



**Grain Trade Australia
Trade Rules “Buyer’s Call” Default Period**

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**NSW Farmers’ Association
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NSW Farmers’ Association Background

The NSW Farmers’ Association (the Association) is Australia’s largest State farmer organisation representing the interests of its farmer members – ranging from broad acre, Livestock, wool and grain producers, to more specialised producers in the horticulture, dairy, egg, poultry, pork, oyster and goat industries.

NSW Farmers welcomes the opportunity to make a submission to the Grain Trade Australia (GTA) Trade Rules of the 15 day default period for 'buyers call'.

At present, GTA Trade Rules stipulate that Buyer's Call

"means that the Seller shall have fifteen (15) calendar days or such other time specified in the contract after receipt of instructions from the Buyer in which to make Delivery or Shipment".

NSW Farmers supports retention of the existing arrangements. We note the observation from GTA that 'the 15 day period is probably too long', but no justification of this is given.

There are both practical and legal issues which go beyond just the GTA Trade Rules and the definition of "buyer's call". These are spelt out below. NSW Farmers strongly objects to shortening the notice period to less than fifteen (15) calendar days for the following reasons:

1. Given the grower's uncertainty about pickup dates (as the buyer determines delivery, in what is usually a wide delivery window), growers need an opportunity to inspect the grain (once notification of delivery is provided) and ensure it does not require fumigation.

The minimum phosphine fumigation exposure period, as specified on the label, is seven days when the commodity temperature is above 25 degrees Celsius, and 10 days when the commodity temperature is 15-25 degrees Celsius. The ventilation period following fumigation is 1-5 days, depending upon flow through.

Fumigating in accordance with the label is a legal requirement which must be adhered to by all growers. Further, failure to fumigate in accordance with the label risks the pesticide being ineffective and building resistance. Also, where grain is to be delivered direct to port ex farm, it is a requirement that it be fumigated.

The rules around phosphine use can be seen in the label displayed in attachment 1. In particular, we refer to the first sentence of the label where, under Directions of Use, it states:

BEFORE using PESTEX this product you should consider the following:
Timing of treatment – If it will be necessary to move grain/commodity before the Total Fumigation Period has expired, then fumigation should NOT be commenced. **Movement of treated commodities or empty containers during application, fumigation exposure or ventilation risks exposure of transport and handling workers and the public to harmful levels of phosphine and is contrary to label instruction. The Total Fumigation Period is the sum of the time required for Exposure to phosphine and the time needed to Ventilate the grain. A shortened Exposure Period will not be effective for storage pest control and a reduced Ventilation Period poses a serious risk of phosphine gas poisoning to workers and bystanders.** In addition a Withholding Period of two days is required after completion of ventilation before the grain is allowed to be used for human consumption or for animal feed. See Notes 4 & 5 for a detailed description of the Minimum Exposure Period and the Ventilation Period.

Reducing the notice period would encourage, and potentially even force, growers to:

- disobey their legal obligations for the use of chemicals;
- place growers and farm workers at risk because of inadequate ventilation of the grain;
- fail to properly treat their grain – unless eggs AND live insects are killed, the grain is not effectively fumigated; and
- incorrect use of chemicals may lead to increased resistance to phosphines thereby putting the quality of other grain at risk;

2. The vast majority of grain trading contracts in Australia incorporate the GTA Rules as constituting the express terms and conditions of the contract. In contracts designated as being at "buyer's call", and absent any agreement between the parties for some other time period to apply in respect of the time for delivery, the seller has 15 calendar days in which to deliver (after receipt of delivery instructions).

Relevantly, the Rules provide that the parties may expressly vary or exclude the operation of the Rules (Rule 1.0), and that time is of the essence of the contract (Rule 4.0). Rule 4.0 is particularly pertinent in contracts for the sale of goods, such as grain. Coupled with a "time is of the essence" clause, the 15 days' notice period has a long history of commercial acceptance internationally, as well as in Australia. For over 30 years it appeared as clause 7 in GAFTA Form 119, which required buyers on FOB terms to give at least 15 days' notice of readiness of vessels, as a fundamental term or condition of the contract.

