Rules and Regulations

Federal Register
Vol. 69, No. 165
Thursday, August 26, 2004

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 98–054–3]

RIN 0579–AB02

Importation of Unmanufactured Wood Articles From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to add restrictions on the importation of pine and fir logs and lumber, as well as other unmanufactured wood articles, from Mexican States adjacent to the United States/Mexico border. This rule requires that these wood articles meet certain treatment and handling requirements to be eligible for importation into the United States. This action is necessary to prevent the introduction into the United States of plant pests, including forest pests, with unmanufactured wood articles from Mexico.

DATES: Effective September 27, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Hesham Abuelnaga, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–5334.

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) are intended to mitigate the plant pest risk presented by the importation of logs, lumber, and other unmanufactured wood articles.

The regulations have provided, in part, that unmanufactured wood articles may be imported into the United States from Canada and from Mexican States adjacent to the United States/Mexico border [1] under a general permit, while unmanufactured wood articles from Mexican States that are not adjacent to the United States/Mexico border are subject to more rigorous requirements. The less restrictive importation requirements for unmanufactured wood articles imported into the United States from Canada and from Mexican States adjacent to the United States/Mexico border were based on the premise that the forests in the United States share a common forested boundary with Canada and adjacent States in Mexico and, therefore, share, to a reasonable degree, the same forest pests. However, a Forest Service pest risk assessment published in February 1998 showed that a significant pest risk exists in the movement of raw wood material into the United States from the adjacent States of Mexico.[2] This conclusion was later confirmed by United States Department of Agriculture (USDA) inspectors during inspections at ports of entry along the United States/Mexico border.

In response to these findings, on June 11, 1999, we published in the **Federal Register** (64 FR 31512–31518, Docket No. 98–054–1) a proposal to amend the regulations by adding restrictions on the importation of pine and fir logs and lumber, as well as other unmanufactured wood articles, from the northern border States of Mexico. We proposed to amend the regulations to provide that pine and fir logs and lumber, as well as other unmanufactured wood articles, imported into the United States from Mexican States adjacent to the United States/Mexico border would be subject to the same requirements as Mexican States that are not adjacent to the United States/Mexico border.

Specifically, for unmanufactured wood articles from Mexico, we proposed to limit the scope of the general permit under § 319.40–3(a) to cover only the importation, from the northern border States, of unmanufactured mesquite wood for cooking, unmanufactured wood for firewood, and small, noncommercial packages of unmanufactured wood for personal cooking or personal medicinal purposes. We proposed several miscellaneous changes, including requiring that the pressure treatment for railroad ties required by § 319.40–5(f) be conducted at a U.S. facility under compliance agreement with the Animal and Plant Health Inspection Service (APHIS); removing the provision in § 319.40–3(a) that the importer document required by that paragraph must state that the articles have never been moved outside Canada or the northern border States of Mexico; and specifying that an importer document is necessary only for commercial shipments of unmanufactured wood articles imported into the United States under a general permit.

We also proposed to amend § 319.40–5 to add methyl bromide fumigation as an additional treatment option for cross-ties and pine and fir lumber from all of Mexico. However, upon further consideration, we have determined that it is not necessary to provide for the use of methyl bromide fumigation for cross-ties and pine and fir lumber from all of Mexico. To date, Mexican States that are not adjacent to the United States/Mexico border have been able to export cross-ties and pine and fir lumber to the United States in accordance with the existing regulations. Therefore, these States do not appear to need the alternative treatment of methyl bromide fumigation. In contrast, kiln drying capacity is very limited in the Mexican States adjacent to the United States/Mexico border, and we expect that it will take some time for new kilns to be built in those States. Given the limited kiln drying capacity and the fact that all of the quarantine pests identified in the pest risk assessment can be mitigated by methyl bromide fumigation, we believe it is reasonable to add methyl bromide fumigation as an alternative treatment for cross-ties and pine and fir lumber from Mexican States adjacent to the United States/Mexico border. Accordingly, paragraph (l) of § 319.40–

[1] The Mexican States adjacent to the United States/Mexico border are Baja California Norte, Chihuahua, Coahuila, Nuevo León, Sonora, and Tamaulipas.

[2] Copies of ''Pest Risk Assessment of the Importation Into the United States of Unprocessed *Pinus* and *Abies* Logs From Mexico,'' may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Internet at *http://www.fpl.fs.fed.us/documnts/fplgtr/fplgtr104.pdf.*

5 in this final rule adds methyl bromide fumigation as an alternative treatment for cross-ties and pine and fir lumber from Mexican States adjacent to the United States/Mexico border. In addition, we have added a footnote to indicate that cross-ties from these States may also be imported if pressure treated with a preservative or heat treated. As additional kilns are built in the Mexican States adjacent to the United States/Mexico border, we expect that kiln drying will become the preferred method of treatment because it increases the commercial value of unmanufactured wood while satisfying phytosanitary treatment requirements.

We solicited comments concerning our proposal for 60 days ending on August 10, 1999. We received 21 comments by that date. They were from various timber industry representatives, environmental groups, State representatives, and other interested individuals. Although the commenters generally supported our efforts to close a potential pathway for the introduction of dangerous plant pests into the United States, some commenters expressed concern about specific provisions of the proposal. These are discussed by subject below.

Lumber and Cross-Ties

Comment: For cross-ties and pine and fir lumber, APHIS should require mandatory fumigation immediately prior to importation and heat or pressure treatment within 30 days following importation. The proposal's provision to limit treatment only to methyl bromide fumigation prior to importation does not adequately address the pest risk associated with the importation of these articles.

Response: We do not agree that both fumigation with methyl bromide and heat or pressure treatment should be required as a condition of entry for cross-ties and pine and fir lumber. Methyl bromide fumigation was proposed merely as an alternative treatment for cross-ties and pine and fir lumber from Mexico. We are confident that requiring that lumber and cross-ties be completely free of bark and treated with only one of these treatment options affords the adequate level of pest protection needed to allow entry of these articles from Mexican States adjacent to the United States/Mexico border.

Comment: The proposed requirements for lumber and cross-ties from Mexico should apply to all other countries.

Response: We do not agree that the proposed alternative methyl bromide treatment for cross-ties and pine and fir lumber from Mexico should be expanded to other countries. Indeed, in this final rule, we have limited the proposed alternative methyl bromide treatment to only cross-ties and pine and fir lumber from Mexican States adjacent to the United States/Mexico border. We proposed methyl bromide fumigation as an alternative treatment based upon the results of an extensive pest risk assessment of wood from Mexico conducted by the U.S. Forest Service. All of the quarantine pests identified in the pest risk assessment can be mitigated by methyl bromide fumigation. This is not true for all pests known to exist in other countries.

Comment: APHIS should require cross-ties from Mexico imported into the United States to be treated at the point of origin in Mexico, not treated after arrival in the United States. The provision that allows cross-ties from Mexico to enter the United States untreated if they will be treated within 30 days of importation presents a high pest risk and requires less stringent importation measures for Mexico than for other countries with less diverse populations of forest pests.

Response: The provisions of § 319.40–5(f) that allow cross-ties to enter the United States untreated as long as they are completely free of bark and pressure treated within 30 days following importation are not new, nor do they apply only to cross-ties from Mexico. Rather, those provisions, since they became effective on August 23, 1995, have applied to cross-ties from all places except places in Asia that are east of 60° East Longitude and north of the Tropic of Cancer. Thus, the importation measures for Mexico are no different than those for other countries from which cross-ties may be imported into the United States.

Consistent with what we discussed in the proposed rule, we are amending § 319.40–5(f) in this final rule to add the requirement that the post-importation pressure treatment for cross-ties be conducted at a U.S. facility that is operating under a compliance agreement.

Comment: APHIS needs to add provisions to the proposal that will help prevent lumber and cross-ties imported by rail or truck from Mexico from being reinfested, or infesting U.S. forests, during transport. Such provisions may include sealed containers, requiring rail doors to remain closed, and trucks to be securely covered. The provisions should apply to movement to and within the United States.

Response: We believe the requirements in this rule and the applicable permits are sufficient to prevent the reinfestation of articles treated prior to shipment to the United States, as well as the infestation of U.S. forests, during transport. Lumber and cross-ties treated in Mexico are at low risk of reinfestation, or infesting U.S. forests, during transport to and within the United States. Therefore, there is little need for additional safeguards. Moreover, there is reduced risk of infestation from untreated cross-ties and lumber from Mexico due to the requirements for debarking, inspection, restrictions on commingling of regulated articles, and direct transport to a treatment facility.

Comment: It appears that the proposal would not require an import permit for cross-ties entering the United States from Mexico. This is inconsistent with the current regulations. APHIS should require an import permit for cross-ties from Mexico to ensure that APHIS personnel and State officials can identify, and place under compliance agreement, mills that will process the ties.

Response: This rule amends the regulations to provide that, with the exception of certain articles covered by general permit, unmanufactured wood articles imported into the United States from Mexican States adjacent to the United States/Mexico border are subject to substantially the same requirements that apply to those articles imported from Mexican States that are not adjacent to the United States/Mexico border. (We say ''substantially the same'' due to our inclusion of fumigation as a treatment option for cross-ties and pine and fir lumber from Mexican States adjacent to the United States/Mexico border; otherwise, the requirements are the same.) Specifically, for articles from Mexico, this rule limits the use of a general permit under § 319.40–3(a) to the importation, from Mexican States adjacent to the United States/Mexico border, of unmanufactured mesquite wood for cooking, unmanufactured wood for firewood, and small, noncommercial packages of unmanufactured wood for personal cooking or personal medicinal purposes. Accordingly, specific permits under § 319.40–2(a) will, in fact, be required for the importation of regulated articles from Mexico, including cross-ties.

Comment: According to the proposed text of § 319.40–5(1), cross-ties from Mexico may only be imported into the United States if they are 100 percent bark-free and have been fumigated according to the T312 treatment schedule. APHIS should also allow heat or pressure treatment of these articles.

Response: We currently allow cross-ties to be imported from all places,

except certain places in Asia, if they are pressure treated with a preservative in accordance with § 319.40–5(f). In this final rule, we have amended paragraph (f) of § 319.40–5 to specify that cross-ties must be pressure treated ''with a preservative.'' This has always been the way § 319.40–5(f) has been interpreted; however, we are adding, for clarification purposes, the words ''with a preservative.'' We also currently allow heat treatment of cross-ties from all places, in accordance with § 319.40–7(c). For clarification, we have amended paragraph (f) of § 319.40–5 in this final rule to indicate that cross-ties from Mexico may be imported if pressure treated with a preservative or heat treated.

As previously noted, this final rule provides an alternative treatment for cross-ties from Mexican States adjacent to the United States/Mexico border. For clarification, we have amended paragraph (l) of § 319.40–5 in this final rule to indicate that cross-ties from Mexican States adjacent to the United States/Mexico border may be imported if pressure treated with a preservative, heat treated, or fumigated.

Comment: Do the proposed changes for lumber apply to finished lumber, raw lumber, or both?

Response: The regulations do not define finished or raw lumber. The regulations in the subpart apply to regulated articles, including lumber, that are unprocessed or have received only primary processing, such as cleaning (removal of soil, limbs, and foliage), debarking, rough sawing (bucking or squaring), rough shaping, spraying with fungicide or insecticide sprays, and fumigation. Hence, for example, the regulations would apply to commercial types of lumber, such as 2 x 4's, but would not apply to processed articles such as plywood or veneer.

Comment: APHIS should require additional handling measures (besides segregation from domestic stock) for U.S. processing mills handling lumber from Mexico. Such requirements would help protect forests adjacent to these processing mills.

Response: Currently, U.S. processing facilities enter into compliance agreements. These compliance agreements specify the requirements necessary to prevent the spread of plant pests from the facility.

Methyl Bromide Fumigation

Comment: APHIS should not propose methyl bromide fumigation as a treatment option for the importation of unmanufactured wood articles from Mexico because there are effective and available alternative treatments, such as heat treatment. The continued use of methyl bromide as a quarantine treatment to control pests is allowed under the Montreal Protocol and the Clean Air Act; however, this does not necessarily mean that this treatment should be added as an option when other effective treatments exist. For example, Decisions VI/11 and VII/5 of the Meetings of the Parties to the Montreal Protocol urge all countries to refrain from the use of methyl bromide in quarantine applications and to use non-ozone depleting technologies wherever possible. Allowing the use of methyl bromide for quarantine treatment of Mexican wood articles when other effective treatments exist would be inconsistent with these decisions.

Response: On January 2, 2003, the U.S. Environmental Protection Agency (EPA) published in the **Federal Register** a final rule titled ''Protection of Stratospheric Ozone: Process for Exempting Quarantine and Preshipment Applications of Methyl Bromide'' which, among other things, sets forth the parameters for the quarantine exemption. In that final rule, the EPA stated that, ''For commodities imported to, exported from, and transported within the U.S., the exemption for quarantine applications will apply when: (1) Methyl bromide is identified within quarantine regulations as the unique treatment option for specific quarantine pests; (2) methyl bromide is identified within quarantine regulations as one among a list of treatment options for specific quarantine pests; and (3) methyl bromide is required for an emergency quarantine application'' (68 FR 242). We believe that APHIS' adoption of methyl bromide fumigation as an alternative treatment for cross-ties and pine and fir lumber from Mexican States adjacent to the United States/Mexico border falls within these parameters.

APHIS is committed to finding environmentally acceptable alternative treatments to methyl bromide fumigation. However, we are also committed to fulfilling our certain obligations under international agreements to recognize efficacious and economically feasible quarantine treatments to control pests. In this instance, we have determined that allowing methyl bromide fumigation as an alternative treatment option for imported cross-ties and pine and fir lumber from Mexican States adjacent to the United States/Mexico border would provide the necessary level of pest protection with minimal impact on the environment.

This determination is supported by an environmental impact statement (EIS) titled ''Rule for the Importation of Unmanufactured Wood Articles From Mexico, With Consideration for Cumulative Impact of Methyl Bromide Use,'' which considered the potential cumulative impact on the environment of methyl bromide use that could result if the proposed rule was adopted.[3] The EIS calculates that a realistic worst case scenario would be an increase in annual methyl bromide use of 24 metric tons (MT)[4] and the emissions from this increase would be 21 MT, and notes that 24 MT is less than one-tenth of 1 percent of the annual current total worldwide methyl bromide consumption (63,960 MT). The EIS further notes that the actual increase in methyl bromide use most likely would be much less than 24 MT because it is believed that most suppliers of unmanufactured wood articles from Mexican border States would choose heat treatment over methyl bromide treatment because heat treated wood is preferred for commercial purposes.

Comment: APHIS needs to assess, not presume, the efficacy of the proposed methyl bromide treatments for lumber and cross-ties from Mexico. One of the proposed treatment schedules, T404, was developed to address the pest risk presented by wood boring insects. Its efficacy against other pests is unknown. The other proposed treatment schedule, T312, was developed to treat logs infested with oak root fungus. Its efficacy against other pests is also unknown. Any assessment of these proposed treatment schedules should include an analysis of each treatment's effectiveness against a complex of pests in a variety of hard and soft woods.

Response: Methyl bromide fumigation has a long history of use for treatment of logs and other wood articles because of its high volatility, ability to rapidly penetrate most materials, and broad toxicity against a wide variety of plant pests (all life stages of insects, mites, and ticks; nematodes, including cysts; snails and slugs; and fungi, such as oak wilt fungus). Yet there is little specific

[3] Copies of the EIS may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.** The EIS may also be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/mb.html.*

[4] The EIS notes that the 1998 environmental assessment for the proposed rule estimated that the amount of methyl bromide required to fumigate wood articles was 72 MT, rather than 24 MT. The EIS clarifies that the 72 MT figure was based on potentially fumigating every unmanufactured wood article imported into the United States from Mexico, whereas the 24 MT figure is a more likely estimate of methyl bromide use on unmanufactured wood articles from only the Mexican border States.

scientific information available about the efficacy of methyl bromide fumigation against many pests and pathogens.

APHIS' Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference in the regulations, provides two methyl bromide fumigation schedules for wood products: T404 and T312. Treatment schedule T404 is a generic treatment for general insect control, while treatment schedule T312 is a more rigorous treatment that has been demonstrated to be effective in eradicating oak wilt disease. This final rule adds methyl bromide fumigation in accordance with treatment schedule T312 as an additional treatment option for imported cross-ties and pine and fir lumber from Mexican States adjacent to the United States/Mexico border; treatment schedule T404 was not offered as a treatment option in the proposed rule and is not included in this final rule.

We believe that treatment schedule T312 will be efficacious against all quarantine pests of concern identified by the pest risk assessment. We are confident that this dose will be sufficient to mitigate any other pests of concern in or on the wood. This dose of methyl bromide has been effective in eradicating oak wilt fungus, and a much lower dose of methyl bromide (treatment schedule T404) has been effective against wood boring insects.

Comment: APHIS needs to develop a focused program to eliminate the use of methyl bromide. Currently, APHIS appears to be more concerned with economics and the facilitation of imports to the United States than with taking a proactive position regarding methyl bromide. The proposal only serves to enhance this impression.

Response: Through collaborative research agreements with the USDA's Agricultural Research Service, we continue to study alternatives to the use of methyl bromide as a phytosanitary measure. In recent years, we have approved several alternative treatments including hot forced air, hot water treatment, and irradiation.

Solid Wood Packing Material (SWPM)

As previously noted, this rule amends the regulations by providing that most unmanufactured wood articles, including SWPM, imported into the United States from Mexican States adjacent to the United States/Mexico border are subject to substantially the same requirements that apply to those articles imported from Mexican States that are not adjacent to the United States/Mexico border. Therefore, under the regulations, all SWPM entering the United States from Mexico must now be totally free from bark and apparently free from live plant pests or must have been heat treated, fumigated, or treated with preservatives (§ 319.40–3(b)).

Comment: APHIS needs to impose stricter import requirements on SWPM from Mexico. At the very least, APHIS should require that all SWPM entering the United States from Mexico be debarked before importation. As a more complete solution, APHIS should adopt the North American Plant Protection Organization's standards for risk mitigation of SWPM.

Response: As noted in the paragraph preceding this comment, SWPM from all areas of Mexico will now have to satisfy the requirements of § 319.40–3(b), which provides for debarking and/or treatment of SWPM as a condition of entry. These phytosanitary requirements for the entry of SWPM from Mexico are consistent with the requirements that apply to SWPM from the rest of the world, except for Canada and China. Nevertheless, we note that on May 20, 2003, we published in the **Federal Register** (68 FR 27480–27491, Docket No. 02–032–2) a proposal 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.

Comment: APHIS should prohibit, under the provisions of a gradual phase-out program, the importation of SWPM from Mexico. There are alternatives to SWPM that would not harbor pests.

Response: While a prohibition on SWPM from Mexico would eliminate the pest risks associated with those articles, we cannot justify such a restrictive measure given the availability of effective and less restrictive mitigation measures.

Comment: Additional treatment options, such as treatment with an EPA-registered borate product, should be allowed for SWPM from Mexico. These products do not affect the strength of the wood and offer natural protection against most common wood-destroying insects and decay fungi when applied through dip diffusion. Further, due to their retention in wood, borates provide protection against reinfestation for the life of the SWPM.

Response: We do not agree that treatment with an EPA-registered borate product should be allowed for SWPM from Mexico. As noted in the EIS, borate is a chemical that has been used to protect lumber from decay, fungi, and beetles during shipment. Borate treatments work best when the wood is kept moist during the diffusion period. Although generally considered to diffuse readily into green wood, borate may not be able to migrate through the larger dimension materials of less permeable species in the timeframes typical of imported wood products. Furthermore, borate treatments may not be effective against all life stages of insects and some fungi.

Comment: For the movement of certain commodities, such as food, chemical treatment of SWPM may not be acceptable to other Federal agencies. Therefore, it would be best not to allow the chemical treatment of any SWPM imported into the United States.

Response: Any treatment of SWPM must be in accordance with the PPQ Treatment Manual and any other applicable Federal laws and regulations, including the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

Comment: SWPM made of reused wood consistently has a moisture content of less than 20 percent and, therefore, greater resistance to pest infestation. APHIS should allow this type of SWPM to be marked and be exempt from the proposed regulations. This change would be in accordance with § 319.40–3(b)(4)(ii) of the current regulations.

Response: Current § 319.40–3(b)(4) contains specific provisions regarding the importation of pallets moved as cargo, and thus does not apply to the SWPM referred to by the commenter. Because SWPM is very often re-used, recycled, or remanufactured, the true origin of any piece of SWPM is difficult to determine and thus its phytosanitary status cannot be ascertained. As previously noted, on May 20, 2003, we published in the **Federal Register** (68 FR 27480–27491, Docket No. 02–032–2) a proposal 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.''

Comment: The provisions of the proposed rule that relate to the importation of SWPM from Mexico are not cost-effective. The proposed changes will raise costs for the Mexican business community and result in Mexico adding requirements for U.S. exports to that country, which will mean added costs for U.S. businesses and U.S. consumers. This proposal will also result in costly delays at U.S. ports of entry. Also, if more contract inspectors are hired to

meet demand, the proposal could result in the inconsistent enforcement of regulatory requirements. Further, this proposal could result in a shift from affordable SWPM to non-wood substitutes, thereby creating potential environmental and disposal problems for U.S. businesses. Because whatever changes APHIS decides to make to the importation of SWPM from Mexico will likely be costly and disruptive, a 5-year phase-in period should be allowed.

Response: This rule amends the regulations by providing that unmanufactured wood articles, including SWPM, imported into the United States from Mexican States adjacent to the United States/Mexico border are subject to substantially the same requirements that apply to those articles from Mexican States that are not adjacent to the United States/Mexico border. The economic analysis in the proposed rule noted that a negligible amount of SWPM that is untreated or not free of bark has historically entered the United States from the northern border States of Mexico. Indeed, the economic analysis went on to note that nearly all SWPM from Mexico's border States already meets the entry requirements that will be imposed by this rule.

Accordingly, we do not anticipate that this rule will raise costs for the Mexican business community such that Mexico will add requirements for U.S. exports to Mexico, resulting in added costs for U.S. businesses and consumers. Furthermore, since nearly all SWPM from Mexico's border States already meets the entry requirements that will be imposed by this rule, we do not expect that this rule will result in costly delays at U.S. ports of entry, inconsistent enforcement by inspectors, or the use of non-wood substitutes for SWPM. Finally, we do not agree that a 5-year phase-in of these regulations is necessary. As previously noted, nearly all SWPM from Mexico's border States already meets the entry requirements that will be imposed by this rule. Therefore, we do not expect that this rule will be costly and disruptive, necessitating a 5-year phase-in of the regulations.

Firewood and Small Quantities of Wood for Personal Use

Comment: APHIS should ensure that any commercial or noncommercial shipments of mesquite wood for cooking and firewood, and small, noncommercial shipments of unmanufactured wood for personal cooking or medicinal purposes, imported into the United States under general permit from Mexico are: From Mexican border States, inspected for the presence of dangerous insects, and subject to appropriate remedial measures if suspicious organisms are found.

Response: We agree that it is important to inspect and determine the origin of noncommercial shipments of mesquite wood for cooking and firewood, and small, noncommercial shipments of unmanufactured wood for personal cooking or medicinal purposes. Accordingly, we have amended § 319.40–3 in this final rule to indicate that noncommercial shipments would be 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 States in Mexico adjacent to the United States border. In the proposed rule, we acknowledged that it would not be administratively feasible to require an importer document for such noncommercial shipments. However, by allowing oral declarations, we anticipate that APHIS will have the resources to carry out this added requirement. We note that all shipments are subject to inspection upon entry into the United States and mitigation if quarantine significant pests are intercepted.

Comment: Diseases and insects can be transported on firewood and small quantities of wood for personal use. Therefore, APHIS should not retain provisions to allow such articles from Mexico to enter the United States under general permit.

Response: As noted in the proposed rule, we do not believe that firewood and small quantities of unmanufactured wood for personal use pose a significant pest risk. Firewood does not pose a significant pest risk because of its limited distribution and consumption near the United States/Mexico border. Similarly, small, noncommercial packages of unmanufactured wood to be used for personal cooking or personal medicinal purposes does not pose a significant pest risk because the packages are limited in quantity and therefore easily inspected, and likely will be distributed and consumed near the border.

Wood Chips

Comment: APHIS should establish treatment requirements, such as steam heat or fumigation, for the phytosanitary treatment of wood chips from Mexico, as well as wood chips from other countries.

Response: Such treatment requirements are already in place. Specifically, § 319.40–6(c) of the current regulations contains the entry requirements, including treatments, for wood chips from all parts of the world, except for certain places in Asia.

Systems Approach

Comment: APHIS should use a systems approach to mitigate the risk of introducing dangerous pests into the United States in unmanufactured wood articles from Mexico. The steps of the approach could include targeting certain pests, rather than articles, in Mexico; establishing programs to control the presence of these pests in Mexico; and cooperating with Mexican authorities to monitor pest outbreaks and to apply specific measures to prevent the introduction of these pests into the United States. Such an approach would be beneficial to U.S. businesses, consumers, and forest resources.

Response: We believe the phytosanitary measures used as entry requirements for unmanufactured wood articles afford the United States the appropriate level of protection against plant pests and are the least restrictive of trade. However, we would consider any specific suggestions for alternative phytosanitary measures, including a systems approach, for unmanufactured wood articles.

Environmental Analysis

Comment: APHIS' environmental assessment that accompanied the proposal omits important information, uses outdated information to analyze the proposal's effects (including the effects that the methyl bromide treatment option would have on our environment), and presents an inadequate comparison of alternatives.

Response: As noted previously, we prepared an EIS titled ''Rule for the Importation of Unmanufactured Wood Articles From Mexico, With Consideration for Cumulative Impact of Methyl Bromide Use'' following the publication of the proposed rule to consider the increase in methyl bromide use for wood imports from Mexico that could result from the adoption of the proposed rule. The focus of the EIS is the incremental contribution of methyl bromide use from the proposed action when added to other methyl bromide uses for the cumulative impact on the environment. The EIS discusses alternatives to the proposed rule, the environmental consequences of methyl bromide on the environment, and the potential cumulative impact of methyl bromide use associated with the proposed rule.

Economic Analysis

Comment: It is untrue that the majority of firms likely to be impacted

by this rule are located in the southwestern United States. Unmanufactured wood articles from Mexico can be shipped wherever there is a U.S. market for them.

