

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 01–080–3]

#### Oriental Fruit Fly; Removal of Quarantined Areas

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the Oriental fruit fly regulations by removing portions of San Bernardino and San Diego Counties, CA, from the list of quarantined areas and by removing restrictions on the interstate movement of regulated articles from those areas. The quarantine was necessary to prevent the spread of Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from these portions of San Bernardino and San Diego Counties, CA, and that the quarantine and restrictions on the interstate movement of regulated articles from those areas are no longer necessary.

**EFFECTIVE DATE:** The interim rule became effective on May 15, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–8039.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruits, nuts, and vegetables. The short life cycle of the Oriental fruit fly allows rapid

development of serious outbreaks that can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93–10 (referred to below as the regulations), restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of the Oriental fruit fly to noninfested areas of the United States. The regulations also designate soil and a large number of fruits, nuts, vegetables, and berries as regulated articles.

In an interim rule effective and published in the **Federal Register** on May 15, 2002 (67 FR 34589–34590, Docket No. 01–080–2), we amended the regulations by removing portions of San Bernardino and San Diego Counties, CA, from the list of quarantined areas and by removing restrictions on the interstate movement of regulated articles from those areas. That action relieved unnecessary restrictions on the interstate movement of regulated articles from those areas.

Comments on the interim rule were required to be received on or before July 15, 2002. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

#### List of Subjects in 7 CFR Part 301

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

#### PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 67 FR 34589–34590 on May 15, 2002.

**Authority:** 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 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).

Done in Washington, DC, this 10th day of September 2002.

**Bobby R. Acord,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 02–23676 Filed 9–17–02; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 01–115–2]

#### Imported Fire Ant; Approved Treatments

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the imported fire ant regulations to add the insecticide fipronil (Chipco®) to the list of chemicals authorized for the treatment of regulated articles and to provide instructions for its use in soil or potting media and on grass sod. This action makes another authorized treatment available to persons wishing to move containerized plants and commercial grass sod interstate from quarantined areas. We are also updating the regulations by making the rates of application for chlorpyrifos (Dursban®), a currently authorized insecticide, consistent with current product labeling.

**EFFECTIVE DATE:** September 18, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles L. Brown, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4838.

#### 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 and even kill livestock, pets, and humans. The imported fire ant feeds on

crops and builds large, hard mounds that damage farm and field machinery.

The imported fire ant regulations (7 CFR 301.81 through 301.81-10, referred to below as the regulations) quarantine infested States or infested areas within States and restrict the interstate movement of regulated articles from those areas to prevent the artificial spread of the imported fire ant. Regulated articles include soil, plants, and sod (§ 301.81-2).

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."

On April 30, 2002, we published a proposal in the **Federal Register** (67 FR 21183-21185, Docket No. 01-115-1) to amend the imported fire ant regulations by adding the insecticide fipronil (Chipco®) to the list of chemicals authorized for the treatment of soil, potting media, and grass sod. We also proposed to change the dosage rates for applying chlorpyrifos, a currently approved insecticide, to grass sod so that the rate would be consistent with current product labeling.

We solicited comments concerning our proposal for 60 days ending July 1, 2002. We received five comments by that date. They were from representatives of a pest control company and three State agriculture departments. Three comments supported our proposal, and two comments raised two issues, which are discussed below.

One commenter stated his concern that over-the-counter availability of fipronil would remove business from pest management professionals. The commenter's assumption that fipronil that is used in the imported fire ant quarantine program will be available over the counter is incorrect. The over-the-counter product is not labeled for imported fire ant quarantine use and thus cannot be used in the program. Certified applicators, who could include personnel at nurseries or golf courses or pest management professionals, must apply the product.

Two commenters were concerned that the use of fipronil would lead to contamination of ground water, streams, lakes, and other water resources due to the over application or misuse of fipronil. Fipronil must be applied according to the label that has been approved by the Environmental Protection Agency (EPA). When fipronil is used in accordance with the label

requirements and applied by certified applicators, it is unlikely that any over application or misuse of fipronil will occur.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

#### Effective Date

This is a substantive rule that approves the use of a new chemical pesticide that may be used as an alternative to other authorized chemicals. Immediate implementation of this rule will enable those persons wishing to sell or use fipronil to benefit from its availability for treatment of the imported fire ant during the fall shipping season, which is about to begin. Therefore, pursuant to 5 U.S.C. 553, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective less than 30 days after publication in the **Federal Register**.

#### 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 rule amends the appendix to the imported fire ant regulations to allow the use of the insecticide fipronil (Chipco®) against the imported fire ant. Fipronil is registered by the EPA for use against imported fire ant in potting media and commercial grass sod and has been found to be efficacious against the imported fire ant based on testing by the Gulfport Plant Methods Center in Mississippi.

Determining the cost of imported fire ant treatments is complicated because of the variety of insecticides that can be used, varying soil conditions, and the various nursery crops grown. For example, in two surveys conducted by Hall and Holloway (1994 and 1995) of 37 nursery crop growers in Texas—representing over one-half of all nursery crops produced in that State—chemical cost per treatment for imported fire ant control averaged \$12.10, with treatment costs making up to 4 percent of their production cost. Almost one-half (*i.e.*, 47 percent) of those growers reported treating for imported fire ant, and most of them reported using more than one insecticide to treat for imported fire ant 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 × \$12.10).

Fipronil is the latest EPA-approved insecticide to be added to the regulations for the treatment of imported fire ant. Other approved insecticides—Pyriproxyfen (Distance®, Fenoxycarb (Award®, Hydramethylnon (AMDRO®, and Bifenthrin (Talstar®—cost approximately the same in the bulk market, between \$5 per pound and \$12 per pound, with each pound treating 17 colonies (*i.e.*, mounds) of imported fire ant. An 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 the inclusion of fipronil as an alternative treatment.

#### Affected Entities

Businesses such as nurseries, sod growers, farm equipment dealers, and construction companies that work with regulated articles are the entities most likely to be affected by this rule. This rule results in a wider selection of treatment options for imported fire ant. The economic effect on affected entities is expected to either be positive, since a wider selection of insecticides will provide greater choice, or have no effect, if they choose not to use fipronil.

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 13,266 nurseries and greenhouses located in areas of the United States quarantined because of imported fire ant, of which 82 to 99 percent were small businesses, according to the U.S. Small Business Administration's criterion of annual sales of less than \$750,000.

The addition of fipronil to the imported fire ant regulations provides the regulated community with a greater selection of treatment options. Thus, it is expected that the economic effect on these businesses would either be positive (a wider selection of insecticides provides greater choice) or neutral (if they choose not to use fipronil). The majority (*i.e.*, 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 will 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 7 CFR Part 301**

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

Accordingly, we are amending 7 CFR part 301 as follows:

**PART 301—DOMESTIC QUARANTINE NOTICES**

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

**Authority:** 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 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 is amended as follows:

a. In paragraph III.B., under the heading INSECTICIDES, by adding “Fipronil (Chipco®)” in alphabetical order.

b. By redesignating paragraph III.C.3.d. as paragraph III.C.3.e. and adding a new paragraph III.C.3.d. to read as set forth below.

c. In newly redesignated paragraph III.C.3.e., by removing, from the heading, the words “or tefluthrin” and adding the words “tefluthrin, or fipronil” in their place, and by adding a new “Method F—Granular Incorporation (Fipronil)” in alphabetical order to read as set forth below.

d. In paragraph III.C.4., under the heading *Exclusion*, by adding a new entry for *Fipronil*, following the *Tefluthrin* entry, to read as set forth below.

e. In paragraph III.C.4., under the heading *Enforcement*, the sixth paragraph, second sentence, by removing the words “or tefluthrin” and adding the words “tefluthrin, or fipronil” in their place.

f. In paragraph III.C.8., by revising the entry for *Material* to read as set forth below.

**APPENDIX TO SUBPART “IMPORTED FIRE ANT”**

**III. Regulatory Procedures**

\* \* \* \* \*

*C. Approved Treatments.*

\* \* \* \* \*

3. Plants Balled or in Containers

\* \* \* \* \*

d. Fipronil: Granular Formulation.

*Material:* Granular fipronil incorporation into soil or potting media for containerized nursery stock.

*Dosage:* The amount of granular fipronil needed to achieve a specified dosage varies with the bulk density of the soil or potting media. Follow label directions to calculate the amount of granular fipronil needed to achieve a specified dosage.

Granular fipronil dosage (parts per million)	Certification period (months after treatment)
10 ppm .....	0–6 months.
12 ppm .....	0–12 months.
15 ppm .....	0–24 months.
25 ppm .....	Continuous.

*Exposure Period:* Containerized nursery stock can be certified for interstate movement from quarantined areas 2 weeks after completion of treatment.

e. \* \* \*

Method F—Granular Incorporation (Fipronil)

Apply fipronil according to the label instructions for granular incorporation. Mix thoroughly to distribute product evenly throughout the soil or potting media. After potting, containers must be watered to the point of saturation.

*Precautions:* Saturation of the soil or potting media with the granular fipronil is essential. Water that drains from the treatment area, which may contain fipronil, must be disposed of in accordance with State and local laws.

4. Imported-Fire-Ant-Free Nursery—Containerized Plants Only

\* \* \* \* \*

*Exclusion*

\* \* \* \* \*

*Fipronil*

For plants grown on the premises: Treatment of soil or potting media with granular fipronil prior to planting is permitted as an alternative to treatment with granular formulations of bifenthrin or tefluthrin. This treatment reduces the risk of infestation of containers by alate queens flying in from adjacent or nearby infested premises. The dosage rate is variable, determined by the selected certification period, for the granular fipronil.

Apply this treatment according to the label directions.

Mixing must be adequate to blend the required dosage of granular fipronil throughout the entire soil or potting media.

\* \* \* \* \*

8. Grass—Sod

*Material*

a. Chlorpyrifos.

Material	Amount and dosage of material	Certification period
Chlorpyrifos .....	8.0 lb (3.6 kg) a.i./acre .....	6 weeks (after exposure period has been completed).

*Exposure Period:* 48 hours.

*Method*

1. Apply a single broadcast application of chlorpyrifos with ground equipment.

2. Immediately after treatment, water the treated areas with at least ½ inch of water.

Chlorpyrifos wettable powder Dursban® 50–WP: Follow label directions for regulatory treatment for IFA.

b. Fipronil.

Material	Amount and dosage of material	Certification period
Fipronil .....	Dosage per application: 0.0125 lb (0.00567 kg) a.i./acre. Total amount over two applications: 0.025 lb (0.01134 kg) a.i./acre.	20 weeks (after exposure period has been completed).

*Exposure Period:* 30 days from the second application.

*Method*

1. Apply in two applications approximately 1 week apart for a total of 0.025 lb (0.01134 kg) a.i./acre.
2. Follow label directions for regulatory treatment for IFA.

\* \* \* \* \*

Done in Washington, DC, this 12th day of September, 2002.

**Bobby R. Acord,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 02-23685 Filed 9-17-02; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2001-NE-42-AD; Amendment 39-12882; AD 2002-19-02]

RIN 2120-AA64

#### **Airworthiness Directives; Turbomeca S.A. Makila Models 1A, 1A1, and 1A2 Turboshaft Engines**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to Turbomeca S.A. Makila Models 1A, 1A1, and 1A2 turboshaft engines with exhaust pipes incorporating modification TU 200A installed. This action requires visual inspections of exhaust pipes for cracks and tears, upon completion of the last flight of each day, and replacement of cracked and torn exhaust pipes before further flight. This action also requires removal from service of modification TU 200A exhaust pipes at the next shop visit or no later than a certain date. This amendment is prompted by several reports of modification TU 200A exhaust pipes cracking at several of the ejector attachment tabs. The actions specified in this AD are intended to prevent the ejector from becoming loose from the exhaust pipe, resulting in damage to the main rotor and tail rotor and loss of helicopter control.

**DATES:** Effective October 3, 2002.

Comments for inclusion in the Rules Docket must be received on or before November 18, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England

Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001-NE-42-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

**FOR FURTHER INFORMATION CONTACT:**

Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7132; fax (781) 238-7199.

**SUPPLEMENTARY INFORMATION:** The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Turbomeca S.A. Makila Models 1A, 1A1, and 1A2 turboshaft engines with modification TU 200A exhaust pipes installed. The exhaust pipe is composed of a primary exhaust pipe mounted on the engine, and an ejector pipe fixed on the primary exhaust pipe by eight attachment tabs. The DGAC advises that several reports were received of modification TU 200A exhaust pipes cracking at several of the ejector attachment tabs. This type of deterioration, if allowed to continue, can result in damage to the main rotor and tail rotor and loss of helicopter control. The DGAC issued AD T2001-301(A), dated July 3, 2001, and AD 2002-124(A), dated March 6, 2002, in order to assure the airworthiness of these Turbomeca S.A. Makila models 1A, 1A1, and 1A2 turboshaft engines in France.

**Bilateral Airworthiness Agreement**

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

#### **FAA's Determination of an Unsafe Condition and Required Actions**

Since an unsafe condition has been identified that is likely to exist or develop on other Turbomeca S.A. Makila Models 1A, 1A1, and 1A2 turboshaft engines of the same type design, this AD is being issued to prevent the ejector from becoming loose from the exhaust pipe, resulting in damage to the main rotor and tail rotor and loss of helicopter control. This AD requires visual inspections of exhaust pipes for cracks and tears, upon completion of the last flight of each day and replacement of cracked and torn exhaust pipes before further flight. This action also requires as terminating action to the repetitive inspections, removal from service of modification TU 200A exhaust pipes at the next shop visit, or no later than June 30, 2003.

#### **Immediate Adoption of This AD**

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

#### **Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact