

# Rules and Regulations

Federal Register

Vol. 60, No. 101

Thursday, May 25, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Parts 300 and 319

[Docket No. 91-074-6]

RIN 0579-AA47

#### Importation of Logs, Lumber, and Other Unmanufactured Wood Articles

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are establishing comprehensive regulations concerning imported unmanufactured wood articles. The new regulations will affect persons importing logs, lumber, bark chips, wood chips, certain wood packing materials, and other unmanufactured wood articles. We are also amending several existing regulations to remove provisions concerning the importation of certain wood articles, and to state that such articles will instead be covered under the new regulations. We are also incorporating by reference Agriculture Handbook 188, the "Dry Kiln Operator's Manual," which contains treatments authorized by this final rule. We are taking these actions because there is increased interest in importing large volumes of unmanufactured wood articles into the United States, and prohibitions and restrictions are necessary to eliminate any significant plant pest risk associated with importing these articles.

**DATES:** Final rule effective August 23, 1995. The Director of the Office of the Federal Register approved the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 on August 23, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard L. Orr, Senior Entomologist,

APHIS, Policy and Program Development, Planning and Risk Analysis Systems, 4700 River Road Unit 117, Riverdale, MD 20737-1238, 301-734-8939.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Animal and Plant Health Inspection Service (APHIS) is establishing comprehensive regulations to eliminate any significant plant pest risks presented by the importation<sup>1</sup> of logs, lumber, and other unmanufactured wood articles.

A changing national and world economy has recently increased the incentives to import wood that may present a significant increase in the risk of plant pest introduction into the United States. An example of this change is the interest of sawmills and other wood processors in utilizing foreign sources of wood to offset expected harvest reductions in the United States, or to provide raw materials for their facilities at prices competitive with or better than domestic prices.

Trees produced in many foreign locations are attacked by a wide variety of exotic plant pests and pathogens that do not occur in this country. Logs and other unmanufactured wood articles imported into the United States could pose a significant hazard of introducing plant pests and pathogens detrimental to agriculture and to natural, cultivated, and urban forest resources. Plant pests and pathogens introduced into the United States in the past, such as the gypsy moth and the agents of Dutch elm disease and chestnut blight, have caused billions of dollars of damage to United States forest and plant resources.

Until recently, the quantity and variety of unmanufactured wood imported were very limited, and there was little need to develop regulations specifically to address such imports. With few exceptions (see the discussion below of interim regulations allowing importation of certain logs from Chile and New Zealand), APHIS has been dealing with such imports only by detaining shipments at ports of first arrival for inspection, and ordering further action if warranted pursuant to

<sup>1</sup>Throughout this document, the words "import" and "importation" are used to mean moving or bringing articles into the territorial limits of the United States.

the Federal Plant Pest Act and regulations issued under that Act (7 CFR part 330). In addition, APHIS has prohibited the entry into the United States of logs from the former Soviet Far East and Siberia because a detailed plant pest risk assessment found that dangerous plant pests could occur in such logs and may be introduced with them.

However, when large volumes of wood imports are involved, inspection at the port of first arrival without other conditions relating to the wood imports is not practical or adequate for preventing the introduction of plant pests associated with imported wood. Interest in importing logs and other unmanufactured wood articles from various countries is increasing rapidly toward a point where inspection and control activities solely at the port of first arrival will not be feasible. There is currently an intense commercial interest in developing a long-term industry in the Pacific Northwest for importing and processing logs from foreign countries. There is also potential for increased log and other unmanufactured wood article imports into other areas of the United States.

#### Interim Rules Affecting Certain Logs From Chile and New Zealand

An interim rule published in the **Federal Register** on February 16, 1993, and effective January 19, 1993 (58 FR 8524-8533, Docket No. 91-074-4), established importation requirements for Monterey pine and Douglas-fir logs from New Zealand. Plant pest risks associated with importing these articles, and import requirements that would reduce these risks to insignificant levels, were identified early in the course of developing comprehensive wood import regulations. Therefore, to reduce these plant pest risks as soon as possible, we established regulatory requirements in 7 CFR 319.40-1 through 319.40-8 for certain logs from New Zealand.

A second interim rule published in the **Federal Register** on November 9, 1993 (58 FR 59348-59353, Docket No. 91-074-5), and effective November 2, 1993, established importation requirements for Monterey pine logs from Chile. This interim rule applied the same requirements to Monterey pine logs from Chile that the first interim rule applied to Monterey pine and Douglas-fir logs from New Zealand.

This final rule replaces the regulations established by the interim rules with comprehensive regulations affecting importation of unmanufactured wood articles from all places, including Chile and New Zealand. The provisions contained in this rule for Monterey pine logs from Chile, and for Monterey pine and Douglas-fir logs from New Zealand are essentially the same as the requirements imposed by the interim rule, except that the interim rule used slightly different definitions due to its limited scope.

#### Proposed Rule

On January 20, 1994, we published a document in the **Federal Register** (59 FR 3002-3029, Docket No. 91-074-3) proposing to replace the interim regulations, "Subpart—Logs from Chile and New Zealand," with a new "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles" containing prohibitions and restrictions concerning imported unmanufactured wood articles.

The proposed rule, and this final rule, are based on an approach that gives importers three complementary options for importing regulated articles. These are:

(1) If the regulations contain specific requirements for importing a specific article from a specific country or area, you may import the article by complying with those requirements. Examples of this option include the importation of Monterey pine logs and raw lumber from Chile and New Zealand in accordance with the requirements of § 319.40-5, "Importation and entry requirements for specified articles." We intend to add more articles, countries or areas from which articles may be imported, and importation requirements to this section as new requests to import various articles are evaluated and approved.

(2) If the regulations do not contain specific requirements for importing the article you wish to import, or if you believe the article may be safely imported under less stringent conditions than the regulations require, you may submit an application for a permit to import the article, and describe in the application information about the article's origin, processing, treatment, and handling. We will evaluate the permit request, conducting plant pest risk assessments as necessary, and if we determine that the article may be safely imported under conditions not already in the regulations, we will institute rulemaking to add the appropriate articles and conditions to § 319.40-5, "Importation and entry requirements for specified articles."

(3) If the regulations do not contain specific requirements for importing the article you wish to import, you may wish to import the article before there is time to complete plant pest risk assessments and add the article and the necessary specific importation requirements to the regulations. In this case, you may import the article by complying with one of the universal importation options in § 319.40-6. These universal options employ heat treatment and other conditions for importing logs and lumber not otherwise enterable. These universal options are relatively stringent, because they must eliminate the spectrum of potential plant pests and address risks that have not been characterized. The universal options are designed to give importers a way to import articles that would otherwise be prohibited until detailed plant pest risk assessments are completed. Whenever feasible, importers may choose to employ universal options while plant pest risk assessments and rulemaking are underway to establish less stringent requirements for the articles they wish to import. Importers of some articles may find that complying with a universal option is the most feasible and cost-effective way to import their articles.

#### Comments on the Proposed Rule

We solicited comments concerning our proposal for a 90-day comment period ending April 20, 1994. We received 56 comments by that date. Eleven were from companies and industrial associations involved in the harvesting and importation of logs and other wood products, or the manufacturing of wood products that could be derived from such imports, or the sale of products or processes used in such manufacturing. Eleven comments were from environmental organizations. Six comments were from universities. Four comments were from State agencies involved in forestry or agriculture. Four comments were from agencies of the Canadian government, and one from the Delegation of the Commission of the European Communities. National associations representing Federal and State employees involved in forestry, American growers of nursery stock, and interested members of the public also submitted comments.

We carefully evaluated these comments. While most supported implementing regulations addressing the importation of wood, many raised questions about how to do so in an optimally effective manner. These comments are discussed below in detail.

In response to the comments, APHIS is making eight changes to the proposed requirements. These changes are:

1. *Change the standard for heat treatment and heat treatment with moisture reduction from 56 °C for 30 minutes to 71.1 °C for 75 minutes.* This change is in response to several commenters who recommended that APHIS use 71.1 °C for 75 minutes as reported in the Forest Service's Scientific Panel Review of January 10, 1992—Proposed Test Shipment Protocol for Importing Siberian Larch Logs. Upon reviewing this research and our data from the proposal supporting a lesser temperature-time combination, we believe we were in error in believing that the proposed heat treatment would effectively eliminate all plant pests of concern. Specifically, a heat treatment of 56 °C for 30 minutes could allow various harmful fungi to survive. Research reports show that various fungi in wood can survive 1 to several hours of heat treatment at temperatures ranging from 56 °C to 70 °C, but are destroyed by a treatment of 71.1 °C for 75 minutes. The heat treatment required by the regulations must be able to effectively destroy all potentially dangerous fungi. Therefore, we are changing the requirements for heat treatment and heat treatment with moisture reduction in § 319.40-7 (c) and (d) to specify 71.1 °C for 75 minutes. We will allow heat treatment at lower temperatures only in specific kiln drying processes where the fungicidal action of the heat is extended over a long period of time and is complemented by moisture reduction (see below).

2. *Allow kiln drying conducted in accordance with acceptable industry practices to qualify as heat treatment with moisture reduction, in lieu of a specific temperature-time combination.* As proposed, heat treatment with moisture reduction had to raise the temperature at the center of the treated article to 56 °C for 30 minutes. If we changed this provision consistent with the above change in the temperature and time of heat treatments (i.e., 71.1 °C for 75 minutes), then most articles kiln dried according to industry practices would not qualify as heat treated with moisture reduction, even though they meet the dryness standard of the regulations (a moisture content of 20 percent or less, as specified in § 319.40-7(d)).

In fact, research shows that while some fungi survive temperatures between 56 °C and 70 °C for relatively short periods, all harmful fungi are destroyed by kiln drying that is conducted according to standard

industry practice, which often dries wood at lower temperatures over a period of 1 to many days, reducing the moisture content eventually to 20 percent or less.

In summary, heat treatment with moisture reduction is an effective treatment if it is employed in either of two ways. It may reduce the moisture content of the article quickly, by employing a temperature of 71.1 °C for 75 minutes or more; or, it may reduce the moisture content more slowly by employing standard industrial dry kiln practices using a lower temperature.

Several commenters suggested that to allow industry to use commonly employed kiln drying techniques to the extent they are effective, we should modify the requirement for heat treatment with moisture reduction. They cited a publication of the Forest Service which the wood industry relies on to specify acceptable kiln drying practices. This publication is the Dry Kiln Operator's Manual, Agriculture Handbook 188.

We agree with these comments, and are changing the requirement for heat treatment with moisture reduction in § 319.40-7(d) to provide that heat treatment with moisture reduction may employ:

1. Kiln drying conducted in accordance with the schedules prescribed for the regulated article in the Dry Kiln Operator's Manual, Agriculture Handbook 188, which is incorporated by reference at § 300.1 of this chapter; or,

2. Dry heat, exposure to microwave energy, or any other method that raises the temperature of the center of each treated regulated article to at least 71.1 °C, maintains the regulated articles at that center temperature for at least 75 minutes, and reduces the moisture content of the regulated article to 20 percent or less as measured by an electrical conductivity meter.

We are also incorporating by reference, in 7 CFR 300.1, the Dry Kiln Operator's Manual.

3. *Allow noncontainerized wood chips to be imported under certain conditions.* Many industry commenters cited a substantial economic burden if they had to import wood chips only in sealed containers, rather than on deck or in open containers. Several suggested allowing some wood chips to be imported on barges or other vessels, covered by tarpaulins, if the wood chips come from a relatively low-risk source (live healthy trees from a managed tropical plantation) and are alone on a vessel (no other regulated articles) that is moved directly to the United States.

