

# 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 301

[Docket No. 02-115-1]

#### Imported Fire Ant; Approved Treatments

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the imported fire ant regulations by adding the insecticide methoprene (Extinguish®) to the list of chemicals that are authorized for the treatment of regulated articles. This product is registered by the U.S. Environmental Protection Agency for use against the imported fire ant and has been found efficacious based on testing by the Gulfport Plant Methods Center. This action would make methoprene available for the treatment of containerized plants and field-grown woody ornamentals in the quarantined areas.

**DATES:** We will consider all comments that we receive on or before May 20, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-115-1, 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. 02-115-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto: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. 02-115-1" on the subject line.

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.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles L. Brown, Imported Fire Ant Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737-1231; (301) 734-8247.

#### SUPPLEMENTARY INFORMATION:

##### Background

The imported fire ant, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, is an aggressive, stinging insect that, in large numbers, can seriously injure or even kill livestock, pets, and humans. The imported fire ant feeds on crops and builds large, hard mounds that damage farm and field machinery. Imported fire ants are notorious hitchhikers and are readily transported long distances when articles such as soil and nursery stock are shipped outside the infested area.

The Animal and Plant Health Inspection Service (APHIS) works to prevent further imported fire ant spread by enforcing a Federal quarantine and cooperating with imported fire ant-infested States to mitigate the risks associated with the movement of regulated articles such as nursery stock and used soil-moving equipment. Also, APHIS evaluates the efficacy of regulatory treatments for preventing the artificial spread of imported fire ant and revises its regulations and procedures as necessary. APHIS works with States, industry, and other Federal agencies to develop and test promising new insecticides and biological control agents.

The regulations in "Subpart—Imported Fire Ant" (7 CFR 301.81 through 301.81-10, referred to below as the regulations) quarantine infested States or infested areas within States

and impose restrictions on the interstate movement of certain regulated articles from those quarantined States or areas for the purpose of preventing the artificial spread of the imported fire ant.

Sections 301.81-4 and 301.81-5 of the regulations provide, among other things, that regulated articles requiring treatment prior to interstate movement must be treated in accordance with the methods and procedures prescribed in the appendix to the subpart, which sets forth the treatment provisions of the "Imported Fire Ant Program Manual."

Tests conducted by APHIS's Gulfport Plant Methods Center in Mississippi have demonstrated that the insecticide methoprene (Extinguish®) is efficacious at variable dosage rates in treating plants in containers and at 1.0-1.5 lb. (0.45-0.68 kg) bait/acre for treatment of field-grown woody ornamentals. On May 27, 1998, methoprene was registered by the U.S. Environmental Protection Agency (EPA) for use against imported fire ant in containerized plants and field-grown woody ornamentals.

Therefore, we are proposing to amend the appendix to the regulations to add the insecticide methoprene (Extinguish®) as a treatment option for certain regulated articles requiring treatment against the imported fire ant. Specifically, we would amend the appendix to the regulations by adding methoprene (Extinguish®) to:

1. The list of authorized chemicals;
2. The list of approved treatments for all nurseries within the quarantined area, to treat all exposed soil surfaces where plants are grown, potted, stored, handled, unloaded, or sold; and
3. The list of fire ant baits that may be used in combination with chlorpyrifos to treat field-grown woody ornamentals.

#### Miscellaneous

In addition to the proposed amendments described previously, we would also make one nonsubstantive change to the appendix to the regulations. Specifically, we would add a reference to the insecticide pyriproxyfen (Distance®) to the second sentence of the paragraph titled *Special Information* in section III.C.5 of the appendix. When pyriproxyfen was added to the appendix as an approved treatment (see 64 FR 57969-57971, published October 28, 1999), references to that product should have been added to all three sentences in the *Special*

Information paragraph, but such a reference appears only in the first and third sentences of the paragraph. We would correct that omission.

#### **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 under Executive Order 12866.

This proposed rule would amend the appendix to the imported fire ant regulations to allow the use of the insecticide methoprene (Extinguish®) against the imported fire ant. Methoprene is registered by the EPA for use against the imported fire ant in containerized plants and field-grown woody ornamentals and has been found to be efficacious against imported fire ant based on testing by the Gulfport Plant Methods Center in Mississippi.

