

**CLARIFICATION OF THE  
QUARANTINE & PRESHIPMENT EXEMPTION  
FOR PROPAGATIVE MATERIAL**

**June 4, 2003**

Methyl bromide used to raise propagative material that crosses state borders for planting in a soil medium that would be endangered by the introduction of quarantine pests qualifies for the quarantine exemption and does not need to be included in requests for a critical use exemption. Each state has regulations that govern nursery stock entering the state and EPA believes these regulations are official controls related to quarantine pests (see below). The pre-plant fumigation of the soil with methyl bromide for propagative material to meet one of the 50 state nursery stock regulations qualifies for the quarantine exemption under the final rule published in the **Federal Register** on January 2, 2003 (68 FR 238) if the propagative material will be shipped across state borders.

The *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol) defines exempted quarantine applications of methyl bromide as “treatments to prevent the introduction, establishment and/or spread of quarantine pests (including diseases), or to ensure their official control, where: (i) official control is that performed by, or authorized by, a national (including state, tribal or local) plant, animal or environmental protection or health authority; (ii) 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.” In addition to the Montreal Protocol language, our regulation contains the following sentence based on Section 604(d)(5) of

the Clean Air Act: “This definition excludes treatments of commodities not entering or leaving the United States or any State (or political subdivision thereof).”

We recently identified a website, maintained by the National Plant Board, that lists the official nursery stock regulation for each of the 50 states in the United States, at <http://www.aphis.usda.gov/npb/F&SQS/sqs.html> For instance, the state of North Carolina has a regulatory certification program that states, “A certificate is required to distribute or sell nursery stock or collected plants. Nursery stock is defined as all wild or cultivated plants or plant parts, trees, shrubs, vines, bulbous plants and roots, grafts, scions and buds. Every carload, box, package or other container of nursery stock originating outside North Carolina and being moved into North Carolina for customer delivery or for resale must have attached to it a tag or certificate stating in effect that the nursery stock being moved has been inspected and certified as apparently free from injurious plant pests by an authorized official of the state of origin. The shipment must bear the name and address of the shipper. Any shipment of nursery stock entering North Carolina not meeting these requirements is hereby declared to be a public nuisance and may be returned to shipper, treated, destroyed or otherwise disposed of by the inspector, without compensation to the shipper.”

We believe that the intent of each state nursery stock regulation is to prevent the introduction, establishment and/or spread of quarantine pests into the planting medium where live pests may propagate, become embedded, and thereby endanger the states’ agriculture. The state nursery stock regulations are akin to the performance-based quarantine laws and

regulations of many foreign countries that require imported goods be pest-free. In the preamble to the final rule, we stated that, in general, broad performance-based requirements would not trigger the quarantine exemption unless they were established by foreign countries. However, in a later section of the preamble we noted that use of methyl bromide for propagative material “differs from many quarantine applications of methyl bromide,” and we established distinct criteria for this type of commodity. We stated that the use of methyl bromide must be “to meet official quarantine requirements specifying that the underground portions of the propagative material are to be free from quarantine pests.” We did not state that the quarantine requirement must identify methyl bromide as one of the treatment options or identify particular quarantine pests. As is apparent from the state nursery stock regulations, such specificity is not typical of requirements for propagative materials. Broad performance-based requirements, such as those found in the state nursery stock regulations, are consistent with our statements about propagative materials in the preamble to the final rule. Thus, the use of methyl bromide for pre-plant soil fumigation to raise nursery stock to be transported across any state border for the purpose of being introduced into the receiving state constitutes an exempt use under the quarantine and preshipment regulation.

EPA considered whether the federal government, the states, or local governments have strict regulations governing the intra-state transport of nursery stock, such as California’s nematode-free certification regulation, and USDA’s Imported Fire Ant Quarantine certification program, which applies on a county-by-county basis. Stock that is shipped within a state does not qualify for the quarantine and preshipment exemption unless there is a regulation governing

such intra-state transport that was established to prevent the introduction of quarantine pests into the soil through such transport.

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### **Questions & Answers**

**1 ) Would use of methyl bromide to grow nursery stock material that is shipped across a state border allow me to obtain exempted quarantine and preshipment (QPS) methyl bromide?**

Yes. All 50 states in the United States have an official nursery stock regulation that is considered an “official control” under EPA regulations and that is directed at quarantine pests. Therefore, the specific portion of methyl bromide used in raising nursery stock that is shipped across a state border qualifies for the quarantine and preshipment exemption. (See below regarding intra-state transport of nursery stock.) The locality to where nursery stock propagative material is being shipped must have an official requirement directed at quarantine pests. However, since all states have such a requirement, the pre-plant fumigation of the soil with methyl bromide for the portion of propagative material that will be shipped to meet one of the 50 state nursery stock regulations constitutes an exempt quarantine application under the final rule (68 FR 238).

**2) Does the use of methyl bromide in raising nursery stock that is shipped within the state qualify for the quarantine and preshipment exemption?**

No. Not unless there is a federal, state, or local regulation governing the intra-state transport of nursery stock, such as California's nematode-free certification program, that was established to prevent the introduction of quarantine pests into the soil through such transport.