



Wood Packing Material Requirements & Customs & Border Protection Enforcement

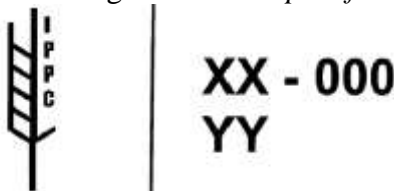
Earlier this week, U.S. Customs & Border Protection (CBP) issued [CSMS 17-000609](#), reminding the Trade Community that pursuant to U.S. Code of Federal Regulations 7 CFR § 319.40-3, non-exempt wood packaging material (WPM) imported into the United States must have been treated at approved facilities at places of origin to kill harmful timber pests that may be present. Moreover, **CBP emphasized that as of November 1, 2017, it will issue penalties to responsible parties for each documented wood packaging materials violation, contrary to the previous published threshold of 5 violations. There will be no yearly reset for calculating repeat violations as each WPM violation may incur a penalty.**

Inasmuch as it has been over ten years since the regulation originally went into effect and CBP issued its corresponding *Guidelines For Liquidated Damages*, a recap of the regulatory requirements may be of interest.

As CBP reminded all, the regulation requires non-exempt WPM used in international trade to be treated to kill harmful insects that may be present. To evidence such treatment, the WPM must display a visible, legible, and permanent mark certifying treatment. The mark must be a legible and permanent mark that indicates that the article has been subjected to the approved measure and include the following elements:

1. The International Plant Protection Convention (IPPC) logo;
2. The ISO two-letter country code for the country that produced the wood packing material followed by a unique number code;
3. The unique number code is assigned by the country's National Plant Protection Organization (NPPO) to the producer of the wood packaging material, who is responsible for ensuring appropriate wood is used and properly marked. Therefore, this code allows a trace back to the facility that treated and stamped the WPM; and
4. An abbreviation that discloses the type of treatment (**HT** for heat treatment or **MB** for methyl bromide fumigation; Guatemala is approved to use **TT** in place of **HT** or **BM** in place of **MB**).

The regulations further require such WPM to 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 the regulation. *Sample of acceptable WPM mark:*



The IPPC logo is on the left; on the right, XX represents the ISO country code and 000 represents the unique number assigned to the producer of the wood packaging material in order to be able to trace back to the treatment facility used; YY represents the method of treatment. Other letters and symbols may be present on the mark as long as the above items are included and clearly legible, permanent, and placed in a visible location, preferably on at least two sides of the article being certified.



BELOW IS THE COMPLETE TEXT OF 7 CFR § 319.40-3 AND A COPY OF CBP'S GUIDELINES FOR LIQUIDATED DAMAGES AND PENALTIES ON WOOD PACKING MATERIAL (WPM) IS ATTACHED.

§ 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.

(a) Canada and Mexico.

(1) The following articles may be imported into the United States under general permit:

(i) From Canada: Regulated articles, other than the following:

(A) Regulated articles of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae, and;

(B) Regulated articles of pine (*Pinus* spp.) that are not completely free of bark from Provinces in Canada that are considered to be infested or partially infested with pine shoot beetle (*Tomicus pinniperda*), as determined by the Canadian Food Inspection Agency, and that are moving to a United States facility operating under a compliance agreement for specified handling or processing under the provisions of § 319.40-8.

(C) Regulated articles of *Fraxinus* spp. (ash), which are subject to the requirements in § 319.40-5(n).

(ii) From States in Mexico adjacent to the United States: Commercial and noncommercial shipments of mesquite wood for cooking; commercial and noncommercial shipments of unmanufactured wood for firewood; and small, noncommercial packages of unmanufactured wood for personal cooking or personal medicinal purposes.

(2) Commercial shipments allowed in paragraph (a)(1) of this section are subject to the inspection and other requirements in § 319.40-9 and must be accompanied by an importer document stating that they are derived from trees harvested in Canada or States in Mexico adjacent to the United States border.

(3) Noncommercial shipments allowed in paragraph (a)(1) of this section are subject to inspection and other requirements of § 319.40-9 and must be accompanied by an importer document or oral declaration stating that they are derived from trees harvested in Canada or States in Mexico adjacent to the United States border.

(b) Regulated wood packaging material.

