

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 02–097–2]

#### Importation of Eucalyptus Logs, Lumber, and Wood Chips From South America

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations that govern the importation of logs, lumber, and other unmanufactured wood articles into the United States to allow wood chips derived from temperate species of *Eucalyptus* from South America to be treated with a surface pesticide prior to importation as an alternative to the existing treatments. This final rule follows a proposed rule that proposed to amend the regulations to require that logs, lumber, and wood chips of tropical species of *Eucalyptus* from South America be subject to more restrictive entry requirements, including treatment with fumigation with methyl bromide or heat treatment, than those currently in the regulations. In that proposed rule, we also proposed to allow wood chips derived from both tropical and temperate species of *Eucalyptus* from South America to be treated with a surface pesticide prior to importation. Although the more restrictive entry requirements for logs, lumber, and wood chips of tropical species of *Eucalyptus* are still under consideration, this action to allow wood chips of temperate species of *Eucalyptus* to be treated with a surface pesticide is necessary to provide an effective alternative treatment to the domestic wood pulp industry, which is interested in importing temperate wood chips of

*Eucalyptus* from South America, while continuing to protect the United States against the introduction of plant pests.

**EFFECTIVE DATE:** January 15, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Hesham Abuelnaga, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–5334.

#### SUPPLEMENTARY INFORMATION:

##### Background

Logs, lumber, 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. The Animal and Plant Health Inspection Service (APHIS) has implemented regulations to prohibit or restrict the importation of logs, lumber, and other unmanufactured wood articles into the United States from certain parts of the world. These regulations, which are found in “Subpart-Logs, Lumber, and Other Unmanufactured Wood Articles” (7 CFR 319.40–1 through 319.40–11, referred to below as the regulations), are designed to prevent the dissemination of plant pests that are new to or not widely distributed within the United States.

An increased interest in the importation of unmanufactured wood articles into the United States from other countries has led to an increased demand for fast-growing trees, such as those of the genus *Eucalyptus*. The fast growth rate, environmental adaptability, and high quality for pulp production of this genus make it one of the most widely propagated genera of trees in the world. South American governments, including those of Brazil, Argentina, Chile, Peru, and Uruguay, have encouraged the planting of these fast-growing trees. Brazil has the largest area of *Eucalyptus* plantations in the world, with approximately 3 million hectares planted with various species. Wood chips of tropical species of *Eucalyptus* are currently being imported, under certain conditions specified in compliance agreements, by some wood products companies into the United States from South America. Recently, wood products companies in the United States have expressed interest in importing large volumes of temperate

*Eucalyptus* wood chips from South America.

Since these articles have not been widely imported into the United States, APHIS requested that the U.S. Forest Service prepare a pest risk assessment to help determine whether the current regulations would continue to provide an adequate level of protection against the introduction of plant pests potentially associated with *Eucalyptus* species if the wood products industry in the United States began importing wood chips of species of *Eucalyptus* in greater volumes. The evidence in the risk assessment, which can be viewed on the Internet at <http://www.fpl.fs.fed.us/documnts/General.htm>, suggested that additional mitigation measures might be necessary.

On September 15, 2003, we published in the **Federal Register** (68 FR 53910–53915, Docket No. 02–097–1) a proposed rule to amend the regulations to require that logs and lumber of tropical species of *Eucalyptus* from South America be fumigated with methyl bromide or heat treated prior to importation and that wood chips of tropical species of *Eucalyptus* from South America be fumigated with methyl bromide, heat treated, or heat treated with moisture reduction prior to importation. We also proposed to allow wood chips derived from both temperate and tropical species of *Eucalyptus* from South America to be treated with a surface pesticide.

We solicited comments concerning our proposal for 60 days ending on November 14, 2003, and received 11 comments by that date. The comments were submitted by State departments of agriculture, an agricultural quarantine inspector, a university professor, foreign forestry societies, domestic wood products companies, foreign national plant protection organizations, and a member of the public. Seven commenters supported the proposed rule with some changes, and four commenters opposed the proposed rule.

Although the pest risk assessment indicated that additional mitigation measures might be necessary in order to safely import logs, lumber, and wood chips of *Eucalyptus* from South America, at this time, we have only received requests that indicate interest in importing large volumes of wood chips of temperate species of *Eucalyptus* from South America. Because the

current treatments for temperate wood chips, which include fumigation with methyl bromide, heat treatment, and heat treatment with moisture reduction, can be impractical to effectively apply to large volumes of wood chips, we believe that it is necessary to provide an effective, alternative treatment option for those wishing to import larger shipments of wood chips to produce wood pulp for paper.

