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CESAC's ISPM 15 Enforcement Questions

Q. If dunnage is shredded so the mark is no longer visible in shipment, or many chocks are cut from one 4x4", what guidance is being given by CBP to inspect WPM for a proper stamp? Can it be documented that if most of the WPM shows a proper mark that the whole shipment was compliant and left to the inspector's discretion? If so can this directive be released to industry to help provide for uniform enforcement practices?

A. Dunnage presents some unique challenges. Often, pieces of dunnage are cut to fit a load and may, during that process, be separated from the IPPC marking. Other times, during the course of transit, dunnage is broken, crushed, abraded, or otherwise damaged; in these cases, too, pieces of dunnage will likely be separated from their compliance mark.

For purposes of enforcement of this regulation as it relates to dunnage, CBP intends to exercise its discretionary authority so that if CBP believes that cut or damaged pieces of dunnage are part of a larger piece of properly marked wood, CBP will determine that the unmarked dunnage has been treated and marked, and consider the unmarked dunnage to be non-violative. This information has been added to the website FAQ.

Q. On CBP's website the FAQ's have a question about the stamp being illegible. The explanation states that, "The regulation says that the mark must be permanent and legible. Therefore, if the mark is not permanent or not legible, the WPM are violative." This is a concern because there is little or no way to address this, and it would seem that at least a percentage allowance should be considered. The proper treatment of WPM can raise the cost from 3 to 5 times more than untreated WPM. Uniform enforcement as noted in Question #1 would solve this problem? There have been several documented vessels that showed an ink rolled stamp that was not legible on a certain percentage. If there is a percentage allowance for damaged dunnage should not the same be true for illegible stamping?

A. The regulation does not address percentage allowances for unmarked wood; it states that the WPM must be permanently and legibly marked. CBP will enforce the regulation as written until and unless directed by USDA to do otherwise.

This question implies that there is a percentage allowance for damaged dunnage. To clarify, no percentage of unmarked dunnage is allowed. For purposes of enforcement of this regulation as it relates to dunnage, if CBP believes that cut or damaged pieces of dunnage are part of a larger piece of properly marked wood, CBP will determine that the unmarked dunnage has been treated and marked, and consider the unmarked dunnage to be non-violative. This is not to be confused with CBP stating that a certain percentage of unmarked dunnage is permissible.

Q. What is CBP's stance on the studies that show heat treatment under many conditions increases the likelihood of mold growth? Will compliant properly marked WPM be ordered re-exported if it is covered in mold? Is CBP aware of any health risks associated with the handling of mold-covered WPM? There are documents being

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circulated that show there is a significant increase in mold formation possible with heat treated/kiln dried WPM. In at least one instance the stevedores refused to work the vessel, the WPM was compliant just covered in mold. In a particular case CBP was not concerned about the mold, but APHIS and the stevedoring company were. Can CBP document that such WPM is safe to handle or can this issue alone be addressed before the July 5 enforcement date?

A. CBP's mission is law enforcement and CBP takes no stance on any possible relationship between heat treatment and mold growth. CBP is not qualified to comment on health and safety issues related to this regulation.

Q. Can CBP or APHIS issue a data-handling sheet that lists the proper precautions to workers who come into direct contact with WPM treated with Methyl Bromide? Or is it safe to assume there are no health risks for those handling MB treated WPM. Would the use of gloves be a good recommendation or is more caution needed?

A: Again, CBP is not qualified to comment on health and safety issues related to this regulation. Material safety data sheets are generally commercially available from various manufacturers.

Q. How is CBP tracking the changes to the IPPC mark that other countries have made? Has CBP been able to verify marks with assistance from the appropriate NPPO when a question about a mark occurred?

A. CBP is not tracking any changes to the IPPC mark. CBP does not validate any mark; this activity is the responsibility of the USDA. CBP's responsibility under this regulation is to ensure that the WPM are legibly and permanently marked. USDA communicates with representatives of the National Plant Protection Organization (NPPO) regularly about this and other topics of mutual interest, and advises CBP as required.

Q. Has CBP documented pests in compliant and properly treated WPM? If so what is the explanation?

A. There have been instances of pest infestation in marked WPM. Whether those WPM were properly treated is not a determination CBP makes. If a determination is made that wood boring pests of the families *Cerambycidae*, *Buprestidae*, *Siricidae*, *Cossidae*, *Curculionidae*, *Platypodidae*, *Sesiidae*, or *Scolytidae* are present in or on marked WPM, a report of those findings is made to USDA.