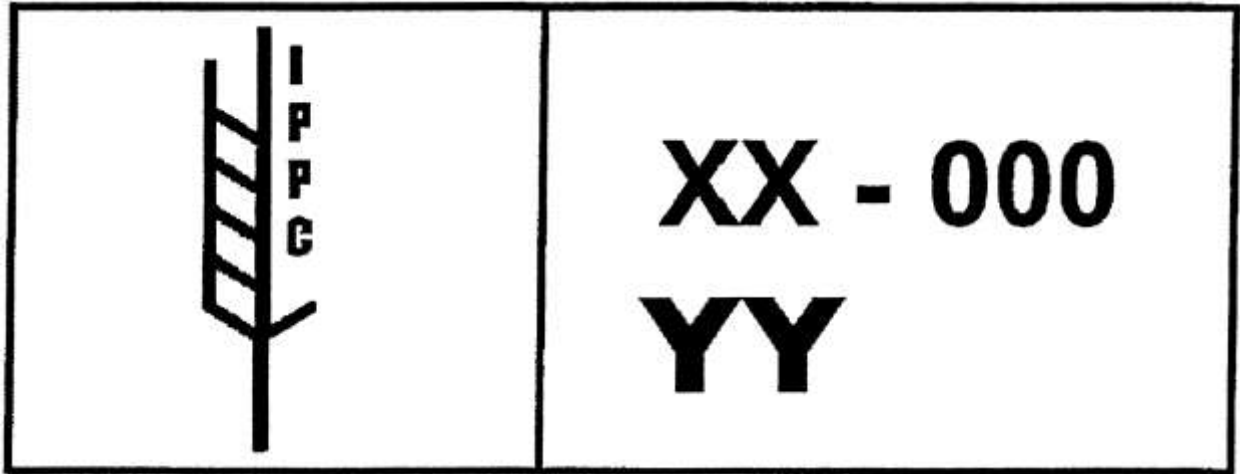
Regulated wood packaging material, whether in actual use as packing for regulated or nonregulated articles or imported as cargo, may be imported into the United States under a general permit in accordance with the following conditions:

(1) The wood packaging material must have been treated in accordance with part 305 of this chapter.

(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)

(c) Loose wood packing materials.

APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Loose wood packing materials (whether in use as packing or imported as cargo) that are dry may be imported subject to the inspection and other requirements in § 319.40–9 and without further restriction under this subpart.

(d) Bamboo timber.

APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Bamboo timber which is free of leaves and seeds and has been sawn or split lengthwise and dried may be imported subject to the inspection and other requirements in § 319.40–9 and without further restriction under this subpart.

(e) Regulated articles the permit process has determined to present no plant pest risk.

Regulated articles for which a specific permit has been issued in accordance with § 319.40–4(b)(2)(i) may be imported without other restriction under this subpart, except that they are subject to the inspection and other requirements in § 319.40–9.

(Approved by the Office of Management and Budget under control numbers 0579–0049 and 0579–0257) [60 FR 27674, May 25, 1995, as amended at 63 FR 50110, Sept. 18, 1998; 63 FR 69542, Dec. 17, 1998; 69 FR 52418, Aug. 26, 2004; 69 FR 55732, Sept. 16, 2004; 69 FR 61587, Oct. 20, 2004; 71 FR 57386, Sept. 29, 2006; 72 FR 30462, 30467, June 1, 2007; 75 FR 4251, Jan. 26, 2010]

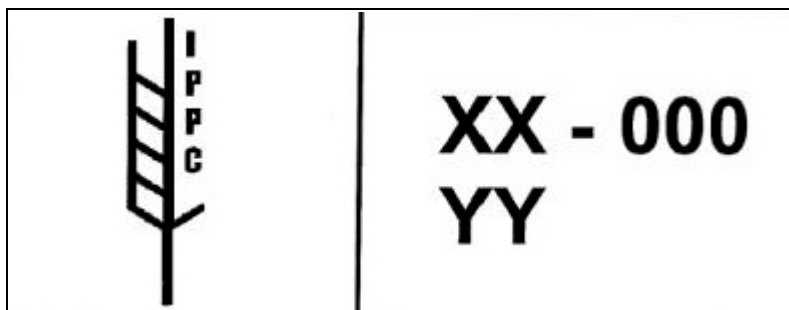
GUIDELINES FOR LIQUIDATED DAMAGES AND PENALTIES ON WOOD PACKING MATERIAL (WPM)

These “Guidelines for Liquidated Damages and Penalties on WPM” shall go into effect on March 9, 2007. The statutory requirements of 7 C.F.R. §319.40-3 mandate that regulated WPM – such as, crates, boxes, and pieces of wood used to support or brace cargo – being imported into the United States shall be heat treated or fumigated with methyl bromide in accordance with EPA label instructions and include a mark that certifies the wood completed the required treatment under the “Guidelines for Regulating Wood Packing Material in International Trade,” ISPM 15 of the International Standards of Phytosanitary Measures (ISPM) and any associated amendments, revisions or exemptions identified by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS).

The regulation (7 C.F.R. §319.40-3) requires that WPM display a visible, legible, and permanent mark certifying treatment. The mark must be a legible and permanent mark that indicates that the article has been subjected to the approved measure and include the following elements:

1. The International Plant Protection Convention (IPPC) logo;
2. The ISO two-letter country code for the country that produced the wood packing material followed by a unique number code;
3. The unique number code is assigned by the country’s National Plant Protection Organization (NPPO) to the producer of the wood packaging material, who is responsible for ensuring appropriate wood is used and properly marked. Therefore, this code allows a trace back to the facility that treated and stamped the WPM; and
4. An abbreviation that discloses the type of treatment (**HT** for heat treatment or **MB** for methyl bromide fumigation; Guatemala is approved to use **TT** in place of HT or **BM** in place of MB).