In the proposed rule, we proposed to allow the use of a surface pesticide treatment as an effective, alternative treatment option for wood chips of both tropical and temperate species of *Eucalyptus*. Currently, tropical wood chips from healthy, plantation-grown trees may be imported without treatment, but must be consigned to a facility operating under a compliance agreement. We are continuing to consider more restrictive entry requirements for wood chips of tropical species of *Eucalyptus*. Until we make a final determination regarding the necessity of additional treatment requirements, however, we will not require that logs, lumber, or wood chips of tropical species of *Eucalyptus* be treated with any of the treatment options discussed in the proposed rule, which included heat treatment, heat treatment with moisture reduction, fumigation with methyl bromide, and surface pesticide treatment. We are allowing the surface pesticide treatment to be used only for wood chips of temperate species of *Eucalyptus* at this time.

The more restrictive entry requirements for logs, lumber, and wood chips of tropical species of *Eucalyptus* from South America are currently still under consideration. All comments that we received regarding the necessity of more restrictive entry requirements for these articles, on the pest risk assessment, on the efficacy of treatments, and all other general comments on the proposed rule will be reviewed and evaluated before any further action is taken related to the importation of these articles.

Since this final rule relates only to the addition of the surface pesticide treatment as an alternative treatment for wood chips of temperate species of *Eucalyptus* from South America, only those comments and portions of comments that pertain specifically to the importation of temperate wood chips and to the surface pesticide treatment as it relates to temperate wood chips will be discussed below. The remaining comments will be discussed in a future rulemaking document.

### Inspection

*Comment:* Treatment of wood chips should not preclude an additional inspection at the port of entry. Inspection at the port of entry is necessary to ensure that the wood chips are free of nematode pathogens associated with *Eucalyptus*.

*Response:* The regulations in § 319.40–9 require all imported regulated articles, which would include wood chips of *Eucalyptus* from South America, to be inspected either at the port of first arrival in the United States or at any other place prescribed by an inspector.

### Efficacy of Treatment

*Comment:* The current treatment options can be impractical for large volumes of wood chips. It is difficult to take concentration readings during the fumigation of wood chips with methyl bromide, heat treatment is difficult because of the bulk nature of the commodity, and heat treatment facilities are usually built for lumber, not wood chips. An effective alternative treatment for wood chips would be fumigation with phosphine.

*Response:* We agree with the commenter's assessment of the current treatment options, however, phosphine treatment is no longer an approved treatment for wood products in the Plant Protection and Quarantine (PPQ) treatment manual. If the commenter wishes to provide research and evidence to demonstrate that this treatment would be an effective alternative option, we would take that research into consideration at that time.

*Comment:* A surface pesticide treatment would be a more desirable mitigation measure for wood chips than heat treatment or fumigation; however, the proposed surface pesticide treatment should be tested on a commercial load of *Eucalyptus* in the southern United States, since the warmer climate there would be similar to the tropical environment in which the potential pests originate. Further, the spray should be tested specifically for pests associated with *Eucalyptus*.

*Response:* Based on the findings of PPQ's Center for Plant Health Science and Technology (CPHST), we believe that the prescribed pesticide spray will be an effective pest mitigation measure for wood chips of temperate species of *Eucalyptus*. Although the potential pests identified in the pest risk assessment differ slightly from those identified for *Pinus radiata* wood chips for which the spray was originally tested, the potential pests associated with *Pinus radiata* are a subset of those

associated with *Eucalyptus* and are of the same family and order. The surface pesticide has proven effective for *Pinus radiata* wood chips, and we believe that it will be effective on temperate *Eucalyptus* wood chips. In addition, as noted previously, all shipments of wood chips will be inspected in accordance with § 319.40–9 to ensure that the wood chips are free of any quarantine pests.

*Comment:* Procedures should be put in place to confirm the proper application of the surface pesticide treatment.

*Response:* Each shipment of wood chips that is treated with the surface pesticide must be accompanied by a certificate stating that the wood chips have been treated in accordance with the regulations in § 319.40–6. In addition to the certificate of treatment, the inspection required under the regulations in § 319.40–9 will ensure that the shipments are free of any quarantine pests. If, at any time, quarantine pests or pathogens are detected, the efficacy and proper application of the treatment will be reevaluated.

*Comment:* The proposed pesticide treatment is too specific and the requirement should include language that allows for alternate, equally effective chemicals or new products. The current rulemaking process can take years to implement change, even if a new treatment, chemical, or product is more effective than the one currently in use.

*Response:* The active ingredients of the fungicide and insecticide components of the surface pesticide treatment are composed of common chemicals combined in a particular formula that has proven highly effective in the treatment of wood chips. If the commenter can provide research and evidence that another chemical or product is equivalent to any of the active ingredients used in the surface pesticide spray, we will consider that evidence. Until further research is done and evaluated, however, we will continue to use the chemicals and the specific formula that have already proven effective. Our policy is to approve specific treatments through rulemaking in order to ensure that all treatments are effective and equivalent.

*Comment:* No justification is given for the use of two disinfectants, didecyl dimethyl ammonium chloride (DDAC) and 3-iodo-2-propynyl butylcarbamate. Treatment with DDAC would be enough.

*Response:* The commenter did not offer any scientific evidence or research to support this comment. Our research indicates that the specific formula given

in the proposed rule is effective and practical for the treatment of wood chips.

*Comment:* The insecticide component of the pesticide is not necessary because insects have a low probability of association with wood chips. The insecticide could have a negative effect on the efficacy of the fungicide component of the pesticide.

*Response:* The pest risk assessment identified all wood products of *Eucalyptus* as presenting a risk for the introduction or dissemination of plant pests. No distinction was made between logs and lumber and wood chips. We will reevaluate the available research and evidence, and any evidence the commenter could provide, to determine whether or not wood chips present a low risk for infestation by arthropod pests. Based on the research that specifically tested this pesticide spray, we agree that the insecticide might have a negative effect on the efficacy of the fungicide, but only after 30 days.<sup>1</sup> In order to ensure the maximum efficacy of both the insecticide and the fungicide, we require retreatment if the wood chips are not exported within 30 days of the initial treatment.

*Comment:* Will the very specific concentrations of active ingredients for each of the fungicides limit the product selection to a specific brand? Are products containing the exact proportions prescribed registered or commercially available at economically feasible prices in potential exporting countries where they would likely be purchased and used? The amounts of chemicals needed to treat a given volume of wood chips is unclear in the specifications in the proposed rule and it might be difficult and cost prohibitive to obtain registrations for these specific formulations of chemicals in foreign countries. The surface pesticide recommendations should be given on the basis of the amount of each of the active ingredients per a specified volume of wood chips in order to allow for some flexibility in the selection of products and to make it possible to more accurately determine the amounts of chemicals needed and the potential environmental impacts of those chemicals.

*Response:* The formula given for the pesticide in the proposed rule lists the ratios of the active ingredients DDAC, 3-iodo-2-propynyl butylcarbamate, and chlorpyrifos that must be present for the pesticide to qualify as an approved treatment according to the regulations in

§ 319.40–7(e). We list the active ingredients because the efficacy of any treatment is dependent on the active ingredients and the formula by which they are combined. Generally, it is not our policy to require specific brands in the regulations because several different brands could have the correct ratio of active ingredients and could be equally effective. We note that this particular pesticide formula has been in use for wood chips from Chile, and exporters have found the ingredients to be readily available and cost effective. The commenter's suggestion that surface pesticide recommendations be given on the basis of the amount of each of the active ingredients needed per a specified volume of wood chips is not practical. The efficacy of this treatment, unlike chemical treatments that involve dipping or fumigating, is based solely on the correct ratio and combination of the active ingredients. As long as the ratios of the chemicals are correct, the dosage can be adjusted to accommodate any volume of wood chips. According to the label instructions on the pesticide, the treatment must be applied to all sides of the wood chips in order to ensure the maximum efficacy. Since the pesticide is sprayed onto the wood chips, it would be extremely difficult, and unnecessary, to require a specific dosage per volume of wood chips.

#### Safety of Importation

*Comment:* The risks of nonnative pest infestation and the toxicity of the chemicals used in the surface pesticide treatment make the importation of wood chips unsafe. The environmental assessment does not adequately consider the potential environmental impact of the chemical treatment on either the country of origin or the United States. The chemicals recommended for use have a long history of safe use in a wide variety of applications, however, these chemicals continue to be described as having moderate to severe toxicity to some. Runoff from the chemicals at the treatment and storage sites and pesticide residue in the ship's holds needs to be addressed. There is a potential for human exposure to chemical residues at the treatment site, on conveyor systems, around storage sites, and transport vehicles, which need to be considered.

*Response:* The commenter did not provide any evidence or scientific studies to support the comment. Based on the evidence presented in the pest risk assessment and the environmental assessment, we believe that the importation of these articles does not present a risk for the introduction or dissemination of plant pests or a risk to

the health of any individuals. The treatments currently in the regulations, and the surface pesticide treatment alternative now being offered, mitigate against nonnative pest infestation. As noted in the environmental assessment, all chemicals to be used in the pesticide treatment are registered with the Environmental Protection Agency (EPA), which evaluates all pesticides for their impact on the environment as part of the registration process. Their evaluations of the pesticides to be used in this treatment indicated that the potential for these pesticides to have a negative impact on the environment is minimal when used according to the label instructions. The environmental assessment, which can be viewed on the Internet at <http://www.aphis.usda.gov/ppd/es/ppdocs.html>, has been amended to address the comments.

*Comment:* The environmental assessment does not include an option for a single component pesticide spray treatment. A fungicide-only treatment would decrease the introduction of chemicals into the environment.

*Response:* As noted previously, based on the available research (Morrell, Freitag, and Silva) and on the findings of CPHST, we believe that a formula with both the insecticide and fungicide components is effective and necessary.

#### Practicality of Additional Conditions

*Comment:* The additional condition to cover the conveyor belt when unloading the chips is not practical because wood chips are unloaded from an ocean vessel using a bucket that drops the wood chips into a hopper that sorts the chips onto a conveyor belt. The hopper cannot be covered due to the fact that the wood chips are dropped into the hopper.

*Response:* This additional safeguarding measure is currently in practice for the importation of *Pinus radiata* wood chips, and there have been no reported problems. The regulations state that the conveyor belt, not the hopper, must be covered to prevent the chips from being blown by the wind and from accidental spillage. We do not believe that this additional condition is impractical.

*Comment:* The time allotted for compliance—45 days after the wood chips arrive at the facility to process the wood chips and to dispose of any fines or unusable wood chips by burning—does not take into account the differing capabilities of different facilities. The allotted amount of time should be specified in each individual compliance agreement. This additional condition is not justified.

*Response:* The commenters did not offer any specific examples or evidence

<sup>1</sup> Morrell, Freitag, and Silva, "Protection of Freshly Cut *Radiata* Pine Chips from Fungal Attack," *Forest Products Journal*, 48(2):57–59.

to support their comments. This additional safeguarding measure is currently in use for *Pinus radiata* wood chips and has proven effective, practical, and reasonable. The safeguard regarding the destruction of fines or unusable chips is in place to further protect against the possibility of the spread of any plant pests associated with the wood chips. If the commenters provide evidence that an extension of time is necessary and that such an extension would not increase the risk of the dissemination of plant pests, we would consider the evidence at that time. However, we believe that this additional safeguarding measure is necessary and justified in order to further protect against the spread of plant pests. In addition, in accordance with the regulations in § 319.40–6(c)(1)(iii), the wood chips must be consigned to a facility in the United States that operates under a compliance agreement in accordance with the regulations in § 319.40–8. The process of entering into a compliance agreement includes site visits by authorized representatives of PPQ to evaluate the capacities of the individual facilities and to determine specific requirements that will prevent the spread of plant pests from that facility. The differing capacities of different facilities are taken into account during the site visits, and authorized representatives work with the individual facilities to ensure compliance with all additional conditions in the regulations.

*Comment:* The wood chips should be treated within 24 hours of the logs being chipped, as required by the regulations, however the statement in the environmental assessment that the pesticide is applied to the wood chips as they are loaded for shipment is not consistent with this requirement. In addition, the requirement to reapply the treatment if more than 30 days elapse between the date of the first application and export is not necessary because the residue of the treatment continues to be effective after 30 days. This requirement may be difficult to comply with at times because of unpredictable delays in harvesting, chipping, or shipping schedules.