We agree with this suggestion. Wood chips derived from live healthy trees from a managed tropical plantation are not likely to present plant pest risks that would not be controlled by the limits imposed by the regulations on the use of the chips. This is because there are few forest pests present in tropical climates that can survive winters in temperate climates. The few tropical plant pests that can survive temperate winters would likely be excluded from managed tropical plantations by the plant pest control practices employed at such plantations. If such chips are imported alone on a vessel and covered by a tarpaulin, there is little risk that the chips will be infested during transit by plant pests from higher-risk wood products. On the other hand, wood chips from unmanaged trees and trees in temperate areas are more likely to present serious plant pest risks. These chips should be subject to the full restrictions proposed for wood chips in the proposed rule, i.e., they should be imported in sealed containers, and subject to fumigation or heat treatment, to prevent the introduction of plant pests they may harbor.

Therefore, we are changing § 319.40-6(c)(2), the universal importation requirement for wood chips and bark chips, by adding the following sentence: "If the wood chips or bark chips are derived from live, healthy, plantation-grown trees in tropical areas, they may be shipped on deck if no other regulated articles are present on the vessel, and the wood chips or bark chips are completely covered by a tarpaulin during the entire journey directly to the United States."

4. *Allow pallets to be imported in accordance with the requirements for solid wood packing materials, even if the pallets are imported as cargo.* Several commenters noted that pallets should be allowed to be imported as cargo under no greater restrictions than if they are imported in actual use as packing. They pointed out that in normal shipping practice, large amounts of pallets are used to ship articles to a port, and then may be shipped as cargo from ports with a pallet surplus to ports with a pallet shortage. Commenters felt that pallets that have been in use, and have met the regulatory requirements for importation in use, do not present significant risks and should not have to meet additional requirements if they are subsequently moved as cargo.

We agree. We are changing § 319.40-3(b) to allow pallets that are imported as cargo to be imported under the same requirements that apply to pallets that are in use as packing materials at the time of importation. Briefly, these

requirements are that if the pallets are free from bark and are used for articles that are not regulated articles, they must be accompanied by an importer document stating that they are totally free from bark, and apparently free from live plant pests. If the pallets are free from bark and are used for regulated articles, they must be accompanied by an importer document stating that they are totally free from bark, apparently free from live plant pests, and have been heat treated, fumigated, or treated with preservatives in accordance with § 319.40-7, or meet all the importation and entry conditions required for the regulated article the solid wood packing material is used to move. If the pallets are not free from bark, they must be accompanied by an importer document stating that the pallets have been heat treated, fumigated, or treated with preservatives in accordance with § 319.40-7. In all cases, the pallets are also subject to the inspection and other port of arrival requirements of § 319.40-9.

5. *Exclude European Russia from the group of Asian countries to which more severe prohibitions and restrictions apply.* Several commenters noted that the apparent intent to exclude European Russia from these more severe requirements was not carried out by the precise language, allowing many importations to occur from all places "except countries in Asia that are wholly or in part east of 60° East Longitude and north of the Tropic of Cancer." Russia does extend east of 60° East Longitude. It was not our intent to include European Russia in this area, as can be seen from the context of the language in the preamble of the proposed rule. Therefore, we are changing this geographic description each time it appears to read "except places in Asia that are east of 60° East Longitude and north of the Tropic of Cancer."

6. *Continue to allow the ongoing importation of railroad ties from countries outside Asia, for subsequent pressure treatment and use in the United States, which APHIS has allowed to occur for some time.* Commenters noted that these articles are normally treated within 30 days, and have been considered low risk. We agree that the regulations should continue to allow the importation of these railroad ties. We are adding the following new paragraph (f) to § 319.40-5, the section concerning importation requirements for specified articles: "Cross-ties (railroad ties) from all countries except places in Asia that are east of 60° East Longitude and north of the Tropic of Cancer may be imported if completely

free of bark and accompanied by an importer document stating that the cross-ties will be pressure treated within 30 days following the date of importation."

7. Amend the definition of "Log" so that it includes cants sawn from logs. One commenter pointed out that by his reading of the regulations, it seemed likely that cants (partly trimmed logs) were subject to the same requirements as logs, but the regulations did not make this point absolutely clear. We did in fact intend that the regulations treat logs and cants the same. To make this clear, we are revising the proposed definition of "Log," which read "The bole of a tree; trimmed timber that has not been further sawn," to read "The bole of a tree; trimmed timber that has not been sawn further than to form cants."

8. Amend the requirements for completing an application for an import permit to require that the applicant specify not only any chemical treatments that will be employed prior to or after importation, but also the dosage of the chemicals that is employed. One commenter pointed out that the permit application procedure in proposed § 319.40-4(a) required the applicant to provide, among other information, the names of any chemicals employed in treatments prior to or after importation (proposed § 319.40-4(a) (4) and (5)). He suggested that the application should also include the dosage used for such treatments, so that APHIS and the public can judge whether the treatments are effectively applied. We agree, and are adding a requirement for dosage information to the affected sections.

With the exception of the changes just discussed, and minor editorial changes, we are adopting the provisions of the proposed rule as a final rule. Additional comments are discussed below.

#### **Goals and Mission of APHIS as They Relate to the Proposed Rule**

*Comment:* APHIS should not consider the needs of international trade but should focus exclusively on pest exclusion as worded in the Federal Plant Pest Act of 1957.

*Response:* It is important to recognize that APHIS has a number of responsibilities and legal mandates beyond the Federal Plant Pest Act. These include international trade agreements such as the General Agreement on Tariffs and Trade and the North American Free Trade Agreement, statutes such as the Regulatory Flexibility Act and the Paperwork Reduction Act, Executive Orders, and additional legal and policy guides. One of APHIS's basic responsibilities is plant

pest exclusion, but this has to be conducted in balance with other national needs and goals.

The majority of comments which specifically addressed the issue of balancing the needs of international commerce with prevention of pest introduction clearly favored such a balancing. However, some commenters believed that APHIS should reduce or terminate raw wood exports, so that wood could be used to meet domestic needs, removing the need for the importation of raw wood. APHIS does not have statutory authority to stop or reduce the export of raw logs by U.S. private land owners and companies so that the wood can be used for domestic needs.

#### **Opposition to the Importation of Unmanufactured Wood**

*Comment:* APHIS should restrict imports to manufactured and/or finished wood products only.

*Response:* APHIS believes that this approach is too extreme. With proper mitigation and monitoring, the importation of some raw wood material from certain locations presents an insignificant plant pest risk.

#### **Limitations of the Pest Risk Assessment Process**

*Comment:* Some comments were directed toward the risk assessment process. A few were concerned that the process did not fully address the unknowns, did not address enough pests, or did not incorporate the full scope of experts needed.

*Response:* The risk assessments conducted by the Forest Service were the most resource extensive risk assessments ever utilized by APHIS to determine the plant pest risk associated with an imported commodity. Great care was taken to choose which assessments needed to be completed before the rule was written. The first assessment focused on raw timber from Siberia, which was identified as extremely high risk. From this assessment, some universal requirements for the rule were derived. Two additional risk assessments were conducted on those timber commodities which were identified as lower risk (specific species of plantation grown trees from New Zealand and Chile). The specific requirements for these commodities were developed from these assessments.

APHIS recognizes both the need for future assessments and the need to improve the risk assessment process. The risk assessment process used for the various assessments was derived from the National Research Council's section on ecological risk assessment as

published in its 1993 "Issues in Risk Assessment" and represents the state of the art as it now stands for conducting ecological risk assessments.

APHIS recognizes that the process is not perfect and that evolution will continue to be necessary. The risk assessment process is being, and will continue to be, modified and improved to make sure that it is the best that the science of ecological risk assessment can provide.

One of the most difficult issues is how to assess the risk associated with unknown organisms, or with known organisms that do not have well-described characteristics or survival and spread capabilities. The regulations are designed to ensure that there is an insignificant risk that importing regulated articles will result in the entry and establishment of either known or unknown dangerous plant pests.

#### **Need for More Assessments of Additional Log Species**

*Comment:* APHIS needs to complete additional assessments for various timber products considered for importation.

*Response:* APHIS agrees, and with the cooperation of the Forest Service, will continue to conduct risk assessments and amend regulations based on them, as appropriate.

#### **Packing Material**

*Comment:* The regulations proposed for solid wood packing materials are too restrictive.

*Response:* We also received comments stating that the regulations proposed for solid wood packing materials are necessary and appropriate. We believe that the requirements in this final rulemaking document for the importation of solid wood packing materials are necessary to prevent the introduction of plant pests into the United States.

#### **Temperate Hardwoods, Tropical Hardwoods, and Chips**

*Comment:* Temperate and tropical hardwoods should be subject to entry requirements that are as strict as those for temperate softwoods.

*Response:* The volume of imported temperate and tropical hardwoods has remained at a low sustained level. These small shipments of high priced logs and lumber can be monitored and controlled much more easily than the proposed large shipments of softwood logs.

*Comment:* The proposed regulations for wood chip importations are too restrictive and it would not be feasible for importers to meet the requirements. The 30-day time limit for processing

wood chips after importation is too short, and the proposed requirement for containerized transportation of wood chips is unnecessary and costly.

*Response:* APHIS believes that the 30-day limit for processing the chips is reasonable. The extension to 60 days requested by several commenters would present additional concerns with monitoring and increased plant pest risk. One commenter was under the incorrect assumption that the chips still had to be processed within the 30-day period if they had been subjected to an approved fumigation. This is not the case. The 30-day limitation is directed toward raw, untreated chips.

The changes we are making to the proposed requirement for containerized transportation of wood chips are discussed above.

### **Methyl Bromide**

*Comment:* In view of the negative effects of methyl bromide (MB) on the ozone layer, APHIS should not rely upon use of MB. Also, the regulations do not include plans for how APHIS will deal with articles requiring MB fumigation after MB is removed from regulatory use around the year 2001.

*Response:* APHIS is concerned about the effects of MB on the ozone layer and will abide by the Environmental Protection Agency's phase-out schedule. However, present reliance by commerce on MB is such that immediately terminating all regulatory use of MB is not realistic.

The regulations were written with the phase out of MB in mind. All MB requirements presented in the regulations have alternative treatments. It is APHIS's hope that industry will develop and implement alternative mitigation schedules (e.g. irradiation, heat, borate, etc.) to replace its reliance on methyl bromide for the importation of regulated articles.

### **Bark Removal on Temperate Softwood Logs**

*Comment:* Temperate softwood logs should be required to have 100 percent of the bark removed before importation, since even small patches of bark can harbor insect pests.

*Response:* APHIS recognizes that 100 percent debarking of logs is not realistic. It is important to remember that APHIS requires either a heat treatment or fumigation to complement the debarking of temperate softwood logs. This combination of debarking with other mitigation requirements is sufficient to destroy plant pests of concern in the bark or directly under the bark.

### **Other Comments and Responses**

*Comment:* APHIS should add other treatments, such as irradiation and borates, to the universal importation requirements.

*Response:* APHIS recognizes the potential value of irradiation, borates, and other treatments for use as universal or specific treatments. Ongoing research into the use of irradiation and borates on timber products looks promising. However, the data is not yet complete to the extent necessary for APHIS to propose specific treatments. Irradiation treatments as well as other alternatives will be added to the regulations as they are developed and proven both effective and operationally feasible.

*Comment:* For logs imported from Chile and New Zealand, APHIS should change the regulations to facilitate on-deck fumigation and transport of logs, and extend the time period for processing such imported logs after they are imported (currently 60 days).

*Response:* The restrictions associated with the movement of logs from Chile and New Zealand prompted a number of responses from industry. Extending the time allowed to process the logs once they enter the United States and allowing the fumigation and movement of logs on the deck of ships were the two most stated requests.