In *Bremer Handelsgesellschaft mbH v J H Rayner and Co Ltd (1978) 2 Lloyds Rep 73*, it was held that a term in an FOB contract requiring the buyers to nominate a vessel in time for the sellers to receive at least 15 days' notice of "earliest readiness of tonnage" at the port of loading, was a condition - breach of which by the buyer entitled the seller to terminate for fundamental breach. That case was followed in *Bunge Corp New York v Tradax Export SA Panama (1981) 1 WLR 711*, which remains the leading international authority in this area of the law.

In these cases - in the Court of Appeal and in the House of Lords - it was accepted that it was the clear purpose of the condition to give the sellers what the parties had freely agreed was a reasonable time for the sellers to make arrangements to perform their delivery obligations. GTA Tribunals have, in past Awards and without qualification, applied these principles (eg NACMA Awards 10, 11, and 12).

In an earlier arbitration award (No 127) it was said that under a "buyer's call" contract, the buyer controls the timing and quantity of delivery, and bears the clear obligation to give proper and timely delivery instructions.

The 15 day notice period has long been a "template" provision in Australian and international contracts. It can be easily altered by the agreement of the contracting parties. Quite apart from those specific reasons for its retention, set out above, it has over time become part of the grain industry's accepted usage and practice.

3. Growers require reasonable lead times in order to secure appropriate farm labour, contractors, equipment and/or transport. This is especially the case during busy

times of the year or if a grower is away. Short notice is at times unworkable and unacceptable.

Arranging trucks to deliver large tonnages over different time periods, sometimes in adverse weather conditions, can be quite difficult and stressful for a farmer trying to attend to day to day operations at the same time. The 15 day period has been the status quo for many years across the industry for good reason and recognises the above points that have not changed significantly over time and accordingly provides sufficient time to account for them. There is a sound foundation justifying 15 days

NSW Farmers also notes a recent GTA arbitration centred around the clause "buyer call". The submission made to and the resultant determination of the Arbitration Panel has made it clear that there is a poor understanding of existing rules. This issue should be addressed as the first priority, rather than seeking to change the existing rules.

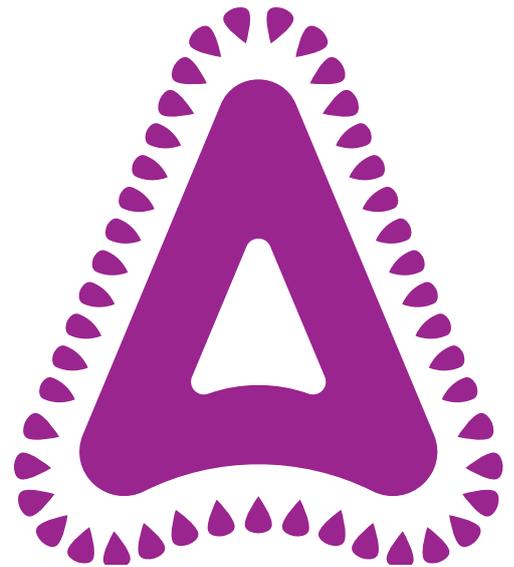
DANGEROUS POISON
KEEP OUT OF REACH OF CHILDREN
READ SAFETY DIRECTIONS BEFORE OPENING OR USING

Pestex[®]
Fumigation Tablets

ACTIVE CONSTITUENT: 330 g/kg PHOSPHINE (PH₃)
present as ALUMINIUM PHOSPHIDE
Each 3 g Tablet Liberates 1 g PHOSPHINE (PH₃)

GROUP 24A INSECTICIDE

*For control of insect pests of stored products
in certain situations and for control of rabbits
in burrows as specified in the Directions for
Use table.*



ADAMA
ESSENTIALS

adama.com

NET CONTENTS: 300g

DIRECTIONS FOR USE:

BEFORE using PESTEX this product you should consider the following:

Timing of treatment – If it will be necessary to move grain/commodity before the Total Fumigation Period has expired, then fumigation should **NOT** be commenced. Movement of treated commodities or empty containers during application, fumigation exposure or ventilation risks exposure of transport and handling workers and the public to harmful levels of phosphine and is contrary to label instruction.