*Response:* We agree with the commenter that the statement in the environmental assessment regarding the application of the pesticide to the wood chips as they are loaded for shipment might not always be consistent with the requirement that the wood chips be treated within 24 hours of the logs being chipped, since not all wood chips would be ready for shipment within 24 hours of the logs being chipped. Although this method is used by some

companies that import *Pinus radiata* wood chips from Chile, we do not require all companies to follow this same procedure. The environmental assessment has been amended to correspond with the language in the regulations. Available research indicates that the efficacy of the pesticide spray declines 4 weeks after the initial application.<sup>2</sup> Since the 30-day time limit is necessary to ensure that the spray remains effective, we do not believe that it would be justified to extend this time period. Importers should be aware of this requirement and plan accordingly to the best of their ability.

*Comment:* The designated 45-day period between the time the trees are felled and the time the wood chips are exported should be extended to allow 90 days for the trees to be felled and chipped and an additional 60 days for the chips to be exported. The shorter interval of time results in the processing and movement of the wood while it is still green; piles of green wood chips rapidly achieve high temperatures and humidity conditions, which lead to the development of fungi and bacteria. In addition, once the wood chips are stored in piles, they retain water, thus increasing the weight of the articles and the subsequent transportation costs. Since this additional condition is based on the post-harvest management practices of Chile, it does not take into account the differences in the post-harvest management practices, climate, and logging conditions in other countries or of the pests specific to *Eucalyptus*.

*Response:* Our requirement that no more than 45 days elapse between the time the trees are felled to the time the wood chips are exported reduces the opportunity for the wood chips to be exposed to plant pests. In addition, as noted previously, available research indicates that the efficacy of the surface pesticide treatment declines 4 weeks after application, so any extension of this time requirement would increase the likelihood that the surface pesticide treatment would have to be reapplied, which could be economically burdensome. This time requirement has proven practical and effective for the importation of other wood chips. The Wood Import Pest Risk Assessment and Mitigation Evaluation Team that conducted the pest risk assessment visited several countries in South America, including Argentina, Brazil, Chile, and Uruguay where most of the

*Eucalyptus* plantations are located. These site visits provided information about the various post-harvest management practices, logging, and climate conditions that APHIS took into consideration when developing the proposed rule. We believe that the designated 45-day period between the time the trees are felled and the time the wood chips are exported is practical and effective for wood chips.

*Comment:* The additional condition that no other regulated articles will be permitted in the holds or sealed containers carrying the wood chips during shipment is unnecessary.

*Response:* The requirement that no other regulated articles be allowed in the holds or sealed containers carrying the wood chips during shipment helps control the possible movement of plant pests from other regulated articles to the wood chips. Given that, we believe this additional safeguarding measure is necessary.

*Comment:* The additional conditions related to the unloading, transporting, and storing of the wood chips in the United States are not justified, given the minimal pest risk posed by wood chips and the security of the mitigation measures in place from harvesting to shipping.

*Response:* These additional measures have proved effective and practical in the importation of other wood chips and are designed to reduce the exposure of the chips to plant pests or pathogens, which might result in infestation. According to the evidence in the pest risk assessment, the potential mechanisms for wood chip infestation by nonindigenous pests are complex and suggest that additional mitigation measures might be necessary for the importation of these articles. We agree with the commenter that *Eucalyptus* wood chips destined for export from South America may be relatively free of most damaging organisms. However, some of the pest organisms of concern are pests that are native to South America but that have been capable of attacking *Eucalyptus* even though it is an introduced species that is native only to Australia, the Philippines, Papua New Guinea, and Indonesia. This adaptability suggests the potential for these pests to develop a wider host range. Although the mitigation measures in place from harvesting to shipping are effective, we believe that additional conditions are necessary to ensure that no plant pests are disseminated into the United States as a result of the importation of these wood chips once they have been treated with the surface pesticide spray.

<sup>2</sup> Morrell, Freitag, and Silva, "Protection of Freshly Cut *Radiata* Pine Chips from Fungal Attack," *Forest Products Journal*, 48(2):57–59.

*Comment:* The additional condition that the wood chips be stored, handled, and safeguarded in a manner that would prevent any infestation of the wood chips by plant pests during the entire interval between treatment and export is not practical, and compliance with this condition is impossible because wood chips are typically stored outside in 40,000-ton piles that are 50 feet high in an area of about 90,000 square feet.

*Response:* This additional condition has been required for the importation of *Pinus radiata* wood chips from Chile for several years and no problems have been reported.

*Comment:* Most pulp mills are generally located in the vicinity of forested areas, thus complying with the additional condition that the storage area for the wood chips not be adjacent to wooded areas would be impossible for most mills. APHIS should define "adjacent" and "wooded areas" more clearly. Since *Eucalyptus* is a nonnative species in the United States, and is not similar to conifers or any North American hardwood species, this additional requirement is not necessary.