Determining the cost to treat for imported fire ant in nursery operations is complicated because of the large number of insecticide products, varying soil conditions, and various types of nursery crops. For example, in two surveys conducted by Hall and Holloway (1994 and 1995) of 37 nursery crop growers in Texas, which represented more than half of all nursery crops produced in that State, chemical cost per treatment per acre for imported fire ant control averaged \$12.10, with treatment costs representing up to 4 percent of their production cost. Almost half (47 percent) of those growers reported treating for imported fire ant and most of them reported using more than one pesticide in their operations (range=1 to 3; average=1.5) making the average cost per acre for insecticides to control imported fire ants \$18.15 (*i.e.*,  $1.5 \times \$12.10$ ).

Methoprene (Extinguish®) would be the latest insecticide to be added to the regulations for the treatment of imported fire ant. The currently approved treatments—Fipronil (Chipco®), Pyriproxyfen (Distance®), Fenoxycarb (AWARD®), Hydramethylnon (AMDRO®), and Bifenthrin (Talstar®)—cost approximately the same in the bulk market, \$5 to \$12 per pound, with each pound treating 17 colonies (*i.e.*, mounds) of imported fire ant. However, any insecticide's retail price depends on the price charged by its local distributor and may vary from State to State. Although the insecticides generally do not differ greatly in price, at least some consumers can be expected to benefit from inclusion of methoprene as an alternative treatment.

#### **Impact on Small Entities**

Businesses such as nurseries that work with regulated articles are the entities most likely to be affected by this proposed rule. This proposed rule would result in a wider selection of treatment options for imported fire ant. The economic effect on affected entities would either be positive, since a wider selection of insecticides will provide greater choice, or would have no effect, if they choose not to use methoprene.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small businesses. Based on data from the 1997 Census of Agriculture, there were 14,762 nurseries and greenhouses in the 13 States that have been affected by imported fire ant plus Puerto Rico, of which 82 to 99 percent were small entities, according to the Small Business Administration criterion of annual sales of \$750,000 or less.

It is expected that the economic effect of this proposed rule on these businesses would either be positive (a wider selection of insecticides will provide greater choice) or neutral (if they choose not to use methoprene). The majority (82 to 99 percent) of firms that may potentially be affected by this proposed rule are small entities.

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

#### **Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### **Executive Order 12988**

This 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.*).

Accordingly, we propose to amend 7 CFR part 301 as follows:

#### **PART 301—DOMESTIC QUARANTINE NOTICES**

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

**Authority:** 7 U.S.C. 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, 7754, and 7760; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In part 301, Subpart-Imported Fire Ant (§§ 301.81 through 301.81–10), the appendix to the subpart would be amended as follows:

a. In paragraph III.B., under the heading INSECTICIDES, by adding, in alphabetical order, an entry for “Methoprene (Extinguish®)”.

b. In paragraph III.C.4., under the heading *Control*, by removing the word “or” immediately following the word “(AWARD®),” and by adding the words “, or methoprene (Extinguish®)” immediately following the word “(Distance®)”.

c. In paragraph III.C.5., in the paragraph titled *Material*, by removing the word “or” immediately following the word “(AMDRO®),” and by adding the words “, or methoprene (Extinguish®)” immediately following the word “(Distance®)”.

d. In paragraph III.C.5., in the paragraph titled *Dosage*, by removing the word “or” immediately following the word “(AMDRO®),” and by adding the words “, or methoprene (Extinguish®)” immediately following the word “(Distance®)”.

e. In paragraph III.C.5., in the paragraph titled *Method*, in the first and third sentences, by removing the word “or” immediately following the word “(AMDRO®),” and by adding the words “, or methoprene (Extinguish®)” immediately following the word “(Distance®)”.

f. In paragraph III.C.5., by amending the paragraph titled *Special Information* as follows: (i) In the first and third sentences, by removing the word “or” immediately following the word “(AMDRO®),” and by adding the words “, or methoprene (Extinguish®)” immediately following the word “(Distance®)”.

(ii) In the second sentence, by removing the word “or” immediately following the word “(AWARD®)” and by adding the words “, pyriproxyfen (Distance®), or methoprene (Extinguish®)” immediately following the word “(AMDRO®)”.

Done in Washington, DC, this 18th day of March 2003.

**Kevin Shea,**

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

[FR Doc. 03-6799 Filed 3-20-03; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 354

#### 9 CFR Parts 97 and 130

[Docket No. 02-040-1]

#### Veterinary Services User Fees; Fees for Endorsing Export Certificates for Ruminants

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the user fees for endorsing export health certificates by establishing a separate user fee that would cover the cost of endorsing certificates that do not require verification of tests or vaccinations for ruminants. We are proposing this change to ensure that we recover all of the costs associated with providing that service. We are also proposing to make several miscellaneous changes to clarify the existing regulations.

**DATES:** We will consider all comments that we receive on or before May 20, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-040-1, 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. 02-040-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto: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. 02-040-1" on the subject line.

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holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

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**FOR FURTHER INFORMATION CONTACT:** For information concerning program operations, contact Ms. Inez Hockaday, Acting Director, Management Support Staff, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737-1231; (301) 734-7517.

For information concerning rate development, contact Ms. Kris Caraher, Accountant, User Fee Section, Financial Management Division, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737-1231; (301) 734-8351.

#### SUPPLEMENTARY INFORMATION:

##### Background

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import- and export-related services for animals, animal products, birds, germ plasm, organisms, and vectors are contained in 9 CFR part 130. Section 130.20 lists user fees we charge for endorsing health certificates for animals, birds, or animal or nonanimal products exported from the United States. Importing countries often require these certificates to show that an animal, bird, or product has tested negative to specific animal diseases or that the animal, bird, or product has not been exposed to specific animal diseases. The endorsement indicates that APHIS has reviewed a certificate and believes it to be accurate and reliable. The steps associated with endorsing an export certificate may include reviewing supporting documentation; confirming that the importing country's requirements have been met; verifying laboratory test results for each animal if tests are required; reviewing any certification statements required by the importing country; and endorsing, or signing, the certificates. Our user fees are intended to cover all of the costs associated with endorsing the certificates.

The user fees we charge to endorse export health certificates vary, depending on whether or not the importing country requires verification of tests or vaccinations and the type and quantity of animals, birds, or products covered by the certificate. For those

certificates that do not require verification of tests or vaccinations, paragraph (a) of § 130.20 lists user fees for the following certificate categories: Animal and nonanimal products; hatching eggs; poultry, including slaughter poultry; slaughter animals (except poultry) moving to Canada or Mexico; and other endorsements or certifications. For those certificates that require verification of tests or vaccinations, paragraph (b) of § 130.20 lists user fees based on the number of animals or birds and the number of tests or vaccinations on the certificate, and whether the animals covered by the certificate are nonslaughter horses moving to Canada or are other animals or birds. Currently, user fees for the endorsement of export health certificates for ruminants, except for ruminants exported for slaughter to Canada or Mexico, are included in the certificate categories "Other endorsements or certifications" and "Other animals or birds" in paragraphs (a) and (b) of § 130.20, respectively.

On August 28, 2000, we published a final rule in the **Federal Register** (65 FR 51997-52010, Docket No. 97-058-2) that amended the user fees for, among other things, the endorsement of export health certificates. We calculated the user fees established by that final rule to cover the costs associated with providing that service, which include direct labor and direct material costs.

Since the time we calculated the fees established in the August 2000 final rule, we have conducted a review of the costs of endorsing export health certificates. In that review, we found that the projected direct labor costs used to calculate the multi-year user fees for the certificate category "Other endorsements or certifications" in § 130.20(a) are less than the actual direct labor costs for the endorsement of certificates for ruminants, which is covered by that certificate category. As a result, the user fees charged to endorse certificates in accordance with § 130.20(a) for ruminants are less than the actual cost of providing that service. For the user fees to cover all the costs associated with endorsing such certificates for ruminants, including the direct labor costs, we propose to establish a new certificate category and user fee in § 130.20(a) for ruminants.

APHIS currently charges \$23 to endorse each certificate covered by the certificate category "Other endorsements or certifications" in § 130.20(a). We have estimated the actual cost of providing that service for ruminants to be \$33 for each endorsement; therefore, we propose to increase the current user fee charged for