

# Proposed Rules

Federal Register

Vol. 75, No. 231

Thursday, December 2, 2010

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. APHIS-2010-0019]

RIN 0579-AD28

#### Importation of Wood Packaging Material From Canada

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations for the importation of unmanufactured wood articles to remove the exemption that allows wood packaging material from Canada to enter the United States without first meeting the treatment and marking requirements of the regulations that apply to wood packaging material from all other countries. This action is necessary in order to prevent the dissemination and spread of pests via wood packaging material from Canada.

**DATES:** We will consider all comments that we receive on or before January 31, 2011.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0019> to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS-2010-0019, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0019.

*Reading Room:* 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.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Tyrone Jones, II, Trade Director, Forestry Products, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1231; (301) 734-8860.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles (7 CFR 319.40–1 through 319.40–11, referred to below as the regulations) restrict the importation of many types of wood articles, including items such as pallets, crates, boxes, and pieces of wood used to support and brace cargo. These types of articles are known as wood packaging materials (WPM). 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)) among others have been linked to the importation of WPM. These and other plant pests that are carried by some imported WPM pose a serious threat to U.S. agriculture and to natural, cultivated, and urban forests.

The variety of woods and lumber qualities used in the construction of WPM make it susceptible to infestation by a wide range of wood pests and diseases. WPM is frequently constructed from lower grade lumber derived from an assortment of woods. Additionally, lumber used in WPM construction may be fresh cut and may not have undergone sufficient processing or treatment to kill pests. Furthermore, WPM is very often reused, recycled, or remanufactured, and the true origin of any specific piece of WPM is difficult to determine, which means that its phytosanitary status cannot be fully ascertained.

Currently, § 319.40–3(a) provides a general permit that authorizes the importation of certain unmanufactured

wood articles, including WPM, into the United States from Canada.<sup>1</sup> A general permit means the written authorization provided in § 319.40–3; no separate, specific permit is required. Under a general permit, unmanufactured wood articles from Canada may be imported into the United States provided they are accompanied by an importer document stating that the articles are derived from trees harvested in, and have never been moved outside of, Canada, and subject to the inspection and other requirements in § 319.40–9.

In contrast, WPM that is not from Canada is subject to the more rigorous requirements of the regulations for importing wood articles from all other countries except Canada. In a final rule published in the **Federal Register** on September 16, 2004 (69 FR 55719–55733; Docket No. 02–032–3), we amended those regulations in order to update the requirements for importation of WPM to correspond with standards established by the International Plant Protection Convention (IPPC) in International Standards for Phytosanitary Measures (ISPM) 15, “Guidelines for Regulating Wood Packaging Material in International Trade.” Currently, paragraph (b) of § 319.40–3 of the regulations lists the IPPC requirements, which include either heat treatment or fumigation with methyl bromide and the proper marking of all treated materials with the approved IPPC symbol and specific control numbers.

The less restrictive importation requirements for WPM imported into the United States from Canada are based on the premise that the forests in the United States share a common forested boundary with Canada and, therefore, share, to a reasonable degree, the same forest pests. However, in a pest risk analysis (PRA) entitled “Risk analysis for the movement of wood packaging material (WPM) from Canada into the United States,” we examined the pest risks associated with the movement of WPM into the United States from Canada. We determined that many North American forest pests, both indigenous and nonindigenous, occur in

<sup>1</sup> The general permit excludes articles from certain subfamilies of the family Rutaceae, regulated articles of pine that are not completely free of bark from Provinces in Canada that are considered to be infested or partially infested with pine shoot beetle, and regulated articles of ash (*Fraxinus* spp.).

both Canada and the United States. Some of these are unique forest pests and pathogens that are established in Canada and have the potential to be introduced or reintroduced into the United States via the movement of WPM, while others are pests that also occur in the United States but are subject to official control in order to prevent their further spread. Among the pests of concern are brown spruce longhorned beetle (*Tetropium fuscum*), European oak borer (*Agilus sulcicollis*), emerald ash borer (*Agilus planipennis*), Asian longhorned beetle (*Anoplophora glabripennis*), European woodwasp (*Sirex noctilio*), the fungus *Ophiostoma tetropii*, and vascular wilt (*Leptographium truncatum*). Copies of the PRA may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room).

Since the implementation of ISPM 15, the USDA and the Canadian Food Inspection Agency (CFIA) officials have participated jointly in the North American Perimeter Approach Wood and Wood Products Steering Committee to develop a harmonization plan that would entail both countries removing the exemption that allows wood packaging material to move from Canada into the United States and from the United States into Canada under general permit and not ISPM 15 guidelines. Coordination of this plan will take place though USDA and CFIA's participation in the North American Plant Protection Organization's Forestry Panel.

Based on the information contained in the PRA, and in keeping with our harmonization efforts with Canada relative to the regulation of WPM, we are proposing to amend the regulations in order to require that WPM from Canada meet the same conditions for importation as WPM from all other countries. This action is necessary in order to provide more consistent regulation of WPM from Canada as well as to reduce the risk of the introduction of dangerous plant pests on WPM moving from Canada into the United States.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this proposed rule on small entities. Copies of the full analysis are available from the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The analysis concludes that the proposed removal of the treatment and marking exemption would have a direct effect on Canadian manufacturers of pallets, which may affect importers and final consumers of goods transported on pallets imported from Canada. 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. The proposed changes are not expected to reduce the amount of goods shipped from Canada, as is evident from observing trends in imports from all other origins since implementation of the treatment standards in 2005.

The vast majority of potentially affected entities would be considered small. However, because the cost of a pallet is a very small share of the bundle of goods transported on pallets, cost increases due to treatment requirements for Canadian producers are not expected to significantly affect domestic consumers.

#### **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**

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the importation of wood packaging material from Canada, we have prepared an environmental assessment. The environmental assessment 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).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (A link to Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**. Comments on the environmental assessment may also be submitted using those methods listed under the heading **ADDRESSES** at the beginning of this proposed rule.

#### **Paperwork Reduction Act**

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### **List of Subjects in 7 CFR Part 319**

Coffee, Cotton, Fruits, 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 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 319.40–3, paragraph (a) is amended by adding a new paragraph (a)(1)(i)(D) 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.**

(a) \* \* \*  
(1) \* \* \*  
(i) \* \* \*

(D) Regulated wood packaging material, whether in actual use as packing for regulated or nonregulated articles or imported as cargo.

\* \* \* \* \*

Done in Washington, DC, this 16th day of November 2010.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2010–30206 Filed 12–1–10; 8:45 am]

**BILLING CODE 3410–34–P**