

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 02-115-2]

#### 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 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 rule makes methoprene available for the treatment of containerized plants and field-grown woody ornamentals in the quarantined areas.

**EFFECTIVE DATE:** November 14, 2003.

**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.”

On March 21, 2003, we published in the **Federal Register** (68 FR 13859-13861, Docket No. 02-115-1) a proposal to amend the regulations by adding the insecticide methoprene (Extinguish®) to the list of chemicals that are authorized for the treatment of regulated articles and make methoprene available for the treatment of containerized plants and field-grown woody ornamentals in the quarantined areas.

We solicited comments concerning our proposal for 60 days ending May 20, 2003. We received two comments by that date. The comments were from State departments of agriculture. Both commenters were in favor of adding methoprene (Extinguish®) to the list of chemicals that are authorized for the treatment of regulated articles.

Therefore, for the reasons given in the proposed rule, we are adopting the

proposed rule as a final rule, without change.

#### Executive Order 12866 and Regulatory Flexibility Act

This 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 final rule amends 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 U.S. Environmental Protection Agency 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 ant \$18.15 (*i.e.*, 1.5 × \$12.10).

Methoprene (Extinguish®) is 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 rule. This final rule will result in a wider selection of treatment options for imported fire ant. The economic effect on affected entities will either be positive, since a wider selection of insecticides will provide greater choice, or neutral, 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.

We expect that the economic effect of this final rule on these businesses will 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 final 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 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 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. 7701–7772; 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).

#### Appendix to Subpart—Imported Fire Ant [Amended]

■ 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, 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 9th day of October, 2003.

**Kevin Shea,**

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

[FR Doc. 03–26043 Filed 10–14–03; 8:45 am]

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## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Parts 910 and 913

[No. 2003–25]

RIN 3069–AB07

#### Amendments to the Privacy Act and Freedom of Information Act; Implementation

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is adopting as a final rule the interim final rule that revised its Privacy Act regulation to reflect an agency reorganization and to make it more “user-friendly” by using plain language and where appropriate, a question-and-answer format. The rule also amended the fee schedule in the Freedom of Information Act (FOIA) regulation, which the Finance Board uses to determine the amount of the fee it charges to duplicate records under both the FOIA and the Privacy Act, to take into account increased salary and operating costs.

**EFFECTIVE DATE:** The final rule will become effective on November 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Janice A. Kaye, Senior Attorney-Advisor, Office of General Counsel, by electronic mail at [kayej@fhfb.gov](mailto:kayej@fhfb.gov), by telephone at 202/408–2505, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In July 2003, the Finance Board published an interim final rule with request for comments that revised its