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## 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:** Final rule.

**SUMMARY:** We are amending 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 removing two treatment schedules that are no longer authorized for use and clarifying the fruits and vegetables on which two methyl bromide treatments may be used. These changes are necessary to ensure that ineffective or unauthorized treatments are not used and to clarify the regulations.

**DATES:** *Effective Date:* June 26, 2008.

**FOR FURTHER INFORMATION CONTACT:** Dr. Inder P.S. Gadh, Senior Risk Manager-Treatments, Commodity Import Analysis and Operations, 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 other articles to prevent the introduction or dissemination of plant pests or noxious weeds into or through

the United States. On July 5, 2007, we published in the **Federal Register** (72 FR 36629–36632, Docket No. APHIS–2006–0091) a proposal<sup>1</sup> to amend the regulations by:

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

We solicited comments concerning our proposal for 60 days ending September 4, 2007. We received one comment by that date, from the national plant protection organization of a foreign country. We address the issues raised by the commenter in the following paragraphs.

The regulations in § 305.2 allow grapes from Australia to enter the United States if they are treated in accordance with methyl bromide/cold treatment combination treatment MB&CT T108-b, found in § 305.10 of the regulations, in order to neutralize the plant pests *Austrotortrix* spp., *Epiphyas* spp., *Bactrocera tryoni*, Mediterranean fruit fly (Medfly), and other fruit flies. The regulations in § 305.2 also provide for the use of MB&CT T108-b to qualify apples, grapes, and pears for interstate movement from areas within the United States that are quarantined due to the presence of Medfly. This treatment schedule has stipulated that these commodities first be fumigated with methyl bromide and then held at either 33 °F or below for 21 days, or between 48 °F and 56 °F for 6 days. In the proposed rule, we stated that our review of these two options had led us to determine that there was not adequate scientific justification to conclude that these pests could be neutralized if the cold treatment option of holding the fruit between 48 °F and 56 °F for 6 days was used. We therefore proposed to remove this option from the regulations.

The commenter stated that we had failed to provide a citation for our review, or scientific information in support of such a change, and asked that

such information be provided in this final rule.

Our review evaluated the scientific justification for each component of the various MB&CT treatment schedules to ensure that all supporting data incorporated and thus adequately reflected the pertinent research on the efficacy of such treatments at neutralizing their target pests. This review revealed the absence of any supporting scientific evidence suggesting that the cold treatment option that we are removing from the regulations is an effective deterrent for its target pests. Indeed, the review determined that the inclusion of this treatment option in the regulations was the result of a long-standing clerical error in the Plant Protection and Quarantine (PPQ) Treatment Manual. Cold treatment at a temperature between 48 °F and 56 °F is an effective component of treatment schedule T108-a–3, where fumigation is performed with a higher dose and for a longer duration than under T108-b. It appears that this temperature range option was inadvertently copied into treatment schedule T108-b, where its efficacy had not been established. When we moved the treatment schedules from the PPQ Treatment Manual into the regulations in part 305, this error was repeated.

However, we welcome any research suggesting that this treatment is, in fact, effective at neutralizing its target pests, and therefore ought to be reintroduced into the regulations.

Fumigation according to methyl bromide treatment schedule MB T104-a–1, in accordance with the methyl bromide treatment regulations in § 305.6, has been 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 has been listed as an approved treatment for mealybugs for all imported fruits and vegetables. In the proposed rule, we pointed out that only some fruits and vegetables are approved by the Environmental Protection Agency to be treated with methyl bromide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). We therefore proposed to update the commodity entries in the table in § 305.2(h)(2)(i) for MB T104-a–1 and MB T104-a–2 to clarify that only imported fruits and

<sup>1</sup>To view the proposed rule and the comment we received, go to <http://www.regulations.gov/jdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0091>.

vegetables approved under FIFRA for treatment with methyl bromide, rather than all imported fruits and vegetables, may be treated according to those treatment schedules.

The commenter suggested that we not change the regulations to specify the commodities approved under FIFRA, since that act could be amended in the future to include or exclude certain fruits or vegetables, and any such revisions to FIFRA would necessitate subsequent revisions to our regulations. Instead, the commenter suggested that any references to specific commodities approved under FIFRA be contained in an updated PPQ Treatment Manual.

We did not propose to list specific commodities in the regulations; rather, we proposed to amend the entry for "all imported fruits and vegetables" in order to make it clear that the two methyl bromide treatments could be applied only to those fruits and vegetables that are approved for treatment with methyl bromide under FIFRA.

The commenter also pointed out that FIFRA applies only to the use and sale of specific chemicals within the United States. Accordingly, the commenter suggested that we revise the wording of § 305.2 to make it clear that FIFRA does not apply to the sale or use of specific chemicals or classes of chemicals in any other country.

We do not believe that it is necessary to make such a statement in our regulations, as they do not assert or imply that FIFRA's applicability extends to the regulation of chemicals by other countries.

The commenter also asserted that, because FIFRA has no authority in other countries, it is possible that a country may employ a methyl bromide fumigation treatment or fumigate an item not approved under FIFRA prior to exporting the commodity to the United States, and yet still comply with our quarantine requirements. For this reason, the commenter suggested that we also amend § 305.2 to specify that all imported foods must not exceed methyl bromide residue limits contained in 40 CFR 180.123.

If methyl bromide was not approved for use on a particular fruit or vegetable under FIFRA, then we would not prescribe its use as a quarantine treatment for that article. We cannot, therefore, envision any circumstances under which an article that we did not require to be treated with methyl bromide would be so treated anyway, or if it was treated with methyl bromide rather than the treatment required under the regulations, that the article would be eligible for entry into the United States.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

#### **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.

We are amending 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 removing two treatment schedules that are no longer authorized for use and clarifying the fruits and vegetables on which two methyl bromide treatments may be used. These changes are necessary to ensure that ineffective or unauthorized treatments are not used and to clarify the regulations.

Removing treatment schedules T409-c-1 and T409-c-3 from the regulations is not expected to have any economic impacts 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 only for those imported fruits and vegetables that are approved for treatment with methyl bromide under FIFRA is not expected to have any economic effects because it simply clarifies the circumstances under which APHIS will perform or authorize the treatments. Therefore, this economic analysis concentrates on the potential economic effects of amending two treatment options for fruits and vegetables.

We are amending 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 will not change. The treatment schedule is approved for *Anastrepha* spp. fruit flies in grapefruits, oranges, and tangerines from Mexico and for *Anastrepha ludens* (Mexican fruit fly) in grapefruits, oranges, and tangerines moved interstate from areas within the United States that are quarantined due to the presence of Mexican fruit fly.

We are also amending the methyl bromide-cold treatment combination 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 will not change. The treatment schedule is approved for *Austrortrix* spp., *Epiphyas* spp., *Bactrocera tryoni*, Medfly, and other fruit flies in grapes from Australia and for Medfly in apples, grapes, and pears 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 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 changes in treatment requirements will be negligible; any changes in treatment costs associated with these amendments to the treatment schedules will 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 rule amends approved treatments for regulated articles moved interstate from areas quarantined due to Medfly. If the 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 vegetable 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.<sup>2</sup> 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 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.<sup>3</sup> 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 will be minimal. 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 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 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.

**Paperwork Reduction Act**

This final 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 amending 7 CFR part 305 as follows:

**PART 305—PHYTOSANITARY TREATMENTS**

■ 1. The authority citation for 7 CFR part 305 continues 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 is 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) \* \* \*

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.
*	*	*	*

\* \* \* \* \*

■ 3. In § 305.6, in the table in paragraph (a), the entry for T101–j–2–1 is 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
*	*	*	*	*

<sup>2</sup> SBA, Small business Size Standards matched to North American Industry Classification System 2002, Effective January 2006 (<http://www.sba.gov/size/sizetable2002.html>).