Here is an example of an acceptable WPM mark:



The IPPC logo is on the left; on the right, XX represents the ISO country code and 000 represents the unique number assigned to the producer of the wood packaging material in order to be able to trace back to the treatment facility used; YY represents the method of treatment. Other letters and symbols may be present on the mark as long as the above items are included and clearly legible, permanent, and placed in a visible location, preferably on at least two sides of the article being certified.

EXCEPTIONS AND EXEMPTIONS

The regulation applies to WPM made from softwood or hardwood. Certain articles, though, are exempt or excepted from the treatment and marking requirements. The exceptions are outlined in 7 C.F.R. §319.40-3. The exceptions and exemptions (further added by Agriculture) are delineated in Appendix B of the CBP document entitled “Operating Procedures for Implementation of the Wood Packaging Materials (WPM) Regulation,” as amended. This may be viewed on the import section of cbp.gov under Commercial Enforcement.

FAILURE TO COMPLY WITH 7 C.F.R. §319.40-3

Regulated WPM must be properly marked to indicate that it has been either heat treated or treated with methyl bromide. There are three categories under WPM for this enforcement:

1) UNMARKED: WPM that is encountered by CBP during the course of inspection and found not bearing the required treatment and markings required under 7 C.F.R. §319.40-3(b)(1) and C.F.R. §319.40-3(b)(2)

2) INAPPROPRIATELY MARKED: WPM that is encountered by CBP during the course of inspection and found to be inappropriately marked or illegibly marked is assumed to be untreated by either of the approved methods identified under 7 C.F.R §319.40-3(b)(1); and

3) INFESTED: WPM that is infested with a named pest confirms that the WPM has not been treated in accordance with 7 C.F.R §319.40-3(b)(1). Named pests are live wood boring pests of the families *Cerambycidae*, *Buprestidae*, *Siricidae*, *Cossidae*, *Curculionidae*, *Platypodidae*, *Sesiidae*, or *Scolytidae*.

Section 319.40-3(b)(3) provides for immediate export of WPM that does not contain the required mark. Marked WPM containing pests in the above mentioned families is considered WPM that has not been treated and marked in accordance with §319.40-3, and shall be immediately exported pursuant to §319.40-3(b)(3). The importer of record, carrier, or bonded custodian is responsible for any costs or charges associated with export.

When assessing liquidated damages and/or penalties, the value of the merchandise is the value of the WPM plus the value of the commodity or commodities identified for importation on the entry documentation.

ASSESSING LIQUIDATED DAMAGES

If the party whose bond is obligated at the time of the discovery of the violation has received an Emergency Action Notification (EAN) requiring export of the violative WPM but fails to do so, CBP may issue a **liquidated damages claim** against that party.

The following procedures shall be utilized in **liquidated damage cases where there is a failure to comply with the EAN**:

- **If a consumption entry is made and the goods were conditionally released**, issue the claim against the importer under 19 C.F.R. §113.62(e). The liquidated damages claim shall be issued at three times (3x) the entered value of the merchandise but not greater than the bond amount.
- **If a consumption entry is made, but the goods were not conditionally released, and the importer failed to comply with the EAN**, issue the claim against the importer under 19 C.F.R. §113.62(g). The amount of the liquidated damages claim shall be the cost of export or remediation but no greater than the bond amount. In an effort to ensure compliance with the EAN, the goods shall not be released and the port should follow procedures outlined in 19 C.F.R. §151.16, *Detention of Merchandise*, until the WPM violation is addressed. Once it is determined that the requirements of the EAN will not be met and CBP has to take remedial measures, the claim for liquidated damages shall be issued against the importer.
- **If an entry is not made and the carrier failed to comply with the EAN**, issue the claim against the carrier under 19 C.F.R. §113.64(b). The liquidated damages claim shall be issued at the entered value of the merchandise, but no greater than the bond amount.
- **If a party other than the carrier or importer failed to comply with the EAN, and that party is responsible for the merchandise under its custodial bond**, issue the claim against that party under 19 C.F.R. §113.63(a)(1). The liquidated damages claim shall be issued at three times (3x) the entered value of the merchandise, but no greater than the bond amount.

ASSESSING PENALTIES

Penalties may be assessed in addition to claims for liquidated damages, and may be assessed even though there is compliance with all EANs in cases wherein:

- The importer, carrier, or bonded custodian **attempts to conceal** a violation of WPM, CBP personnel shall issue a penalty either under Title 19 United States Code 1592, or 1595a(b).
- The importer, carrier, or bonded custodian has continuous documented violations (more than 5) over one fiscal year period nationally, CBP personnel may issue a penalty under Title 19 United States Code 1592, or 1595a(b) may also be assessed.

WPM violations (all categories) shall be documented in the EAN database, and WPM violations under categories 1 and 2 shall be documented in CBP databases with the WPM violation code **wp:nc**.

ISPM 15 REQUIREMENTS APPLY TO ALL SPECIES OF CONIFEROUS (SOFTWOOD) AND NON-CONIFEROUS (HARDWOOD) PACKAGING MATERIALS.



Violative Packaging



Illegible WPM Mark