

Proposed Rules

Federal Register

Vol. 74, No. 165

Thursday, August 27, 2009

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 301

[Docket No. APHIS–2009–0016]

RIN 0579–AD01

Wood Packaging Material Used in Domestic Commerce

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments; notice of intent to prepare an environmental impact statement.

SUMMARY: We are soliciting public comment on regulatory options that could be applied to wood packaging material (e.g., crates, dunnage, wooden spools, pallets, packing blocks) used in domestic commerce to decrease the risk of the artificial spread of plant pests such as the emerald ash borer and the Asian longhorned beetle. These and other plant pests that could be transported interstate by wood packaging material pose a serious threat to U.S. agriculture and to natural, cultivated, and urban forests. We are also announcing our intent to prepare an environmental impact statement on various potential pest mitigation measures and opening a public scoping period for this document.

DATES: We will consider all comments that we receive on or before October 26, 2009.

ADDRESSES: You may submit comments by either of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0016> to submit or view comments and to view supporting and related materials available electronically.

- **Postal Mail/Commercial Delivery:** Please send two copies of your comment to Docket No. APHIS–2009–0016, Regulatory Analysis and Development,

PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0016.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Chaloux, National Emerald Ash Borer Program Manager, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1236; (301) 734–0917.

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) restrict the importation of many types of wood articles, including items such as pallets, crates, boxes, and pieces of wood used to support and brace cargo. These types of articles are known as wood packaging materials (WPM). Introductions into the United States of exotic plant pests such as the pine shoot beetle *Tomicus piniperda* (Scolytidae) and the Asian longhorned beetle *Anaplophora glabripennis* (Cerambycidae) among others have been linked to the importation of WPM. Risk of the artificial spread of plant pests has also been linked to the domestic movement of WPM in and around quarantined areas.

The variety of woods and lumber qualities used in the construction of WPM make it susceptible to infestation by a wide range of wood pests and diseases. WPM is frequently constructed from lower grade lumber derived from an assortment of woods. Additionally, lumber used in WPM construction may be fresh cut and may not have undergone sufficient processing or treatment to kill pests. Furthermore, WPM is very often reused, recycled, or

remanufactured, and the true origin of any specific piece of WPM is difficult to determine, which means that its phytosanitary status cannot be fully ascertained. These facts, coupled with the amount of WPM in circulation, create a high level of concern that WPM may serve as a vehicle for human assisted long-distance movement of various plant pests.

Currently, the regulations in 7 CFR part 301 contain domestic quarantine notices for specific pests that identify regulated articles, quarantined areas, and conditions governing the interstate movement of regulated articles from quarantined areas. The domestic quarantines for wood pests, such as emerald ash borer and Asian longhorned beetle, regulate the movement of logs, lumber, and other unmanufactured wood articles from quarantined areas to non-quarantined areas within the United States. Quarantine requirements governing movement of WPM vary for different pests. The variety of requirements creates a regulatory framework that may create confusion and present challenges to industry and stakeholder compliance. As a result, we are exploring the development of uniform measures to govern interstate movement of all WPM in order to provide greater ease of comprehension and compliance. This action is supported by various WPM industry groups.

We are publishing this advance notice of proposed rulemaking in order to seek information and develop regulatory options on the general problem of plant pests in WPM moved interstate. WPM accompanies nearly all types of domestically shipped commodities, from fruits and vegetables to machinery and electrical equipment. National Wooden Pallet and Container Association figures indicate that 1.2 billion pallets are currently in circulation in the United States, with 93 percent of all goods moving on those pallets. We are seeking ways to maximize our protection against the artificial spread of various plant pests by WPM without placing unjustified strain on domestic commerce and shipping requirements. We are requesting public comment on what actions would be most effective and appropriate to reduce the risk of this potential spread.

We are specifically seeking options for establishing uniform requirements for the domestic handling of WPM, alternative treatments to methyl bromide that could be used to reduce the risk of WPM contributing to the artificial spread of various plant pests, as well as alternative practices for handling WPM. These measures would be independent of any specific movement restrictions and treatment requirements contained in 7 CFR part 301 for particular plant pests.

Options for Managing the Pest Risks Associated With WPM

We are specifically requesting comment on options for strengthening our response to the risks associated with the restrictions on interstate movement of WPM, the potential impacts of increased use of alternative packaging materials such as plastic pallets and/or processed wood, and a number of technical questions.

At this time, we are considering the feasibility of implementing International Plant Protection Convention (IPPC) treatment standards as requirements for the domestic movement of WPM. In a final rule published in the **Federal Register** on September 16, 2004 (69 FR 55719–55733; Docket No. 02–032–3), we amended the regulations in order to update the requirements for importation of WPM to correspond with standards established by the IPPC in International Standards for Phytosanitary Measures (ISPM) 15, “Guidelines for Regulating Wood Packaging Material in International Trade.” Paragraph (b) of § 319.40–3 of the regulations lists the IPPC requirements, which include either heat treatment or fumigation with methyl bromide and the proper marking of all treated materials with the approved IPPC symbol and specific control numbers.

Another option for strengthening regulations concerning the domestic movement of WPM is a practice employed by a segment of the pallet industry called pooling. Pooled pallet companies retain ownership of individual pallets through a pallet’s lifecycle through rigorous inventory tracking and management, leasing these pallets to companies engaged in interstate commodity movement. The pooled pallets are constructed from a higher grade of wood than traditional pallets, with strict specifications pertaining to such factors as species of tree and source location. Some pallets are constructed out of plastics or resin, which is typically recycled into new pallets at the end of the first pallet’s lifecycle. A third variety of pallet is constructed of a combination of wood

and plastics. Combining IPPC treatments with pallet pooling may provide sufficient mitigation of the pest risk associated with WPM moving domestically in the United States.

We are also seeking ways to respond to environmental concerns about the use of methyl bromide fumigation on domestic 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. 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. 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.

Notice of Intent To Prepare an Environmental Impact Statement

These scoping questions include inquiries relevant to the preparation of an environmental impact statement (EIS). The EIS will examine the range of potential effects that the proposed applications could pose to the human environment, taking into account those alternatives and issues presented in response to this advance notice of proposed rulemaking.

We are seeking public comment on the options discussed in this document. There may also be additional information relevant to domestic production and movement of WPM that should be considered during the drafting of any potential regulation. In particular, APHIS would like to improve its understanding of the scientific, economic, and logistical aspects of the domestic production, use, and movement of WPM and the potential protection that a domestic regulation might provide for domestic forests and natural resources.

The environmental effects of any alternatives selected will be analyzed in full compliance with the National Environmental Policy Act in the EIS mentioned above. Our goal is to maximize protection of U.S. agriculture and forests against plant pests associated with WPM without unduly affecting domestic 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 may have on domestic entities.

We are also seeking public comment addressing the following questions, which will help us better consider the potential issues surrounding the proposed EIS and any possible regulations governing interstate movement of WPM that would mitigate the pest risks associated with these articles:

1. Are there issues of concern if we were to establish domestic regulations pertaining to the interstate movement of WPM that mirror the IPPC treatment standards?

2. Other than ISPM 15 treatments as required for exportation of WPM and treatments authorized under specific domestic pest quarantines, what environmentally sound regulatory or nonregulatory actions would maximize protection against the spread of invasive pests associated with WPM in a cost-effective manner?

3. Are data available for treatments, other than those currently authorized under the regulations, which might be used nationally to reduce the risk of WPM introducing pests into new habitats?

4. Could the imposition of a requirement that WPM moving interstate be bark-free reduce the need for other regulatory treatment requirements?

5. What is the magnitude of the pest risks associated with WPM moving interstate and to what extent would the options presented here, or other options, reduce these risks?

6. APHIS would like to better understand the potential economic effects of requiring treatment for interstate movement of WPM, including the following specific issues:

a. What proportion of WPM currently used domestically is either made with heat-treated (core temperature raised to a prescribed level for a prescribed period of time) or methyl bromide fumigated raw wood inputs, or treated using either of these methods following construction?

b. If heat treatment or methyl bromide fumigation of all WPM were required, what proportions of WPM producers would install new, additional, or upgraded heat-treating or fumigating equipment at their facilities?

c. How do the prices of treated wood inputs for WPM construction and repair compare to the prices of untreated wood inputs?

d. What are the typical one-time costs associated with the purchase and installation of heat treating or methyl bromide fumigation equipment for raw wood inputs or finished WPM, and what are the time periods involved in

the purchase and installation of the treatment equipment?

e. What are the typical ongoing operating costs associated with heat treatment or methyl bromide fumigation of wood inputs or constructed WPM (including labor, energy, and other variable expenses)?

f. Information provided by the American Lumber Standards Committee indicates that there is significant unused heat treatment capacity across the United States. Is this capacity appropriate for both supplying treated inputs and treating finished products? And is this capacity suitably distributed regionally to adequately serve the WPM industry if treatment were required for all WPM moved interstate?

7. What would be the environmental effects of requiring treatment of WPM moved interstate, including effects on global climate change and the stratospheric ozone layer? What would be the environmental effects of alternative packaging materials?

a. If the WPM industry is given the option of heat treatment or methyl bromide fumigation, what, if any, change would occur in carbon dioxide emissions relative to current global emissions, and what, if any, changes would occur in atmospheric bromine concentrations relative to current global concentrations?

b. What effect would changes in rates of use of the most likely alternative packaging materials have on emissions?

8. How could APHIS best monitor compliance with treatment requirements? How can WPM be identified as eligible for interstate movement if treatment were to be required? Should we recognize ISPM 15 markings as one means of identifying WPM as eligible for interstate movement?

9. Various parties are frequently involved in the construction and interstate movement of WPM. Who should be responsible for ensuring that WPM moving interstate meets any requirements that might be imposed?

10. Is it feasible and cost-effective for the shipping industry to replace WPM with processed wood packaging material or other alternative packaging material?

a. What are the most likely substitutes?

b. What portion of the packaging material market do alternative materials currently comprise?

11. One advantage of wood dunnage is its biodegradable nature. What would be the environmental effects, if any, of requiring that less biodegradable materials be substituted for wood dunnage?

12. Concern has been expressed over the relative fire hazards associated with certain packaging materials, specifically plastic. Is there any specific information about the fire hazard of WPM relative to other packaging materials that should be considered in our assessment of environmental and other risks?

13. If treatment of some kind were to be required for all WPM moved interstate, would the industry need a phase-in period to allow time to adapt? If so, how long should this phase-in period last?

In addition to the questions listed above, we are asking that the public identify any other issues that they consider to be appropriate in connection with amending the regulations governing the interstate movement of WPM.

This action has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 24th day of August 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–20708 Filed 8–26–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0719; Directorate Identifier 2009–NM–078–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 45 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Learjet Model 45 airplanes. This proposed AD would require inspecting the baggage bay door fire barrier seal for inconel mesh in the fire barrier seal material; for certain airplanes, inspecting the fiberglass doublers for presence of red Room Temperature Vulcanizing (RTV) sealant; and doing related investigative and corrective actions if necessary. This proposed AD results from reports of incorrect external baggage door seal material and door seal

sealant as well as incorrect sealant on interior baggage panels used during manufacture of the airplane. We are proposing this AD to prevent the use of door seals and sealant that do not meet flammability requirements, which could result in an uncontrollable and undetected fire within the baggage compartment.

DATES: We must receive comments on this proposed AD by October 13, 2009.

ADDRESSES: You may send comments by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** 202–493–2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942; telephone 316–946–2000; fax 316–946–2220; e-mail ac.ict@aero.bombardier.com; Internet <http://www.bombardier.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

William Griffith, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4116; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION: