

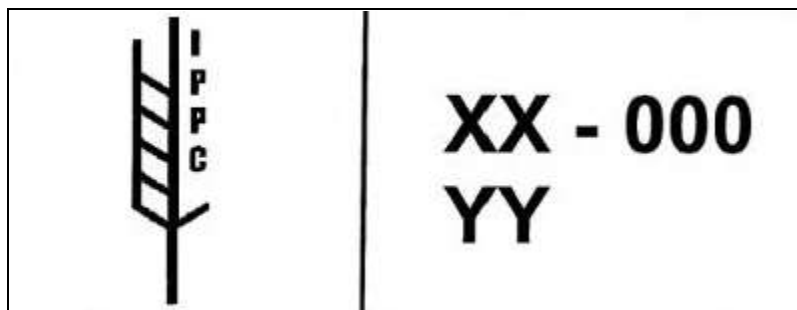
## GUIDELINES FOR LIQUIDATED DAMAGES AND PENALTIES ON WOOD PACKING MATERIAL (WPM)

These “Guidelines for Liquidated Damages and Penalties on WPM” shall go into effect on March 9, 2007. The statutory requirements of 7 C.F.R. §319.40-3 mandate that regulated WPM – such as, crates, boxes, and pieces of wood used to support or brace cargo – being imported into the United States shall be heat treated or fumigated with methyl bromide in accordance with EPA label instructions and include a mark that certifies the wood completed the required treatment under the “Guidelines for Regulating Wood Packing Material in International Trade,” ISPM 15 of the International Standards of Phytosanitary Measures (ISPM) and any associated amendments, revisions or exemptions identified by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS).

The regulation (7 C.F.R. §319.40-3) requires that WPM display a visible, legible, and permanent mark certifying treatment. The mark must be a legible and permanent mark that indicates that the article has been subjected to the approved measure and include the following elements:

1. The International Plant Protection Convention (IPPC) logo;
2. The ISO two-letter country code for the country that produced the wood packing material followed by a unique number code;
3. The unique number code is assigned by the country’s National Plant Protection Organization (NPPO) to the producer of the wood packaging material, who is responsible for ensuring appropriate wood is used and properly marked. Therefore, this code allows a trace back to the facility that treated and stamped the WPM; and
4. An abbreviation that discloses the type of treatment (**HT** for heat treatment or **MB** for methyl bromide fumigation; Guatemala is approved to use **TT** in place of HT or **BM** in place of MB).

Here is an example of an acceptable WPM mark:



The IPPC logo is on the left; on the right, XX represents the ISO country code and 000 represents the unique number assigned to the producer of the wood packaging material in order to be able to trace back to the treatment facility used; YY represents the

method of treatment. Other letters and symbols may be present on the mark as long as the above items are included and clearly legible, permanent, and placed in a visible location, preferably on at least two sides of the article being certified.

## EXCEPTIONS AND EXEMPTIONS

The regulation applies to WPM made from softwood or hardwood. Certain articles, though, are exempt or excepted from the treatment and marking requirements. The exceptions are outlined in 7 C.F.R. §319.40-3. The exceptions and exemptions (further added by Agriculture) are delineated in Appendix B of the CBP document entitled “Operating Procedures for Implementation of the Wood Packaging Materials (WPM) Regulation,” as amended. This may be viewed on the import section of [cbp.gov](http://cbp.gov) under Commercial Enforcement.

### FAILURE TO COMPLY WITH 7 C.F.R. §319.40-3

Regulated WPM must be properly marked to indicate that it has been either heat treated or treated with methyl bromide. There are three categories under WPM for this enforcement:

**1) UNMARKED:** WPM that is encountered by CBP during the course of inspection and found not bearing the required treatment and markings required under 7 C.F.R. §319.40-3(b)(1) and C.F.R. §319.40-3(b)(2)

**2) INAPPROPRIATELY MARKED:** WPM that is encountered by CBP during the course of inspection and found to be inappropriately marked or illegibly marked is assumed to be untreated by either of the approved methods identified under 7 C.F.R §319.40-3(b)(1); and

**3) INFESTED:** WPM that is infested with a named pest confirms that the WPM has not been treated in accordance with 7 C.F.R §319.40-3(b)(1). Named pests are live wood boring pests of the families *Cerambycidae*, *Buprestidae*, *Siricidae*, *Cossidae*, *Curculionidae*, *Platypodidae*, *Sesiidae*, or *Scolytidae*.