*Response:* We believe that this additional condition is a necessary and effective safeguard to protect against the potential for pest infestation and dissemination of pests as a result of the wood chips being stored near an unprotected and untreated wooded environment. It would be difficult to add a specific definition of "adjacent" and "wooded areas" to the regulations that would adequately address the pest risk in each individual case. We will therefore define these terms in the language of each individual compliance agreement. As noted previously, the process of entering into a compliance agreement includes site visits by authorized representatives to evaluate the capacities of each different facility and to determine if additional, specific requirements are necessary in order to prevent the spread of plant pests from that facility. At the time of the site visit, the authorized representatives will be able to ensure that each individual facility meets the additional condition that the wood chip storage not be adjacent to a wooded area in accordance with the regulations. Although *Eucalyptus* is a nonnative species in the United States, as noted previously, some of the pests of concern are native to South America but have exhibited an ability to adapt to a broader host range and to new hosts.

#### Pest Risk Assessment

*Comment:* The pest risk assessment team did not request information from the national plant protection

organization of Uruguay and the phytosanitary measures should be adjusted to the risk of introduction of the pests present in Uruguay that would affect wood chips. The pests considered to have a high risk and a moderate risk potential for introduction into the United States are not present in Uruguay.

*Response:* The Wood Import Pest Risk Assessment and Mitigation Evaluation Team that conducted the pest risk assessment included representatives from APHIS, the United States Department of Agriculture Forest Service, Forest Service retirees, and the governments of Argentina, Brazil, Chile, and Uruguay. A site visit was made to Uruguay in April of 1998, and members of Uruguay's Department of Agriculture accompanied and assisted the team during the site visits. Although it is true that some of the pests listed as having a high risk potential for introduction into the United States are not present in Uruguay, three pests considered to have a high risk potential are present in Uruguay. These pests are: *Chydarteres striatus*, *Phoracantha semipunctata*, and *Retrachyderes thoracicus*. If the commenter provides research and evidence that these three pests are not present in Uruguay, we will consider the evidence at that time. The pests listed as having a moderate risk are not present in Uruguay, but our mitigation measures specifically target pests with a high risk potential.

*Comment:* Certain pests that are already present in the United States are still considered to have a high risk potential for introduction into the United States according to the pest risk assessment. The pests in question are: *Botryosphaeria dothidea*, *B. obtusa*, *B. ribis*, *Ceratocystis fimbriata*, *Erytricum salmonicolor*, *Steirastoma breve*, and *Phoracantha semipunctata*.

*Response:* While we agree with the commenter that some of the pests in question are present in the United States—*B. dothidea*, *B. obtusa*, *B. ribis*, *Ceratocystis fimbriata*, *Phoracantha semipunctata*, and *Erytricum salmonicolor*—we are mitigating specifically for the pests that were rated as having a high risk potential that are not present in the United States. These pests include: *Sarsina violescens*, *Scolytopsis brasiliensis*, *Xyleborus retusus*, *Xyleborus biconicus*, *Xyleborus* spp., *Chilecomadia valdiviana*, *Chydarteres striatus*, *Retrachyderes thoracicus*, *Trachyderes* spp., *Steirastoma breve*, and *Stenodontes spinibarbis*.

The pests mentioned by the commenter are listed in the pest risk assessment for several different reasons.

Four of the pests in question—*B. dothidea*, *B. obtusa*, *B. ribis*, and *Ceratocystis fimbriata*—are all pest organisms native to the United States, however, genetic variation exhibited by the species results in differing capacities for causing damage. Because these species are present in South America in a genetic variation from the species already present in the United States, it is impossible to predict the potential extent of damage or range if these genetic variations were introduced into the United States with *Eucalyptus* as a host. Although *Erytricum salmonicolor* is present in the United States, it is nonindigenous and not widely distributed. Currently, it is found only in Florida, Louisiana, and Mississippi. Wider distribution of this pathogen would have unknown adverse effects on the United States. *Steirastoma breve* is not present in the United States. *Phoracantha semipunctata* is a nonindigenous pest and is found only in California. Wider distribution of this pest would have unknown adverse effects on the United States.