Q. Is CBP compiling compliance statistics by country? If so can this be shared with industry so that shippers are aware of potential WPM problems?

A. CBP does not compile compliance statistics under this activity. USDA is gathering information but, because the data only relates to noncompliant shipments, there is no baseline upon which to make determinations of compliance.

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Q. Is CBP compiling information on fraudulent or counterfeit marks? If so can this also be shared with industry for the same reason as explained in Question #7?

A. CBP does not make a determination as to the veracity of any WPM mark. We have no independent information on whether a particular mark is fraudulent or counterfeit.

Q. Would CBP consider the creation of a Phytosanitary Certificate established through the IPPC to show that all WPM onboard was properly treated? It has been explained that ISPM 15 does not allow this, but it would seem a possible resolution. Especially for shippers who can establish a high compliance rate, for example as implemented through CTPAT?

A. The regulation does not allow the acceptance of a phytosanitary certificate; it allows only for marking of the WPM. Any suggested change to the regulation would need to be addressed to USDA. If and when USDA changes the regulation, CBP will make plans to implement enforcement of the regulation as revised.

Q. How will CBP determine if dunnage on a dock is foreign or domestic? It seems most of the inspections take place after discharge and not during. If the dunnage is not attached to the cargo it would seem likely that it could be hard to determine the true origin? This is another reason that a controlled Phytosanitary Certificate might help to serve as a secondary form of compliance. Though if inspected on the dock hours or days after discharge what procedures would be implemented to tell the origin of the WPM?

A. CBP has determined, for purposes of enforcement, that the country of origin of the cargo is the country of origin of any unmarked WPM. If unmarked WPM are separated from cargo and abandoned on a dock or at a terminal, the WPM are considered foreign and will not be permitted to leave the dock or terminal.

Q. Based on information from a previous conference call, CBP said that the term "first port of arrival" could mean the first port that WPM is inspected. How will CBP follow up on a shipment inland by barge to make sure it is reexported? For example a LASH barge that comes into New Orleans and then is shipped up to Cairo, IL? If inspected in Cairo and found to be non-compliant then what would the scenario be to re-export the violative WPM? And how would CBP monitor this re-exporting process?

A. When CBP orders violative WPM to be exported, it is the responsibility of the importer or other party of interest to arrange and pay for that export. CBP does not interfere with a choice of exporter. Ordinarily, an IE will be cut. In cases where movement between U.S. ports becomes necessary to cause the ordered exportation, it will be on a restrictive T&E in conjunction with an appropriately executed USDA Emergency Action Notification (EAN) (PPQ-523). The EAN will provide and document restrictions as to routing, diversion, and authorized timeframe to complete the restricted T&E movement.

Q. When lumber or plywood is used in ship's deck construction as to cover or protect a vessel structure (ventilation duct, conveyor etc.) Is this foreign origin wood covered under

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ISPM 15 enforcement in the U.S.? Is it correct to assume that the plywood is exempt, and that non-compliant lumber remaining on deck is not to be inspected?

A. The WPM regulation refers only to wood packaging materials as defined. Only WPM is covered by the regulation; wood used onboard the vessel for deck construction is not addressed.

Q. If dunnage is stamped is this final, and does CBP or USDA still have to visually see the mark and approve it?

Q. If dunnage is marked to the standards, is it a requirement that CBP inspect and approve before it can be landed or disposed of in U.S.? When can WPM be brought to the dock, is there a national standard?

A. We are not sure what these two questions mean. Could they please be clarified?

Q. If dunnage is clearly marked properly with international codes, but is not free of bark is this still ISPM 15 compliant?

A. For purposes of entry into the U.S., marked WPM are compliant. The U.S. regulation does not require that WPM be bark-free.

Q. Can CBP/APHIS provide a list of countries that will accept non-compliant WPM that is being re-exported? As there is a chance the re-exporting policy will increase the likelihood that non-compliant WPM will simply be dumped at sea. As noted in the conference call salt water exposure will not eliminate all pests. Unless there is another option such as destruction (chipper or burning), or fumigation for non-compliant WPM there is legitimate concern the re-exportation policy could actually lead to increased pest infested WPM washing up on our shores.

A. CBP does not maintain a list of countries that will accept violative WPM. There are many countries that are signatories to the convention, and those countries are at different stages of implementation. A list of countries that are signatories to the IPPC is maintained at <http://www.nwpc.com/ExportTreatment/ProgramOverview.htm>. It is the responsibility of the importer or other party of interest to determine a destination for violative WPM that the U.S. orders exported.