Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 305

[Docket No. APHIS–2006–0091]

Amendments to Treatments for Plant Pests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations for the treatment of plant pests by removing two treatment options that we now believe to be ineffective at neutralizing their target plant pests. A review of these treatments found these options to be ineffective. We are also proposing to remove two treatment schedules that are no longer authorized for use and to clarify the fruits and vegetables on which two methyl bromide treatments may be used. These changes would ensure that ineffective or unauthorized treatments are not used and clarify the regulations.

DATES: We will consider all comments that we receive on or before September 4, 2007.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0091 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0091, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0091.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. S. Gadh, Senior Risk Manager-Treatments, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The phytosanitary treatments regulations contained in 7 CFR part 305 (referred to below as the regulations) set out standards and schedules for treatments required in 7 CFR parts 301, 318, and 319 for fruits, vegetables, and articles to prevent the introduction or dissemination of plant pests or noxious weeds into or through the United States.

In this document, we are proposing to:

- Amend two treatments to remove options that we now believe to be ineffective at neutralizing their target plant pests;
- Remove two treatment schedules that are no longer authorized for use; and
- Clarify the fruits and vegetables on which two methyl bromide treatments may be used.

These changes are discussed in more detail directly below.

Temperature Requirement for Conducting Methyl Bromide Treatment MB T101–j–2–1

In the approved treatments regulations in § 305.2(h)(2), fumigation according to methyl bromide treatment schedule MB T101–j–2–1, in accordance with the methyl bromide treatment regulations in § 305.6, is approved as a treatment for *Anastrepha* spp. fruit flies in grapefruit, orange, and tangerine from Mexico and for *Anastrepha ludens* (Mexican fruit fly) in grapefruit, orange, and tangerine moved interstate from areas within the United States that are quarantined due to the presence of Mexican fruit fly. The schedule for this fumigation treatment in § 305.6 currently requires that the treatment be conducted at a temperature between 70 and 85 °F.

A recent discovery of a live larva of Mexican fruit fly in citrus that was being moved interstate from an area within the United States that had been quarantined for the Mexican fruit fly and had been treated with MB T101–j–2–1 prompted the Animal and Plant Health Inspection Service (APHIS) to reevaluate the research that had been used to formulate this treatment. The reevaluation revealed that, in order to effectively neutralize Mexican fruit fly, the treatment should be performed at a temperature of 80 °F or above. Accordingly, we are proposing to amend the entry for this treatment in § 305.6(a) to indicate that it may only be performed at a temperature of 80 °F or above. The commodities for which this treatment is an approved treatment would not change.

Cold Treatment Options in Combination Treatment MB&CT T108–b

In the approved treatments regulations in § 305.2(h)(2)(i), the methyl bromide/cold treatment combination treatment MB&CT T108–b, performed in accordance with the combination treatment requirements in § 305.10, is approved as a treatment for *Austrotortrix* spp. and *Epiphyas* spp., *Bactrocera tryoni*, *Ceratitis capitata* (Mediterranean fruit fly, or Medfly), and other fruit flies in grape from Australia and for Medfly in apple, grape, and pear moved interstate from areas within the United States that are quarantined due to the presence of Medfly. The schedule listed for MB&CT T108–b in § 305.10 currently provides two options for conducting the cold treatment portion of the treatment: An option in which the fruit is held at 33 °F or below for 21 days, and an option in which the fruit is held between 48 °F and 56 °F for 6 days.

A review by APHIS has determined that there is not adequate scientific justification to conclude that the pests for which MB&CT T108–b is an approved treatment can be neutralized if the option of holding the fruit between 48 °F and 56 °F for 6 days is used. Accordingly, we are proposing to remove this option from the cold treatment schedule in MB&CT T108–b. The other options available for this MB&CT treatment and the commodities for which this treatment is an approved treatment would not change.

Treatments for Aircraft Using the Pesticide Resmethrin

In the approved treatment regulations in § 305.2(g), two treatments are listed that are approved for use on aircraft to treat for fruit flies and soft-bodied insects: The aerosol treatments T409–c–1 and T409–c–3. As described in the aerosol spray for aircraft treatment schedules regulations in § 305.9(b), both of these treatments require the use of resmethrin, a pesticide.

The U.S. Environmental Protection Agency (EPA) issues labels for pesticides such as resmethrin that set out requirements for their use, including approved uses. Resmethrin's EPA label does not list aerosol application to aircraft as an approved use. APHIS may secure emergency approval to use pesticides in a manner that is not specified on the EPA label, but we have not done so for these two treatments. Thus, they cannot currently be legally administered. Accordingly, we are proposing to remove treatment schedules T409–c–1 and T409–c–3 from the aerosol spray for aircraft treatment schedules regulations. We would also remove the entry for fruit flies and soft-bodied insects in the table listing approved treatments for aircraft (among other equipment) in § 305.2(g).

If this change is finalized, no treatment would be approved in the regulations to neutralize fruit flies and other soft-bodied insects that are associated with aircraft. To our knowledge, neither of the treatments we are proposing to remove has been used in many years, and aircraft are not being treated for fruit flies and other soft-bodied insects. We are not proposing to add a substitute treatment for fruit flies and other soft-bodied insects, because presently a treatment is unnecessary. If we determine that such a treatment is necessary, we will add one to the regulations through subsequent rulemaking.

Clarifying the Fruits and Vegetables on Which Two Methyl Bromide Treatments May Be Used

In the approved treatment regulations in § 305.2(h)(2)(i), fumigation according to methyl bromide treatment schedule MB T104–a–1, in accordance with the methyl bromide treatment regulations in § 305.6, is listed as an approved treatment for hitchhikers or surface pests, except mealybugs, for all imported fruits and vegetables. Similarly, fumigation according to methyl bromide treatment schedule MB T104–a–2 is listed as an approved treatment for mealybugs for all imported fruits and vegetables. However, only some fruits and vegetables are approved by EPA to be treated with methyl bromide under the Federal Insecticide, Fungicide, and Rodenticide Act. These fruits and vegetables are typically approved for treatment either on the EPA label for methyl bromide or through an exemption under Section 18 of the Act. (EPA makes lists of commodities that it has approved for treatment with methyl bromide available on its Web site at *http://www.epa.gov/pesticides/*.) The current APHIS regulations are ambiguous and can be read as indicating that methyl bromide fumigation is approved for use on all fruits and vegetables, which is incorrect.

Therefore, we are proposing to update the commodity entries in the table in § 305.2(h)(2)(i) for MB T104–a–1 and MB T104–a–2. Rather than indicating simply that the treatments are approved for all imported fruits and vegetables, these entries would instead indicate that the treatments are approved for those imported fruits and vegetables that are approved for treatment with methyl bromide under the Federal Insecticide, Fungicide, and Rodenticide Act. This proposed clarification reflects the requirements in § 305.5(c)(1), which states that all chemical applications must be administered in accordance with an EPA-approved pesticide label and the APHIS-approved treatment schedule prescribed in part 305, and that if EPA cancels approval for the use of a pesticide on a commodity, then the treatment schedule prescribed in part 305 is no longer authorized for that commodity.

Executive Order 12866 and Regulatory Flexibility Act

This proposed 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.

We are proposing to amend the regulations for the treatment of plant pests by removing two treatment options that we now believe to be ineffective at neutralizing their target plant pests. A review of these treatments found these options to be ineffective. We are also proposing to remove two treatment schedules that are no longer authorized for use, to clarify the fruits and vegetables on which two methyl bromide treatments may be used, and to clearly prohibit the use of unauthorized chemical treatments. These changes would ensure that ineffective or unauthorized treatments are not used and clarify the regulations.

Removing treatment schedules T409–c–1 and T409–c–3 would not be expected to have any economic effects because, to our knowledge, these treatments have not been used for many years. Clarifying that treatment schedules MB T104–a–1 and MB T104–a–2 are approved for only those imported fruits and vegetables that are listed on the EPA label for methyl bromide or otherwise authorized for treatment by EPA would not be expected to have any economic effects because it simply clarifies the circumstances under which APHIS will perform the treatments. Therefore, this economic analysis concentrates on the potential economic effects of our proposal to amend two treatment options for fruits and vegetables.