The Total Fumigation Period is the sum of the time required for Exposure to phosphine and the time needed to Ventilate the grain. A shortened Exposure Period will not be effective for storage pest control and a reduced Ventilation Period poses a serious risk of phosphine gas poisoning to workers and bystanders. In addition a Withholding Period of two days is required after completion of ventilation before the grain is allowed to be used for human consumption or for animal feed. See Notes 4 & 5 for a detailed description of the Minimum Exposure Period and the Ventilation Period.

Safety and handling of the product – Phosphine is a highly dangerous fumigant and fumigation should only be undertaken in situations where the safety of workers and the public can be ensured. Observe all RESTRAINTS, PRECAUTIONS and instructions on the label.

Restrains:

- DO NOT fumigate in inhabited buildings.
- DO NOT fumigate in work situations where there is risk that phosphine gas could leak from fumigation enclosures into working areas.
- DO NOT use on commodities, or in empty containers, railcars or vessels that are in transit or likely to be in transit during the Exposure and/or Ventilation Periods.
- DO NOT use in road transport vehicles (including a truck or road hauled container).
- DO NOT heap tablets. Heaped tablets limit gas release.
- DO NOT add water to the tablets.
- DO NOT use when the commodity temperature is less than 15°C or the relative humidity within the structure is less than 25% or, with raw cereal grains, the moisture content is less than 9%.
- DO NOT apply in structures which are not well sealed*.
- DO NOT apply as a surface-only treatment in a structure whose height exceeds twice its width, unless the structure/enclosure has a gas recirculation device fitted.

PESTS/COMMODITY/SITUATION See Note 1 for description of well sealed* and Note 2 for storage pests controlled	APPLICATION See Note 3		FUMIGATION PERIOD# #[TOTAL OF THE MINIMUM EXPOSURE PERIOD PLUS VENTILATION PERIOD]		WITH-HOLDING PERIOD	TOTAL OF (EXPOSURE + VENTILATION + WITHHOLDING)
	BASIC RATE (g. phosphine per m ³)	DOSAGE (number of tablets ²)	MINIMUM EXPOSURE PERIOD See Note 4	VENTILATION PERIOD See Note 4		
Storage pests in: Well-sealed* structures such as:- fumigation enclosures, grain storage sheds, silos, and structures which are suitable for fumigation; Raw cereal grains (such as barley, maize, millets, oats, rice, rye, sorghum, triticale, wheat); Other food commodities (such as flour and other milled cereal products, breakfast cereals, dried fruits, dried vegetables, dried pulses, other dried foods, peanuts, oilseeds, cocoa and coffee beans); Seeds for propagation; Bulk stockfeeds.	1.5	3 tablets per 2 m ³	7 days when commodity temperature is above 25°C. 10 days when commodity temperature is above 15°C to 25°C. 20 days for surface only application to bulk commodities in well-sealed* structures greater than 375 m ³ capacity (e.g. greater than 300 tonnes wheat).	1-5 days	2 days	10-14 days 13-17 days 23-27 days
Tobacco in bales, cases, hogsheads in well-sealed* fumigation enclosures.			7 days	2-3 days	Nil	9-10 days
Well-sealed* empty warehouses, elevators, stores structures and enclosures.			7 days when temperature is above 25°C. 10 days when temperature is 15° to 25°C.	1-5 days	Nil	8-12 days 11-15 days

NOTES:

