

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 98-057-1]

RIN 0579-AA99

Importation of Unmanufactured Wood Articles; Solid Wood Packing Material

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are soliciting public comment on how to amend the regulations on the importation of logs, lumber, and other unmanufactured wood articles to decrease the risk of solid wood packing material (e.g., crates, dunnage, wooden spools, pallets, packing blocks) introducing exotic plant pests into the United States. Introductions of exotic plant pests such as the pine shoot beetle and the Asian longhorned beetle have been linked to the importation of solid wood packing material. These and other plant pests that could be carried by imported solid wood packing material pose a serious threat to U.S. agriculture and to natural, cultivated, and urban forests.

DATES: Consideration will be given only to comments received on or before March 22, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98-057-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 98-057-1. Comments received may be inspected 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 comments are requested to call

ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Orr, Senior Entomologist, Risk Analysis Systems, PPD, APHIS, 4700 River Road Unit 117, Riverdale, MD 20737-1238, (301) 734-8939; or e-mail: richard.l.orr@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Logs, lumber, and other unmanufactured wood articles imported into the United States could pose a significant threat of introducing plant pests detrimental to agriculture and to natural, cultivated, and urban forests. The regulations in 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. Regulated articles include unprocessed logs, lumber, trees, bark, cork, raw wood products, wood chips, mulch, solid wood packing material, and other unmanufactured wood articles.

Introductions into the United States of exotic plant pests such as the pine shoot beetle and the Asian longhorned beetle have been linked to the importation of solid wood packing material (SWPM). These and other plant pests that could be carried by imported SWPM pose a serious threat to U.S. agriculture and to natural, cultivated, and urban forests.

On September 18, 1998, we published an interim rule in the **Federal Register** (63 FR 50100-50111, Docket No. 98-087-1) to require that SWPM from China be heat treated, fumigated, or treated with preservatives prior to arrival in the United States. (Under the September 18 interim rule, China means the People's Republic of China, including the Hong Kong Special Administrative Region.) We took this action because of a number of recent incidents, including the introduction of the Asian longhorned beetle, that demonstrate that China is the largest source of exotic plant pests in SWPM imported into the United States.

We are publishing this advance notice of proposed rulemaking to seek information and develop regulatory options on the general problem of plant pests in SWPM imported from any country. SWPM accompanies nearly all types of imported commodities, from fruits and vegetables to machinery and

electrical equipment. We are seeking ways to maximize our protection against the introduction of exotic plant pests by SWPM without unduly affecting international trade or the environment. We are requesting public comment on what actions would be most effective and appropriate to further reduce the risk of SWPM introducing exotic plant pests.

We are specifically requesting public comment on options for strengthening restrictions on the importation of SWPM, alternative treatments to methyl bromide that could be used to reduce the risk of SWPM introducing exotic plant pests, and a number of specific questions. Following are descriptions of the current restrictions and treatment options for importing SWPM, the problem with importing SWPM, and several options we are considering for strengthening restrictions on importing SWPM. A list of specific questions for which we are seeking comments appears at the end of this document.

Current Restrictions on Importing SWPM

The regulations concerning logs, lumber, and other unmanufactured wood articles imported into the United States were promulgated on May 25, 1995 (60 FR 27674, Docket No. 91-074-6), to reduce the plant pest risks presented by the importation of these articles. The regulations were considered to be necessary because a changing national and world economy has increased importations of wood and related articles over the past several years. Trees produced in many foreign locations are attacked by a wide variety of exotic plant pests that do not occur in this country. Many of these plant pests pose a significant hazard to agriculture and to natural, cultivated, and urban forests and carry the potential of causing billions of dollars of damage to these resources.