APHIS believes that allowing additional time beyond 60 days for processing the logs would make monitoring difficult and increase the plant pest risk. Therefore, APHIS will maintain the 60-day requirement.

APHIS has prohibited the movement of logs on the open deck of ships because of the possibility of infestation of the logs while at the port of origin and/or other foreign ports visited while the ship is in transit. APHIS believes that until the issue of infestation during shipment to the United States is satisfactorily answered, the movement of logs on the open deck of ships must continue to be prohibited.

*Comment:* The regulations should specify strong penalties that will be imposed on persons who do not comply with the regulations. The regulations should also make importers financially responsible for damages and control costs resulting from pests introduced through their shipments.

*Response:* For an importer, the primary practical consequence for non-compliance is future ineligibility to import additional shipments.

USDA has no authority to require importers to post bonds or otherwise stipulate their financial responsibility for costs that may result from introduced plant pests. However,

individual shipments will be refused entry unless the shipments comply with regulatory requirements.

APHIS can also respond to violations by canceling compliance agreements. Because domestic processing facilities must hold a current compliance agreement to import and process many types of regulated articles in the regulations, APHIS can stop violators from importing articles by canceling or refusing to sign a compliance agreement.

In addition, statutory authority allows us to impose civil and criminal penalties on violators. Individuals also have recourse through the courts; persons who believe they suffered harm due to an importer who did not comply with regulatory requirements may file a civil suit against that importer.

*Comment:* APHIS must allocate additional resources and personnel, especially inspectors at ports and sawmills processing imported wood, if the regulations are to be successfully enforced and monitored.

*Response:* We agree that adequate resources and personnel, especially inspectors, must be devoted to prevent the introduction of plant pests into the United States. Adjustments in the level of personnel and resources devoted to APHIS programs are a normal part of management in the agency. Duties and staffing levels will be adjusted, at ports and elsewhere, to take the needs of the new wood import program into account.

While APHIS will assign some personnel to major ports to work specifically with wood imports, and will assign some personnel to work specifically with monitoring compliance both overseas and in domestic processing facilities, we believe much of the resources needed for this program are already in place, in the form of existing APHIS port personnel and cooperating personnel from State plant protection agencies.

Funding levels and agency personnel may vary from year to year. Import authorizations will not be provided if the level of resources decreases below the level needed to ensure that all imported regulated articles are subject to the level of inspection and monitoring necessary to prevent the introduction of plant pests into the United States.

Regarding APHIS resources needed to ensure compliance with the regulations, commenters should be aware that user fees we collect for some program operations will help to ensure that the needed resources are available.

*Comment:* The regulations would allow importers to self-certify, in the "importer document," information

about the type, quantity, and origin of imported articles and any treatments that have been applied to them. This self-certification is not an adequate substitute for a certificate issued by a plant protection organization recording the required information. You cannot rely on importers to honestly and completely record the necessary information in an informal importer document. In particular, exports from the former Soviet Union are subject to rampant corruption, forgery of documents, and smuggling.

*Response:* Questions about enforcement of regulations and how to deter violators who may present inaccurate information and documents opens up a complex nest of issues much larger than any single regulation. The general position of APHIS on these issues is as follows:

1. *Violations are most likely when the profit for the violator is high and the risk is low.* APHIS plans its enforcement activities accordingly. We tend to scrutinize carefully large shipments of regulated articles, especially those of particularly valuable species. We employ various means to independently verify the accuracy of documents associated with these shipments—whether the documents are issued by an importer or by a government agency. We keep importers aware of the risks they face if they file inaccurate documents or fail to meet regulatory requirements. These risks include civil penalties, criminal fines and jail sentences, and loss of business due to APHIS rejection of permit applications and compliance agreement applications. Generally, wood commodities are not so lucrative that an importer would risk these penalties, especially long-term loss of business, for the sake of fraudulently importing any one shipment. We intend to vigorously publicize our enforcement activities related to this final rule during the initial implementation period, to make potential violators aware of the risks they face.

2. *Self-certification has worked in other programs.* Many APHIS and other Federal agencies have programs that rely in part on regulated individuals providing accurate certifications to the agency. Experience has shown that these programs can work when the interests of both the regulated party and the agency are served by accurate self-certification. Examples of APHIS programs that have successfully employed self-certification include the domestic Gypsy Moth quarantine under 7 CFR 301.45 through 301.45-12 (in which businesses operating under compliance agreements may issue certificates), and the importation

program for greenhouse-grown potted plants from Canada under 7 CFR 319.37-4(c) (in which greenhouse growers apply labels which certify that their plants meet certain growing requirements). Such programs work, in part, because our inspectors learn to evaluate the accuracy of self-certifications through visual examination of the materials and through independent sources of information. The programs also work because they are generally employed where the regulated parties have a financial reason to desire a continuing relationship of trust with the regulating agency, so they can continue to do business. This is the case with importer documents employed in this final rule.

3. *The accuracy of self-certifications is often empirically tested at the port of first arrival.* Much of the information in importer documents can be independently checked, sometimes by direct inspection and testing. Inspectors can discover a great deal about the accuracy of documents concerning a shipment by looking for plant pests and evidence of treatments in the articles. Moisture content can be directly measured at ports to determine whether kiln drying has occurred. Fraudulent importer documents will often conflict with waybills, valid importer documents from earlier shipments, and other records. We intend to use all of these opportunities to enhance enforcement and create a culture in which importers see that issuing inaccurate documents is not worth the risk.

4. *Individual "high-crime" areas of international trade must be addressed in a larger forum than just the wood regulations.* We agree that doing business in the former Soviet Union presents severe problems for honest businesspersons and the customs services of many countries. There is widespread smuggling, forgery of documents, and coercion of officials related to exports from this area. While we are not aware of significant criminal activities affecting unmanufactured wood exports from the former Soviet Union, this may be because such exports to the United States have not been allowed to occur in significant quantities until now.

For these reasons, we will take particular care in enforcing regulatory requirements with regard to the importation of regulated articles from the former Soviet Union. As discussed above, there are numerous methods available to APHIS to confirm that the importation of regulated articles meets the regulatory requirements. We intend to employ them vigorously.

There is an ongoing, international effort to reduce the level of smuggling, fraud, and other criminal activity associated with exports from the former Soviet Union. The State Department and the Federal Bureau of Investigation are working with their counterparts in other countries and in the former Soviet republics to try to stabilize the situation, and APHIS will monitor the results of these efforts to determine what level of enforcement activity needs to be directed toward shipments of regulated articles from the former Soviet Union.

*Comment:* The regulations should minimize the costs associated with importing wood by imposing requirements that are both effective in pest control and cost efficient. To keep costs under control, the regulations should not include additional controls beyond those needed to control pest risk.

*Response:* We agree, and believe we have designed the regulations to effectively exclude plant pests at minimal cost. Wherever we had two or more alternative, equally effective control methods, we wrote the regulations to allow importers to choose whichever method was less costly and disruptive to commerce in their particular cases. Whenever control methods with significant costs were necessary, such as heat treatment, we avoided using detailed "design standards" that can add to costs by requiring treatment facilities to be built and operated in particular ways. Instead, we have employed "performance standards" that allow maximum freedom for innovation and cost savings to regulated parties.

*Comment:* In developing the proposed rule, APHIS failed to adequately communicate with the affected parties and the public. Only 10 representatives of environmental public interest organizations were on the distribution list for National Environmental Policy Act (NEPA) materials associated with the rule, and Indian Tribes with extensive forest holdings were not contacted.

*Response:* We disagree. APHIS had numerous contacts with potentially affected groups prior to rulemaking. We actively sought information from academic, environmental, and industry organizations and encouraged them to involve their constituents in contributing to APHIS development of a proposed rule. We sent representatives to forestry conferences to explain APHIS perspectives early in the process. We developed a mailing list of persons and organizations interested in potential rulemaking for wood imports, which grew to over 500 members by the time

the proposal was drafted. Persons on this list were informed of each significant step that preceded the proposal, for example, public meetings, plant pest risk analyses, and interim APHIS requirements at ports. We published an advance notice of proposed rulemaking prior to the proposed rule. We also established an electronic bulletin board, accessible by direct dial and through the Internet, to distribute copies of the proposed rule and associated documents and to accept public comments on the proposal. These activities resulted in far greater early public involvement than is usual for a Federal informal rulemaking proceeding.

Also, publication of the proposed rule in the **Federal Register** meets the minimum procedural standard for adequate public notice. We believe our outreach activities far exceeded this minimum standard. Certainly, any individual or group that was interested in the wood imports issue and was involved with the media and forums where wood and forestry issues are normally discussed had ample notice of, and opportunity to participate in, APHIS decisionmaking prior to the issuance of the proposed rule.

*Comment:* To ensure consistent nationwide requirements for importing wood, and to facilitate interstate and international commerce, the APHIS regulations should preempt all State and local requirements for wood imports. Officials in various States appear to have very different understandings of what authority they have over imports and how they are to interact with APHIS personnel.

*Response:* Executive Order 12612, "Federalism," instructs Federal agencies not to take actions that exceed the powers enumerated for the Federal government in the Constitution, and not to unnecessarily preempt State law or preclude States from developing policies and taking actions at their discretion. We do not believe the proposed changes to the regulations raise Federalism implications in terms of the Executive Order. The regulations address how a Federal agency will conduct operations of a Federal program, and do not preclude States from developing policies or exercising their authority to involve their employees in any plant protection programs developed by a State. States are free to pass laws or implement regulations for State plant protection programs. However, State programs may not add requirements for importing regulated articles that are inconsistent or in conflict with the requirements established by the Federal regulations.

States may not cite their participation in the enforcement of the Federal regulations as the basis for also enforcing additional requirements that are not contained in the Federal regulations.

In the "Executive Order 12778" section of the proposed rule, we stated "If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted \* \* \*." We believe State and local laws and regulations would be inconsistent with our rule if they prohibit imports allowed by our regulations, or if they impose conditions on importation that are in addition to the conditions set forth in this final rule. States may impose requirements in accordance with State law that are not inconsistent with our regulations.

#### **Executive Order 12866 and Regulatory Flexibility Act**

We are issuing this final rule in conformance with Executive Order 12866. This rule has been determined to be significant and has been reviewed by the Office of Management and Budget under Executive Order 12866.

We have prepared an economic analysis concerning this final rule. This analysis indicates that this rule will not have significant annual effects on the economy. Copies of the economic analysis may be obtained by sending a written request to APHIS, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Copies of the economic analysis are also available for inspection 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 the analysis are requested to call ahead on (202) 690-2817 to facilitate entry at the reading room.

The United States has become the world's leading importer of unmanufactured wood. In 1990, the United States imported the equivalent of 34.4 million cubic meters (CBM) of logs, lumber, and other unmanufactured wood valued at about \$5.1 billion. Total imports nearly tripled between 1950 and 1990, with most of this increase occurring after 1970. Historically, Canada has supplied the United States with virtually all of its unmanufactured wood imports.

Domestic production of logs, lumber, and other unmanufactured wood has increased steadily since 1950. In roundwood equivalents, production in 1990 was 1.6 times greater than in 1950. Most timber production occurs in

southern and western States. In 1990, Oregon and Washington accounted for about 16 percent of the total U.S. tree harvest.

Domestic logging companies are facing increasing challenges from conservation groups. Conservationists are opposed to many tree harvesting practices, especially clear cutting. In addition, concern over habitats for wildlife has raised questions about replacement of old growth/diversified forests with monoculture. Conservation issues are likely to limit future tree harvests in several northwestern States.

Nationally, commercial forest lands are projected to decrease by about 4 percent over the next 50 years. Production is likely to decline in the Pacific Northwest and increase in the South and Rocky Mountain States.<sup>2</sup> A slightly limited domestic harvest combined with higher consumer demand would likely result in an increased demand for imported wood and wood products. Alternative supplies of logs and other wood products have been located in the former Soviet Union, New Zealand, Chile, Brazil, and other countries. Wood imports from alternative sources have the potential to introduce and disseminate exotic plant pests and diseases throughout the United States.

This final rule regulates the importation of logs and other unmanufactured wood products from all areas. There are exemptions from some requirements for imports from Canada and Mexican border states because most insects and other wood pests in these areas are also indigenous to the United States, or will become so through natural migration. Therefore, wood imports from Canada and Mexican border states do not pose a significant risk of exotic plant pest introduction.

The regulations will reduce to an insignificant level the risk of entry and dissemination of plant pests associated with unmanufactured wood imports. Some regulated wood products are prohibited importation based on plant pest risk assessments that reveal more than an insignificant risk of the introduction of plant pests. Unrestricted trade in unmanufactured wood would likely result in losses to domestic agriculture from plant pest damage. Without governmental regulation, private entities might engage in trading activities that would result in the introduction of plant pests into the United States.

<sup>2</sup> Over the next 50 years, new technologies may allow wood products companies to remove larger amounts of wood products from each tree.

The following items are subject to the regulations: logs; wood chips; lumber; whole trees; portions of trees not consisting solely of leaves, flowers, fruits, buds, or seeds; bark; cork; laths; hog fuel; sawdust; painted raw wood products; excelsior; wood mulch; wood shavings; pickets; stakes; shingles; solid wood packing materials; humus; compost; and litter. Manufactured wood products are not regulated by the rule. The regulations require that certain specified imported unmanufactured wood products be treated prior to arrival in the United States.

In 1990 the United States imported about 255,800 CBM of unmanufactured wood that would require treatment under the final regulations. These unmanufactured wood imports accounted for less than one percent of total 1990 domestic supplies. Imported shipments of kiln dried lumber are not required to be treated.

About 4.1 million newly manufactured units of wood dunnage were imported as cargo from regulated areas in 1990. Dunnage imported as cargo can be manufactured from rough untreated lumber that has not been stripped of all tree bark.<sup>3</sup> Imports comprised about 27 percent of the newly manufactured dunnage products available in the United States during 1990.

Imports of regulated articles that will now require treatment totaled about \$27.4 million in 1990. Total domestic supplies of these articles exceeded \$80 billion during the same year. Therefore, the value of imports that will require treatment under the final regulations represented less than one percent of total domestic supplies in 1990.

Our economic analysis estimates that this action would increase economic welfare for domestic producers of logs, lumber, and other regulated wood products by about \$35.2 million. However, U.S. consumers of these products will incur a welfare loss of about \$171.9 million.

About 98.8 percent of total estimated losses are attributable to treatment costs for dunnage (including scrap lumber) used to pack various commodities that are imported into the United States. APHIS anticipates that this loss will be mitigated as shipping companies switch to bark free dunnage materials to avoid Q-40 related treatment costs. Shippers will take precautions to ensure that dunnage is bark free before commodities are loaded at the foreign port of origin.

<sup>3</sup> For the purpose of this economic analysis, dunnage imported as cargo includes dunnage produced for first time use, and does not include dunnage manufactured from used or scrap lumber.

The Agency maintains that bark free dunnage material is readily available throughout the world and can be substituted at little or no cost. Therefore, APHIS estimates that the required use of bark free dunnage will result in a negligible cost increase to shippers in the long run.

Complying with the rule's requirements may cost U.S. society up to \$136.7 million; this represents the cost of plant pest exclusion. This cost estimate does not include the opportunity cost associated with importation of timber products like Siberian larch that might be imported in the absence of this rule. Data are not available to make this estimate. Additionally, this cost figure does not take into account either the benefits that would be accrued by excluding pests, or the probability that businesses would be able to reduce cost by switching to less costly options such as bark free dunnage.

If the United States does not expend resources to exclude plant pests through regulation or other means, such pests could become established and cause significant damage to domestic agriculture. For example, in the past few years plant pests including the Asian gypsy moth and pine shoot beetle have recently been introduced into the U.S., and several million dollars have been spent on efforts to control and prevent further spread to noninfested areas of the country. A recent USDA Forest Service pest risk assessment concerning potential Siberian timber imports evaluated the potential costs to U.S. society of several nonindigenous plant pests. The risk assessment estimated that introduction of a single pest, larch canker, could cause direct timber losses of \$129.0 million annually. The same study estimated that a worst-case scenario involving heavy establishment of exotic defoliators in the United States could cost \$58 billion (about \$4.1 billion annually). This is a damage estimate of resources that would be lost to established defoliators.

The benefits that would accrue from pest exclusion may be less because control efforts would be put in place to regulate the spread of exotic pests. Total benefits should be calculated as the avoided cost of such control efforts and avoided damages to agricultural and forest resources. However, past experiences with introduced exotic defoliators indicate that control measures would not likely prevent further spread and thus make eradication extremely unlikely.

The initial estimated losses will be offset over time as businesses adapt to new international wood marketing

channels. If resource constraints remain constant after this rule is implemented, consumers will purchase a slightly higher volume of domestic wood products at prices that are slightly higher than those that currently prevail in the U.S. market. However, domestic consumers will continue to supplement their wood and wood product purchases with imports whenever the imported price is lower than the domestic price.

Each year about 6 to 7.5 million non-bulk shipments of various commodities are imported into the United States. APHIS estimates that between 3.6 and 4.5 million (60 percent) of annual imported non-bulk shipments arrive in the United States packed in dunnage made of rough untreated wood with bark. The regulations will prohibit untreated dunnage with bark from entering the United States.

APHIS does not expect the economic impact on U.S. producers of regulated articles to be uniform across the country. Producers in southern and Rocky Mountain States will likely gain more than producers in the Pacific Northwest. Conservation issues and resource constraints will likely limit the amount of welfare gain acquired by loggers and sawmills in Oregon and Washington.

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 ("the Act"), which the President signed into law on March 22, 1995, USDA has assessed the effects of this rulemaking action on State, local, and tribal governments, and the private sector. This action does not compel the expenditure of \$100 million or more by any State, local or tribal governments, or by anyone in the private sector, and therefore a statement under section 202 of the Act is not required.

The Regulatory Flexibility Act requires that APHIS specifically consider the economic impact of regulations on small entities. Small Business Administration (SBA) data indicates that about 25,998 domestic entities could be impacted by the restrictions on regulated articles. About 25,769 (99 percent) of these entities are classified as small according to SBA criteria. These consist of approximately 14,662 small logging companies or sawmills that produce domestic wood articles, and approximately 15,642 entities that could import foreign wood for processing or resale. (These two figures total more than 25,769 because some firms process or resell both domestic and imported wood.) These small entities should experience most of the anticipated \$35.2 million increase in domestic welfare. This increase will be a small average economic benefit for

affected small entities, as it represents less than one percent of combined average annual sales for impacted small entities. A few small entities will undoubtedly accrue a disproportionate share of the domestic welfare increase due to their individual positions in their markets and variations in business strategies for dealing with new opportunities. The overall impact on small businesses is expected to be minor.

Under these circumstances, the Acting Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), APHIS has prepared an environmental impact statement (EIS) addressing the importation of logs, lumber, and other unmanufactured wood in accordance with this rule. On August 12, 1994, a notice was published in the **Federal Register** (59 FR 41441) informing the public of the availability of the final EIS.

The final EIS considered and evaluated the six following alternatives:

Alternative 1—No Action (No Regulations)

Alternative 2—Final Regulations (Preferred Alternative)

Alternative 3—Prohibit Untreated Wood Except Packing Material

Alternative 4—Prohibit Untreated Wood

Alternative 5—Prohibit Unmanufactured Wood Except Packing Material

Alternative 6—Prohibit Unmanufactured Wood

The final EIS addressed the potential impacts to the human environment, including possible risks to human health, impacts to forest resources, impacts to biodiversity, impacts from the use of methyl bromide, and impacts to global climate change, cultural resources, and endangered and threatened species. A detailed analysis of potential impacts from the use of methyl bromide was prepared because of the classification of methyl bromide as an ozone depletor.

The analysis of the environmental impacts to all aspects of the human environment revealed that impacts attributable to the six alternatives are virtually identical, but are entirely dependent upon the degree to which plant pests are able to be excluded. Each alternative demonstrated a different likelihood of success.

Alternative 6 is the most protective, that is, the most likely to minimize the risk of plant pest introduction. However, it is also the most restrictive with regard to importation of unmanufactured wood articles. Alternative 1, the No Action Alternative, is believed to be the least protective, and more likely than the other alternatives to result in inadvertent plant pest introductions.

Alternative 4 is similar to Alternative 6 in that it is protective but may unnecessarily interfere with trade. The protective capacity of Alternatives 3 and 5 is diminished by the exclusion of packing materials from treatment requirements.

Alternative 2, the Preferred Alternative, offers a balanced approach to the importation of logs, lumber, and other unmanufactured wood articles that requires plant pest treatments in all cases in which APHIS has identified a risk of plant pest introductions. This alternative was selected by the agency and is reflected by this final rule.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been submitted for approval to the Office of Management and Budget.

#### List of Subjects

##### 7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

##### 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR parts 300 and 319 are amended to read as follows:

#### PART 300—INCORPORATION BY REFERENCE

1. Part 300 is revised to read as follows:

**Authority:** 7 U.S.C. 150ee, 154, 161, 162, and 167; 7 CFR 2.17, 2.51, and 371.2(c).

#### § 300.1 Materials incorporated by reference; availability.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which was reprinted on November 30, 1992, and includes all revisions through March 1995, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(1) The treatments specified in the Plant Protection and Quarantine Treatment Manual and its revisions are required to authorize the movement of certain articles regulated by domestic quarantines (7 CFR parts 301 and 318) and foreign quarantines (7 CFR part 319).

(2) *Availability.* Copies of the Plant Protection and Quarantine Treatment Manual:

(i) Are available for inspection at the Office of the Federal Register Library, 800 North Capitol Street NW, Suite 700, Washington, DC; or,

(ii) May be obtained by writing or calling the Animal and Plant Health Inspection Service, Documents Management Branch, Printing Distribution and Mail Section, 4700 River Road Unit 1, Riverdale, MD 20737-1229, (301) 734-5524; or

(iii) May be obtained from field offices of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine. Addresses of these offices may be found in local telephone directories.

(b) *Dry Kiln Operator's Manual.* The Dry Kiln Operator's Manual, which was published in August 1991 as Agriculture Handbook No. 188 by the United States Department of Agriculture, Forest Service, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(1) The kiln drying schedules specified in the Dry Kiln Operator's Manual provide a method by which certain articles regulated by "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles" (7 CFR 319.40-1 through 319.40-11) may be imported into the United States.

(2) *Availability.* Copies of the Dry Kiln Operator's Manual are available for inspection at the Office of the Federal Register Library, 800 North Capitol Street NW, Suite 700, Washington, DC, or are for sale as ISBN 0-16-035819-1 by the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328.

**PART 319—FOREIGN QUARANTINE NOTICES**

2. The authority citation for part 319 is revised to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

**Subpart—Citrus Canker and Other Citrus Diseases**

3. In § 319.19, paragraphs (a), (b), (c), and (d) are revised to read as follows:

**§ 319.19 Notice of quarantine.**

(a) In order to prevent the introduction into the United States of the citrus canker disease (*Xanthomonas citri* (Hasse) Dowson) and other citrus diseases, the importation into the United States of plants or any plant part, except fruit and seeds, of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae is prohibited, except as provided in paragraphs (b), (c), and (d) of this section.

(b) Plants or plant parts of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae may be imported into the United States for experimental or scientific purposes in accordance with conditions prescribed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture.

(c) Plants or plant parts of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae may be imported into Guam in accordance with § 319.37–6.

(d) Plants or plant parts of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae that are regulated articles under §§ 319.40–1 through 319.40–11 may be imported into the United States in accordance with §§ 319.40–1 through 319.40–11 and without restriction by this subpart.

\* \* \* \* \*

**Subpart—Bamboo**

4. The title “Subpart—Bamboo” is revised to read “Subpart—Bamboo Capable of Propagation”.

5. In § 319.34, paragraphs (a) and (c) are removed; paragraphs (b) and (d) are redesignated as paragraphs (a) and (b); and newly designated paragraph (a) is revised to read as follows:

**§ 319.34 Notice of quarantine.**

(a) In order to prevent the introduction into the United States of dangerous plant diseases, including bamboo smut (*Ustilago shiraiana*), the importation into the United States of any variety of bamboo seed, bamboo plants, or bamboo cuttings capable of propagation,<sup>1</sup> including all genera and species of Bambuseae, is prohibited unless imported:

(1) For experimental or scientific purposes by the United States Department of Agriculture;

(2) For export, or for transportation and exportation in bond, in accordance with §§ 352.2 through 352.15 of this chapter; or,

(3) Into Guam in accordance with § 319.37–4(b).

\* \* \* \* \*

**Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products<sup>1 2</sup>**

6. In § 319.37–1, the definition of “Prohibited article” is revised to read as follows:

**§ 319.37–1 Definitions**

\* \* \* \* \*

**Prohibited article.** Any nursery stock, plant, root, bulb, seed, or other plant product designated in § 319.37–2 (a) or (b), except wood articles regulated under §§ 319.40–1 through 319.40–11, “Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles.”

\* \* \* \* \*

7. “Subpart—Logs from Chile and New Zealand” of this part is revised to read as follows:

**Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles**

Sec.

319.40–1 Definitions.

319.40–2 General prohibitions and restrictions; relation to other regulations.

<sup>1</sup>Regulations concerning the importation into the United States of bamboo not capable of propagation are set forth in §§ 319.40–1 through 319.40–11.

<sup>2</sup>The Plant Protection and Quarantine Program also enforces regulations promulgated under the Endangered Species Act of 1973 (P.L. 93–205, as amended) which contains additional prohibitions and restrictions on importation into the United States of articles subject to this subpart (See 50 CFR parts 17 and 23).

<sup>3</sup>One or more common names of articles are given in parentheses after most scientific names (when common names are known) for the purpose of helping to identify the articles represented by such scientific names; however, unless otherwise specified, a reference to a scientific name includes all articles within the category represented by the scientific name regardless of whether the common name or names are as comprehensive in scope as the scientific name.

319.40–3 General permits; articles that may be imported without a specific permit; articles that may be imported without either a specific permit or an importer document.

319.40–4 Application for a permit to import regulated articles; issuance and withdrawal of permits.

319.40–5 Importation and entry requirements for specified articles.

319.40–6 Universal importation options.

319.40–7 Treatments and safeguards.

319.40–8 Processing at facilities operating under compliance agreements.

319.40–9 Inspection and other requirements at port of first arrival.

319.40–10 Costs and charges.

319.40–11 Plant pest risk assessment standards.

**Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles**

**§ 319.40–1 Definitions.**

**Administrator.** The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture delegated to act in his or her stead.

**APHIS.** The Animal and Plant Health Inspection Service, United States Department of Agriculture.

**Bark chips.** Bark fragments broken or shredded from log or branch surfaces.

**Certificate.** A certificate of inspection relating to a regulated article, which is issued by an official authorized by the national government of the country in which the regulated article was produced or grown, which contains a description of the regulated article, which certifies that the regulated article has been inspected, is believed to be free of plant pests, and is believed to be eligible for importation pursuant to the laws and regulations of the United States, and which may contain any specific additional declarations required under this subpart.

**Compliance agreement.** A written agreement between APHIS and a person engaged in processing, handling, or moving regulated articles, in which the person agrees to comply with requirements contained in the agreement.

**Departmental permit.** A document issued by the Administrator authorizing the importation of a regulated article for experimental, scientific, or educational purposes.

**Free from rot.** No more than two percent by weight of the regulated articles in a lot show visual evidence of fructification of fungi or growth of other microorganisms that cause decay and the breakdown of cell walls in the regulated articles.

**General permit.** A written authorization contained in § 319.40–3

for any person to import the articles named by the general permit, in accordance with the requirements specified by the general permit, without being issued a specific permit.

*Humus, compost, and litter.* Partially or wholly decayed plant matter.

*Import (imported, importation).* To bring or move into the territorial limits of the United States.

*Importer document.* A written declaration signed by the importer of regulated articles, which must accompany the regulated articles at the time of importation, in which the importer accurately declares information about the regulated articles required to be disclosed by § 319.40–2(b).

*Inspector.* Any individual authorized by the Administrator to enforce this subpart.

*Log.* The bole of a tree; trimmed timber that has not been sawn further than to form cants.

*Loose wood packing material.* Excelsior (wood wool), sawdust, and wood shavings, produced as a result of sawing or shaving wood into small, slender, and curved pieces.

*Lot.* All the regulated articles on a single means of conveyance that are derived from the same species of tree and were subjected to the same treatments prior to importation, and that are consigned to the same person.

*Lumber.* Logs that have been sawn into boards, planks, or structural members such as beams.

*Permit.* A specific permit to import a regulated article issued in accordance with § 319.40–4, or a general permit promulgated in § 319.40–3.

*Plant pest.* Any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts of parasitic plants, noxious weeds, viruses, or any organism similar to or allied with any of the foregoing, or any infectious substances, which can injure or cause disease or damage in any plants, parts of plants, or any products of plants.

*Port of first arrival.* The area (such as a seaport, airport, or land border station) where a person or a means of conveyance first arrives in the United States, and where inspection of regulated articles is carried out by inspectors.

*Primary processing.* Any of the following processes: cleaning (removal of soil, limbs, and foliage), debarking, rough sawing (bucking or squaring), rough shaping, spraying with fungicide or insecticide sprays, and fumigation.

*Regulated article.* The following articles, if they are unprocessed or have

received only primary processing: logs; lumber; any whole tree; any cut tree or any portion of a tree, not solely consisting of leaves, flowers, fruits, buds, or seeds; bark; cork; laths; hog fuel; sawdust; painted raw wood products; excelsior (wood wool); wood chips; wood mulch; wood shavings; pickets; stakes; shingles; solid wood packing materials; humus; compost; and litter.

*Sealed container; sealable container.* A completely enclosed container designed for the storage or transportation of cargo, and constructed of metal or fiberglass, or other rigid material, providing an enclosure which prevents the entrance or exit of plant pests and is accessed through doors that can be closed and secured with a lock or seal. Sealed (sealable) containers are distinct and separable from the means of conveyance carrying them.

*Solid wood packing material.* 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.

*Specific permit.* A written document issued by APHIS to the applicant in accordance with § 319.40–4 that authorizes importation of articles in accordance with this subpart and specifies or refers to the regulations applicable to the particular importation.

*Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

*Tropical hardwoods.* Hardwood timber species which grow only in tropical climates.

*United States.* All of the States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

*Wood chips.* Wood fragments broken or shredded from any wood.

*Wood mulch.* Bark chips, wood chips, wood shavings, or sawdust intended for use as a protective or decorative ground cover.

#### § 319.40–2 General prohibitions and restrictions; relation to other regulations.

(a) *Permit required.* Except for regulated articles exempted from this requirement by paragraph (c) of this section or § 319.40–3, no regulated article may be imported unless a specific permit has been issued for importation of the regulated article in accordance with § 319.40–4, and unless the regulated article meets all other

applicable requirements of this subpart and any requirements specified by APHIS in the specific permit.

(b) *Importer document; documentation of type, quantity, and origin of regulated articles.* Except for regulated articles exempted from this requirement by paragraph (c) of this section or § 319.40–3, no regulated article may be imported unless it is accompanied by an importer document stating the following information. A certificate that contains this information may be used in lieu of an importer document at the option of the importer:

(1) The genus and species of the tree from which the regulated article was derived;

(2) The country, and locality if known, where the tree from which the regulated article was derived was harvested;

(3) The quantity of the regulated article to be imported;

(4) The use for which the regulated article is imported; and

(5) Any treatments or handling of the regulated article required by this subpart that were performed prior to arrival at the port of first arrival.

(c) *Regulation of articles imported for propagation or human consumption.*

The requirements of this subpart do not apply to regulated articles that are allowed importation in accordance with § 319.19, “Subpart—Citrus Canker and Other Citrus Diseases”; § 319.34, “Subpart—Bamboo Capable of Propagation”; or §§ 319.37 through 319.37–14, “Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products”; or to regulated articles imported for human consumption that are allowed importation in accordance with §§ 319.56 through 319.56–8, “Subpart—Fruits and Vegetables.”

(d) *Regulated articles imported for experimental, scientific or educational purposes.* Any regulated article may be imported without further restriction under this subpart if:

(1) Imported by the United States Department of Agriculture for experimental, scientific, or educational purposes;

(2) Imported pursuant to a Departmental permit issued by APHIS for the regulated article prior to its importation and kept on file at the port of first arrival; and

(3) Imported under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the introduction into the United States of plant pests.

(e) *Designation of additional regulated articles.* An inspector may designate any article as a regulated article by giving written notice of the

designation to the owner or person in possession or control of the article. APHIS will implement rulemaking to add articles designated as regulated articles to the definition of regulated article in § 319.40-1 if importation of the article appears to present a recurring significant risk of introducing plant pests. Inspectors may designate an article as a regulated article after determining that:

(1) The article was imported in the same container or hold as a regulated article;

(2) Other articles of the same type imported from the same country have been found to carry plant pests; or

(3) The article appears to be contaminated with regulated articles or soil.

**§ 319.40-3 General permits; articles that may be imported without a specific permit; articles that may be imported without either a specific permit or an importer document.**

(a) *Canada and Mexico.* APHIS hereby issues a general permit to import articles authorized by this paragraph. Regulated articles from Canada and from states in Mexico adjacent to the United States border, other than regulated articles of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae, may be imported without restriction under this subpart, except that they must be accompanied by an importer document stating that the regulated articles are derived from trees harvested in, and have never been moved outside, Canada or states in Mexico adjacent to the United States border, and except that they are subject to the inspection and other requirements in § 319.40-9.

(b) *Solid wood packing materials—(1) Free of bark; used with non-regulated articles.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Solid wood packing materials that are completely free of bark and are in actual use at the time of importation as packing materials for articles which are not regulated articles may be imported without restriction under this subpart, except that:

(i) The solid wood packing materials are subject to the inspection and other requirements in § 319.40-9; and

(ii) The solid wood packing materials must be accompanied at the time of importation by an importer document, stating that the solid wood packing materials are totally free from bark, and apparently free from live plant pests.

(2) *Free of bark; used with regulated articles.* APHIS hereby issues a general permit to import regulated articles

authorized by this paragraph. Solid wood packing materials that are completely free of bark and are in actual use at the time of importation as packing materials for regulated articles may be imported without restriction under this subpart, except that:

(i) The solid wood packing materials are subject to the inspection and other requirements in § 319.40-9;

(ii) The solid wood packing materials must be accompanied at the time of importation by an importer document, stating that the solid wood packing materials are totally free from bark, and apparently free from live plant pests; and

(iii) The solid wood packing materials must be accompanied at the time of importation by an importer document, stating that the solid wood packing materials have been heat treated, fumigated, or treated with preservatives in accordance with § 319.40-7, or meet all the importation and entry conditions required for the regulated article the solid wood packing material is used to move.

(3) *Not free of bark; used with regulated or nonregulated articles.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Solid wood packing materials that are not completely free of bark and are in actual use as packing at the time of importation may be imported without restriction under this subpart, except that:

(i) The solid wood packing materials are subject to the inspection and other requirements in § 319.40-9;

(ii) The solid wood packing materials must be accompanied at the time of importation by an importer document, stating that the solid wood packing materials have been heat treated, fumigated, or treated with preservatives in accordance with § 319.40-7.

(4) *Pallets moved as cargo.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Pallets that are completely free of bark and that are not in actual use as packing at the time of importation (i.e., pallets moved as cargo) may be imported without restriction under this subpart, except that:

(i) The pallets are subject to the inspection and other requirements in § 319.40-9; and

(ii) The pallets are accompanied by an importer document stating that the pallets were previously eligible for importation in accordance with paragraph (b) of this section and have not had wood added to them since that use. Solid wood packing materials other than pallets that are imported as cargo

must be imported in accordance with the requirements of this subpart for raw lumber.

(c) *Loose wood packing materials.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Loose wood packing materials (whether in use as packing or imported as cargo) that are dry may be imported subject to the inspection and other requirements in § 319.40-9 and without further restriction under this subpart.

(d) *Bamboo timber.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Bamboo timber which is free of leaves and seeds and has been sawn or split lengthwise and dried may be imported subject to the inspection and other requirements in § 319.40-9 and without further restriction under this subpart.

(e) *Regulated articles the permit process has determined to present no plant pest risk.* Regulated articles for which a specific permit has been issued in accordance with § 319.40-4(b)(2)(i) may be imported without other restriction under this subpart, except that they are subject to the inspection and other requirements in § 319.40-9.

**§ 319.40-4 Application for a permit to import regulated articles; issuance and withdrawal of permits.**

(a) *Application procedure.* A written application for a permit<sup>1</sup> must be submitted to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Port Operations Permit Unit, 4700 River Road Unit 136, Riverdale, MD 20737-1236. The completed application must include the following information:

(1) The specific type of regulated article to be imported, including the genus and species name of the tree from which the regulated article was derived;

(2) Country, and locality if known, where the tree from which the regulated article was derived was harvested;

(3) The quantity of the regulated article to be imported;

(4) A description of any processing, treatment or handling of the regulated article to be performed prior to importation, including the location where any processing or treatment was or will be performed and the names and dosage of any chemicals employed in treatments;

<sup>1</sup> Application forms for permits are available without charge from the Administrator, c/o the Permit Unit, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 4700 River Road, Riverdale, MD 20737, or local offices of Plant Protection and Quarantine, which are listed in telephone directories.

(5) A description of any processing, treatment, or handling of the regulated article intended to be performed following importation, including the location where any processing or treatment will be performed and the names and dosage of any chemicals employed in treatments;

(6) Whether the regulated article will or will not be imported in a sealed container or in a hold;

(7) The means of conveyance to be used to import the regulated article;

(8) The intended port of first arrival in the United States of the regulated article, and any subsequent ports in the United States at which regulated articles may be unloaded;

(9) The destination and general intended use of the regulated article;

(10) The name and address of the applicant and, if the applicant's address is not within the United States, the name and address of an agent in the United States whom the applicant names for acceptance of service of process; and

(11) A statement certifying the applicant as the importer of record.

(b) *Review of application and issuance of permit.* After receipt and review of the application, APHIS shall determine whether it appears that the regulated article at the time of importation will meet either the specific importation requirements in § 319.40-5 or the universal importation requirements in § 319.40-6.

(1) If it appears that the regulated article proposed for importation will meet the requirements of either § 319.40-5 or § 319.40-6, a permit stating the applicable conditions for importation under this subpart shall be issued for the importation of the regulated article identified in the application.

(2) If it appears that the regulated article proposed for importation will not meet the requirements of either § 319.40-5 or § 319.40-6 because these sections do not address the particular regulated article identified in the application, APHIS shall review the application by applying the plant pest risk assessment standards specified in § 319.40-11.

(i) If this review reveals that importation of the regulated article under a permit and subject to the inspection and other requirements in § 319.40-9, but without any further conditions, will not result in the introduction of plant pests into the United States, a permit for importation of the regulated article shall be issued. The permit may only be issued in unique and unforeseen circumstances

when the importation of the regulated article is not expected to recur.

(ii) If this review reveals that the regulated article may be imported under conditions that would reduce the plant pest risk to an insignificant level, APHIS may implement rulemaking to add the additional conditions to this subpart, and after the regulations are effective, may issue a permit for importation of the regulated article.

(3) No permit will be issued to an applicant who has had a permit withdrawn under paragraph (d) of this section during the 12 months prior to receipt of the permit application by APHIS, unless the withdrawn permit has been reinstated upon appeal.

(c) *Permit does not guarantee eligibility for import.* Even if a permit has been issued for the importation of a regulated article, the regulated article may be imported only if all applicable requirements of this subpart are met and only if an inspector at the port of first arrival determines that no emergency measures pursuant to the Federal Plant Pest Act or other measures pursuant to the Plant Quarantine Act are necessary with respect to the regulated article.<sup>2</sup>

(d) *Denial and withdrawal of permits.* Any permit which has been issued may be withdrawn by an inspector or the Administrator if he or she determines that the person to whom the permit was issued has violated any requirement of this subpart. If the withdrawal is oral, the decision to withdraw the permit and the reasons for the withdrawal of the permit shall be confirmed in writing as promptly as circumstances permit. Any person whose permit has been denied or withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the permit was wrongfully

<sup>2</sup> Section 105(a) of the Federal Plant Pest Act (7 U.S.C. 150dd(a)) provides, among other things, that the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or dispose of, in such manner as he deems appropriate, subject to section 105(d) of the Federal Plant Pest Act (7 U.S.C. 150dd(d)), any product or article, including any article subject to this subpart, which is moving into or through the United States, and which he has reason to believe is infested with any such plant pest at the time of the movement, or which has moved into the United States, and which he has reason to believe was infested with any such plant pest at the time of the movement. Section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and section 107 of the Federal Plant Pest Act (7 U.S.C. 150ff) also authorize measures against regulated articles which are not in compliance with this subpart.

denied or withdrawn. The Administrator shall grant or deny the appeal, in writing, stating the reasons for granting or denying the appeal as promptly as circumstances permit. If there is a conflict as to any material fact and the person from whom the permit is withdrawn requests a hearing, a hearing shall be held to resolve the conflict. Rules of practice concerning the hearing shall be adopted by the Administrator.

#### § 319.40-5 Importation and entry requirements for specified articles.

(a) *Bamboo timber.* Bamboo timber consisting of whole culms or canes may be imported into Guam or the Northern Mariana Islands subject to inspection and other requirements of § 319.40-9. Bamboo timber consisting of whole culms or canes that are completely dry as evidenced by lack of moisture in node tissue may be imported into any part of the United States subject to inspection and other requirements of § 319.40-9.

(b) *Monterey pine logs and lumber from Chile and New Zealand; Douglas-fir logs and lumber from New Zealand—*  
(1) *Logs.* (i) *Requirements prior to importation.* Monterey or Radiata pine (*Pinus radiata*) logs from Chile or New Zealand and Douglas-fir (*Pseudotsuga menziesii*) logs from New Zealand that are accompanied by a certificate stating that the logs meet the requirements of paragraph (b)(1)(i) (A) through (D) of this section, and that are consigned to a facility in the United States that operates in accordance with § 319.40-8, may be imported in accordance with paragraphs (b)(1)(i)(A) through (b)(1)(iii) of this section.

(A) The logs must be from live healthy trees which are apparently free of plant pests, plant pest damage, and decay organisms.

(B) The logs must be debarked in accordance with § 319.40-7(b) prior to fumigation.

(C) The logs and any solid wood packing materials to be used with the logs during shipment to the United States must be fumigated in accordance with § 319.40-7(f)(1), within 45 days following the date the trees are felled and prior to arrival of the logs in the United States, in the holds or in sealable containers. Fumigation must be conducted in the same sealable container or hold in which the logs and solid wood packing materials are exported to the United States.

(D) During shipment to the United States, no other regulated article is permitted on the means of conveyance with the logs, unless the logs and the other regulated articles are in separate

holds or separate sealed containers, or, if the logs and other regulated articles are mixed in a hold or sealed container, the other regulated articles either have been heat treated with moisture reduction in accordance with § 319.40-7(d), or have been fumigated in the hold or sealable container in accordance with paragraph (b)(1)(i)(C) of this section.

(ii) *Requirements upon arrival in the United States.* The following requirements apply upon arrival of the logs in the United States.

(A) The logs must be kept segregated from other regulated articles from the time of discharge from the means of conveyance until the logs are completely processed at a facility in the United States that operates under a compliance agreement in accordance with § 319.40-8.

(B) The logs must be moved from the port of first arrival to the facility that operates under a compliance agreement in accordance with § 319.40-8 by as direct a route as reasonably possible.

(iii) *Requirements at the processing facility.* The logs must be consigned to a facility operating under a compliance agreement in accordance with § 319.40-8 that includes the following requirements:

(A) Logs or any products generated from logs, including lumber, must be heat treated in accordance with § 319.40-7(c), or heat treated with moisture reduction in accordance with § 319.40-7(d).

(B) The logs, including sawdust, wood chips, or other products generated from the logs in the United States, must be processed in accordance with paragraph (b)(1)(iii) of this section within 60 days from the time the logs are released from the port of first arrival.

(C) Sawdust, wood chips, and waste generated by sawing or processing the logs must be disposed of by burning, heat treatment in accordance with § 319.40-7(c), heat treatment with moisture reduction in accordance with § 319.40-7(d), or other processing that will destroy any plant pests associated with the sawdust, wood chips, and waste. Composting and use of the sawdust, wood chips, and waste as mulch are prohibited unless composting and use as mulch are preceded by fumigation in accordance with § 319.40-7(f)(3), heat treatment in accordance with § 319.40-7(c), or heat treatment with moisture reduction in accordance with § 319.40-7(d). Wood chips, sawdust, and waste may be moved in enclosed trucks for processing at another facility operating under a compliance agreement in accordance with § 319.40-8.

(2) *Raw lumber.* Raw lumber, including solid wood packing materials imported as cargo, from Chile or New Zealand derived from Monterey or Radiata pine (*Pinus radiata*) logs and raw lumber from New Zealand derived from Douglas-fir (*Pseudotsuga menziesii*) logs may be imported in accordance with paragraphs (b)(2) (i) and (ii) of this section.

(i) During shipment to the United States, no other regulated article (other than solid wood packing materials) is permitted on the means of conveyance with the raw lumber, unless the raw lumber and the other regulated articles are in separate holds or separate sealed containers; *Except for* mixed shipments of logs and raw lumber fumigated in accordance with § 319.40-7(f)(2) and moved in accordance with paragraph (b)(1)(i)(D) of this section. Raw lumber on the vessel's deck must be in a sealed container.

(ii) The raw lumber must be consigned to a facility operating under a compliance agreement in accordance with § 319.40-8 that requires the raw lumber to be heat treated in accordance with § 319.40-7(c) or heat treated with moisture reduction in accordance with § 319.40-7(d) before any cutting, planing, or sawing of the raw lumber, and within 30 days from the time the lumber is released from the port of first arrival.

(c) *Tropical hardwoods.—(1) Debarked.* Tropical hardwood logs and lumber that have been debarked in accordance with § 319.40-7(b) may be imported subject to the inspection and other requirements of § 319.40-9.

