

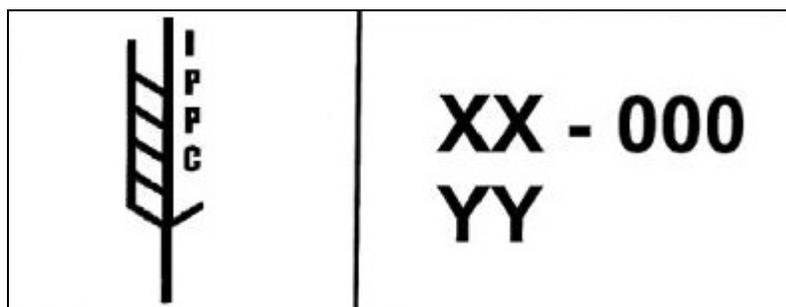
GUIDELINES FOR LIQUIDATED DAMAGES AND PENALTIES ON WOOD PACKING MATERIAL (WPM)

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