

**Enforcement Trends & Mitigation Guidelines for Wood
Packaging Materials**

February 5, 2025

1:00 PM-2:00 PM CT

Presented by Josh Beker



ROBERTS & KEHAGIARAS LLP
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U.S. Regulations on Imports of Wood Packaging Materials



Ensuring Safe and Pest-Free Imports



Saving you Money

Presented by: Josh Beker, Senior Associate



ROBERTS & KEHAGIARAS LLP
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Agenda

- What is WPM?
- Risks
- ISPM 15 Standard
- Treatment/Marking requirements
- Compliance and Enforcement
- Fines and Penalties
- Mitigation Strategies
- Future



What is Wood Packaging Material (WPM)?

- Wood packaging materials that are used or for use with cargo to prevent damage, including, but not limited to, dunnage, crating, pallets, packing blocks, drums, cases, and skids.
 - 7 CFR § 319.40-1
- Exclusions: Manufactured wood materials, loose wood packing materials, wood pieces less than 6mm thick



Risks of Untreated Wood Packaging

- Pests and Diseases:
 - Examples like the emerald ash borer and Asian longhorned beetle
- Economic Impact:
 - Potential damage to agriculture and forests



Animalia

Squashing lantern flies isn't enough. Here's how to kill them.

For years, officials asked people to crush invasive spotted lantern flies. But as the pest continues to spread, some researchers say it's time to send in the birds.

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The New York Times

Spotted Lanternflies Are Back. You Should Still Kill Them.

The battle continues against the colorful bugs. Here's how New Yorkers can help curb the infestation.





The New York Times

‘Murder Hornet’ Has Been Eradicated From the U.S., Officials Say

The hornet was discovered in a corner of Washington State. Five years later, a massive mobilization has eliminated the invasive species, at least for now.

NATURE

Giant, parachuting Joro spiders expected to arrive in NY and NJ this summer

Joro spiders have already spread across several states, and the species' range is expected to keep expanding to new ones — including the northeast

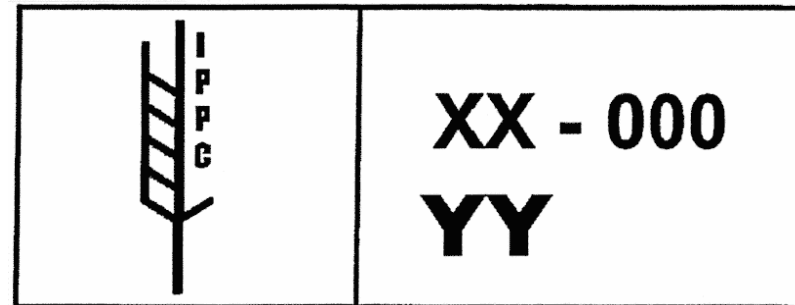
Joro spiders are native to East Asia. They were introduced to the U.S. in 2013, when they were first spotted in Georgia, and probably arrived by hitching a ride on a shipping container, says Andy Davis, a University of Georgia scientist, who studies Joro spiders' behavior and physiology. With their four-





ISPM 15 Standard

- International Standard developed by the International Plant Protection Convention (IPPC)
 - Purpose: Preventing the spread of harmful pests through wood packaging
- Treaty agreement codified by the U.S. in 7 CFR § 319.40-3



Treatment Requirements

- Heat Treatment: For heat treatment, WPM must be heat treated to achieve a minimum wood core temperature of 56°C for a minimum of 30 minutes.
- Fumigation with Methyl Bromide: For fumigation, the WPM must be fumigated with methyl bromide in an enclosed area for at least 16 hours at the regulated dosage and then must be aerated to reduce the concentration of fumigant below hazardous exposure levels.



Marking Requirements

- After either of these treatments, the WPM must be marked in a visible location on each article, preferably on at least two opposite sides of the article, with a legible and permanent mark, approved by the IPPC, to certify that wood packaging material has been subjected to an approved treatment.
- Marks will vary by country and treatment establishment. The mark must include the IPPC trademarked graphic symbol, the ISO two-letter country code for the country that produced the wood packaging material, a unique number assigned by the national plant protection agency of that country to the producer of the wood packaging material, and an abbreviation disclosing the type of treatment.

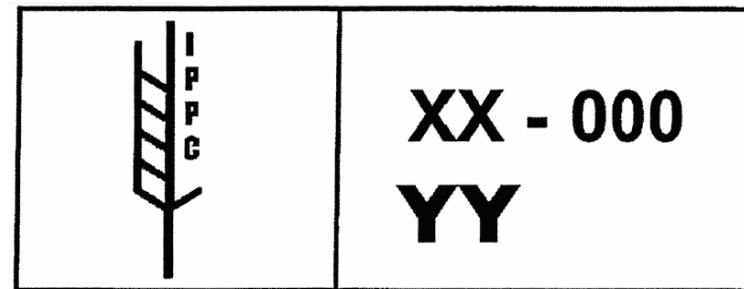
Marking Requirements

- Debarking
 - All WPM must be debarked
 - Formerly, the ISPM 15 stamp had to bear the abbreviation “DB” to show that it was debarked
 - “DB” Mark is no longer required
 - ***This change continues to cause issues at the port***



Reading the Stamp

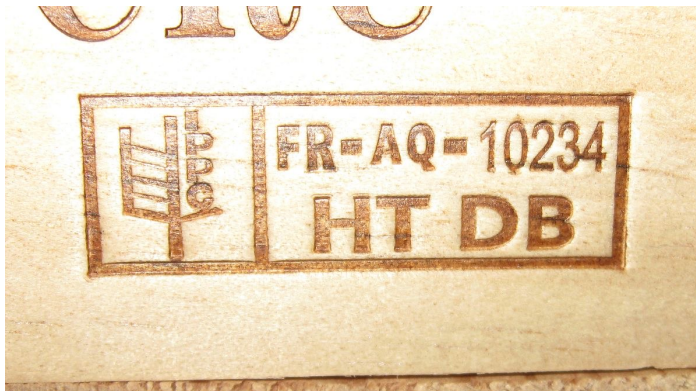
- The mark must include:
 - a unique graphic symbol
 - the ISO two-letter country code for the country that produced the wood packaging material
 - a unique number assigned by the national plant protection agency of that country to the producer of the wood packaging material, and
 - an abbreviation disclosing the type of treatment (e.g., HT for heat treatment or MB for methyl bromide fumigation).
- The currently approved format for the mark is as follows, where XX would be replaced by the country code, 000 by the producer number, and YY by the treatment type (HT or MB)



Examples



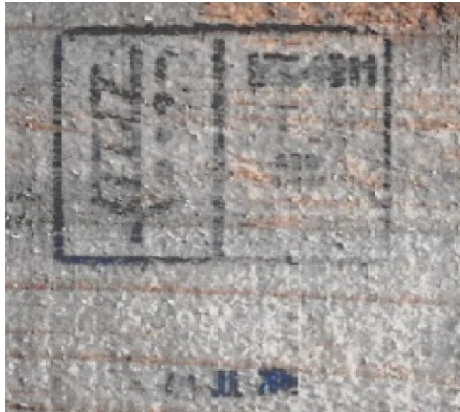
Examples



Examples



Examples



Compliance and Enforcement

- Regulatory Bodies: USDA and U.S. Customs and Border Protection (CBP)
- Invasive Species List:
<https://www.invasivespeciesinfo.gov/species-profiles-list>
- Enforcement: Inspections at ports of entry, potential delays or re-export for non-compliance



Enforcement

- Failure to comply with 7 CFR §319.40-3. There are three categories under WPM for this enforcement:
 - 1. UNMARKED: WPM that is encountered by CBP during the course of inspection and found not bearing the required treatment and markings required under 7 CFR §319.40-3(b)(1) and CFR §319.40-3(b)(2)
 - 2. INAPPROPRIATELY MARKED: WPM that is encountered by CBP during the course of inspection and found to be inappropriately marked or illegibly marked is assumed to be untreated by either of the approved methods identified under 7 CFR §319.40-3(b)(1); and
 - 3. INFESTED: WPM that is infested with a timber pest confirms that the WPM has not been treated in accordance with 7 CFR §319.40-3(b)(1).
- Options:
 - Issue an Emergency Action Notification (“EAN”) ordering reexportation immediately or within seven days
 - Issue an EAN to fumigate/clean the materials immediately (certain circumstances only)

Fines and Penalties

- Liquidated Damages can be assessed for failure to comply with the terms of the EAN
 - This is a violation of your bond conditions
- Penalties can be assessed for violating the WPM regulations
- **BOTH** may be assessed

Fines and Penalties

- LD: The liquidated damages claim shall be issued at three times **(3x) the entered value of the merchandise**, but no greater than the bond amount.
- Penalty: assessed at the **domestic value of the merchandise**

Fines and Penalties

- What this means for the importer of record:
 - You must reexport the goods within seven days,
 - Failure to do so will lead to LD issued at three times **(3x) the entered value of the merchandise**, but no greater than the bond amount.
 - Pay to put the goods back on the boat, ship them back, fumigate, clean, repack the goods, and then ship them back,
 - Plus, all the time it takes to do all this
 - Face a penalty assessed at the **domestic value of the merchandise**

Mitigation Overview

- Multiple options exist for Mitigation:
 - Cancellation in full
 - Mitigation in part
- Both apply to LD as well as Penalties
- Based on the presence of mitigating and aggravating circumstances

Mitigating Factors

- Clear documentary evidence of immediate remedial action taken to prevent further WPM violations.
- An established record of compliance relating to WPM requirements.
- Exceptional cooperation with CBP and APHIS (required action taken under EAN and other exceptional cooperation to aid in the resolution of the case).
- A small number of WPM violations in relation to the number of transactions engaged in.
- The WPM was actually properly treated (although unmarked or inappropriately marked).
- A small percentage of the shipment involved in the violation is noncompliant.
- WPM was marked, but marking was illegible.
- Violator's lack of importing experience.
- Violator informed CBP or APHIS/PPQ about the noncompliance or possibility of noncompliance.
- Contributory CBP or APHIS/PPQ error.
- Violator is a governmental entity or charitable institution.
- Violations in close temporal proximity.

*And this is **not** an exhaustive list!*

Aggravating Factors

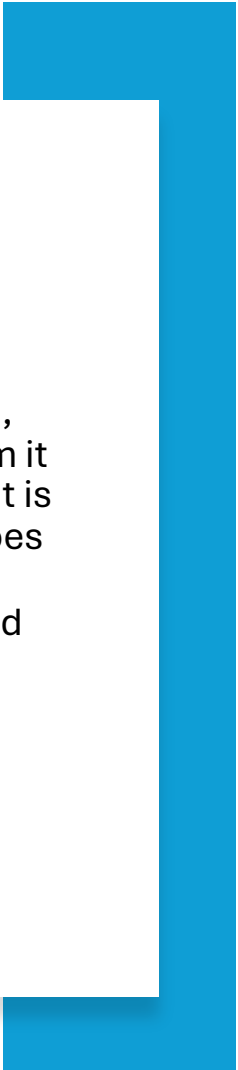
- CBP Aggravating Factors:
 - Lack of Cooperation with CBP or APHIS.
 - Falsely marked WPM or submission of false information or documentation.
 - Attempt to conceal or cover-up WPM violation.
 - Failure to take immediate remedial action to prevent further WPM violations.

Data Gathering / Mitigating Aggravating Circumstances

- Most important step: Gather all the information. Quality data can help:
 - Determine if there is a basis to challenge the EAN
 - Mitigate the LD/Penalty by keying in on the mitigating circumstances
- Usually have seven days to act on the EAN. This is your opportunity to make sure that none of the aggravating circumstances are present



Mitigation Strategies: Data Gathering


- Talk to the supplier
 - Find out where/how WPM is stored, where it is bought/sourced, confirm it was treated, ask your supplier what is their ***written*** plan to ensure this does not happen again, have they taken steps to ensure it has not happened again.
 - Focus on the mitigation factors
- 

Mitigation Strategies: Value of the Goods

- ***Always check CBP's work***
 - The basis for a LD is the ***entered value of the goods***
 - The basis for a penalty is the ***domestic value of the goods***
- Do not assume that CBP accurately calculated the LD or penalty.
- Notate this. Challenge them if they did not.



Mitigation Strategies: Know Your Violation History

- Mitigation is afforded based on your violation history (3-year period of review)
 - 1st offense: Mitigation to 1-10% of the penalty amount
 - 2nd offense: Mitigation to 10-25% of the penalty amount
 - 3rd or subsequent offense: Mitigation to not lower than 25% of the penalty amount
 - Anything more than that: watch out.
 - Mitigation will be limited
 - CTPAT Status can be revoked
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Best Practices for Importers

- Verification: Ensure wood packaging material is ISPM 15-compliant
- Documentation: Review certification from the exporting country's national plant protection organization (NPPO)
 - Remember, the NPPO in the issuing country can make a mistake too!
- Know your Packer:
 - How are your materials stored (comingled with other goods or separated)
 - Where are the materials stored (indoors or outdoors)
 - What is the climate (warm and wet, dry, climate controlled, etc.)

Future

- There are efforts underway by certain members of the trade community to allow for **local destruction and repackaging** of non-compliant WPM
- Efforts are underway to get CBP/USDA approval for this option
- Would eliminate the burdensome and costly reexportation requirement, if approved.

Conclusion

- Importance of adhering to regulations
- Encouraging compliance for safe trade
- Fines and Penalties are **extreme**
- Mitigation is possible
- Call for help when needed!

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QUESTIONS?



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