#### Economic Analysis

*Comment:* While the cost of the surface pesticide treatment is unknown, it will likely be closer to 3–5 percent of the value of the wood chips rather than less than 1 percent as stated in the economic analysis in the proposed rule. The overall costs associated with the requirements would make it cost prohibitive for a company to bring in occasional shipments of *Eucalyptus* wood chips to supplement its domestic supply of hardwood chips.

*Response:* The commenter did not provide any information to support the statement that the costs would be closer to 3–5 percent of the value of the wood chips. Although the actual overall costs associated with compliance with the requirements are difficult to estimate without additional information, we note that the domestic wood industry has been complying with these requirements when importing *Pinus radiata* wood chips from Chile and has not found compliance with the requirements to be cost prohibitive. Costs for the importer would depend on the market price for wood chips in the United States and overseas as well as the costs of purchasing the equipment required to spray the wood chips with the pesticide. Additional costs could make this treatment option cost prohibitive for smaller shipments of wood chips, but we note that we are allowing treatment with the surface pesticide treatment only as an alternative. Importers could still choose the current treatment options for wood

chips, which include heat treatment and fumigation, in order to bring in shipments of wood chips of temperate species of *Eucalyptus*. Although these treatment options are not as practical for large volumes of wood chips, they are viable options for small shipments.

*Comment:* The proposed rule failed to recognize the costs associated with the environmental controls required to manage the application and containment of the suggested chemicals. An effective and safe technology would have to be developed and special facilities would have to be built to contain the chemicals both offshore and in the United States.

*Response:* The chemicals used in the pesticide treatment are common chemicals that are registered with the EPA and are federally regulated and safe for application. The pesticide is similar to pesticides used by the domestic agricultural industry. We do not believe that costs associated with managing the application of the treatment or of storing the chemicals will be cost prohibitive. This pesticide treatment is currently in use for importing certain wood chips, and there have been no reported problems about the economic feasibility of the treatment.

**General Comment**

*Comment:* Because debarking is regularly practiced in Uruguay and because the *Eucalyptus* plantations are well-managed, have effective systems of pest detection, and are protected against pest infestation, wood chips should be considered a low phytosanitary risk commodity.

*Response:* According to research cited previously (Morrell, Freitag, and Silva) debarking does not mitigate for decay, mold, and fungus that can begin affecting the wood chips within 24 hours of chipping. Additional mitigation measures, such as treatment with a fungicide, which is a component of the surface pesticide treatment being offered, are necessary to ensure that the wood chips are free of decay, mold, and fungus.

**Research and Development**

*Comment:* The chemicals in the surface pesticide spray, especially the fungicide, are relatively specific in terms of the pests and pathogens that they target. If treatment with surface pesticides is going to continue to be a pest mitigation measure for wood chips, further research should be done to identify pesticides that will be effective against a wider range of pests. Further research should be done to test the efficacy of a variety of insecticide and fungicide mixtures applied to wood chips as surface sprays for insects and diseases associated specifically with *Eucalyptus* and other hardwood chips. Further research should be done to develop spray containment technology to reduce the potential negative environmental impact of chemical treatments.

*Response:* As noted previously, according to the findings of CPHST, we believe that the pesticide will be effective for mitigating potential pests associated with *Eucalyptus*, however, we would evaluate and consider any evidence that the commenter might provide regarding the efficacy of a variety of insecticide and fungicide mixtures applied to wood chips as a treatment for insects and diseases specifically associated with *Eucalyptus* and other hardwood chips. The environmental assessment addresses the potential negative environmental impact of the chemicals and provides evidence that the negative environmental impacts will be minimal, if the chemicals are used according to the label instructions. We welcome any scientific studies, research, and evidence related to any of the topics suggested in the comments for future research and development. We will evaluate all studies and research that we receive.

Therefore, for the reasons given in the proposed rule and in this document, we are amending § 319.40-7(e) to allow the same surface pesticide treatment used on *Pinus radiata* wood chips from Chile to be used on wood chips of temperate species of *Eucalyptus*. We are also amending § 319.40-6(c)(1) to require the

same import conditions for temperate *Eucalyptus* wood chips from South America as those required for *Pinus radiata* wood chips from Chile.

*Executive Order 12866 and Regulatory Flexibility Act*

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the regulations that govern the importation of logs, lumber, and other unmanufactured wood articles into the United States to allow wood chips of temperate species of *Eucalyptus* from South America to be treated with a surface pesticide as an alternative to the current treatments. This action is necessary in order to provide an effective alternative treatment to those who wish to import wood chips of temperate species of *Eucalyptus* from South America and to prevent the introduction of plant pests into the United States through the importation of these articles.

The surface pesticide treatment for wood chips of temperate species of *Eucalyptus* from South America provides an alternative to the currently approved treatments, which include fumigation with methyl bromide, heat treatment, and heat treatment with moisture reduction. The cost of the surface pesticide treatment is comparable to that of the existing treatment of methyl bromide fumigation (see table 1), and is already being used to treat *Pinus radiata* wood chips from Chile, so we do not expect it to have a significant economic impact on the wood products industries. This rule benefits the U.S. wood products industries by making available an alternative treatment that is more cost effective for treating large volumes of temperate wood chips. The availability of this alternative treatment benefits the U.S. wood products industry by facilitating access to these wood chips, which are readily available and produce high-quality pulp.

TABLE 1.—TREATMENT COSTS FOR EUCALYPTUS WOOD CHIPS

	Heat	Methyl bromide	Heat with moisture reduction	Surface pesticide
Wood chips (1 ton) .....	\$50 to \$100 .....	\$0.50 to \$3 .....	\$20 to \$30 .....	\$1.50 to \$3.

Source: U.S. Environmental Protection Agency, Dec. 1996, "Heat Treatments to Control Pests on Imported Timber."

Although there are no entities, large or small, currently importing wood chips of temperate species of *Eucalyptus* from South America into the United

States, we expect that this rule will have positive economic effects for any entities that choose to import those articles by making available an

alternative treatment that is more cost effective for treating large volumes of temperate wood chips.

Under these circumstances, the 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 12988*

This final rule has been reviewed under Executive Order 12988, 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*

An environmental assessment and a finding of no significant impact (FONSI) have been prepared for this final rule. The assessment provides a basis for the conclusion that the alternate treatment for wood chips of species of eucalyptus from South America under the conditions specified in this final rule do not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment.

The environmental assessment and FONSI were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and FONSI are available for viewing on the Internet at <http://www.aphis.usda.gov/ppd/es/ppdocs.html>. Copies of the environmental assessment and FONSI are also available for public inspection in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming. In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

#### **Paperwork Reduction Act**

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### **List of Subjects in 7 CFR Part 319**

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

■ Accordingly, 7 CFR part 319 is amended as follows:

#### **PART 319—FOREIGN QUARANTINE NOTICES**

■ 1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 319.40–6, the introductory text of paragraph (c)(1) is revised to read as follows:

#### **§ 319.40–6 Universal importation options.**

\* \* \* \* \*

(c) \* \* \*

(1) *From Chile (pine) and South America (eucalyptus)*. Wood chips from Chile that are derived from Monterey or Radiata pine (*Pinus radiata*) logs and wood chips from South America that are derived from temperate species of *Eucalyptus* may be imported in accordance with paragraph (c)(2) of this section or in accordance with the following requirements:

\* \* \* \* \*

#### **§ 319.40–7 [Amended]**

■ 3. In § 319.40–7, paragraph (e) is amended as follows:

■ a. In the introductory text of the paragraph, by adding the words “and wood chips from South America derived from temperate species of *Eucalyptus*” after the word “Chile”.

■ b. In paragraph (e)(2), in the paragraph heading, by adding the words “and *Eucalyptus (temperate species) wood chips from South America*” after the word “Chile” and, in the first sentence following the paragraph heading, by adding the words “or on wood chips from South America derived from temperate species of *Eucalyptus*” after the word “Chile”.

Done in Washington, DC, this 12th day of January 2004.

**Bobby R. Acord,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04–875 Filed 1–14–04; 8:45 am]

**BILLING CODE 3410–34–P**

#### **DEPARTMENT OF TRANSPORTATION**

#### **Federal Aviation Administration**

#### **14 CFR Part 71**

[Docket No. FAA–2003–16496; Airspace Docket No. 03–ACE–80]

#### **Modification of Class E Airspace; Mapleton, IA**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of the direct final rule which revises Class E airspace at Mapleton, IA.

**EFFECTIVE DATE:** 0901 UTC, February 19, 2004.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on November 28, 2003 (68 FR 66701). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 19, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on January 5, 2004.

**Elizabeth S. Wallis,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 04–915 Filed 1–14–04; 8:45 am]

**BILLING CODE 4910–13–M**