Proposed Rules

Federal Register
Vol. 62, No. 249
Tuesday, December 30, 1997

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 Parts 300 and 301

[Docket No. 96–069–1]

High-Temperature Forced-Air Treatments for Citrus

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow the use of a process involving high-temperature forced air for treating tangerines, oranges (except navel oranges), and grapefruit from Mexico and areas of the United States that are infested with plant pests in the genus *Anastrepha,* which includes *A. ludens,* the Mexican fruit fly. This action would provide an additional option for treating these fruits. The treatments would be included in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations.

DATES: Consideration will be given only to comments received on or before March 2, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–069–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–069–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested tocall ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Campbell, Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 136, Riverdale, MD 20737–1236; (301) 734–6799; or e-mail rcampbell@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

To prevent the spread of plant pests into or within the United States, the U.S. Department of Agriculture (USDA) restricts the importation and interstate movement of many articles, including fruits. As a condition of movement, some fruits are required to be treated for plant pests in accordance with the Code of Federal Regulations (CFR). The Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual) of the USDA's Animal and Plant Health Inspection Service (APHIS) contains approved treatment schedules and is incorporated by reference into the CFR at 7 CFR 300.1.

Pursuant to 7 CFR 319.56–2x, USDA allows tangerines, oranges, and grapefruit from Mexico to be imported into the United States if treated in accordance with the PPQ Treatment Manual. We are proposing to amend this manual to include the high-temperature forced-air treatments described below under ''Treatments'' for tangerines, oranges (except navel oranges), and grapefruit from Mexico as additional effective treatments for pests in the genus *Anastrepha,* which includes *A. ludens,* the Mexican fruit fly. We would amend 7 CFR 300.1 to show that the PPQ Treatment Manual has been so changed.

In addition, because the Mexican fruit fly infests parts of the United States (currently, parts of Texas and California), USDA regulates the interstate movement of certain articles from those areas under the Mexican Fruit Fly Quarantine and Regulations, found at 7 CFR 301.64 through 301.64–10. Acceptable treatments for the regulated articles are listed in § 301.64–10. Treatments for the regulated articles themselves include a cold treatment, fumigation with methyl bromide, and a high-temperature forced-air treatment for grapefruit of a certain size; treatments for the fields or groves in which the regulated articles are grown include a soil drench with diazinon and a malathion bait spray.

The high-temperature forced-air treatment for grapefruit listed in § 301.64–10(e) specifies that the grapefruit must be at least 3.5 in (9 cm) in diameter and 9.25 oz (262 g) in weight. This treatment is based on a target temperature, which means that any *Anastrepha* larvae present in the grapefruit are killed through a process of incrementally increasing the air temperature in the hot-air chamber until the temperature at the grapefruit center reaches 118 °F (48 °C). The treatment specifies a minimum size for the grapefruit because grapefruit less than the specified size were found during research to reach the target temperature too quickly to ensure larvae mortality. This treatment, which is still a viable option, is also included in the PPQ Treatment Manual.

We are proposing to amend § 301.64–10 to allow for the use of the high-temperature forced-air treatments described below for tangerines, oranges (except navel oranges), and grapefruit. Unlike the treatment described above, which is based on a target temperature, the proposed treatments are based on time: They involve maintaining at least a specified temperature in the hot-air chamber for a specified period of time. These treatments specify a maximum size for the fruit because research revealed that, when used on fruit larger than the stated size, the treatment did not raise the internal temperature of the fruit sufficiently within the allotted time to ensure mortality of *Anastrepha* larvae. We would indicate in § 301.64–10(e) that these three new treatments are included in the PPQ Treatment Manual.

For consistency, we are also proposing to remove from § 301.64–10 the specific requirements for the cold treatment, the methyl bromide treatment, and the high-temperature forced-air treatment, which are described, respectively, in paragraphs (a), (d), and (e). Because all of these treatments are spelled out in the PPQ Treatment Manual, there is no reason for them also to be listed in the CFR. Removing the specific instructions for these treatments from § 301.64–10 and indicating that the treatments should be conducted in accordance with the PPQ Treatment Manual is in keeping with regulatory reform efforts to remove unnecessary or redundant Federal regulations.

The soil drench and malathion bait spray treatments are not listed in the PPQ Treatment Manual and will remain in § 301.64–10 (b) and (c). These treatments are cultural practices to be performed by producers in the groves

and fields, not quarantine treatments to be performed on the regulated articles as are the cold, methyl bromide, and high-temperature forced-air treatments. However, we are proposing some minor grammatical and punctuation changes to § 301.64–10(b).

Treatments

The following high-temperature forced-air treatments were developed by the USDA's Agricultural Research Service. The treatments must be administered in sealed, insulated chambers. The air may be heated in the chambers, or hot air may be introduced into the chambers.

Tangerines

The proposed treatment is for tangerines that are commercial size 125 or smaller. (Commercial size is an index based on the approximate number of fruit that fit into a commercial shipping box [40 lb or 18.14 kg].) Each tangerine must weigh no more than 8.6 oz (245 g).

Place the tangerines in the chamber and seal it. Raise the air temperature in the chamber to 113 °F (45 °C) or higher for 210 minutes. (Treatment time begins when the coldest air temperature sensor reaches 113 °F.) Record the temperature of each sensor at least once every 2 minutes throughout the treatment. Any temperature reading below 113 °F will invalidate the entire treatment. If any low temperature readings occur, repeat (do not simply extend) the treatment.

Oranges

The proposed treatment is for oranges (except navel oranges) that are commercial size 100 or smaller. Each orange must weigh no more than 16.5 oz (468 g).

Place the oranges in the chamber and seal it. Raise the air temperature in the chamber to 114.8 °F (46 °C) or higher for 250 minutes. (Treatment time begins when the coldest air temperature sensor reaches 114.8 °F.) Record the temperature of each sensor at least once every 2 minutes throughout the treatment. Any temperature reading below 114.8 °F will invalidate the entire treatment. If any low temperature readings occur, repeat (do not simply extend) the treatment.

Grapefruit

The proposed treatment is for grapefruit that are commercial size 70 or smaller. Each grapefruit must weigh no more than 18.8 oz (532 g).

Place the grapefruit in the chamber and seal it. Raise the air temperature in the chamber to 114.8 °F (46 °C) or higher for 300 minutes. (Treatment time begins when the coldest air temperature sensor reaches 114.8 °F.) Record the temperature of each sensor at least once every 2 minutes throughout the treatment. Any temperature reading below 114.8 °F will invalidate the entire treatment. If any low temperature readings occur, repeat (do not simply extend) the treatment.

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 process required by Executive Order 12866.

This proposed rule would allow use of a process involving high-temperature forced air for treating tangerines, oranges (except navel oranges), and grapefruit from Mexico and areas of the United States infested with plant pests in the genus *Anastrepha,* including *A. ludens,* the Mexican fruit fly. High-temperature forced-air treatments developed by the Agricultural Research Service would serve as additional treatment alternatives against the Mexican fruit fly and other species of *Anastrepha* that may attack tangerines, oranges, and grapefruit grown in Mexico and the United States. Development of these proposed treatments was triggered, in part, by the expected loss of methyl bromide as a treatment and phytotoxicity of oranges to methyl bromide. (The U.S. Clean Air Act requires that any substance identified as ozone depleting, including methyl bromide, be withdrawn from production, importation, and use in the United States by the year 2000.)

At present, tangerines, oranges, and grapefruit imported from Mexico can be treated for the Mexican fruit fly and other species of *Anastrepha* using several different methods. Cold treatment is acceptable for tangerines, oranges, and grapefruit. Vapor heat and methyl bromide treatments are acceptable for clementines (a variety of tangerine), oranges, and grapefruit. Grapefruit of a certain size may also be treated with a high-temperature forced-air treatment that is a different temperature and time combination than the procedure described in this proposed rule.

Acceptable treatments for tangerines, oranges, and grapefruit produced in the regulated areas of the United States include cold treatment of the fruit, treatment of the soil in the groves, and bait-spray treatment of the groves. Additionally, oranges and grapefruit may be treated with methyl bromide, and grapefruit may be treated with a different high-temperature forced-air treatment than the procedure described in this proposed rule.

The provision of high-temperature forced-air treatments as described in this proposed rule as an alternative treatment for tangerines and oranges, and as an additional high-temperature forced-air treatment alternative for grapefruit, would provide one more treatment method from which to choose.

Mexico is the largest source of citrus imported into the United States. In 1996, the value of citrus imported from Mexico totaled about $38 million, representing approximately 40 percent of U.S. citrus imports. We do not anticipate any increase in the amount of tangerines, oranges, or grapefruit imported into the United States as a result of this proposed action.

More than half of the citrus imported from Mexico is not treated at all because it is imported from Mexican municipalities free of fruit flies. Such was the case for about 52 percent of the citrus imported from Mexico in fiscal year (FY) 1995 and about 57 percent in FY 1996. Citrus may be exported to the United States from these fruit-fly-free municipalities with certification only. Shipments of tangerines, oranges, and grapefruit from other areas of Mexico are treated before they arrive at the U.S. border. In FY 1996, approximately 3,427 metric tons of tangerines and 88 metric tons of oranges from Mexico were fumigated with methyl bromide before being precleared for entry into the United States.

The only areas of the United States currently infested with Mexican fruit fly are in Texas and California. The infested area in California is primarily urban and includes no commercial production. The regulated areas in Texas are found in a major citrus-growing region. In FY 1996, four of the five regulated production areas in Texas were found to be infested with the Mexican fruit fly, and 5,426,900 pounds of citrus (mostly grapefruit) were fumigated for shipment internationally or to citrus-growing areas of the United States. Most of the citrus was shipped to California. Again, in FY 1997, four of the five production areas were found infested, and the exported fruit was fumigated.

There are eight fumigation companies treating citrus shipped from the regulated areas of Texas, and all are considered small businesses by U.S. Small Business Administration standards (annual revenue less than $5 million, averaged over 3 years). The approval of high-temperature forced air as an alternative treatment could lead to a reduction in the income of these fumigation companies if the citrus growers were to find that using high-

temperature forced air is financially preferable to using fumigation. No facilities currently exist in Texas that are capable of performing high-temperature forced-air treatments. However, in recent meetings of growers in the regulated areas, the possibility of building and operating one or two high-temperature forced-air treatment facilities as cooperative ventures (in view of the sizable cost of such facilities) was discussed. The time required for realization of such a cooperative effort would provide the fumigation companies a period to adjust to any anticipated reduction in business. Moreover, unless special-use exemptions are attached to the Clean Air Act or another fumigation compound is approved to replace methyl bromide, the fumigating companies will soon no longer be able to fumigate regulated citrus anyway. When methyl bromide use is banned, any possible impacts on the incomes of these companies from the addition of high-temperature forced-air treatments as alternative treatment methods would become inconsequential.

No significant economic impacts on any small entities, including citrus importers or producers or providers of alternative pest treatments for citrus, are expected due to the proposed addition of the high-temperature forced-air treatment methods described in this proposed rule. The number of importers of tangerines, oranges, and grapefruit from Mexico and the percentage that are small entities are not known, but most are probably not small (defined for fruit and vegetable wholesalers as having fewer than 100 employees). As described above, the eight potentially affected U.S. fumigation firms are small entities, but these firms would likely be affected by the proposed rule only if one or more high-temperature forced-air treatment facilities were to be constructed and become operational prior to the time the ban on methyl bromide becomes effective—at which time the economic effect of the proposed rule on the fumigation firms becomes irrelevant. Both large and small citrus producers in the regulated areas of the United States could benefit from the proposed rule if the proposed treatment were to prove less expensive than fumigation. Moreover, the proposed rule could be beneficial to these producers when methyl bromide use is banned because it provides another acceptable method for treating their citrus for export or shipment to restricted areas of the United States.

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

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

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR parts 300 and 301 would be amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 300.1, paragraph (a), the introductory text would be revised to read as follows:

§ 300.1 Materials incorporated by reference; availability.

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

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PART 301—DOMESTIC QUARANTINE NOTICES

3. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

4. In § 301.64–1, a new definition would be added in alphabetical order to read as follows:

§ 301.64–1 Definitions.

* * * * *

PPQ Treatment Manual. The Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

* * * * *

5. Section 301.64–10 would be revised to read as follows:

§ 301.64–10 Treatments.

* * * * *

(a) *Apple, grapefruit, orange, pear, plum, pomegranate, quince, and tangerine.* Cold treatment in accordance with the PPQ Treatment Manual.

(b) *Soil within the dripline of plants that are producing or have produced fruits listed in § 301.64–2(a).*

Host fruits must be removed from host plants prior to treatment.

Material: diazinon

Dosage: Apply 5 lb a.i. per acre (0.12 lb or 2 oz avdp. per 1,000 ft^2).

Method: Soil drench using ground equipment. Apply with 130 gal of water per acre (3 gal per 1,000 ft^2) under hosts.

Frequency/timing: Three applications at 14- to 16-day intervals as needed. Applications may be repeated if infestations become established.

In addition to the above, diazinon must be applied in accordance with all label directions.

(c) * * *

(d) *Grapefruit and oranges.* Methyl bromide in accordance with the PPQ Treatment Manual.

(e) *Grapefruit, oranges (except navel oranges), and tangerines.* High-temperature forced air in accordance with the PPQ Treatment Manual.

Done in Washington, DC, this 18th day of December.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–33718 Filed 12–29–97; 8:45 am]

BILLING CODE 3410–34–P