(2) *Not debarked.* Tropical hardwood logs that have not been debarked may be imported if fumigated in accordance with § 319.40-7(f)(1) prior to arrival in the United States.

(3) *Not debarked; small lots.* Tropical hardwood logs that have not been debarked may be imported into the United States, other than into Hawaii, Puerto Rico, or the Virgin Islands of the United States, if imported in a lot of 15 or fewer logs and subject to the inspection and other requirements of § 319.40-9.

(d) *Temperate hardwoods.* Temperate hardwood logs and lumber (with or without bark) from all places except places in Asia that are east of 60° East Longitude and north of the Tropic of Cancer may be imported if fumigated in accordance with § 319.40-7(f) prior to arrival in the United States and subject to the inspection and other requirements of § 319.40-9.

(e) *Regulated articles associated with exclusively tropical climate pests.* Regulated articles that have been

identified by a plant pest risk assessment as associated solely with plant pests that can successfully become established only in tropical or subtropical climates may be imported if:

(1) The regulated article is imported only to a destination in the continental United States; and,

(2) the regulated article is not imported into any tropical or subtropical areas of the United States specified in the permit.

(f) Cross-ties (railroad ties) from all places except places in Asia that are east of 60° East Longitude and north of the Tropic of Cancer may be imported if completely free of bark and accompanied by an importer document stating that the cross-ties will be pressure treated within 30 days following the date of importation.

#### § 319.40-6 Universal importation options.

(a) *Logs.* Logs may be imported if prior to importation the logs have been debarked in accordance with § 319.40-7(b) and heat treated in accordance with § 319.40-7(c). During the entire interval between treatment and export, the logs must be stored and handled in a manner which excludes any access to the logs by plant pests.

(b) *Lumber.—(1) Heat treated or heat treated with moisture reduction.* Lumber that prior to importation has been heat treated in accordance with § 319.40-7(c), or heat treated with moisture reduction in accordance with § 319.40-7(d), may be imported in accordance with paragraphs (b)(1) (i) and (ii) of this section.

(i) During shipment to the United States, no other regulated article (other than solid wood packing materials) is permitted on the means of conveyance with the lumber, unless the lumber and the other regulated articles are in separate holds or separate sealed containers, or, if the lumber and other regulated articles are mixed in a hold or sealed container, all the regulated articles have been heat treated in accordance with § 319.40-7(c), or heat treated with moisture reduction in accordance with § 319.40-7(d). Lumber on the vessel's deck must be in a sealed container, unless it has been heat treated with moisture reduction in accordance with § 319.40-7(d).

(ii) If lumber has been heat treated in accordance with § 319.40-7(c), that fact must be stated on the importer document, or by a permanent marking on each piece of lumber in the form of the letters "HT" or the words "Heat Treated." If lumber has been heat treated with moisture reduction in accordance with § 319.40-7(d), that fact must be stated on the importer

document, or by a permanent marking, on each piece of lumber or on the cover of bundles of lumber, in the form of the letters "KD" or the words "Kiln Dried."

(2) *Raw lumber.* Raw lumber, including solid wood packing materials imported as cargo, from all places except places in Asia that are wholly east of 60° East Longitude and north of the Tropic of Cancer may be imported in accordance with paragraphs (b)(2) (i) and (ii) of this section.

(i) During shipment to the United States, no other regulated article (other than solid wood packing materials) is permitted on the means of conveyance with the raw lumber, unless the raw lumber and the other regulated articles are in separate holds or separate sealed containers. Raw lumber on the vessel's deck must be in a sealed container.

(ii) The raw lumber must be consigned to a facility operating under a compliance agreement in accordance with § 319.40-8 that requires the raw lumber to be heat treated in accordance with § 319.40-7(c) or heat treated with moisture reduction in accordance with § 319.40-7(d), within 30 days from the time the lumber is released from the port of first arrival. Heat treatment must be completed before any cutting, planing, or sawing of the raw lumber.

(c) *Wood chips and bark chips.* Wood chips and bark chips from any place except countries in Asia that are wholly east of 60° East Longitude and wholly or in part north of the Tropic of Cancer may be imported in accordance with this paragraph.

(1) The wood chips or bark chips must be accompanied by an importer document stating that the wood chips or bark chips were either:

(i) Derived from live, healthy, tropical species of plantation-grown trees grown in tropical areas; or

(ii) Fumigated with methyl bromide in accordance with § 319.40-7(f)(3), heat treated in accordance with § 319.40-7(c), or heat treated with moisture reduction in accordance with § 319.40-7(d).

(2) During shipment to the United States, no other regulated articles (other than solid wood packing materials) are permitted in the holds or sealed containers carrying the wood chips or bark chips. Wood chips or bark chips on the vessel's deck must be in a sealed container; *Except that:* If the wood chips or bark chips are derived from live, healthy, plantation-grown trees in tropical areas, they may be shipped on deck if no other regulated articles are present on the vessel, and the wood chips or bark chips are completely covered by a tarpaulin during the entire journey directly to the United States.

(3) The wood chips or bark chips must be free from rot at the time of importation, unless accompanied by an importer document stating that the entire lot was fumigated with methyl bromide in accordance with § 319.40-7(f)(3), heat treated in accordance with § 319.40-7(c), or heat treated with moisture reduction in accordance with § 319.40-7(d).

(4) Wood chips or bark chips imported in accordance with this paragraph must be consigned to a facility operating under a compliance agreement in accordance with § 319.40-8. The wood chips or bark chips must be burned, heat treated in accordance with § 319.40-7(c), heat treated with moisture reduction in accordance with § 319.40-7(d), or otherwise processed in a manner that will destroy any plant pests associated with the wood chips or bark chips, within 30 days of arrival at the facility. If the wood chips or bark chips are to be used for mulching or composting, they must first be fumigated in accordance with § 319.40-7(f)(3), heat treated in accordance with § 319.40-7(c), or heat treated with moisture reduction in accordance with § 319.40-7(d).

(d) *Wood mulch, humus, compost, and litter.* Wood mulch, humus, compost, and litter may be imported if accompanied by an importer document stating that the wood mulch, humus, compost, or litter was fumigated in accordance with § 319.40-7(f)(3), heat treated in accordance with § 319.40-7(c), or heat treated with moisture reduction in accordance with § 319.40-7(d).

(e) *Cork and bark.* Cork and cork bark, cinnamon bark, and other bark to be used for food, manufacture of medicine, or chemical extraction may be imported if free from rot at the time of importation and subject to the inspection and other requirements of § 319.40-9.

#### § 319.40-7 Treatments and safeguards.

(a) *Certification of treatments or safeguards.* If APHIS determines that a document required for the importation of regulated articles is inaccurate, the regulated articles which are the subject of the certificate or other document shall be refused entry into the United States. In addition, APHIS may determine not to accept any further certificates for the importation of regulated articles in accordance with this subpart from a country in which an inaccurate certificate is issued, and APHIS may determine not to allow the importation of any or all regulated articles from any such country, until corrective action acceptable to APHIS

establishes that certificates issued in that country will be accurate.

(b) *Debarking.* Except for raw lumber, no more than 2 percent of the surface of all regulated articles in a lot may retain bark, with no single regulated article retaining bark on more than 5 percent of its surface. For raw lumber, debarking must remove 100 percent of the bark.

(c) *Heat treatment.* Heat treatment must be performed only at a facility where APHIS or an inspector authorized by the Administrator and the national government of the country in which the facility is located has inspected the facility and determined that its operation complies with the standards of this paragraph. Heat treatment procedures may employ steam, hot water, kilns, exposure to microwave energy, or any other method (e.g., the hot water and steam techniques used in veneer production) that raises the temperature of the center of each treated regulated article to at least 71.1 °C and maintains the regulated article at that center temperature for at least 75 minutes. For regulated articles heat treated prior to arrival in the United States, during the entire interval between treatment and export the regulated article must be stored, handled, or safeguarded in a manner which excludes any infestation of the regulated article by plant pests.

(d) *Heat treatment with moisture reduction.* (1) Heat treatment with moisture reduction may employ:

(i) Kiln drying conducted in accordance with the schedules prescribed for the regulated article in the Dry Kiln Operator's Manual, Agriculture Handbook 188, which is incorporated by reference at § 300.1 of this chapter; or,

(ii) Dry heat, exposure to microwave energy, or any other method that raises the temperature of the center of each treated regulated article to at least 71.1 °C, maintains the regulated articles at that center temperature for at least 75 minutes, and reduces the moisture content of the regulated article to 20 percent or less as measured by an electrical conductivity meter.

(2) For regulated articles heat treated with moisture reduction prior to arrival in the United States, during the entire interval between treatment and export the regulated article must be stored, handled, or safeguarded in a manner which excludes any infestation of the regulated article by plant pests.

(e) *Surface pesticide treatments.* All United States Environmental Protection Agency registered surface pesticide treatments are authorized for regulated articles imported in accordance with this subpart. Surface pesticide

treatments must be conducted in accordance with label directions approved by the United States Environmental Protection Agency. When used on heat treated logs, a surface pesticide treatment must be first applied within 48 hours following heat treatment. The surface pesticide treatment must be repeated at least every 30 days during storage of the regulated article, with the final treatment occurring no more than 30 days prior to departure of the means of conveyance that carries the regulated articles to the United States.

(f) *Methyl bromide fumigation.* The following minimum standards for methyl bromide fumigation treatment are authorized for the regulated articles listed in paragraphs (f)(1) through (f)(3) of this section. Any method of fumigation that meets or exceeds the specified temperature/time/concentration products is acceptable.

(1) *Logs.* (i) *T-312 schedule.* The entire log and the ambient air must be at a temperature of 5 °C or above throughout fumigation. The fumigation must be conducted using schedule T-312 contained in the Treatment Manual. In lieu of the schedule T-312 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 240 g/m<sup>3</sup> with exposure and concentration levels adequate to provide a concentration-time product of at least 17,280 gram-hours calculated on the initial methyl bromide concentration.

(ii) *T-404 schedule.* The entire log and the ambient air must be at a temperature of 5 °C or above throughout fumigation. The fumigation must be conducted using schedule T-404 contained in the Treatment Manual. In lieu of the schedule T-404 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 120 g/m<sup>3</sup> with exposure and concentration levels adequate to provide a concentration-time product of at least 1920 gram-hours calculated on the initial methyl bromide concentration.

(2) *Lumber.* The lumber and the ambient air must be at a temperature of 5 °C or above throughout fumigation. The fumigation must be conducted using schedule T-404 contained in the Treatment Manual. In lieu of the schedule T-404 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 120 g/m<sup>3</sup> with exposure and concentration levels adequate to provide a concentration-time product of at least 1920 gram-hours calculated on the initial methyl bromide concentration.

(3) *Regulated articles other than logs or lumber.* (i) If the ambient air and the regulated articles other than logs or lumber are at a temperature of 21 °C or above throughout fumigation, the fumigation must be conducted using schedule T-404 contained in the Treatment Manual. In lieu of the schedule T-404 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 48 g/m<sup>3</sup> with exposure and concentration levels adequate to provide a concentration-time product of at least 760 gram-hours calculated on the initial methyl bromide concentration.

(ii) If the ambient air and the regulated articles other than logs or lumber are at a temperature of 4.5–20.5 °C throughout fumigation, the fumigation must be conducted using schedule T-404 contained in the Treatment Manual. In lieu of the schedule T-404 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 120 g/m<sup>3</sup> with exposure and concentration levels adequate to provide a concentration-time product of at least 1920 gram-hours calculated on the initial methyl bromide concentration.

(g) *Preservatives.* All preservative treatments that use a preservative product that is registered by the United States Environmental Protection Agency are authorized for treatment of regulated articles imported in accordance with this subpart. Preservative treatments must be performed in accordance with label directions approved by the United States Environmental Protection Agency.

#### § 319.40-8 Processing at facilities operating under compliance agreements.

(a) Any person who operates a facility in which imported regulated articles are processed may enter into a compliance agreement to facilitate the importation of regulated articles under this subpart. The compliance agreement shall specify the requirements necessary to prevent spread of plant pests from the facility, requirements to ensure the processing method effectively destroys plant pests, and the requirements for the application of chemical materials in accordance with the Treatment Manual. The compliance agreement shall also state that inspectors must be allowed access to the facility to monitor compliance with the requirements of the compliance agreement and of this subpart. Compliance agreement forms may be obtained from the Administrator or an inspector.

(b) Any compliance agreement may be canceled by the inspector who is supervising its enforcement, orally or in writing, whenever the inspector finds that the person who entered into the compliance agreement has failed to comply with the conditions of the compliance agreement. If the cancellation is oral, the decision to cancel the compliance agreement and the reasons for cancellation of the compliance agreement shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been canceled may appeal the decision in writing to the Administrator within 10 days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. The Administrator shall grant or deny the appeal, in writing, stating the reasons for granting or denying the appeal, as promptly as circumstances permit. If there is a conflict as to any material fact and the person whose compliance agreement has been canceled requests a hearing, a hearing shall be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

#### § 319.40-9 Inspection and other requirements at port of first arrival.

(a) *Procedures for all regulated articles.* (1) All imported regulated articles shall be inspected at the port of first arrival. If the inspector finds signs of plant pests on or in the regulated article, or finds that the regulated article may have been associated with other articles infested with plant pests, the regulated article shall be cleaned or treated as required by an inspector, and the regulated article and any products of the regulated article shall also be subject to reinspection, cleaning, and treatment at the option of an inspector at any time and place before all applicable requirements of this subpart have been accomplished.

(2) Regulated articles shall be assembled for inspection at the port of first arrival, or at any other place prescribed by an inspector, at a place and time and in a manner designated by an inspector.

(3) If an inspector finds that an imported regulated article is so infested with a plant pest that, in the judgment of the inspector, the regulated article cannot be cleaned or treated, or contains soil or other prohibited contaminants, the entire lot may be refused entry into the United States.

(4) No person shall move any imported regulated article from the port

of first arrival unless and until an inspector notifies the person, in writing or through an electronic database, that the regulated article:

(i) Is in compliance with all applicable regulations and has been inspected and found to be apparently free of plant pests;<sup>3</sup> or,

(ii) Has been inspected and the inspector requires reinspection, cleaning, or treatment of the regulated article at a place other than the port of first arrival.

(b) *Notice of arrival; visual examination of regulated articles at port of first arrival.* (1) At least 7 days prior to the expected date of arrival in the United States of a shipment of regulated articles imported in accordance with this subpart, the permittee or his or her agent must notify the APHIS Officer in Charge at the port of arrival of the date of expected arrival. The address and telephone number of the APHIS Officer in Charge will be specified in any specific permit issued by APHIS<sup>4</sup>. This notice may be in writing or by telephone. The notice must include the number of any specific permit issued for the regulated articles; the name, if any, of the means of conveyance carrying the regulated articles; the type and quantity of the regulated articles; the expected date of arrival; the country of origin of the regulated articles; the name and the number, if any, of the dock or area where the regulated articles are to be unloaded; and the name of the importer or broker at the port of arrival.

(2) Imported regulated articles which have been debarked in accordance with § 319.40-7(b) and can be safely and practically inspected will be visually examined for plant pests by an inspector at the port of first arrival. If plant pests are found on or in the regulated articles or if the regulated article cannot be safely and practically inspected, the regulated articles must be treated in accordance with the Treatment Manual.

(c) *Marking and identity of regulated articles.* Any regulated article, at the time of importation shall bear on the outer container (if in a container), on the regulated article (if not in a container), or on a document accompanying the regulated article the following information:

(1) General nature and quantity of the regulated articles;

(2) Country and locality, if known, where the tree from which the regulated article was derived was harvested;

(3) Name and address of the person importing the regulated article;

(4) Name and address of consignee of the regulated article;

(5) Identifying shipper's mark and number; and

(6) Number of the permit (if one was issued) authorizing the importation of the regulated article into the United States.

(d) *Sampling for plant pests at port of first arrival.* Any imported regulated article may be sampled for plant pests at the port of first arrival. If an inspector finds it necessary to order treatment of a regulated article at the port of first arrival, any sampling will be done prior to treatment.

#### § 319.40-10 Costs and charges.

The services of an inspector during regularly assigned hours of duty and at the usual places of duty shall be furnished without cost to the importer.<sup>5</sup> The inspector may require the importer to furnish any labor, chemicals, packing materials, or other supplies required in handling regulated articles under this subpart. APHIS will not be responsible for any costs or charges, other than those identified in this section.

#### § 319.40-11 Plant pest risk assessment standards.

When evaluating a request to import a regulated article not allowed importation under this subpart, or a request to import a regulated article under conditions other than those prescribed by this subpart, APHIS will conduct the following analysis to determine the plant pest risks associated with each requested importation in order to determine whether or not to issue a permit under this subpart or to propose regulations establishing conditions for the importation into the United States of the regulated article.

(a) *Collecting commodity information.* (1) APHIS will evaluate the application for information describing the regulated article and the origin, processing, treatment, and handling of the regulated article; and

(2) APHIS will evaluate history of past plant pest interceptions or introductions (including data from foreign countries) associated with the regulated article.

(b) *Cataloging quarantine pests.* For the regulated article specified in an application, APHIS will determine what

plant pests or potential plant pests are associated with the type of tree from which the regulated article was derived, in the country and locality from which the regulated article is to be exported. A plant pest that meets one of the following criteria is a quarantine pest and will be further evaluated in accordance with paragraph (c) of this section:

(1) Non-indigenous plant pest not present in the United States;

(2) Non-indigenous plant pest, present in the United States and capable of further dissemination in the United States;

(3) Non-indigenous plant pest that is present in the United States and has reached probable limits of its ecological range, but differs genetically from the plant pest in the United States in a way that demonstrates a potential for greater damage potential in the United States;

(4) Native species of the United States that has reached probable limits of its ecological range, but differs genetically from the plant pest in the United States in a way that demonstrates a potential for greater damage potential in the United States; or

(5) Non-indigenous or native plant pest that may be able to vector another plant pest that meets one of the criteria in paragraphs (b)(1) through (4) of this section.

(c) *Determining which quarantine pests to assess.* (1) APHIS will divide quarantine pests identified in paragraph (b) of this section into groups depending upon where the plant pest is most likely to be found. The plant pests would be grouped as follows:

(i) Plant pests found on the bark;

(ii) Plant pests found under the bark;

and

(iii) Plant pests found in the wood.

(2) APHIS will subdivide each of the groups in paragraph (c)(1) of this section into associated taxa.

(3) APHIS will rank the plant pests in each group in paragraph (c)(2) of this section according to plant pest risk, based on the available biological information and demonstrated plant pest importance.

(4) APHIS will identify any plant pests ranked in paragraph (c)(3) of this section for which plant pest risk assessments have previously been performed in accordance with this section. APHIS will conduct individual plant pest risk assessments for the remaining plant pests, starting with the highest ranked plant pest(s) in each group.

(5) The number of plant pests in each group to be evaluated through individual plant pest risk assessment will be based on biological similarities

<sup>3</sup> Certain regulated articles may also be subject to §§ 319.56 through 319.58-8, "Subpart—Fruits and Vegetables," or to Noxious Weed Act regulations under part 360 of this chapter, or to Endangered Species Act regulations under parts 355 and 356 of this chapter and 50 CFR parts 17 and 23.

<sup>4</sup> A list of APHIS Officers in Charge may be obtained from the Administrator, c/o Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, MD 20737.

<sup>5</sup> Provisions relating to costs for other services of an inspector are contained in part 354 of this chapter.

of members of the group as they relate to measures taken in connection with the importation of the regulated article to mitigate the plant pest risk associated with the regulated article. For example, if the plant pest risk assessment for the highest ranked plant pest indicates a need for a mitigation measure that would result in the same reduction of risk for other plant pests ranked in the group, the other members need not be subjected to individual plant pest risk assessment.

(d) *Conducting individual plant pest risk assessments.* APHIS will evaluate each of the plant pests identified in paragraph (c)(4) of this section by:

(1) Estimation of the probability of the plant pest being on, with, or in the regulated article at the time of importation;

(2) Estimation of the probability of the plant pest surviving in transit on the regulated article and entering the United States undetected;

(3) Estimation of the probability of the plant pest colonizing once it has entered into the United States;

(4) Estimation of the probability of the plant pest spreading beyond any colonized area; and

(5) Estimation of the damage to plants that could be expected upon introduction and dissemination within the United States of the plant pest.

(e) *Estimating unmitigated overall plant pest risk.* APHIS will develop an estimation of the overall plant pest risk associated with importing the regulated article based on compilation of individual plant pest risk assessments performed in accordance with paragraph (d) of this section.

(f) *Evaluating available requirements to determine whether they would allow safe importation of the regulated article.* The requirements of this subpart, and any other requirements relevant to the regulated article and plant pests involved, will be compared with the individual plant pest risk assessments in order to determine whether particular conditions on the importation of the regulated article would reduce the plant pest risk to an insignificant level. If APHIS determines that the imposition of particular conditions on the importation of the regulated article could reduce the plant pest risk to an insignificant level, and determines that sufficient APHIS resources are available to implement or ensure implementation of the conditions, APHIS will implement rulemaking to allow importation of the requested regulated article under the conditions identified by the plant pest risk assessment process.

### Subpart—Packing Materials

#### § 319.69 [Amended]

8. The introductory text to § 319.69 is removed.

9. In § 319.69, paragraph (a), the phrase "On and after July 1, 1933, the" is removed and the word "The" is added in its place.

10. In § 319.69, paragraph (b), the phrase "On and after June 8, 1953, the" is removed and the word "The" is added in its place.

11. In § 319.69, paragraph (b)(3) is removed, and paragraphs (b)(4) and (b)(5) are redesignated as paragraphs (b)(3) and (b)(4), respectively.

#### § 319.69a [Amended]

12. In § 319.69a, paragraph (a) is amended by removing the reference "(b)(1), (3), and (4)" and adding the reference "(b)(1) and (3)" in its place.

Done in Washington, DC, this 19th day of May 1995.

**Terry L. Medley,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 95-12789 Filed 5-24-95; 8:45 am]

BILLING CODE 3410-34-P

### Agricultural Marketing Service

#### 7 CFR Part 946

[FV95-946-2FR]

#### Irish Potatoes Grown in Washington; Establishment of Interest Charge on Overdue Assessment Payments and Clarification of Operating Reserve Authority

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes an interest charge on overdue assessments under the marketing order and clarifies authority for an operating reserve not to exceed approximately two fiscal periods' expenses. This action will contribute to the efficient operation of the order by ensuring that adequate funds are available to cover authorized expenses incurred under the order. This rule was recommended by the State of Washington Potato Committee (Committee), the agency responsible for the local administration of the order.

**EFFECTIVE DATE:** May 25, 1995.

**FOR FURTHER INFORMATION CONTACT:** Dennis L. West, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204-2807; telephone: (503)

326-2724; or James B. Wendland, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, D.C. 20090-6456; telephone: (202) 720-2170.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 113 and Marketing Order No. 946 (7 CFR part 946), both as amended, regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the "order." The order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this final rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially