of heat-treated pine logs by *Bursaphelenchus xylophilus* and its *Monochamus* vectors. *Journal of Nematology* 27(4):98.
- Dwinell, L.D. 1996. Methyl bromide alternatives for decontaminating softwood chips, lumber, and logs. *Proceedings of the Annual International Research Conference on Methyl Bromide Alternatives and Emissions Reductions*, November 4–6, 1996, Orlando, Florida, p. 64–1 to 64–3.
- Dwinell, L.D. 1997. The pinewood nematode: Regulation and mitigation. *Annual Review of Phytopathology* 35: 153–166.
- Dwinell, L.D. 2001a. Potential use of elevated temperatures to manage pests in transported wood. *Exotic Forest Pests Online Symposium*, April 16–29, 2001.
- Dwinell, L.D. 2001b. Potential use of fumigation to manage the risks of pests in transported wood. *Exotic Forest Pests Online Symposium*, April 16–29, 2001.
- Hanula, J.L., and C.W. Berisford 1982. Methyl bromide fumigation destroys broods of the smaller European elm bark beetle (Coleoptera: Scolytidae) in elm logs. *Journal of Economic Entomology* 75(4): 688–690.
- Latta, R. and C.H. Gaddis 1941. The destruction of dormant egg clusters of the gypsy moth by methyl bromide fumigation. Unpublished report. USDA Bureau of Entomology and Plant Quarantine, Washington DC. 13p.
- Mack, Ron 2002. Personal communication. USDA, APHIS, PPQ, CPHST, Otis Laboratory, Otis MA.
- McMullen, M.J. 1952. The sterilization of timber by fumigation. *Tech. Notes*, Forest Commission, Division of Wood Technology, NSW, Australia 6(3/4): 20–24.
- Michelsen, A. 1964. Diffusion of methyl bromide into pine wood during fumigation against *Hylotrupes bajulus*. *Holzforschung und Holzverwertung* 16: 66–71.
- Robertson, J. 1997. Polo Probit PC Software. LeOra Software, Inc., Berkeley, CA.
- USDA 1991. An Efficacy Review of Control Measures for Potential Pests of Imported Soviet Timber. Miscellaneous Publication No. 1495, USDA/APHIS, Riverdale, MD.
- USDA, 1994. Importation of Logs, Lumber, and Other Unmanufactured Wood Articles, Environmental Impact Statement, July 1994. USDA/APHIS, Hyattsville, MD 86p.
- Yu, K.Y., Y.W. Chung, H.H. Lee, and J.W. Jae 1984. Study on shipboard fumigation of the imported logs. *Korea Journal of Plant Protection* 23(1): 37–41.

#### Executive Order 12866 and Regulatory Flexibility Act

This proposed 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 SWPM import requirements proposed 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/>.

We do not have enough data for a comprehensive analysis of the economic effects of this proposed rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis for this proposed rule. We are inviting comments about this proposed rule as it relates to small entities. In particular, we are interested in determining the number and kind of small entities who may incur benefits or costs from implementation of this proposed rule and the economic impact of those benefits or costs.

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 proposed rule that would adopt the International Plant Protection Convention (IPPC) standards on wood packaging materials, which are guidelines on globally accepted measures that may be applied to solid wood packing material (SWPM) to reduce the entry of pests via this pathway. The IPPC guidelines require SWPM to be heat treated at 56 °C for 30 minutes, 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 SWPM. 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. Recent interceptions of pests at ports of entry show a steady increase in serious pests associated with SWPM from everywhere except China, whose SWPM must already be treated due to past pest interceptions. If left unchecked, pests imported with SWPM have the potential to cause significant economic damage to the agricultural and forest resources of the United States. The damage they cause could be similar in magnitude to the recent introduction of the Asian long-horned 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 would 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 City in 1996 and in Chicago, Illinois 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 yielded a net loss of about \$6 million (spending \$59 million in control activities to save \$53 million in resources). However, 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 City 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 SWPM, 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 (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 SWPM from Asia is suspected. The pest may have arrived some five years ago, before the interim rule on China was implemented. 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 quarantined counties in 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 would address pest threats posed not only by Cerambycidae, which was the primary target of the China 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 proposed in this rule are not expected to completely eliminate all pest interceptions related to SWPM. As

evident from data reported between 2000 and 2001, two 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 would be reduced, the risk of an outbreak would 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 proposed 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 SWPM the global SWPM market will be greatly affected, likely causing a broader impact on the domestic wood packaging industry than the provisions of this proposed rule.

The impact of this rule would 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, would affect importers of commodities transported on pallets and final consumers of those goods are potentially impacted by this rule. The required treatments would 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 would 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 proposed 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 SWPM 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 would 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 impacted.

The adoption of this rule would 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 in 2003, only treated wood packing materials would likely be in demand for export. The extent of the impact on pallet and container manufacturers would 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 firms that engage in export and would therefore be impacted is unknown. Regardless, the impact on the overall SWPM 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 U.S. 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 SWPM from domestic exporters who reuse pallets and wood containers to ship goods back from foreign countries. The number of firms affected in this way is unknown and may be large.

In sum, this rule would impact 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 would 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 would 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 would likely create a broader impact on the domestic wood packaging industry than the provisions of this proposed rule. The adoption of the standard globally would ensure that U.S. producers and exporters are not placed at a competitive disadvantage by this rule as compared to their trading partners.

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (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

An environmental impact statement (EIS) has been prepared for this proposed rule 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).

Copies of the EIS are available for public inspection in our reading room (information on the location and hours of the reading room is provided at the beginning of this proposed rule under the heading **ADDRESSES**). In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

A notice of intent to prepare the EIS was published in the **Federal Register** on August 14, 2002 (67 FR 52893;

Docket No. 02–032–1) and a notice of availability of the draft EIS was published in the **Federal Register** on November 15, 2002 (67 FR 69216–69217, Docket No. ER–FRL–6634–9).

#### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 02–032–2. Please send a copy of your comments to: (1) Docket No. 02–032–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OClO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This rule would require persons treating SWPM in accordance with the regulations to apply an internationally recognized mark, and would require the plant protection services of countries where the SWPM is treated to develop procedures to monitor and audit the treatments. The information we propose to collect is the minimum needed to protect the United States from incursion by destructive insect pests and plant diseases. Failing to collect this information would cripple our ability to ensure that SWPM does not harbor destructive plant pests. APHIS inspectors at ports would examine SWPM for the IPPC-approved international mark required by the regulations. Therefore, the international mark is, in effect, a certificate verifying proper treatment. Persons who forge, alter, or fraudulently use the mark would be subject to administrative or criminal penalties.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

- (1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;
- (2) Evaluate the accuracy of our estimate of the burden of the proposed

information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.0041 hours per response.

*Respondents:* Importers/exporters of goods sent to the United States and foreign plant health protection authorities.

*Estimated annual number of respondents:* 3,000.

*Estimated annual number of responses per respondent:* 3,300.

*Estimated annual number of responses:* 9,900,000.

*Estimated total annual burden on respondents:* 40,590 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste

Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

**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 proposed 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, we propose to amend 7 CFR part 319 as follows:

**PART 319—FOREIGN QUARANTINE NOTICES**

1. The authority citation for part 319 would continue to read as follows:

**Authority:** 7 U.S.C. 450, 7711-7714, 7718, 7731, 7732, 7751-7754, and 7760; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 319.40-3, paragraph (b) would be 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) *Solid wood packing material.* Solid wood packing 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 solid wood packing materials 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 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	Initial dose (g/m <sup>3</sup> )	Minimum required concentration (g/m <sup>3</sup> ) after:			
		0.5 hrs.	2 hrs.	4 hrs.	16 hrs.
21 °C or above .....	48	36	24	17	14
16 °C or above .....	56	42	28	20	17
11 °C or above .....	64	48	32	22	19

(2) *Marking.* The solid wood packing 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 solid wood packing material, a unique number assigned by the national plant protection agency of that country to the producer of the solid wood packing material, and an abbreviation disclosing the type of treatment (e.g., HT for heat

treatment or MB for methyl bromide fumigation).

(3) *Immediate reexport of SWPM without required mark.* An inspector at the port of first arrival may order the immediate reexport of SWPM 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.* Solid wood packing 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.

\* \* \* \* \*

**§ 319.40-5 [Amended]**

3. In § 319.40-5, paragraphs (g) through (k) would be removed.

Done in Washington, DC, this 14th day of May 2003.

**Bill Hawks,**

*Under Secretary, Marketing and Regulatory Programs.*

[FR Doc. 03-12503 Filed 5-19-03; 8:45 am]

**BILLING CODE 3410-34-P**