Response: In our economic analysis, we did not definitively state that the majority of small entities likely to be affected would be located in the southwestern United States, we only presumed that would be the case. This presumption was based on the geographic proximity of the southwestern United States to exporting Mexican border States, and considered the small fraction of the U.S. supply of unmanufactured wood articles imported from Mexico, and the even smaller percentage originating in the Mexican border States. If unmanufactured wood articles from Mexico are shipped throughout the United States, the effects on small entities in the United States would be so spread out as to be considered negligible.

Miscellaneous

Comment: APHIS should establish adequate compliance monitoring to ensure that unmanufactured wood articles from Mexico entering the United States under permit to be treated later or heat treated prior to importation are indeed treated and handled in conformance with the regulations.

Response: We believe the current monitoring program is sufficient to ensure compliance with the regulations. For wood articles treated prior to entry, inspectors review treatment documentation at the ports of entry for compliance with the regulations. For untreated wood articles, inspectors verify that all applicable requirements in the regulations have been met and that all required import documentation is in order before allowing the articles to move to approved processing facilities. An approved processing facility must enter into a compliance agreement before it can receive untreated wood articles from Mexico. These compliance agreements contain stipulations relating to proper compliance with the regulations. The facilities are inspected prior to entering into the compliance agreement and undergo random monitoring visits. All of these provisions are designed to ensure compliance with the regulations.

Comment: APHIS should describe how kiln drying will provide adequate protection from pest infestation, particularly fungi.

Response: We are confident that kiln drying will provide sufficient protection from pest infestation. The effectiveness of dry heat against wood boring insects is well-documented in the Dry Kiln Operator's Manual, which is incorporated by reference in the regulations, as well as in many published articles. Moisture reduction, such as kiln drying, is also effective for fungi. Since fungi require a moist environment in which to grow, moisture reduction deprives the fungi of the necessary wetness to grow while the elevated temperature makes it difficult for fungal spores to survive. Although it could be argued that heat penetration is more efficient under moist environments, we believe that requiring moist heat would cause damage, such as warping, to the wood being treated.

Comment: Kiln drying capacity in Mexico is very limited. Therefore, until more kiln drying facilities are built in Mexico, few articles will be able to be kiln dried there.

Response: Pretreatment of wood articles by kiln drying is not the only option allowed under the regulations. Heat treatments, including kiln drying, are allowed to be completed after entry into the United States. Also, this rule allows methyl bromide fumigation as an option for imported cross-ties and pine and fir lumber from Mexican States adjacent to the United States/Mexico border.

Comment: Since previous assumptions of risk levels have been shown to be in error, it may be time for APHIS to review the risk associated with Canadian unmanufactured wood articles.

Response: Given the pest risk assessment that found that a significant pest risk exists in the movement of raw wood material into the United States from the adjacent States of Mexico, we agree that we need to determine the pest risk associated with unmanufactured wood articles from Canada. Accordingly, we have initiated a pest risk assessment for unmanufactured wood articles from Canada.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This 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.

For this final rule, we have prepared an economic analysis that provides a cost-benefit analysis as required by Executive Order 12866, as well as an analysis of the potential economic effects of this rule on small entities as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

We are amending the regulations to add restrictions on the importation of pine and fir logs and lumber, as well as other unmanufactured wood articles, from the northern border States of Mexico. This rule requires that these wood articles meet certain treatment and handling requirements to be eligible for importation into the United States. This action is necessary to prevent the introduction into the United States of plant pests, including forest pests, with unmanufactured wood articles from Mexico.

Specifically, we are amending the regulations as follows:

- By limiting the applicability of the general permit in § 319.40–3 for unmanufactured wood articles from Mexican States adjacent to the United States/Mexico border to unmanufactured mesquite wood for cooking, unmanufactured wood for firewood, and small, noncommercial packages of unmanufactured wood for personal cooking or personal medicinal purposes.
- By making all other unmanufactured wood articles imported from Mexican States adjacent to the United States/Mexico border subject to substantially the same entry requirements that apply to those articles from the rest of Mexico.
- By adding methyl bromide fumigation as a treatment option for debarked pine and fir lumber imports and railroad cross-ties imported from Mexican States adjacent to the United States/Mexico border.

Alternatives to the rule would be to not make any changes at all, prohibit unmanufactured wood articles from Mexican States adjacent to the United States/Mexico border, or not include methyl bromide fumigation as a treatment alternative. If the regulations are left unchanged, pest risks identified in the Forest Service risk assessment would not be addressed. Risks to U.S. agricultural and forestry resources would remain at their current unacceptable level. By placing unmanufactured wood imports from Mexican States adjacent to the United States/Mexico border under substantially the same phytosanitary restrictions as the rest of Mexico, the border Mexican States will be able to continue to export these commodities to the United States.

Prohibition of unmanufactured wood imports from Mexican States adjacent to

the United States/Mexican border would be inconsistent with APHIS' position that effective means of pest risk mitigation are available. Not including methyl bromide fumigation as a treatment option could limit unmanufactured wood imports from Mexican States adjacent to the United States/Mexico border if alternative means of treatment in the region are of insufficient capacity. Insufficient kiln drying capacity is possible because unmanufactured wood articles currently enter the United States from Mexican States adjacent to the United States/Mexico border under general permit and phytosanitary treatment is not required. In sum, the amended regulations, in providing a set of balanced, science-based requirements in response to identified pest risks, is the preferred alternative.

Approximated percentages of unmanufactured softwood imports that originate in Mexican States adjacent to the United States/Mexico border are used to evaluate the impact of the regulatory amendments. In its pest risk assessment, the Forest Service used pine and fir pests as surrogates for determining overall pest risks. Similarly, this analysis focuses on softwood imports, since they comprise over 90 percent, by value, of lumber and wood molding imported by the United States from Mexico and globally.

Molding is the most significant of softwood imports from Mexico, comprising over 60 percent. This commodity group includes both manufactured and unmanufactured articles. Available statistics do not allow for the two categories of softwood molding imports to be distinguished. Since only unmanufactured wood articles are affected by this rule, two analyses are performed, one including and one excluding softwood molding.

We approximate that between 35 and 40 percent, by value, of softwood articles imported from Mexico originate in Mexican States adjacent to the United States/Mexico border. When molding is not included in the analysis, the total annual value of articles originating in Mexican States adjacent to the United States/Mexico border is about $19.3 million. When softwood molding is included, the total value is about $53.9 million.

The significance of these values can be put in perspective by comparing them to overall U.S. import and supply levels. Unmanufactured wood articles include a variety of commodities, but the main U.S. import, softwood lumber, provides a reasonable basis for comparison. Global imports contribute about one-fourth of the U.S. softwood lumber supply, and imports from Mexico comprise about 0.8 percent of total imports. Thus, Mexico's share of the U.S. supply is only about 0.2 percent. Given that about 35 to 40 percent of Mexico's softwood lumber shipments to the United States originates in Mexican States adjacent to the United States/Mexico border, shipments from these border Mexican States represent about 0.3 percent of softwood lumber imports by the United States, and less than 0.1 percent of U.S. supply.