SWPM is one of the classes of wood articles that are subject to import restrictions under the regulations. The regulations define SWPM in § 319.40-1 as "Wood packing materials other than loose wood packing materials, used or for use with cargo to prevent damage, including, but not limited to, dunnage, crating, pallets, packing blocks, drums, cases, and skids." Most of the wooden pallets, crates, dunnage, and similar articles used to assist the movement of

commodities in international commerce meet the definition of SWPM and are subject to the regulations. However, more synthetic or highly processed wood materials are being used as packing material, and these articles (e.g., plywood, oriented strand board, corrugated paperboard, plastic, resin composites) are not subject to the requirements for SWPM.

(Loose wood packing material is not included within the scope of this advance notice of proposed rulemaking. Loose wood packing material is defined in the regulations as "Excelsior (wood wool), sawdust, and wood shavings, produced as a result of sawing or shaving wood into small, slender, and curved pieces." No restrictions on importing loose wood packing material are being considered because the risk of exotic plant pests being carried in loose wood packing material is negligible.)

The importation of SWPM is regulated because this material presents a number of plant pest risks. SWPM is often constructed from raw wood cut shortly before it is used, often includes bark on some surfaces, and is often made from wood that may be of low quality due to pest damage. These factors all mean that SWPM presents a high risk of spreading wood pests that exist in the areas where the SWPM was constructed. Additionally, the SWPM in transit is in close contact with the commodities (including wood products) it is used to pack, with an excellent opportunity for pests to move from SWPM to commodities. After commodities arrive in the United States, pests from the SWPM have many opportunities to escape and become established, especially since the SWPM associated with commodities often moves long distances throughout the United States, is reused frequently, and is often stored outdoors at ports and warehouses when not in use.

To control these risks, § 319.40-3 of the regulations imposes certain requirements on imported SWPM. The least restrictive requirement for importing SWPM occurs when the SWPM is used to move nonregulated articles (articles that are not wood, or that are highly processed wood excluded from the regulations). When SWPM is used to move nonregulated articles, the SWPM must be completely free of bark and apparently free from live plant pests. It need not be heat treated, fumigated, or treated with preservatives.

If the SWPM is not completely free of bark, it must be heat treated, fumigated, or treated with preservatives in accordance with the regulations prior to arrival. Even if the SWPM is completely

free of bark, the SWPM must be either heat treated, fumigated, or treated with preservatives in accordance with the regulations prior to arrival if it is used to pack regulated wood commodities in transit, or must meet all the importation and entry conditions required for the regulated wood commodities the SWPM is used to move. (As mentioned previously, on September 18, 1998, we published an interim rule that places additional restrictions on SWPM from China. The interim rule became effective on December 17, 1998.)

Importing SWPM Under Current Restrictions

Most SWPM imported into the United States is imported under the requirement that it be completely free of bark and apparently free from live plant pests. When the regulations were promulgated in 1995, we believed that the plant pests of particular concern were those found on or under bark. Requiring SWPM to be completely free of bark significantly reduces the risk that exotic plant pests associated with bark will be introduced into the United States. However, since promulgation of the regulations in 1995, we have found that the complete removal of bark from SWPM has limitations in reducing the risk of plant pests being carried in SWPM imported into the United States. In particular, deep wood-boring plant pests can remain in wood even after the bark has been removed, and, therefore, can be difficult to detect. Other types of exotic plant pests that threaten agriculture and forests, such as pathogenic fungi, are also difficult to detect by mere visual inspection and may remain even after complete removal of bark. Such plant pests pose a serious threat to U.S. agriculture and to natural, cultivated, and urban forests.

Interceptions of potentially destructive exotic plant pests by Animal and Plant Health Inspection Service (APHIS) inspectors at U.S. ports clearly identify SWPM as the highest risk pathway into the United States for exotic plant pests of all types that threaten forests. Between August 1995 and March 1998, approximately 500 shipments were found by port inspectors to be infested with a variety of exotic plant pests that threaten forests; 97 percent of these findings were associated with SWPM. These findings were in shipments originating from all over the world, including countries of Europe, Africa, South America, and Asia.

Recent introductions into the United States of exotic plant pests that threaten forests have been linked with the importation of SWPM. For example, an

infestation of the Asian longhorned beetle was discovered in three areas in and around Chicago, IL, in July 1998, and has been linked to the importation of SWPM from China. A similar infestation was discovered in 1996 in Brooklyn, Queens, and Amityville, NY. Control of the pest in these locations has required the felling and burning of hundreds of trees on public and private land. Control efforts in both areas continue. These actions have been necessary because the spread of the Asian longhorned beetle into U.S. hardwood forests could result in severe economic losses to the nursery and forest products industries. Even though the Asian longhorned beetle was likely established in these areas prior to implementation of our current regulations governing SWPM, the Asian longhorned beetle continues to be intercepted on shipments associated with SWPM from China.

In 1992, the pine shoot beetle was discovered in the United States on a Christmas tree farm in Ohio; since then, APHIS has quarantined portions of nine States to prevent the spread of the pine shoot beetle. The pine shoot beetle is a highly destructive pest of pine trees, and was probably introduced into the United States in ship dunnage from Europe—again, prior to implementation of our current regulations governing SWPM.

Options for Managing the Pest Risks Associated with SWPM

As stated previously in this document, SWPM accompanies nearly all types of imported commodities, from fruits and vegetables to machinery and electrical equipment. Any further restrictions we place on its importation are likely to affect international trade. Likewise, other countries may adopt similar restrictions, which could significantly affect U.S. exports. We are seeking public comment on ways to maximize protection of U.S. agriculture and forests against exotic plant pests associated with SWPM without unjustifiably affecting international trade.

We are also seeking ways to respond to environmental concerns about the use, both domestically and overseas, of methyl bromide fumigation for imported wood products in the long term. Most fumigations of wood products have historically involved treatments with methyl bromide due to convenience, cost, availability, ease of handling, timely completion of treatment, and good efficacy. It is anticipated that most treatments conducted under the September 18 interim rule concerning SWPM from China will employ methyl

bromide fumigation, for the same reasons. Any potential increase in the use of methyl bromide is of concern because of the associated risk of increased ozone depletion, which results in increased ultraviolet radiation at the Earth's surface. Under the Montreal Protocol, the United States and other signatories have agreed to a phaseout of the use of methyl bromide by developed countries by the year 2005, but there is an exemption for methyl bromide used for quarantine purposes. In the absence of any agreed upon international controls on the use of methyl bromide for quarantine purposes, use of methyl bromide for these purposes may not only continue, but could increase. This makes it all the more critical that we find a long-term solution to the problem of how best to manage the pest risk associated with imported SWPM. We are intent on minimizing the use of methyl bromide in order to protect the stratospheric ozone layer, and we are seeking options that will accomplish this objective.

One option for addressing the pest risks associated with imported SWPM is imposing restrictions—either treatment requirements or a ban—on a country-by-country basis, based on an assessment of the risk of exotic plant pests being carried on SWPM from a particular country. This is our current approach, demonstrated in the September 18 interim rule concerning importation of SWPM from China. This option may have the advantage of limiting trade effects to the highest risk sources. There may be several disadvantages to this option. As noted earlier, exotic plant pests in SWPM have been found in shipments originating from countries all over the world, including some in Europe, Africa, South America, and Asia. Further, SWPM is exchanged among shippers, importers, and exporters, making it difficult to determine the origin and history of most SWPM in use. Even if we could determine a method of certifying the origin of SWPM, such a requirement might put an unrealistic burden on inspectors at U.S. ports of entry to inspect the certifications.

