

**Department of Homeland Security  
U.S. Customs and Border Protection  
Laredo, Texas**

DATE: April 1, 2008

FILE: TRD08-010

**Port of Laredo Trade Notice**

TO: Customs Brokers, Importers and Other Interested Parties

SUBJECT: Liquidated Damages and Penalties on Wood Packing Material (WPM)

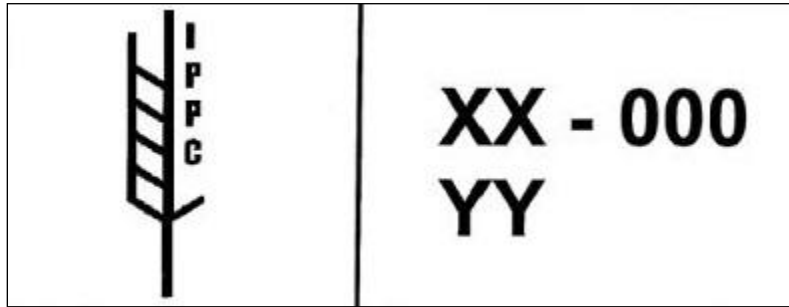
On September 16, 2005, the United States (U.S.), in cooperation with Mexico and Canada, began enforcement of international phytosanitary standards for regulated wood packaging material (WPM) entering North America. On February 1, 2006, this enforcement moved to Phase II, with enforced compliance of the regulation requiring exportation of non-compliant WPM. Full enforcement, Phase III, began July 5, 2006.

The Office of International Trade provided the “**Guidelines for Liquidated Damages and Penalties on WPM**” that went into effect on March 09, 2007. The regulations set forth in 7 C.F.R. § 319.40 are intended to protect U.S. agricultural resources from the introduction of potentially injurious wood-boring pests. Failure to comply with these regulations poses significant pest risks to U.S. agriculture. This policy provides the means to assess liquidated damages against those who do not comply with the action specified on the Emergency Action Notice (EAN) for failure to comply with WPM regulations. The policy also enables CBP to penalize those documented importers, carriers, or bonded custodians who have made multiple attempts to enter violative WPM (more than 5 times in one fiscal year) or who attempt to conceal a WPM violation.

The regulation 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).



### **FAILURE TO COMPLY WITH 7 CFR 319.40-3**

If the Wood Packing Material is:

- 1) **UNMARKED:** The WPM that is encountered by CBP during the course of an inspection and found not bearing the required treatment and markings required under 7 CFR 319.40-3(b)(1) and CFR 319.40-3(b)(2).
- 2) **INAPPROPRIATELY MARKED:** The WPM that is encountered by CBP during the course of an inspection and found to be inappropriately marked or illegibly marked is assumed to be untreated by either of the approved methods identified under 7 CFR 319.40-3(b)(1); and
- 3) **INFESTED:** The WPM that is infested with a named pest confirms that the WPM has not been treated in accordance with 7 CFR 319.40-3(b)(1). Named pests are live wood boring pests of the families Cerambycidae, Buprestidae, Siricidae, Cossidae, Curculionidae, Platypodidae, Sesiidae, or Scolytidae.

The regulation provides for immediate export of the 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 7 CFR 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.

### **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 the party.

The following procedures shall be utilized in liquidated damage cases where there is a failure to comply with the Emergency Action Notification (EAN):

- If a consumption entry is made and the goods were conditionally released, issue the claim against the importer under 19 CFR 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 CFR 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 CFR 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 CFR 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 CFR 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 continuously 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.



Example of Violative Packaging



Example of an Illegible WPM Mark

For more information on the implementation and enforcement of the WPM regulations on liquidated damages and penalties please visit the CBP website ([CBP.GOV](http://CBP.GOV)).

If you have any further questions on this issue, please contact Agriculture Chief David Gonzalez, at (956) 523-7301, or Supervisory Agriculture Specialists Jose Perez Jr. (956) 794-9464 or Adriana Mendez (956) 417-5100.

Guadalupe H. Ramirez  
Acting Port Director