We are proposing to amend methyl bromide treatment schedule MB T101–j–2–1 to indicate that it may only be performed at a temperature of 80 °F or above. The commodities for which this treatment is an approved treatment would not change. The treatment schedule is approved for *Anastrepha* spp. fruit flies in grapefruit, orange, and tangerine from Mexico and for *Anastrepha ludens* (Mexican fruit fly) in grapefruit, orange, and tangerine moved interstate from areas within the United States that are quarantined due to the presence of Mexican fruit fly.

We are also proposing to amend combination cold treatment-methyl bromide treatment schedule MB&CT T108–b to remove the cold treatment option of holding the fruit between 48 °F and 56 °F for 6 days. The other options available for this MB&CT treatment and the commodities for which this treatment is an approved treatment would not change. The treatment schedule is approved for *Austrotortrix* spp., *Epiphyas* spp., *Bactrocera tryoni*, Medfly, and other fruit flies in grape from Australia and for Medfly in apple, grape, and pear moved interstate from areas within the

United States that are quarantined due to the presence of Medfly.

Depending on the actual cost increases that occur because of the changes to the treatment schedules for MB T101–j–2–1 and MB&CT T108–b, foreign suppliers or domestic suppliers located in quarantined areas may experience a cost increase, and consequently the quantity of fruit or vegetables shipped could decrease. This decrease in the quantity shipped could result in a price increase, benefiting U.S. producers and suppliers located outside quarantined areas.

In reality, negative effects of the proposed changes in treatment requirements would be negligible; any changes in treatment costs associated with these amendments to the treatment schedules would represent a small fraction of the prices of the fruits and vegetables. Additionally, import quantities affected are small to nonexistent. Grapefruit, orange, and tangerine imports from Mexico represent less than one-half of 1 percent of domestic supply, and there are no records of apple, grape, or pear imports from Australia.

Domestically, this proposed rule would amend approved treatments for regulated articles moved interstate from areas quarantined due to Medfly. There are currently no areas in the United States quarantined due to the presence of Medfly. Because the proposal would not prohibit movement of regulated articles, if areas are quarantined in the future due to the presence of this pest, the effect on entities within those areas that move regulated articles interstate would be minimized by the continued availability of various treatment options that, in most cases, would allow these small entities to continue to move regulated articles interstate with very little change in cost.

If the proposed changes affect treatment costs or shipping expenses, U.S. entities that could be affected include producers of Medfly host crops, many of which are categorized within the following North American Industry Classification System subsectors: NAICS 111310, Orange Groves; NAICS 111320, Citrus (except Orange) Groves; NAICS 111331, Apple Orchards; NAICS 111332, Grape Vineyards; NAICS 111334, Berry (except Strawberry) Farming; NAICS 111335, Tree Nut Farming; NAICS 111336, Fruit and Tree Nut Combination Farming; and NAICS 111339, Other Noncitrus Fruit Farming. Other entities that could be affected are fruit and vegetables wholesalers (NAICS 422480), supermarkets and other grocery stores (NAICS 445110), warehouse clubs and superstores (NAICS 452910), and fruit and vegetable markets (NAICS 445230).

Other than warehouse clubs and superstores, the vast majority of the businesses that compose these industries are small entities. The Small Business Administration (SBA) classifies Medfly host crop operations as small entities if their annual receipts are not more than $750,000.[1] According to the 2002 Census of Agriculture, there were 446 operations that were engaged in the production of citrus and noncitrus fruits. Over 99 percent of these entities were designated as small entities. The SBA classifies fresh fruit and vegetable merchant wholesalers (NAICS code 422480) as small entities if they employ 100 or fewer employees. According to the 2002 Economic Census there were 4,644 of these entities nationally, with 484 (or 10.4 percent) of them considered to be large. SBA classifies supermarkets and other grocery stores (NAICS 445110) as small entities if their annual receipts are not more than $25 million. There were 56,577 supermarkets and other groceries in 2002. Of these, only 3,477 or 6.1 percent are considered to be large. Fruit and vegetable markets (NAICS code 445230) are considered small if their annual sales are not more than $6.5 million. In 2002, the most recent year for which data are available, the census reported 2,257 fruit and vegetable markets.[2] Approximately 96 percent of these are considered to be small entities by SBA standards. The census also reported 2,761 warehouse clubs and superstores (NAICS 452910), which are classified as small entities if their annual sales are not more than $25 million. Of the above total, 2,593, or 93.9 percent, are classified as large entities.

The majority of entities that could be affected by the rule are small entities. However, any effects would be minimal.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects for 7 CFR part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we are proposing to amend 7 CFR part 305 as follows:

PART 305—PHYTOSANITARY TREATMENTS

1. The authority citation for 7 CFR part 305 would continue to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 305.2 would be amended as follows:

a. In the table in paragraph (g), by removing, in the entry for Aircraft, the words ''Fruit flies and soft-bodied insects'' in the Pest column and ''Aerosol T409–c–1 or Aerosol T409–c–3.'' in the Treatment column.

b. In the table in paragraph (h)(2)(i), under All, by revising the entry for ''All imported fruits and vegetables'' and by adding a new entry for ''All imported fruits and vegetables approved for treatment with methyl bromide under the Federal Insecticide, Fungicide, and Rodenticide Act'' to read as set forth below.

§ 305.2 Approved treatments.

* * * * *

(h) * * *

(2) * * *

(i) * * *

[1] SBA, Small business Size Standards matched to North American Industry Classification System 2002, Effective January 2006 (*http://www.sba.gov/size/sizetable2002.html*).

[2] U.S. Census Bureau, 2002 Economic Census Geographic Area Series: Manufacturing and Wholesale Trade, Revised January 2006 (*http://www.census.gov/econ/census02/guide/geosumm.htm*).

Location	Commodity	Pest	Treatment schedule
All	All imported fruits and vegetables	Most	Quick freeze T110.
	All imported fruits and vegetables approved for treatment with methyl bromide under the Federal Insecticide, Fungicide, and Rodenticide Act.	Hitchhiker pests or surface pests, except mealybugs.	MB T104–a–1.
		Mealybugs	MB T104–a–2.
*	* * * * * *	*	

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3. In § 305.6, in the table in paragraph (a), the entry for T101–j–2–1 would be revised to read as follows.

§ 305.6 Methyl bromide fumigation treatment schedules.

(a) * * *

Treatment schedule	Pressure	Temperature (°F)	Dosage rate (lb/1,000 cubic feet)	Exposure period (hours)
*	* * * * *	*	*	
T101–j–2–1	NAP	80 or above	2.5	2
*	* * * * *	*	*	

4. Section 305.9 would be amended as follows:

a. The section heading would be revised to read as set forth below.

b. Paragraph (b), including the table, would be revised to read as set forth below.

§ 305.9 Aerosol spray for aircraft treatment schedule.

* * * * *

(b) *Aerosol schedule.*

Treatment schedule	Aerosol	Rate
T–409b	d-phenothrin (10%)	8g/1,000 ft^3

5. In § 305.10, in the table in paragraph (a)(3), the entry for T–108b would be revised to read as follows:

§ 305.10 Treatment schedules for combination treatments.

(a) * * *

(3) * * *

Treatment schedule	Type of treatment	Temperature (°F)	Dosage rate (lb/1,000 cubic feet)	Exposure period (hours)
*	* * *	* * *	*	
T108–b	MB	50 or above	1.5	2 hours
		40–49	2	2 hours
	CT	33 or below		21 days
*	* * *	* * *	*	

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Done in Washington, DC, this 28th day of June 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–13036 Filed 7–3–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–124–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We are reopening the public comment period on a proposed amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Since the close of the comment period, Virginia revised its revegetation standards for success for areas planted with a mixture of herbaceous and wood species by withdrawing one amendment and adding a new amendment. The amendments are intended to render the State's regulations consistent with SMCRA.

DATES: We will accept written comments on the proposal until 4 p.m. (local time) on July 20, 2007.