Another option for strengthening regulations on importing SWPM is requiring that all SWPM imported into the United States be heat treated (kiln dried), fumigated, or treated with a preservative. The September 18 interim rule concerning SWPM from China requires that SWPM imported into the United States from China be heat treated, fumigated, or treated with preservatives prior to departure from China. One possible advantage to this option is that it would address the

potential pest risk associated with SWPM from any region, including SWPM that may have been exchanged among shippers, importers, and exporters from multiple countries. This option might broadly affect trade from numerous sources, while still allowing use of SWPM. One disadvantage of this option may be that, although treated SWPM may be stored, handled, or safeguarded in a manner that excludes reinfestation by plant pests, the available treatments by themselves have different levels of residual effects in preventing reinfestation, with fumigation providing no residual protection against reinfestation with pests. Also, heat treated, kiln dried, or fumigated wood is visually indistinguishable from untreated wood. As SWPM deteriorates from use, shippers often replace single boards or portions of the SWPM, so that, for example, a pallet may contain some wood that has been kiln dried and some wood that has not. Another disadvantage of this option is that it could increase the use of methyl bromide or other fumigants that are harmful to the environment.

A third option would be to prohibit the importation of SWPM in any form and from any country. This could include SWPM from Canada and the States of Mexico adjacent to the U.S. border. (Currently, the regulations allow SWPM from Canada and the States of Mexico adjacent to the U.S. border to be imported without restriction, provided they are derived from trees harvested in, and have never been moved outside, Canada or the States of Mexico adjacent to the United States.) Alternative packing material that could be allowed would include processed wood (e.g., particle board, plywood, press board) and nonwood materials (e.g., plastic). The advantages of this option are that it would provide the greatest protection against pest risk and could eventually result in decreased use of methyl bromide. A disadvantage of this option is that it could have an undesirable effect on international trade. This effect could be mitigated by a phase-in period to allow shippers to adjust to the prohibition, and, during this time, heat treatment, treatment with preservatives, fumigation, or other effective alternative treatments could be required before SWPM could be imported.

We are seeking public comment on the options discussed in this document. We are also seeking alternative options for consideration. The environmental effects of any alternatives selected will be analyzed in full compliance with the National Environmental Policy Act. Our goal is to maximize protection of U.S.

agriculture and forests against exotic plant pests associated with SWPM without unduly affecting international trade or the environment. We are interested in information on any alternatives that would accomplish this goal. We welcome comments that address the economic impacts that the various options would impose on entities in the United States and abroad.

We are also seeking public comment addressing the following questions, which will help us better consider the issues surrounding the importation of SWPM:

- Are there treatments, other than those currently authorized under the regulations, that can be used to reduce the risk of SWPM introducing exotic plant pests?
- What would be the economic, environmental, or other effects of requiring treatment of SWPM, including the cost of treatment, disruption in trade and potential delays in shipping, effects on the ozone layer, etc.?
- What would be the economic, environmental, or other effects of prohibiting the importation of SWPM from any country, including disruption in trade and potential delays in shipping, effects of alternative materials on the environment, etc.?
- How could APHIS best monitor treatment requirements?
- Is it feasible and cost-effective for the shipping industry to replace SWPM with processed wood packing material (e.g., particle board) or nonwood packing material?
- One advantage of wood dunnage is that it is biodegradable. What would be the environmental effects, if any, of requiring that nonbiodegradable material be substituted for wood dunnage?
- If SWPM is allowed to be imported into the United States, with treatment, how should APHIS determine who is responsible for a regulatory violation, since SWPM is exchanged among shippers, importers, and exporters?
- If importation of SWPM into the United States were to be prohibited, or if treatment of some kind were to be required for all SWPM imported into the United States, would the shipping industry need a phase-in period to allow time to adapt? If yes, how long?
- What is the magnitude of the pest risk associated with SWPM and to what extent would the options discussed, or other options, reduce these pest risks?
- What other regulatory or nonregulatory actions would help us maximize protection in a cost-effective manner against exotic plant pests associated with SWPM without unduly

affecting international trade or the environment?

We are also asking the public to address any other issues that they consider appropriate in connection with the importation of SWPM.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 13th day of January 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–1226 Filed 1–19–99; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 31 and 32

RIN 3150–AD82

Requirements Concerning the Accessible Air Gap for Generally Licensed Devices

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a proposed rulemaking that would have amended the Commission's regulations to provide additional regulatory control over certain measuring, gauging, and controlling devices to prevent unnecessary radiation exposure to individuals resulting from the use of the devices that contain radioactive sources. This proposed rule would have addressed only generally licensed devices. It did not include devices subject to specific licenses. The NRC is conducting a risk review of the current licensing and inspection programs and licensees' activities for both generally and specifically licensed devices. The risk review will determine the risk associated with licensees' activities by determining and relating the probabilities of the occurrence and consequences of events during use and likely accidents involving radioactive material. The NRC will determine from the results of the risk review the need to develop restructured licensing and inspection programs for material licensees and the associated rulemaking for implementing these programs. Therefore, pending the results of the risk review and the need for a comprehensive rulemaking, and because the proposed rule did not include both generally and specifically licensed devices, the Commission is withdrawing this proposed rule.

ADDRESSES: The Commission paper, the staff requirements memoranda (SRM), and associated documents are available for public inspection and/or copying for a fee at the NRC Public Document Room located at 2120 L Street, NW. (Lower Level), Washington, DC 20003–1527, telephone: (202) 634–3273.

FOR FURTHER INFORMATION CONTACT:

Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail jmm2@nrc.gov.

SUPPLEMENTARY INFORMATION:

On November 27, 1992 (57 FR 56287), the Commission published a notice of proposed rulemaking in the **Federal Register** entitled "Requirements Concerning the Accessible Air Gap for Generally Licensed Devices." The proposed rule would have amended the Commission's regulations to provide additional regulatory control over certain measuring, gauging, and controlling devices distributed by manufacturers and used by persons under NRC's general license provisions. The rulemaking would have affected devices with an accessible air gap or radiation levels that exceed a specified value. This rulemaking would have made it increasingly difficult for personnel to obtain access to the device's radiation beam, thereby reducing the frequency and likelihood of unnecessary radiation exposure. The rulemaking applied to persons who distribute these special measuring, gauging, and controlling devices under the NRC general license provisions, and to persons who use the devices under the general license.

The NRC received 5 comment letters on the proposed rule. Three comments were received from manufacturers and two comments were received from device users. Development of the final rule was suspended. On July 2, 1996, the NRC/Agreement State Working Group (WG) issued a final report concerning its evaluation of current regulations on generally and specifically licensed devices and provided recommendations to increase licensees' accountability regarding these devices. The staff's evaluation of the WG recommendations was provided to the Commission. The subsequent SRM dated December 31, 1996, requested a response to specific issues raised by the Commission in SECY–96–221. On November 26, 1997, the NRC staff provided for the Commission's consideration SECY–97–273, entitled "Improving NRC's Control Over, and Licensees' Accountability for, Generally and Specifically Licensed Devices."

Included as an attachment to this Commission paper was the SRM, entitled "Responses to Issues Included in the December 31, 1996, Staff Requirement Memorandum." Additional recommendations from the NRC staff that were not addressed in the WG report, such as proceeding with or dropping the air gap rule, were discussed. Subsequently, an SRM dated April 13, 1998, directed the NRC staff to terminate the proposed rulemaking.

This proposed rule addressed only generally licensed devices and has been on hold for the last five years. The NRC's current strategy for both generally and specifically licensed devices, is to perform a comprehensive risk review of the licensing and inspection programs, including licensees' activities. The results will be used to develop new risk-based licensing and inspection programs and will be approved by the Commission before they are implemented. In addition, the risk review will determine whether a similar rulemaking should be developed. Because of these actions, the Commission is withdrawing this proposed rulemaking.

Dated at Rockville, Maryland, this 12th day of January, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–1196 Filed 1–19–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–219–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain CASA Model CN–235 series airplanes. This proposal would require a one-time visual inspection to detect relative movement or deformation of the joint areas of the rear attaching supports and lower skin of the left and right outer flaps; repetitive borescopic inspections to detect cracking of the spar and of the