- FUMIGATION WILL CONTROL ALL STAGES OF INSECTS ONLY IN STRUCTURES/ENCLOSURES THAT ARE WELL-SEALED*.**
Well-sealed structures/enclosures are fumigation chambers, well-sealed silos, sheds and buildings, and other fumigation enclosures make gas-tight with gas-proof sheeting. Well-sealed means permanent sealing porous surfaces, seams and cracks and temporary sealing of intake and/or outlet valves, doors, fan housings, windows and hatches. For further information see appropriate industry advisory documents such as Grains Research and Development Corporation 'Advice' sheet 'Sealed Silos \$ave', available from State Departments of Agriculture or Primary Industries. Increasing the application rate will not compensate for gas loss from an unsealed enclosure.
Note: STRUCTURES MUST BE WELL-SEALED. IF THEY ARE NOT, FUMIGATION WILL NOT GIVE ADEQUATE CONTROL, AND WOULD BE CONTRARY TO LABEL DIRECTIONS.
- STORAGE PESTS** include: Lesser Grain Borer, Cadelle, Cigarette Beetle, Confused Flour Beetle, Dried Fruit Beetle, Flat Grain Beetle, Merchant Grain Beetle, Red-legged Ham Beetle, Rust-red Flour Beetle, Sawtoothed Grain Beetle, Skin and Hide Beetle, Spider Beetles, Warehouse Beetle, Angoumois Grain Moth, Indian Meal Moth, Mediterranean Flour Moth, Mottled Grain Moth, Raisin Moth, Tobacco Moth, Tropical Warehouse Moth, Psocids, Stored Products Mites, Bean Weevil, Coffee Bean Weevil, Granary Weevil, Maize Weevil, Pea Weevil and Rice Weevil. Approved treatment dosages will also kill any cockroaches, rats and mice present.
- PHOSPHINE APPLICATION RATES** are based on the internal volume of the structures to be fumigated; they apply equally to full or partly filled or empty structures and they apply to all commodities. The commodity equivalent rates (g/tonne) should only be used when the commodity stowage factor is known, they apply only when the storage structures are full or nearly full or when part-filled structures are dosed on the tonnage equivalents of their internal volumes. The calculated commodity dosage must be based on the rate per volume. The application rate of 1.5 g phosphine per 1 metre³ is equivalent to:

Capacity of fumigation enclosure

Tonnes wheat	Bushels	Cubic metres	Number tablets
20	730	27	40
50	1830	65	100
100	3660	130	200
300	11000	375	600

- MINIMUM EXPOSURE PERIODS** are needed to allow products to react to completion and to expose insects for long enough to kill all stages. A SHORTENED EXPOSURE PERIOD CANNOT BE COMPENSATED FOR BY INCREASED DOSAGE. Insect death and reaction of the tablets are both slower at lower temperatures. Temperatures specified are those within the commodity to be fumigated. The minimum exposure period should start from time of completion of application of product.
- VENTILATION PERIOD – ON COMPLETION OF EXPOSURE PERIOD:**
Ventilation of structures is complete only when phosphine concentrations measured at appropriate locations in the enclosure and work area are below the Threshold Limit Value – Time Weighted Average (TLV-TWA) exposure standard of 0.3 ppm. The following are minimum ventilation periods required and may need to be increased to ensure the exposure standard is not exceeded.
Minimum Ventilation Periods:
Structures, including bunker storages, containing treated commodities:
 - Without throughflow (i.e. access only through the headspace): not less than 5 days
 - With throughflow and natural draught (wind): for structures of 300 tonnes or greater capacity: 2 to 5 days depending on size.
For structures of less than 300 tonnes capacity: 2 days
 - With throughflow and forced draught (flash-proof fan) operated 2 hours on and 2 hours off: not less than 1 day.

Tobacco: In bales: not less than two days. In cases and hogsheads: not less than 3 days.

Empty Buildings and Enclosures:

- a) Without throughflow: 5 days
- b) With throughflow and natural draught (wind): for structures of 300 tonnes or greater capacity: not less than 2 days, depending on structure size, openings and prevailing wind speed.
For structures of less than 300 tonnes capacity: 2 days
- c) With throughflow and forced draught (flash-proof fan) operated 2 hours on and 2 hours off: 1 to 2 days depending on size of structure.

WITHHOLDING PERIOD:

DO NOT USE TREATED PRODUCE FOR HUMAN CONSUMPTION OR FOR STOCK FEED FOR 2 DAYS AFTER COMPLETION OF FUMIGATION (MINIMUM EXPOSURE PLUS VENTILATION PERIOD).

TOBACCO: NOT REQUIRED WHEN USED AS DIRECTED.

TREATED COMMODITIES MAY BE SHIPPED AFTER COMPLETION OF THE MINIMUM EXPOSURE PERIOD PLUS VENTILATION PERIOD.