<sup>3</sup> 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>).

[www.census.gov/econ/census02/guide/geosumm.htm](http://www.census.gov/econ/census02/guide/geosumm.htm).

- 4. Section 305.9 is amended as follows:
  - a. By revising the section heading to read as set forth below.
  - b. By revising paragraph (b), including the table, 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 <sup>3</sup> .

- 5. In § 305.10, in the table in paragraph (a)(3), the entry for T-108b is 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.

\* \* \* \* \*

Done in Washington, DC, this 20th day of May 2008.

**Kevin Shea,**

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

[FR Doc. E8-11740 Filed 5-23-08; 8:45 am]

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**DEPARTMENT OF AGRICULTURE**

**Commodity Credit Corporation**

**7 CFR Part 1427**

**RIN 0560-AH78**

**Cotton World Price Determination**

**AGENCY:** Farm Service Agency and Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Credit Corporation (CCC) is revising the Upland Cotton regulations to use Far East prices instead of Northern Europe prices in determining the upland cotton adjusted world price (AWP). The change is being made because of changes in the market and in the available price data. The AWP is used to determine repayment rates for marketing assistance loans (MAL) and to establish loan deficiency payments (LDP).

**DATES:** *Effective Date:* May 23, 2008.

**FOR FURTHER INFORMATION CONTACT:** Scott Sanford, Fibers, Peanuts, and Tobacco Analysis Director, Economic and Policy Analysis Staff, Farm Service Agency, United States Department of Agriculture (USDA), Stop 0515, 1400 Independence Ave., SW., Washington, DC 20250-0515. Telephone: (202) 720-3392. Electronic mail: [Scott.Sanford@wdc.usda.gov](mailto:Scott.Sanford@wdc.usda.gov). Persons

with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

**Background**

CCC administers the commodity loan program for upland cotton. Under section 1204 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171, 7 U.S.C. 7934), repayment of the loan is allowed at the AWP in lieu of what would otherwise be full repayment of the loan plus interest. Under section 1204, AWP is the “prevailing world market price for the commodity (adjusted to United States quality and location), as determined by the Secretary.” No particular formula is set by the statute for determining the prevailing world price; however, as specified in the regulation in 9 CFR 1427.25, for the 2007 and preceding crops CCC has used a northern Europe (NE) price. While the statute does not require the use of an NE price for this purpose the statute does require the use of an NE price for certain other purposes, one being in connection with an adjustment, under section 1234(e), to the otherwise determined AWP, and the other being in connection with import quotas under section 1237(b). AWP’s are announced each Thursday and are generally based on quotes for a particular crop—that is, cotton in a particular crop year. The changeover from one crop to the next occurs in April. By regulation, there is a 6-week phase-in period in which the old and new crop prices are mixed progressively in favor of new crop prices.

This rule changes the basic AWP determination to a Far East (FE) rather

than NE basis. At one time, northern Europe was a center of cotton trade. However, in recent years much of the focus of world trade in cotton has moved to the Pacific Rim countries, especially China. Now, the vast majority of U.S. cotton exports are destined for the Far East, with smaller shares to South Asia, Mexico, and Turkey. Less than one percent of U.S. cotton exports are now bound for Northern Europe. Also, Cotlook, Ltd. (Cotlook), the supplier of NE quotes, has announced that it will not publish forward crop quotes, NE basis, for the 2008 season. No NE quotes will be published by Cotlook at all after July 31, 2008. By contrast, Cotlook will continue to publish Far East prices. There is no alternative, preferable reporting system. The coarse count adjustment of section 1427.25(f) of the regulations will be made on an FE rather than NE basis. In the two instances in which an NE basis is statutorily required those determinations will be made using such direct or indirect data as may be available.

**Notice and Comment**

These regulations are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553), as specified in section 1601(c) of the 2002 Farm Bill, which requires that the regulations be promulgated and administered without regard to the notice and comment provisions of section 5 of title 5 of the United States Code or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking.