

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 304

[Docket No. 02-086-1]

RIN 0579-AB54

Methyl Bromide; Official Quarantine Uses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish regulations to provide for the submission of requests by State, local, or tribal authorities for a determination whether methyl bromide treatments or applications required by the State, local, or tribal authorities to prevent the introduction, establishment, or spread of plant pests or noxious weeds should be authorized as official quarantine uses. These proposed regulations are necessary to comply with a recent amendment to the Plant Protection Act that requires the Secretary to publish and maintain a registry of authorized State, local, and tribal requirements for methyl bromide treatments or applications. This proposed rule would establish a process by which State, local, or tribal authorities could request and, if warranted, receive, a determination that their methyl bromide requirements should be authorized as official quarantine uses.

DATES: We will consider all comments that we receive on or before October 12, 2004.

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

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 02-086-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-086-1.

- *E-mail:* Address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-086-1" on the subject line.

- *Agency Web Site:* Go to <http://www.aphis.usda.gov/ppd/rad/cominst.html> for a form you can use to submit an e-mail comment through the APHIS Web site.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

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: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. Gadh, Treatment Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737; (301) 734-6799.

SUPPLEMENTARY INFORMATION:

Background

Methyl bromide is a broad-spectrum pesticide used as a fumigant to control insect pests, nematodes, weeds, and pathogens. Its primary uses are for soil fumigation, post-harvest protection, and quarantine treatments.

In the United States, production, consumption, and trade of methyl bromide are regulated by the Environmental Protection Agency (EPA) under the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*). The Clean Air Act provides the basic framework to regulate air quality through air pollution control, and it has been amended to reflect changes in U.S. obligations under the 1987 Montreal Protocol on Substances that Deplete the Ozone

Layer (the Montreal Protocol). EPA also regulates methyl bromide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*).

The United States is a Party to the Montreal Protocol, an international treaty that provides a schedule to reduce and eventually eliminate the emissions of various manmade, ozone-depleting substances, including methyl bromide. The Montreal Protocol requires a phaseout of methyl bromide production and consumption in developed countries, including the United States, by the year 2005 and in developing countries by the year 2015. However, the Montreal Protocol exempts quarantine and pre-shipment (QPS) applications of methyl bromide from these phaseout requirements.

The Farm Security and Rural Investment Act of 2002 amended the Plant Protection Act (PPA) by adding a new sec. 419 (7 U.S.C. 7719) that pertains specifically to methyl bromide. Among other things, the amendment requires the Secretary of Agriculture, upon request of State, local, or tribal authorities, to determine whether a methyl bromide treatment or application required by those authorities to prevent the introduction, establishment, or spread of plant pests (including diseases) or noxious weeds should be authorized as an official control or official requirement. The Secretary may not make such a determination unless she finds that there is no other registered, effective, and economically feasible alternative available. The amendment also directs the Secretary to publish and maintain a registry of those State, local, and tribal requirements for methyl bromide treatments and applications that she has determined should be authorized as an official control or official requirement.

We are proposing to establish regulations to comply with the requirements of this amendment to the PPA. Specifically, we are proposing to add a new part 304 to our regulations in title 7 of the Code of Federal Regulations that would establish procedures that State, local, and tribal authorities would have to follow when submitting a request to the Administrator of the Animal and Plant Health Inspection Service (APHIS), acting on behalf of the Secretary of Agriculture, to have a required methyl

bromide application or treatment recognized as an official control or official requirement. The proposed regulations also describe the criteria that the Administrator would use to evaluate such requests.

Definitions

Section 304.1 of the proposed regulations includes three standard definitions that are consistent with those used elsewhere in our regulations. We would define *Administrator* as the Administrator of the Animal and Plant Health Inspection Service or any individual authorized to act for the Administrator; *Animal and Plant Health Inspection Service (APHIS)* as the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture (USDA); and *State* as any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States. The section would also include definitions of *control* and *requirement*. *Control* would be defined as “suppression, containment, or eradication of a pest population,” which is the same definition found in the International Plant Protection Convention’s Glossary of Phytosanitary Terms. *Requirement* would be defined as “a treatment or application to prevent the introduction, establishment or spread of pests.” This proposed definition is drawn from the common EPA and Montreal Protocol definition of the term “quarantine applications.”

Proposed § 304.1 also includes a definition of *official quarantine use*, under which the terms “official control” and “official requirement” would be subsumed. We believe that defining and using the single term *official quarantine use* would aid officials of State, local, and tribal authorities by succinctly characterizing the type of methyl bromide application or treatment for quarantine purposes that would qualify as an official control or official requirement.

We would define *official quarantine use* in § 304.1 as: “A methyl bromide treatment or application that the Administrator determines to be an official control or official requirement, based on information that the treatment or application is required by a State, local, or tribal authority for either of the following reasons: (1) For the management of plant pests or noxious weeds of potential importance to the area endangered thereby and not yet present there, or present but not widely

distributed; or (2) to meet official quarantine requirements for the management of economic plant pests in plant material intended for propagation.”

In contrast, in its January 3, 2003, final rule titled “Protection of Stratospheric Ozone: Process for Exempting Quarantine and Preshipment Applications of Methyl Bromide” (68 FR 237–254), under authority of section 604(d)(5) of the Clean Air Act, the EPA defined the term *quarantine applications*, in part, as “treatments to prevent the introduction, establishment and/or spread of quarantine pests (including diseases), or to ensure their official control, where: (1) Official control is that performed by, or authorized by, a national (including state, tribal or local) plant, animal or environmental protection or health authority; (2) quarantine pests are pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed and being officially controlled. This definition excludes treatments of commodities not entering or leaving the United States or any State (or political subdivision thereof).” With the exception of the last sentence, this definition tracked the definition of “quarantine application” with respect to methyl bromide agreed among parties to the Montreal Protocol, including the United States, in 1995 (Decisions VII/5).

There are differences between our proposed definition of *official quarantine use* and EPA’s definition of *quarantine applications* because we believe that it is important for our definition to explicitly provide for those instances where the treatment of plant material intended for propagation may be required by a particular State, local, or tribal authority for quarantine purposes. We welcome any suggestions or specific comments regarding our proposed definition of *official quarantine use*.

As noted earlier in this document, the EPA, under the authority of the Clean Air Act, regulates the production, consumption, and trade of methyl bromide in the United States. It should also be noted that paragraph (d)(2) of the new sec. 419 of the PPA provides that “[n]othing in this section shall be construed to alter or modify the authority of the Administrator of the Environmental Protection Agency or to provide any authority to the Secretary of Agriculture under the Clean Air Act or regulations promulgated under the Clean Air Act.” We wish to make it clear that in issuing this proposed rule, our intent is to fulfill our responsibilities under sec. 419, not to

establish a parallel or alternative regulatory mechanism governing the consumption of methyl bromide. As we note in proposed § 304.2(e), the Administrator of the Environmental Protection Agency will continue to exempt, consistent with the Montreal Protocol and under the authority of the Clean Air Act, quarantine applications of methyl bromide. In addition, the proposed regulations are not intended to have any effect on requirements issued by EPA under FIFRA.

Requests for Determination; Review of Determinations

Section 304.2 of the proposed regulations, “Requests for determination,” contains general provisions pertaining to requests for authorization of methyl bromide uses as official quarantine uses, criteria that the Administrator would use in evaluating such requests, and a description of the process by which a previously authorized official quarantine use may be removed from the registry when appropriate.

Paragraph (a) would indicate that a State, local, or tribal authority may request that the Administrator determine whether a methyl bromide treatment or application required by the State, local, or tribal authority should be authorized as an official quarantine use. Paragraph (b) would provide that the Administrator will make a determination in response to a request not later than 90 days after its receipt. The Administrator would issue a favorable determination if the methyl bromide treatment or application under consideration conformed to the definition of *official quarantine use* in § 304.1 and if he or she found that no other registered, effective, and economically feasible alternative to methyl bromide existed for that treatment or application. This paragraph would also provide that if the Administrator determined that a methyl bromide treatment or application should not be authorized as an official quarantine use, the Administrator would provide to the requestor, in writing, the reasons for his or her determination.

Given that the terms “registered, effective, and economically feasible” are not defined in sec. 419, we expect that these terms, as they would apply to the consideration of requests, would have their commonly understood meanings, *i.e.*:

- “Registered” means a pesticide registered or otherwise approved by EPA for a specific use;
- “Effective” means that there is a body of science with sufficient rigor and

specificity to show that an alternative treatment would meet the efficacy requirements to allow its consideration as a quarantine treatment; and

- “Economically feasible” means that the costs of the alternative quarantine treatment would not be so high as to make the trade in the treated good prohibitively expensive.

We welcome any suggestions or specific comments regarding our interpretation of these criteria, particularly with respect to factors that you believe could or should be taken into account while considering the economic feasibility of a potential alternative to methyl bromide.

While the proposed regulations themselves do not address research, we wish to note that the Administrator’s determination that a particular treatment or application should be authorized as an official quarantine use has the effect of spurring further research into alternatives to that treatment or application. Specifically, paragraph (b) of sec. 419 provides, in part, that “[f]or uses where no registered, effective, economically feasible alternatives available can currently be identified, the Secretary shall initiate research programs to develop alternative methods of control and treatment.” Ongoing USDA research activities led by the Agricultural Research Service are investigating alternatives for major uses of methyl bromide. The research requirements of sec. 419 may influence the allocation of research resources, to the extent that it provides specific statutory justification for research on alternatives to methyl bromide used for quarantine purposes, and may influence the areas of emphasis within the array of federally funded research programs on alternatives. State, local, or tribal authorities may value federally mandated efforts to develop registered, effective and economically feasible alternatives to quarantine uses of methyl bromide. This interest could be expected to strengthen as the cost of methyl bromide use increases.

Proposed paragraph (c) provides for the review of authorized uses. As proposed, a review would be triggered by the registration by EPA of a new pesticide, or a new use for an existing pesticide, that could serve as an alternative to the treatment or application authorized as an official quarantine use. We believe that registration is a logical trigger for such a review, given that it would serve as an indication of the likely availability of a new treatment or application that could serve as an alternative to an official quarantine use of methyl bromide. In its review, APHIS would consider the

effectiveness and economic feasibility of the alternative, just as we would in our review of a new request for a determination under proposed § 304.2(b). The State, local, or tribal authority that had requested and received the determination that the methyl bromide treatment or application under review was an official quarantine use would be invited to participate in the review. If, as a result of the review, APHIS finds that the registered alternative is effective and economically feasible, we would rescind the determination that the methyl bromide treatment or application was an official quarantine use. While this proposed review process is not explicitly called for by sec. 419, we believe that it is in keeping with the objectives of the section to provide for such a review.

While the regulations in proposed § 304.2(c) would provide that the Administrator may rescind the determination that a methyl bromide treatment or application is an official quarantine use when a registered, effective, and economically feasible alternative becomes available, we wish to acknowledge the possibility that an alternative may become available that is effective and economically feasible, but that is not subject to registration by EPA (non-chemical treatments such as irradiation have been cited as an example). We are explicitly seeking comment on whether our regulations should take such a possibility into account. Mainly, we are interested in learning if this is a practical consideration, *i.e.*, whether or not you believe that there may actually be instances where an alternative that is not subject to registration by EPA could prove to be an effective and economically feasible application for a particular use, and thus might serve as a desirable alternative to methyl bromide. If indeed this is a practical consideration, should the regulations provide some mechanism for the review, voluntary or otherwise, of a listed treatment or application such as that provided for by proposed § 304.2(c)? We welcome all comments on this subject.

Under proposed paragraph (d), a State, local, or tribal authority that has submitted a request for a determination would, in the event that the Administrator determines that the particular methyl bromide treatment or application should not be authorized as an official quarantine use, have the opportunity to request that the Administrator reconsider his or her determination. This same opportunity would be provided in the event that, as

a result of the review process described in the previous paragraph, the Administrator rescinds the determination that a methyl bromide treatment or application was an official quarantine use. In its request for reconsideration, the State, local, or tribal authority would have to provide, in writing, the facts and reasons upon which it is relying to show that the treatment or application should be authorized as an official quarantine use or that the determination should remain in effect. The Administrator would take into account the information provided in the request for reconsideration and any other relevant facts, including the information provided in the original request for determination, and would render a decision as promptly as circumstances permitted. The Administrator’s decision, and his or her reasons for that decision, would be communicated to the requestor in writing.

APHIS will consult with EPA as appropriate in the course of evaluating requests to determine whether methyl bromide uses should be authorized as official quarantine uses and whether and when a previously authorized official quarantine use may be removed from the registry.

Submission of Requests

Proposed § 304.3 describes the information that would have to be included in any request to the Administrator for a determination that a methyl bromide application or treatment should be authorized as an official quarantine use. Paragraph (a) would state that the request must be submitted and signed by the executive official or a plant protection official of the State, local, or tribal authority seeking the determination, and must include a copy of the State, local, or tribal regulation or mandatory quarantine procedures under which the methyl bromide treatment or application is required; the name of the crop/use for which the methyl bromide treatment or application is required; the name of the plant pests or noxious weeds targeted for control with methyl bromide; and the location(s) where the methyl bromide treatment or application is carried out. We believe that this specific information, which would be considered along with more general information available to APHIS, would be necessary for the Administrator to be able to make a determination regarding the methyl bromide treatment or application that is the subject of the request. Paragraph (b) would provide an address for the submission of requests.

Registry

Finally, as required by sec. 419(c) of the amended PPA, proposed § 304.4 would state that all State, local, and tribal requirements for methyl bromide applications or treatments that are determined by the Administrator to be official quarantine uses will appear on a registry of such treatments or applications that will be published and maintained by the Administrator. This section would provide an address to which one could write to receive a copy of the registry, as well as an Internet Web site (<http://www.aphis.usda.gov/ppq/bromide/>) where the registry would be posted.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

For this rule, we have prepared an economic analysis. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866, as well as an analysis of the potential economic effects of this proposed rule on small entities, as required under 5 U.S.C. 603. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

We do not have enough data for a comprehensive analysis of the economic effects of this proposed rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis for this proposed rule. We are inviting comments about this proposed rule as it relates to small entities. In particular, we are interested in determining the number and kind of small entities who may incur benefits or costs from implementation of this proposed rule and the economic impact of those benefits or costs.

This proposed rule would establish procedures to implement an amendment to the PPA added as part of the Farm Security and Rural Investment Act of 2002. The amendment, a new sec. 419, calls for the Secretary of Agriculture, upon request of State, local, or tribal authorities, to determine whether methyl bromide treatments or applications required by those authorities to prevent the introduction, establishment, or spread of plant pests (including diseases) or noxious weeds should be authorized as official controls

or official requirements. The amendment also requires the Secretary to publish and maintain a registry of these authorized uses and to initiate research programs to develop viable methyl bromide alternatives.

A methyl bromide use included in the registry would be termed an official quarantine use. It would be an official quarantine requirement or control of a State, local, or tribal authority for either of the following purposes: (i) For the management of plant pests or noxious weeds of potential importance to the area endangered thereby and not yet present there, or present but not widely distributed; or (ii) to meet official quarantine requirements for the management of economic plant pests in plant material intended for propagation.

Much of U.S. agriculture, especially horticultural production, is currently dependent upon methyl bromide for the control of insects, rodents, nematodes, weeds, and pathogens for quarantine and other purposes. Most methyl bromide is used as a soil fumigant, with significant quantities applied to soils for the production of crops in California and Florida, in particular. Methyl bromide is also applied in post-harvest treatments, both for quarantine purposes and to meet sanitation standards, and as a structural fumigant. Production and consumption of methyl bromide by the United States is to be phased out in 2005, except for uses exempted under the Montreal Protocol and Clean Air Act, including quarantine applications.

Under sec. 419, a determination that a treatment or application should be authorized as an official control or official requirement requires that USDA continue research on alternatives to such uses. USDA, under Agricultural Research Service leadership, is conducting research programs on alternatives for many methyl bromide uses. Section 419 may provide additional focus for new research initiatives on alternatives to methyl bromide used for quarantine purposes, and may bolster ongoing research programs. State, local, or tribal authorities may value federally mandated efforts to develop registered, effective and economically feasible alternatives to quarantine uses of methyl bromide. This interest could be expected to strengthen as the cost of methyl bromide use increases. Section 419 may influence the allocation of research resources, to the extent that it provides specific statutory justification for research on alternatives to methyl bromide used for quarantine purposes.

As a part of the rulemaking process, APHIS evaluates whether proposed regulations are likely to have a

significant economic impact on a substantial number of small entities, as required by the Regulatory Flexibility Act. Many, if not most, of the agricultural enterprises that use methyl bromide are small entities. However, the effects of this proposed rule on small, as well as large, entities is not expected to be significant. The new sec. 419 and the proposed regulations would not affect the exemption of quarantine applications from the methyl bromide phaseout. The Administrator of the Environmental Protection Agency will continue to exempt, consistent with the Montreal Protocol and under the authority of the Clean Air Act, quarantine applications of methyl bromide. At most, the requirements of sec. 419 may influence the focus of research on methyl bromide alternatives.

Implementation of sec. 419 will require administering the registry and continuing research programs on alternatives to the official quarantine uses. Under this proposed rule, a determination that a use should be authorized as an official quarantine use would require confirming that a registry candidate is an official quarantine requirement or control of the requesting State, local, or tribal authority and that no registered, effective, and economically feasible alternative is available. Requests for a determination would have to identify the quarantine need for the treatment or application and document the State, local, or tribal regulation or mandatory procedures under which the methyl bromide treatment or application is required.

This proposed rule contains various recordkeeping and reporting requirements. These requirements are described in this document under the heading "Paperwork Reduction Act."

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.

National Environmental Policy Act

An environmental assessment has been prepared for this proposed rule. The environmental assessment documents our review of the environmental impacts associated with this proposed rule. We are making the environmental assessment available to the public for review and comment.

The environmental assessment was 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).

Copies of the environmental assessment are available for public inspection in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this document). In addition, copies may be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. The environmental assessment is also available on the Internet at http://www.aphis.usda.gov/ppq/enviro_docs/mb.html.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 02–086–1. Please send a copy of your comments to: (1) Docket No. 02–086–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OClO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Under this proposed rule, State, local, or tribal authorities seeking determinations that methyl bromide treatments or applications qualify as official quarantine uses would have to submit written requests to APHIS. These

requests would need to include information on the nature and location of the methyl bromide use under consideration and the plant pests or noxious weeds that methyl bromide is needed to control.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: State, local, and tribal authorities.

Estimated annual number of respondents: 10.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 10.

Estimated total annual burden on respondents: 5 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs.

Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR 304

Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we are proposing to amend 7 CFR chapter III by adding a new part 304 to read as follows:

PART 304—METHYL BROMIDE

Sec.

304.1 Definitions.

304.2 Requests for determination; review of determinations.

304.3 Submission of requests.

304.4 Registry.

Authority: 7 U.S.C. 7719; 7 CFR 2.22, 280, and 371.3.

§ 304.1 Definitions.

Administrator. The Administrator of the Animal and Plant Health Inspection Service or any individual authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Control. Suppression, containment, or eradication of a pest population.

Official quarantine use. A methyl bromide treatment or application that the Administrator determines to be an official control or official requirement, based on information that the treatment or application is required by a State, local, or tribal authority for either of the following reasons:

(1) For the management of plant pests or noxious weeds of potential importance to the area endangered thereby and not yet present there, or present but not widely distributed; or

(2) To meet official quarantine requirements for the management of economic plant pests in plant material intended for propagation.

Requirement. A treatment or application to prevent the introduction, establishment or spread of pests.

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

§ 304.2 Requests for determination; review of determinations.

(a) A State, local, or tribal authority may request that the Administrator determine whether a methyl bromide treatment or application required by the

State, local, or tribal authority should be authorized as an official quarantine use.

(b) The Administrator will issue a determination not later than 90 days after the receipt of a request submitted in accordance with § 304.3. A methyl bromide treatment or application will be determined by the Administrator to be an official quarantine use if the treatment or application conforms to the definition of that term in § 304.1, and if the Administrator finds that there is no other registered, effective, and economically feasible alternative available. If the Administrator determines that a methyl bromide treatment or application should not be authorized as an official quarantine use, the Administrator will provide to the requestor, in writing, the reasons for his or her determination.

(c) If a registered alternative to methyl bromide becomes available for a treatment or application that the Administrator has determined to be an official quarantine use, the Administrator will initiate a review to consider the effectiveness and economic feasibility of the alternative. The State, local, or tribal authority that requested and received the determination that the methyl bromide treatment or application under review was an official quarantine use will be invited to participate in the review. If the Administrator finds that the registered alternative is effective and economically feasible, the Administrator will rescind the determination that the methyl bromide treatment or application is an official quarantine use.

(d) If the Administrator determines that a methyl bromide treatment or application should not be authorized as an official quarantine use (see paragraph (b) of this section) or that a determination should be rescinded (see paragraph (c) of this section), the affected State, local, or tribal authority may request that the Administrator reconsider his or her determination. Requests for reconsideration may be submitted to the address provided in § 304.3(b). In its request for reconsideration, the State, local, or tribal authority must provide, in writing, the facts and reasons upon which it is relying to show that the treatment or application should be determined to be an official quarantine use or that a determination should remain in effect. The Administrator will take into account the information provided in the request for reconsideration and any other relevant facts, including the information provided in the original request for determination, and will render a decision as promptly as circumstances

permit. The Administrator's decision, and his or her reasons for that decision, will be communicated to the requestor in writing.

(e) Consistent with the Montreal Protocol and under the authority of the Clean Air Act, the Administrator of the Environmental Protection Agency (EPA) shall exempt quarantine applications of methyl bromide. APHIS will consult with EPA as appropriate in the course of evaluating requests to determine whether methyl bromide uses should be authorized as official quarantine uses and whether and when a previously authorized official quarantine use may be removed from the registry.

§ 304.3 Submission of requests.

(a) A request for a determination under § 304.2 must be submitted and signed by the executive official or a plant protection official of the State, local, or tribal authority seeking the determination, and must include the following:

(1) A copy of the State, local, or tribal regulation or mandatory quarantine procedures under which the methyl bromide treatment or application is required;

(2) The name of the crop/use for which the methyl bromide treatment or application is required;

(3) The name(s) of the plant pests or noxious weeds targeted for control with methyl bromide; and

(4) The location(s) where the methyl bromide treatment or application is being carried out.

(b) All requests must be submitted to [address to be added in final rule].

§ 304.4 Registry.

All State, local, and tribal requirements for methyl bromide applications or treatments that are determined by the Administrator to be official quarantine uses will appear on a registry of such treatments or applications that will be published and maintained by the Administrator. A copy of the registry may be obtained by writing to [address to be added in final rule]. The registry may also be viewed on the Internet at <http://www.aphis.usda.gov/ppq/bromide/>.

Done in Washington, DC, this 9th day of August 2004.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 04-18445 Filed 8-11-04; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NE-33-AD]

RIN 2120-AA64

Airworthiness Directives; Bombardier-Rotax GmbH Type 912 F, 912 S, and 914 F Series Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Bombardier-Rotax GmbH Type 912 F, 912 S, and 914 F series reciprocating engines. That AD currently requires venting of the lubrication system and inspection of the valve train on all engines. That AD also requires venting of the lubrication system of all engines on which the lubrication system has been opened, and any engine on which the propeller has been rotated one full turn in the wrong direction. This proposed AD would require similar actions, and also require removing the existing part number oil dipstick from service and installing a new oil dipstick. This proposed AD results from the need to clarify the mandated procedures for inspections and venting. This proposed AD also results from the manufacturer discovering that under certain circumstances, the oil level in the oil tank can fall below the minimum level required to sustain proper engine lubrication. We are proposing this AD to prevent damage to the engine valve train due to inadequate venting of the lubrication system, which can result in an in-flight engine failure and forced landing.

DATES: We must receive any comments on this proposed AD by October 12, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- *By mail:* Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-NE-33-AD, 12 New England Executive Park, Burlington, MA 01803-5299.
- *By fax:* (781) 238-7055.
- *By e-mail:* 9-ane-adcomment@faa.gov.

You can get the service information identified in this proposed AD from Bombardier-Rotax GmbH, Gunskirchen,