Section 319.40-3(b)(3) provides for immediate export of WPM that does not contain the required mark. Marked WPM containing pests in the above mentioned families is considered WPM that has not been treated and marked in accordance with §319.40-3, and shall be immediately exported pursuant to §319.40-3(b)(3). The importer of record, carrier, or bonded custodian is responsible for any costs or charges associated with export.

When assessing liquidated damages and/or penalties, the value of the merchandise is the value of the WPM plus the value of the commodity or commodities identified for importation on the entry documentation.

## ASSESSING LIQUIDATED DAMAGES

If the party whose bond is obligated at the time of the discovery of the violation has received an Emergency Action Notification (EAN) requiring export of the violative WPM but fails to do so, CBP may issue a **liquidated damages claim** against that party.

The following procedures shall be utilized in **liquidated damage cases where there is a failure to comply with the EAN**:

- **If a consumption entry is made and the goods were conditionally released**, issue the claim against the importer under 19 C.F.R. §113.62(e). The liquidated damages claim shall be issued at three times (3x) the entered value of the merchandise but not greater than the bond amount.
- **If a consumption entry is made, but the goods were not conditionally released, and the importer failed to comply with the EAN**, issue the claim against the importer under 19 C.F.R. §113.62(g). The amount of the liquidated damages claim shall be the cost of export or remediation but no greater than the bond amount. In an effort to ensure compliance with the EAN, the goods shall not be released and the port should follow procedures outlined in 19 C.F.R. §151.16, *Detention of Merchandise*, until the WPM violation is addressed. Once it is determined that the requirements of the EAN will not be met and CBP has to take remedial measures, the claim for liquidated damages shall be issued against the importer.
- **If an entry is not made and the carrier failed to comply with the EAN**, issue the claim against the carrier under 19 C.F.R. §113.64(b). The liquidated damages claim shall be issued at the entered value of the merchandise, but no greater than the bond amount.
- **If a party other than the carrier or importer failed to comply with the EAN, and that party is responsible for the merchandise under its custodial bond**, issue the claim against that party under 19 C.F.R. §113.63(a)(1). The liquidated damages claim shall be issued at three times (3x) the entered value of the merchandise, but no greater than the bond amount.

## ASSESSING PENALTIES

Penalties may be assessed in addition to claims for liquidated damages, and may be assessed even though there is compliance with all EANs in cases wherein:

- The importer, carrier, or bonded custodian **attempts to conceal** a violation of WPM, CBP personnel shall issue a penalty either under Title 19 United States Code 1592, or 1595a(b).
- The importer, carrier, or bonded custodian has continuous documented violations (more than 5) over one fiscal year period nationally, CBP personnel may issue a penalty under Title 19 United States Code 1592, or 1595a(b) may also be assessed.

WPM violations (all categories) shall be documented in the EAN database, and WPM violations under categories 1 and 2 shall be documented in CBP databases with the

WPM violation code **wp:nc**.

**ISPM 15 REQUIREMENTS APPLY TO ALL SPECIES OF CONIFEROUS (SOFTWOOD) AND NON-CONIFEROUS (HARDWOOD) PACKAGING MATERIALS.**



Violative Packaging



Illegible WPM Mark

## **U.S. Customs and Border Protection Updated October 2019**

### **GUIDELINES FOR THE CANCELLATION OF CLAIMS FOR LIQUIDATED DAMAGES AND MITIGATION OF PENALTIES RELATING TO THE WOOD PACKAGING MATERIAL REGULATIONS**

The regulations on wood packaging material (“WPM”) set forth in Title 7 of the U.S. Code of Federal Regulations (“C.F.R.”) are intended to protect U.S. agricultural resources from the introduction of potentially injurious wood-boring pests. Failure to comply with those regulations poses significant pest risks to U.S. agriculture. U.S. Customs and Border Protection (“CBP”) enforces the WPM regulations by assessing liquidated damages against those who do not comply with the action specified on an Emergency Action Notification (“EAN”) issued by the U.S. Department of Agriculture and by penalizing those documented importers, carriers, or bonded custodians who attempt to enter violative WPM or who attempt to conceal a WPM violation.

The provisions and procedures of Section I are applicable when CBP issues a claim for liquidated damages for an entity’s failure to take required action on an EAN issued by the U.S. Department of Agriculture, Animal Plant Health Inspection Service, Plant Protection and Quarantine (“APHIS/PPQ”) relating to the wood packaging material regulations at 7 C.F.R. 319.40-3. The provisions and procedures of Section II are applicable when CBP issues a penalty pursuant to section 1595a(b) of Title 19, United States Code (19 U.S.C. § 1595a(b)) for an entity’s violation of 7 C.F.R. 319.40-3.

Although CBP is not required to grant relief in any specific case, CBP may reference these guidelines when deciding whether to grant relief in a specific case and, if CBP deems that relief is appropriate, to determine the mitigation, remission, or cancellation amount. CBP reviews the specific facts and circumstances of each case individually and may deviate from these guidelines if CBP determines that such deviation is appropriate. Pursuant to 19 U.S.C. §§ 1618 and 1623, as well as other applicable regulatory authorities, duly authorized CBP officials are entitled to grant relief under such terms and conditions as they deem appropriate, sufficient, reasonable and/or just.

#### **I. Cancellation of Claims for Liquidated Damages for Failure to Take Action on an Emergency Action Notification**

##### **A. Assessment**

In cases where an entity does not take action required under an EAN issued by the APHIS/PPQ, CBP may issue a claim for liquidated damages against the entity (an importer, carrier, or bonded custodian) for breach of its bond conditions.

##### **B. Mitigation**

Relief will generally only be provided if the petitioner establishes one of the following extraordinary circumstances: Mitigation Guidelines: Wood Packaging Material Violations

1. Action required under the EAN was eventually taken, although it occurred after the specified deadline. In this situation, the claim for liquidated damages may be cancelled at an amount between \$500 and \$5,000 depending on the specific circumstances of the case.

2. The petitioner was unable to take action required under the EAN due to circumstances beyond its control, or due to APHIS/PPQ or CBP error. In this situation, the claim for liquidated damages should be cancelled.

## **II. Mitigation of Penalties Assessed for Violations of the Wood Packaging Material Regulations**

### **A. Assessment**

Effective November 1, 2017, CBP's Agriculture Programs and Trade Liaison ("APTL") of the Office of Field Operations revised policy so that CBP may issue a penalty, under 19 U.S.C. § 1595a(b), to an entity for a single violation of 7 C.F.R. 319.40-3. There are 3 categories of violations of 7 C.F.R. § 319.40-3: (1) unmarked WPM, (2) inappropriately marked WPM, and (3) infested WPM. A penalty under 19 U.S.C. § 1595a(b) may be assessed at the value of the article or articles introduced or attempted to be introduced, which includes the article or articles and the wood packaging material.

### **B. Mitigation**

For all three categories of violations described above, the following applies:

#### **1. First Violation**

Penalties assessed for first violations may be mitigated to an amount between 1 to 10% of the value of the assessed penalty depending on the presence of mitigating and aggravating factors.

#### **2. Second Violation:**

Penalties assessed for second violations may be mitigated to an amount between 10 to 25% of the value of the assessed penalty depending on the presence of mitigating and aggravating factors.

#### **3. Third or Subsequent Violations:**

Penalties assessed for third or subsequent violations may be mitigated to an amount not lower than 25% of the assessed penalty depending on the presence of mitigating and aggravating factors.

Mitigation will generally not be provided if the violator has a continuing documented pattern of WPM violations. Mitigation Guidelines: Wood Packaging Material Violations

C. Examples of **Mitigating Factors** include, but are not limited to:

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

D. Examples of **Aggravating Factors** include, but are not limited to:

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

Español:

## U.S. Customs and Border Protection Updated October 2019

### **DIRECTRICES PARA LA CANCELACIÓN DE RECLAMACIONES POR DAÑOS Y PERJUICIOS LIQUIDADOS Y LA MITIGACIÓN DE LAS SANCIONES RELATIVAS A LA NORMATIVA SOBRE MATERIALES DE EMBALAJE DE MADERA**

Las reglamentaciones sobre el material de embalaje de madera ("WPM") establecidas en el Título 7 del Código de Regulaciones Federales de los Estados Unidos ("C.F.R.") tienen por objeto proteger los recursos agrícolas de los Estados Unidos de la introducción de plagas potencialmente perjudiciales para la madera. El incumplimiento de esas regulaciones plantea riesgos significativos de plagas para la agricultura estadounidense. La Oficina de Aduanas y Protección Fronteriza de los Estados Unidos ("CBP") hace cumplir las regulaciones de WPM evaluando los daños liquidados contra aquellos que no cumplen con la acción especificada en una Notificación de Acción de Emergencia ("EAN") emitida por el Departamento de Agricultura de los Estados Unidos y penalizando a aquellos importadores, transportistas o custodios de materiales que intentan ingresar a los E.U con violación al WPM o que intentan ocultar una violación de WPM.

Las disposiciones y procedimientos de la Sección I son aplicables cuando el CBP emite una reclamación por daños y perjuicios liquidados por la falta de acción requerida por una entidad en un EAN emitido por el Departamento de Agricultura de los Estados Unidos, el Servicio de Inspección Sanitaria Vegetal Animal, la Protección Fitosanitaria y la Cuarentena ("APHIS/PPQ") en relación con las regulaciones sobre materiales de embalaje de madera en 7 C.F.R. 319.40-3. Las disposiciones y procedimientos de la Sección II son aplicables cuando el CBP emite una sanción de conformidad con el artículo 1595 bis(b) del Título 19, Código de los Estados Unidos (19 U.S.C., 1595a(b)) por la violación de una entidad de 7 C.F.R. 319.40-3.

Aunque el CBP no está obligado a conceder una mitigación en ningún caso específico, el CBP puede hacer referencia a estas directrices al decidir si conceder una compensación en un caso específico y, si la CBP considera que la compensación es apropiada, para determinar el monto de mitigación, remisión o cancelación. La CBP examina los hechos y circunstancias específicos de cada caso individualmente y puede desviarse de estas directrices si la CBP determina que dicha desviación es apropiada. De conformidad con los 19 U.S.C., 1618 y 1623, así como con otras autoridades reguladoras aplicables, los funcionarios de la CBP debidamente autorizados tienen derecho a conceder una compensación en los términos y condiciones que consideren apropiados, suficientes, razonables y/o justos.



## **I. Cancelación de Reclamaciones por Daños Liquidados por No Tomar Medidas en una Notificación de Acción de Emergencia**

### **A. Evaluación**

En los casos en que una entidad no tome las medidas requeridas bajo un EAN emitido por el APHIS/PPQ, CBP puede emitir una reclamación por daños y perjuicios liquidados contra la entidad (un importador, transportista o custodio de fianza) por incumplimiento de sus condiciones de fianza.

### **B. Mitigación**

Por lo general, el alivio solo se proporcionará si el peticionario establece una de las siguientes circunstancias extraordinarias: Pautas de mitigación: Violaciones del material del embalaje de madera

1. Finalmente se adoptaron las medidas requeridas en virtud de la EAN, aunque se produjo después de la fecha límite especificada. En esta situación, la reclamación por daños y perjuicios liquidados puede cancelarse a un monto entre \$500 y \$5,000 dependiendo de las circunstancias específicas del caso.

2. El peticionario no pudo tomar las medidas requeridas bajo la EAN debido a circunstancias fuera de su control, o debido a un error de APHIS/PPQ o CBP. En esta situación, la reclamación por daños y perjuicios liquidados debe ser cancelada.

## **II. Mitigación de las sanciones evaluadas por violaciones del Reglamento sobre materiales de embalaje de madera**

### **A. Evaluación**

A partir del 1 de noviembre de 2017, los Programas Agrícolas y de enlace Comercial del CBP ("APTL") de la Oficina de Operaciones revisaron la política para que el CBP pueda emitir una sanción, en virtud del 19 U.S.C. n.o 1595a(b), a una entidad por una sola infracción de 7 C.F.R. 319.40-3. Hay 3 categorías de violaciones de 7 C.F.R. 319.40-3: (1) WPM sin marcar, (2) WPM marcado inapropiadamente y (3) WPM infestado. Una sanción en virtud de 19 U.S.C. 1595a(b) puede evaluarse al valor del artículo o artículos introducidos o intentados introducirse, que incluye el artículo o artículos y el material de embalaje de madera.

### **B. Mitigación**

Para las tres categorías de infracciones descritas anteriormente, se aplica lo siguiente:

#### **1. Primera violación**

Las sanciones evaluadas por las primeras infracciones pueden mitigarse a una cantidad de entre el 1 y el 10% del valor de la sanción evaluada dependiendo de la presencia de factores atenuantes y agravantes.

## 2. Segunda infracción:

Las sanciones evaluadas por segundas infracciones pueden mitigarse por un monto entre el 10 y el 25% del valor de la sanción evaluada dependiendo de la presencia de factores atenuantes y agravantes.

## 3. Violaciones Terceras o Posteriores:

Las sanciones evaluadas por terceras violaciones o posteriores pueden mitigarse a una cantidad no inferior al 25% de la pena evaluada dependiendo de los factores atenuantes y agravantes de la presencia.

Por lo general, no se proporcionará mitigación si el infractor tiene un patrón documentado continuo de violaciones del WPM. Directrices de mitigación: Violaciones del material de embalaje de madera

### C. Algunos ejemplos de **factores atenuantes** incluyen, entre otros:

1. Evidencia documental clara de medidas correctivas inmediatas adoptadas para prevenir nuevas violaciones del WPM.
2. Un registro establecido de cumplimiento relativo a los requisitos del WPM.
3. Cooperación excepcional con el CBP y la APHIS (medidas necesarias adoptadas en el marco de la EAN y otra cooperación excepcional para ayudar en la resolución del caso).
4. Un pequeño número de violaciones del WPM en relación con el número de transacciones que se realizan.
5. En realidad, el WPM fue tratado adecuadamente (aunque sin marcar o marcado inapropiadamente).
6. Un pequeño porcentaje del envío involucrado en la infracción no es conforme.
7. El WPM estaba marcado, pero el marcado era ilegible.
8. La falta de experiencia de importación del infractor.
9. El infractor informó a CBP o APHIS/PPQ sobre el incumplimiento o la posibilidad de incumplimiento.
10. Error contributivo CBP o APHIS/PPQ.
11. Violador es una entidad gubernamental o institución caritativa.
12. Violaciones en proximidad temporal.

### D. Los ejemplos de **factores agravantes** incluyen, pero no se limitan a:

1. Falta de cooperación con CBP o APHIS.
2. WPM falsamente marcado o presentación de información o documentación falsa.
3. Intente ocultar o encubrir la violación de WPM.
4. No tomar medidas correctivas inmediatas para prevenir más violaciones del WPM