RABBIT CONTROL:

DIRECTIONS FOR USE (Qld, NSW, Vic, SA, WA only):

SITUATION	RATE	CRITICAL COMMENTS
Burrow	1 or 2 tablets per lead	Cut back around hole to expose other leads or tunnels for treatment and to provide adequate depth for the soil plug to close the opening after treatment. Place tablets well down the tunnel to avoid accidental covering by the soil plug. Fill the opening with ample soil and firm down well. Leave the surface as level as possible to discourage attention from outside rabbits. Effectiveness will be increased in any soil condition if tablets are wrapped in moistened paper prior to insertion in the hole.

NOT TO BE USED FOR ANY OTHER PURPOSE, OR IN ANY MANNER, CONTRARY TO THIS LABEL UNLESS AUTHORISED UNDER APPROPRIATE LEGISLATION.

GENERAL INSTRUCTIONS

PESTEX® releases phosphine gas when exposed to air. Phosphine penetrates throughout the commodity to kill eggs, larvae, pupae and adult stages of storage pests in sealed enclosures, but some eggs, pupae and adults will survive in unsealed enclosures (see Note 1 above).

Protect by sealing or otherwise, sensitive electrical and electronic equipment (computers, meters, switches, fire alarm systems, etc) containing copper/copper alloy components, photographic film or copy paper. Phosphine corrodes copper based materials.

APPLICATION

Fumigation of Commodities in Silos and Bulk Storages: Place the tablets in a single layer and separated from the commodity e.g. on non-flammable trays/sheets which are evenly spread on the commodity surface inside the storage.

Fumigation of Commodities under Gas Proof Sheeting: Place tablets spaced from each other on non-flammable sheets/trays distributed between and/or alongside stacked commodities in a manner that allows free circulation of gas. Ensure that the sheeting is sealed in a gas-tight manner after application.

Fumigation of empty storages/enclosures: Place tablets spaced from each other on non-flammable sheets/trays evenly spread in the enclosure; with application starting at the further point from the exit door. Ensure the enclosure is made gas-tight. Lock and seal exit door after application.

INSECTICIDE RESISTANCE WARNING

For insecticide resistance management PESTEX® Fumigation Tablets is a Group 24A insecticide.

GROUP 24A INSECTICIDE

Some naturally occurring insect biotypes resistant to PESTEX and other Group 24A insecticides may exist through normal genetic variability in any insect population. The resistant individuals can eventually dominate the insect population if PESTEX or other Group 24A insecticides are used repeatedly. The effectiveness of PESTEX on resistant individuals could be significantly reduced.

Since the occurrence of resistant insects is difficult to detect prior to use, Adama Australia Pty. Ltd. accepts no liability for any losses that may result from the failure of PESTEX to control resistant insects.

Application of PESTEX in unsealed storages/enclosures and use of low dose rates and shortened exposure periods is contrary to label instruction and will contribute to development of resistance.

Rabbit Control

Phosphine from PESTEX Fumigation Tablets acts as a respiratory, metabolic and nerve poison. Best results are achieved if the area to be treated is "dogged" thoroughly before the operation starts, to ensure that all the rabbits are in their warrens.

FLAMMABLE – KEEP AWAY FROM NAKED FLAME.

PRECAUTIONS

Show the following warning sign prominently at all approaches to every fumigation site.

"DANGER – POISON GAS – KEEP AWAY"

Keep animals, children and unauthorised persons away from the area under treatment until the area is shown to be free from phosphine as indicated by a gas measuring device.

Warning: Containers must be opened in the open air. Whilst opening containers take care and point containers away from the face and body, as under certain conditions possible build-up of gas may result in flash flame upon exposure to air.

Application rates higher than label directions and contrary to label instruction could cause the gas concentrations to reach the lower flammability level which is 1.79% by volume (17,900 parts per million). When used according to the label directions, the amount of gas produced remains far below the lower flammability level.

RE-ENTRY PERIOD

After application, wait until the Exposure Period has passed, then thoroughly ventilate for the required Ventilation Period and to the required Standard. Re-entry to fumigation areas is not recommended until measuring device(s) indicate that they are free of phosphine. The use of gas detection tubes or other measuring devices is recommended for monitoring gas levels in fumigation areas as phosphine gas may still be present even after treated commodities have been removed and fumigation areas ventilated.

DO NOT re-enter a storage after application has commenced or once treated grain/commodity has been emptied without wearing a full face respirator with particulate (P1) and phosphine gas filter cartridge (canister) or self-contained breathing apparatus, until a measuring device indicates that it is free of phosphine or the Total Fumigation Period (Minimum Exposure Period plus Ventilation Period) has elapsed.

PROTECTION OF LIVESTOCK

Disturbance of untreated phosphide powder residue results in release of more phosphine gas. Residues of phosphine gas or untreated phosphide powder in treated grain/commodity will be harmful if fed to animals, including poultry. Ensure feed is well mixed and that such residues are not present before feeding.

DO NOT feed treated grain/commodity to animals, including poultry, until the Total Fumigation Period (Exposure plus Ventilation) plus the Withholding Period has expired.

PROTECTION OF WILDLIFE, FISH, CRUSTACEANS AND ENVIRONMENT

This product is highly toxic to wildlife. Dangerous to fish. DO NOT contaminate streams, rivers or waterways with the chemical or used containers.

STORAGE AND DISPOSAL

Store in the closed, original container in a cool, dry, well-ventilated locked area, out of the reach of children and unauthorised persons and away from all dwellings, animals, food, feedstuffs, seed and fertilisers.

DO NOT store or carry container in vehicle cabins (this includes glove compartments, luggage compartments or other common air-spaces).

Keep away from water and liquids. Water and many liquids cause immediate release of phosphine from PESTEX. Uncontrolled release of phosphine may result in fire or explosion and release gas will pose a serious risk of injury to workers and bystanders.

After fumigation with the product on trays/sheets remove the spent tablets and ensure residual phosphide is destroyed before disposal, e.g. by swamping with dilute acid or soapy water in open air until bubbling ceases. Dispose of deactivated residues below 500 mm in an approved disposal pit specifically marked and set up for this purpose, clear of waterways, desirable vegetation and tree roots.

Triple rinse the empty containers with soapy water to ensure residual phosphide is destroyed. Dispose of rinsings in an approved disposal pit. Destroy empty containers by breaking, crushing or puncturing them. Dispose of the containers at a local authority landfill. If no local authority landfill is available, bury the containers at a depth of 500 mm in an approved disposal pit. DO NOT burn empty containers or product.

SAFETY DIRECTIONS

Very dangerous. Product releases dangerous phosphine gas slowly in moist air and immediately if wet. Can kill if inhaled or swallowed. DO NOT inhale dust or vapour. Avoid contact with eyes and skin. Open container in the open air. Keep away from water and liquids. Keep away from naked flames. Forms toxic gas. Use the entire contents in one operation; if not possible, seal container thoroughly with waterproof adhesive tape or air-tight closure. Wash hands after use. When opening the container or using the product wear elbow-length PVC gloves, full face piece respirator with combined dust and gas cartridge (canister) or supplied air respirator. After each days use wash gloves and respirator (if rubber wash with detergent and warm water).

FIRST AID

If poisoning occurs, contact a doctor or Poisons Information Centre. Phone Australia 131126.

DO NOT give direct mouth-to-mouth resuscitation if swallowed.

To protect rescuer, use air-viva, oxy-viva or one-way mask. Resuscitate in a well-ventilated area.

MATERIAL SAFETY DATA SHEET

Additional information is listed in the material safety data sheet (MSDS). A material safety data sheet for PESTEX is available from Adama on request. Call Customer Service on (02) 9431 7800.

CONDITIONS OF SALE: The use of PESTEX Fumigation Tablets being beyond the control of the manufacturer, no warranty expressed or implied is given by Adama Australia Pty. Ltd. regarding its suitability, fitness or efficiency for any purpose for which it is used by the buyer, whether in accordance with the directions or not and Adama Australia Pty. Ltd. accepts no responsibility for any consequence whatsoever from the use of this product.

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EPG: 4B3
HAZCHEM CODE: 4WE
PACKAGING GROUP: I



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Date of Manufacture