Including softwood molding articles in the analysis increases the level of imports from Mexico (and the approximated import level from Mexican States adjacent to the United States/Mexico border) by a factor of about 2.8. Mexico's share of U.S. imports of softwood lumber and softwood molding is about 2.1 percent. Shipments from Mexican States adjacent to the United States/Mexico border of these principal softwood articles represent about 0.8 percent of U.S. imports (35 to 40 percent of 2.1 percent). Since at least some softwood molding articles are manufactured, this percentage exceeds the amount of softwood imports affected by the regulatory amendments, but serves here as an upper bound. Thus, between 0.3 percent and 0.8 percent of U.S. imports of unmanufactured wood articles originate in Mexican States adjacent to the United States/Mexico border.

The most common method used to treat unmanufactured wood articles entering the United States is kiln drying. The cost of kiln drying, based on recent prices for green and kiln-dried framing lumber in the United States, ranges between $23 and $30 per thousand board feet. This cost range is equivalent to between $9.75 and $12.71 per cubic meter ($m^3$). Methyl bromide fumigation costs in the United States average about $400 to $600 per standard container. This range in fumigation costs for lumber shipments, assuming containers are loaded 80 to 90 percent of capacity, converts to $6.13 to $10.34 per m^3 of lumber.

Kiln drying and methyl bromide fumigation costs in Mexico may differ from those in the United States, but any difference in the relative costs of the two treatment methods is not thought to be significant. APHIS does not know the extent to which either method will be used to treat unmanufactured wood articles imported from Mexican States adjacent to the United States/Mexico border. The decision will depend not only on relative costs, but also on the value added through kiln drying and on the availability of kiln drying capacity in the border Mexican States.

In the United States, kiln-dried softwood lumber is commercially preferred, and temperatures attained in the kiln drying process exceed those required for heat treatment with moisture reduction. Kiln drying of unmanufactured wood imports thus serves to increase its commercial value while satisfying phytosanitary treatment requirements. Importers are likely to choose kiln drying as the preferred treatment method when treatment costs are similar.

The advantage of kiln drying over methyl bromide fumigation presupposes sufficient kiln drying capacity within the region. Kiln drying facilities are not as likely to be found in Mexican States adjacent to the United States/Mexico border as they are in other Mexican States where phytosanitary treatment of unmanufactured wood articles exported to the United States has been required. Pine and fir lumber imports from Mexican States adjacent to the United States/Mexico border would be constrained if there is insufficient kiln drying capacity and if heat treatments with or without moisture reduction were the only phytosanitary treatment alternatives (not considering other options of using kiln drying facilities elsewhere in Mexico or in the United States within 30 days following importation). Inclusion of methyl bromide fumigation as a treatment alternative lessens the possibility that pine and fir lumber imports from Mexican States adjacent to the United States/Mexico border may be impeded due to insufficient kiln drying capacity in the region, as firms adjust to the new treatment requirements.

Economic effects of the treatment requirements for U.S. importers will be minor, given the small quantity of unmanufactured wood articles imported from Mexican States adjacent to the United States/Mexico border and the minor costs of treatment. The value of unmanufactured softwood articles imported annually from Mexican States adjacent to the United States/Mexico border ranges between $19.3 million and $53.9 million, depending on the portion of softwood molding that is unmanufactured. These values represent from 0.3 to 0.8 percent of the value of all U.S. imports of these articles.

Costs of kiln drying and methyl bromide fumigation are small when compared to the value of the wood articles treated. The average price of softwood lumber imported from Mexico in 1999 and 2000 was about $343 per m^3. Methyl bromide fumigation costs of about $6 to $10 per m^3 and kiln drying

costs of about $10 to $13 per m^3 are equivalent to about 2 to 4 percent of this import price. Assuming that treatment costs are equal to 4 percent of the value of the commodities imported and that importers bear the full cost of treatment, the combined treatment cost for U.S. importers of unmanufactured wood articles from Mexican States adjacent to the United States/Mexico border would total between $773,000 and $2,157,000 per year, depending on the percentage of wood molding imports that is unmanufactured.

This expenditure is an acceptable cost when one considers possible adverse impacts for the Nation's agriculture and forests if unmanufactured wood articles are allowed to continue to enter from Mexican States adjacent to the United States/Mexico border under general permit. The possibility of pest introductions that could cost the United States tens of millions of dollars a year necessitates that these imports be subject to substantially the same mitigation measures as are required of unmanufactured wood articles imported from the rest of Mexico.

As a part of the rulemaking process, APHIS evaluates whether new regulations are likely to have a significant economic impact on a substantial number of small entities. Entities that import unmanufactured wood articles that originate in Mexican States adjacent to the United States/Mexico border will be directly affected. The impact will be the cost of newly required phytosanitary treatments.

Principal industries affected by the new regulations will be (by North American Industry Classification System category): Sawmills and Wood Preservation; Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers; Other Miscellaneous Durable Goods Merchant Wholesalers; and Construction of Buildings. The Small Business Administration has established criteria for determining whether an establishment may be considered small with respect to the Regulatory Flexibility Act. Nearly all establishments that will be affected are small entities.

The impact of additional costs of treatment for U.S. small entities will be minor, given that only between 0.3 and 0.8 percent of unmanufactured wood articles imported by the United States come from Mexican States adjacent to the United States/Mexico border, and costs of treatment are equal to between 2 and 4 percent of the value of the imported articles. Moreover, commercial benefits of kiln drying will be realized when that treatment alternative is used. A substantial number of small entities will not be significantly affected by the regulatory amendments. Small as well as large U.S. entities will benefit from reduced risks of pest introduction.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Use of Methyl Bromide

The United States is fully committed to the objectives of the Montreal Protocol, including the reduction and ultimately the elimination of reliance on methyl bromide for quarantine and pre-shipment uses in a manner that is consistent with the safeguarding of U.S. agriculture and ecosystems. APHIS reviews its methyl bromide policies and their effect on the environment in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and Decision XI/13 (paragraph 5) of the 11th Meeting of the Parties to the Montreal Protocol, which calls on the Parties to review their ''national plant, animal, environmental, health, and stored product regulations with a view to removing the requirement for the use of methyl bromide for quarantine and pre-shipment where technically and economically feasible alternatives exist.''

The United States Government encourages methods that do not use methyl bromide to meet phytosanitary standards where alternatives are deemed to be technically and economically feasible. In some circumstances, however, methyl bromide continues to be the only technically and economically feasible treatment against specific quarantine pests. In addition, in accordance with Montreal Protocol Decision XI/13 (paragraph 7), APHIS is committed to promoting and employing gas recapture technology and other methods whenever possible to minimize harm to the environment caused by methyl bromide emissions.

National Environmental Policy Act

On September 20, 2002, the U.S. Environmental Protection Agency (EPA) published in the **Federal Register** (67 FR 59284–59285) a notice of availability of the final environmental impact statement (EIS) titled ''Rule for the Importation of Unmanufactured Wood Articles From Mexico, With Consideration for Cumulative Impact of Methyl Bromide Use.'' The EIS considers the incremental increase in methyl bromide use for wood imports from Mexico that could result from our adoption of the proposed rule as a final rule.[5] The EIS 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).

Pursuant to the implementing regulations for NEPA, in cases requiring an EIS, APHIS must prepare a record of decision at the time of its decision. This final rule constitutes the required record of decision for the EIS.

The NEPA implementing regulations require that a record of decision state what decision is being made; identify alternatives considered in the environmental impact statement process; specify the environmentally preferable alternative; discuss preferences based on relevant factors—economic and technical considerations, as well as national policy considerations, where applicable; and state how all of the factors discussed entered into the decision. In addition, the record of decision must indicate whether the ultimate decision has been designed to avoid or minimize environmental harm and, if not, why not.

The Decision

APHIS has decided, in this final rule, to amend its regulations to provide that pine and fir logs and lumber, as well as other unmanufactured wood articles, imported into the United States from

[5] Copies of the EIS are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, the EIS may be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/mb.html,* and copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Mexican States adjacent to the United States/Mexico border will be subject to substantially the same requirements as Mexican States not adjacent to the United States. Methyl bromide fumigation has been added as an optional treatment for railroad cross-ties and pine and fir lumber from Mexican States adjacent to the United States/Mexico border.

Alternatives Considered in the Impact Statement Process

The EIS, which focuses mainly on cumulative effects of methyl bromide use, considers a reasonable range of alternatives, including: (1) No action, essentially maintaining the exemption from treatment requirements for importation of unmanufactured wood articles from Mexican States that border the United States, (2) removal of the Mexican border State exemption, requiring the same treatments for similar commodities as non-border Mexican States, (3) permitting use of methyl bromide as a treatment option for railroad cross-ties and pine and fir lumber from Mexico, (4) a combination of alternatives (2) and (3), above, and (5) prohibiting the importation of unmanufactured wood articles from Mexico.

Environmentally Preferable Alternative

The environmentally preferable alternative would be to prohibit importation of unmanufactured wood articles from Mexico, which would virtually eliminate all associated pest risks, as well as the need to use methyl bromide. However, APHIS believes that this alternative would be more trade restrictive than necessary to prevent the introduction into the United States of plant pests from Mexico.

Preferences Among Alternatives

There is a preference for the approach taken in this final rule, which we adopt herein (alternative (4), above). Among all of the alternatives considered, APHIS believes that this alternative best satisfies all of our international and domestic obligations, including the North American Free Trade Agreement (NAFTA), the Montreal Protocol, the Plant Protection Act (PPA), NEPA, and the Clean Air Act.

Factors in the Decision

APHIS is guided by the PPA, under which the detection, control, eradication, suppression, prevention, and retardation of the spread of plant pests or noxious weeds have been determined by Congress to be necessary and appropriate for the protection of the agriculture, environment, and economy of the United States. The PPA also has been designed to facilitate exports, imports, and interstate commerce in agricultural products and other commodities. In order to achieve these objectives, use of pesticides, including methyl bromide, has often been prescribed.

Methyl bromide is an ozone depleting substance that is strictly regulated under the Montreal Protocol and the Clean Air Act. While the goal of these authorities and agreements is to limit and ultimately phase out all ozone depleting substances, certain exemptions and exclusions are recognized, including an exemption for methyl bromide use for plant quarantine and pre-shipment purposes, including the purposes provided for in this final rule. The exemption is not unconditional, however. The United States, like other signatories to the Montreal Protocol, must review its national plant health regulations with a view to removing the requirement for the use of methyl bromide for quarantine and preshipment application where technically and economically feasible alternatives exist.

By authorizing and encouraging limited use of methyl bromide—only so much as is necessary to meet the mandates of the PPA—for imports from Mexican border States, the Agency is achieving the purposes of its enabling legislation, while promoting the goals of the Montreal Protocol, the Clean Air Act, NEPA, and other applicable authorities or agreements.

Avoid or Minimize Environmental Harm

The environment can be harmed by using methyl bromide, in which case recovery of the ozone layer may be delayed, or by not using methyl bromide, in which case agriculture and forested ecosystems, among other aspects of environmental quality, could be devastated. By assuring that use of methyl bromide is limited only to those situations in which substitute materials are not available and only in those amounts necessary to eliminate pest threats to agriculture and ecosystems, the Agency strikes a proper balance in its efforts to minimize environmental harm. APHIS is committed to monitoring these efforts through the NEPA process, and otherwise. (*See,* for example, the final EIS titled ''Importation of Solid Wood Packing Material, Final Environmental Impact Statement'' for which a notice of availability was published in the **Federal Register** (68 FR 54900–54901) on September 19, 2003.) Furthermore, where appropriate, measures—gas recapture technology, for example—to minimize harm to environmental quality caused by methyl bromide emissions have been, and will continue to be, put in place by APHIS.

Other

Methyl bromide used in quarantine applications prescribed by the United States contributes just a small fraction of total anthropogenic bromine released into the atmosphere. Nevertheless, the Montreal Protocol is action-forcing in the sense that signatories must review their national plant health regulations with a view to finding alternatives to exempted uses of methyl bromide. The EPA has also cautioned that, regardless of the incremental contribution, it is important to recognize that any additional methyl bromide releases would delay recovery of the ozone layer.

A considerable amount of research and development on methyl bromide alternatives has been conducted within the USDA and continues today. Under the Clean Air Act, EPA has also established a program to identify alternatives to ozone depleting substances, including methyl bromide. But EPA's listing of an acceptable alternative does not always adequately address its suitability for a particular use. We must not put agriculture and ecosystems at risk based on unproven technology.

APHIS is firmly committed to the objectives of the Montreal Protocol to reduce and ultimately eliminate reliance on methyl bromide for quarantine uses, consistent with its responsibilities to safeguard this country's agriculture and ecosystems. Searching for cost-effective alternatives to major quarantine and pre-shipment uses of methyl bromide, then, is an Agency—indeed, a worldwide—priority. In order to achieve the twin objectives of reducing and ultimately eliminating methyl bromide emissions while safeguarding agriculture and ecosystems in the most expeditious, cost-effective way possible, research, developmental, and testing efforts within the Federal Government must be closely coordinated. APHIS is determined to cooperate actively with the Agricultural Research Service, EPA, the Office of Management and Budget, and others involved in this effort to find effective alternatives to quarantine methyl bromide uses.

In a letter dated October 25, 2002, EPA stated that it has no objections to the alternative selected by APHIS. Copies of the EPA letter may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0049.

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 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 are amending 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 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.40–2 [Amended]

■ 2. Section 319.40–2 is amended by adding, at the end of the section, the following:

''(Approved by the Office of Management and Budget under control number 0579–0049)''.

■ 3. Section 319.40–3 is amended as follows:

■ a. By revising paragraph (a) to read as set forth below.

■ b. By adding, at the end of the section, the following:

''(Approved by the Office of Management and Budget under control number 0579–0049)''.

§ 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 regulated articles of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae; and

(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.

* * * * *

§ 319.40–4 [Amended]

■ 4. Section 319.40–4 is amended by adding, at the end of the section, the following:

''(Approved by the Office of Management and Budget under control number 0579–0049)''.

■ 5. Section 319.40–5 is amended as follows:

■ a. By revising paragraph (f) to read as set forth below.

■ b. By adding a new paragraph (l) to read as set forth below.

■ c. By adding, at the end of the section, the following:

''(Approved by the Office of Management and Budget under control numbers 0579–0049 and 0579–0135)''.

§ 319.40–5 Importation and entry requirements for specified articles.

* * * * *

(f) Cross-ties (railroad ties) from all places, except places in Asia that are east of 60° East Longitude and north of the Tropic of Cancer, may be imported if completely free of bark and accompanied by an importer document stating that the cross-ties will be pressure treated with a preservative within 30 days following the date of importation at a U.S. facility under compliance agreement. Cross-ties (railroad ties) may also be imported if heat treated in accordance with § 319.40–7(c).

* * * * *

(l) *Cross-ties (railroad ties) and pine and fir lumber from Mexican States adjacent to the United States/Mexico border.*[3] Cross-ties (railroad ties) 8 inches or less at maximum thickness and lumber derived from pine and fir may be imported from Mexican States adjacent to the United States/Mexico border into the United States if they:

(1) Originate from Mexican States adjacent to the United States/Mexico border;

(2) Are 100 percent free of bark; and

(3) Are fumigated prior to arrival in the United States. The regulated article and the ambient air must be at a temperature of 5 °C or above throughout fumigation. The fumigation must be conducted using schedule T312 contained in the Treatment Manual. In lieu of the schedule T312 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 240 g/m^3 with exposure and concentration levels adequate to provide a concentration-time product of at least 17,280 gram-hours calculated on the initial methyl bromide concentration.

§ 319.40–6 [Amended]

■ 6. Section 319.40–6 is amended by adding, at the end of the section, the following:

''(Approved by the Office of Management and Budget under control number 0579–0049)''.

§ 319.40–7 [Amended]

■ 7. Section 319.40–7 is amended by adding, at the end of the section, the following:

''(Approved by the Office of Management and Budget under control number 0579–0049)''.

§ 319.40–8 [Amended]

■ 8. Section 319.40–8 is amended by adding, at the end of the section, the following:

''(Approved by the Office of Management and Budget under control number 0579–0049)''.

§ 319.40–9 [Amended]

■ 9. Section 319.40–9 is amended as follows:

■ a. By redesignating footnotes 3 and 4 as footnotes 4 and 5, respectively.

■ b. By adding, at the end of the section, the following:

''(Approved by the Office of Management and Budget under control number 0579–0049)''.

§ 319.40–10 [Amended]

■ 10. In § 319.40–10, footnote 5 is redesignated as footnote 6.

[3] Cross-ties (railroad ties) may also be imported in accordance with paragraph (f) of this section, or may be imported if heat treated in accordance with § 319.40–7(c).

Done in Washington, DC, this 20th day of August 2004.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 04–19519 Filed 8–25–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 01–015–2]

Brucellosis in Cattle; State and Area Classifications; Missouri

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Missouri from Class A to Class Free. The interim rule was based on our determination that Missouri meets the standards for Class Free status. The interim rule relieved certain restrictions on the interstate movement of cattle from Missouri.

DATES: *Effective Date:* The interim rule became effective on February 26, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Debra A. Donch, National Brucellosis Epidemiologist, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–6954.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective February 26, 2004, and published in the **Federal Register** on March 2, 2004 (69 FR 9747–9749, Docket No. 01–015–1), we amended the brucellosis regulations in 9 CFR part 78 (referred to below as the regulations) concerning the interstate movement of cattle by changing the classification of Missouri from Class A to Class Free. The interim rule was based on our determination that Missouri meets the standards for Class Free status. The interim rule relieved certain restrictions on the interstate movement of cattle from Missouri.

Comments on the interim rule were required to be received on or before May 3, 2004. We received one comment by that date, from a private citizen. This commenter was opposed to the change in Missouri's classification. The issues raised by the commenter are discussed below.

The commenter objected to the use of the word ''free'' to describe a State or area designated as Class Free for brucellosis on the basis that our regulations do not require every animal in a State or area be tested; the commenter asserted, therefore, that we cannot be certain that a State or area classified as Class Free is free of brucellosis.

The regulations provide a system for classifying States or areas of States according to the rate of *Brucella* infection present and the general effectiveness of a brucellosis control and eradication program. To attain and maintain Class Free status, a State or area must, among other requirements, (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer; (2) trace back at least 90 percent of all brucellosis reactors found in the course of Market Cattle Identification (MCI) testing to the farm of origin; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the consecutive 12-month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd. A full listing of the standards that a State must meet to be classified as Class Free may be found in the definition of *Class Free State* in § 78.1 of the regulations. We have no evidence that testing every animal, as the commenter suggests, would increase the accuracy of the classification system to a degree that would warrant the massive additional burden of testing every animal in a State or area.

The last brucellosis-infected cattle herd in Missouri was depopulated in October 2002. Since then, no brucellosis-affected herds have been detected. After reviewing the brucellosis program records for Missouri, we have concluded that this State meets the standards for Class Free status. Accordingly, the interim rule designated Missouri as a Class Free State for brucellosis, thereby relieving certain restrictions on the interstate movement of cattle from Missouri. We have no evidence that Missouri should not have been classified Class Free and the commenter did not provide any such evidence. We are making no changes in response to this comment.

The commenter asserted that our immediate action to change the classification of Missouri from Class A to Class Free was not warranted.

It is important to reclassify States when they have met the criteria for reclassification as Class Free. This encourages cooperation and compliance with the brucellosis control and eradication program and regulations by relieving certain restrictions on the interstate movement of cattle when they are determined to be no longer necessary. We have no evidence indicating that Missouri does not meet the standards for being declared Class Free, and the commenter did not provide any such evidence. We are making no changes in response to this comment.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 78 and that was published at 69 FR 9747–9749 on March 2, 2004.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 19th day of August, 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–19517 Filed 8–25–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9154]

RIN 1545–BD64

Extension of Time To Elect Method for Determining Allowable Loss

AGENCY: Internal Revenue Service (IRS), Treasury.