

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. 99-027-1]

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 pyriproxyfen (Distance®) to the list of chemicals authorized for the treatment of containerized nursery plants and field-grown woody ornamentals that are to be certified for interstate movement from quarantined areas. This action would give the regulated community another choice with which to meet certification requirements. We are also proposing to update the imported fire ant regulations by amending dosages and formulations for currently authorized insecticides in order to be consistent with product labeling and availability; by alphabetizing, for organizational purposes, the list of authorized chemicals; and by adding a brand name to the list of authorized chemicals, for consistency.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by August 6, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 99-027-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 99-027-1.

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 rules, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-5255; or e-mail: ron.p.milberg@usda.gov.

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 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 restrict the interstate movement of certain articles from those quarantined States or areas to prevent 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."

Recent trials conducted by the Animal and Plant Health Inspection Service (APHIS) Imported Fire Ant Methods Development Station in Gulfport, MS, have shown that the insecticide pyriproxyfen (Distance®) is effective as a bait at a dosage rate of 1.0-1.5 lbs (0.45-0.68 kg) bait/acre for the treatment of field grown woody ornamentals and for controlling the imported fire ant in containerized nursery plants. As with the currently authorized bait insecticides, fenoxycarb (AWARD®) and

hydramethylnon (AMDRO®), pyriproxyfen (Distance®) provides no residual barrier against infestation by new queens and must be followed by the application of a contact insecticide to eliminate all colonies and to prevent reinfestation.

In 1998, the United States Environmental Protection Agency approved pyriproxyfen (Distance®) for the treatment of grass sod, soil, and mulch against the imported fire ant at a dosage rate of 1.0-1.5 lbs (0.45-0.68 kg) bait/acre. We are proposing: (1) to amend the Appendix to the subpart, paragraph III.B., under the heading "Insecticide," by adding pyriproxyfen (Distance®) to the list of authorized chemicals for the treatment of regulated articles; (2) to amend paragraph III.C.4. of the Appendix, under the heading "Control," to allow pyriproxyfen (Distance®) to be used as an alternative to fenoxycarb (AWARD®) and hydramethylnon (AMDRO®) for the treatment of containerized nursery plants to eliminate the imported fire ant; and (3) to amend paragraph III.C.5. of the Appendix to allow pyriproxyfen (Distance®) to be used as an alternative to fenoxycarb (AWARD®) and hydramethylnon (AMDRO®) for the treatment of field-grown woody ornamentals to eliminate active imported fire ant colonies.

In addition, in order to update the Appendix to the subpart, we are proposing to amend paragraph III.C.4. by adding the "flowable" formulation of bifenthrin to the regulations and paragraph III.C.3. by announcing that the "wetable powder" formulation of bifenthrin has been discontinued by the manufacturer in favor of the new flowable formulation. We are also proposing to amend paragraph III.C.5. by changing the dosage rate for fenoxycarb (AWARD®) and hydramethylnon (AMDRO®) from 1.5 lbs (0.68 kg) bait/acre to 1.0-1.5 lbs (0.45-0.68 kg) bait/acre, in order to be consistent with product labeling.

Finally, we are proposing to amend the Appendix to the subpart, paragraph III.B., under the heading "Insecticides," by adding the brand name (Talstar®) to the entry for bifenthrin, in order to be both consistent and fair, and by alphabetizing the list for the sake of organization.

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 process required by Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the economic effects of this proposed rule on small entities. We do not currently have all the data necessary for a comprehensive analysis of the economic effects of this rule on small entities. Therefore, we are inviting comments concerning potential economic effects. In particular, we are interested in determining the number and kinds of small entities that may incur benefits or costs from implementation of this proposed rule.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167), the Secretary of Agriculture is authorized to regulate the interstate movement of articles to prevent the spread of injurious plant pests in the United States.

This proposed rule would amend the imported fire ant regulations to allow the use of the bait insecticide pyriproxyfen (Distance®) for the treatment of containerized nursery plants and field-grown woody ornamentals that are to be certified for interstate movement from quarantined areas.

Currently, in order to be certified, containerized nursery plants and field-grown woody ornamentals must be treated with a bait insecticide, either fenoxycarb (AWARD®) or hydramethylnon (AMDRO®), in conjunction with a contact insecticide, bifenthrin (Talstar®). We are proposing to allow pyriproxyfen (Distance®) to be used as an alternative to fenoxycarb (AWARD®) and hydramethylnon (AMDRO®) in order to give nurseries more options by which they can certify their products. All three bait insecticides fall within the same price range, \$8–\$10/lb, but competition between imported fire ant insecticide producers, which would be stimulated by the inclusion of pyriproxyfen (Distance®), could result in decreased prices, benefiting many nurseries.

The only significant alternative to this proposed rule that we considered was to not add pyriproxyfen (Distance®) to the list of authorized chemicals for the treatment of regulated materials. We have rejected this alternative because it would deny nurseries the benefit of

having another authorized bait insecticide to choose from.

This proposed rule contains no reporting or recordkeeping requirements.

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.*).

List of Subjects in 7 CFR Part 301

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

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. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

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

a. In paragraph III.B., under the heading “INSECTICIDES,” the list would be revised to read as set forth below.

b. In paragraph III.C.3.d., under the heading “Method C—Topical Application,” a fourth paragraph would be added to read as set forth below.

c. In paragraph III.C.4., under the heading “Control,” immediately following the word “(AMDRO®)”, the word “or” would be removed and a comma would be added in its place, and immediately following the word “(AWARD®)”, the words “, or

pyriproxyfen (Distance®)” would be added.

d. In paragraph III.C.4., under the heading “Exclusion,” under “Bifenthrin,” first sentence, immediately following the word “granular”, the word “, flowable,” would be added.

e. In paragraph III.C.4., under the heading “Exclusion,” under “Bifenthrin,” first paragraph, the last sentence would be revised to read as set forth below.

f. In paragraph III.C.4., under the heading “Exclusion,” under “Tefluthrin,” first sentence, immediately following the word “granular”, the word “, flowable,” would be added.

g. In paragraph III.C.5., the “Material” and “Dosage” paragraphs would be revised to read as set forth below.

h. In paragraph III.C.5., in the “Method” paragraph, the phrase “1.5 lb (0.68 kg)” would be removed and the phrase “1.0–1.5 lb (0.45–0.68 kg)” would be added in its place.

i. In paragraph III.C.5., in the “Method” and “Special Information” paragraphs, the words “fenoxycarb (AWARD®) or hydramethylnon (AMDRO®)” would be removed and the words “fenoxycarb (AWARD®), hydramethylnon (AMDRO®), or pyriproxyfen (Distance®)” would be added in their place each time they appear.

Appendix to Subpart “Imported Fire Ant”—Portion of “Imported Fire Ant Program Manual”⁸*III. Regulatory Procedures*

* * * * *

*B. * * ***Insecticides*

Bifenthrin (Talstar®)
Chlorpyrifos (Dursban®)
Diazinon
Fenoxycarb (AWARD®)
Hydramethylnon (AMDRO®)
Pyriproxyfen (Distance®)
Tefluthrin (FIREBAN®)

C. * * *

3. * * *

d. * * *

Method C—Topical Application

* * * * *

Manufacture of the 10WP (wetable powder) formulation was discontinued in 1998; however, the EPA will allow this product to be utilized until supplies are exhausted.

* * * * *

⁸ A copy of the entire “Imported Fire Ant Program Manual” may be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737–1236.

4. * * *

Exclusion**Bifenthrin**

* * * The dosage rate for granular bifenthrin is variable and is determined by the certification period selected; for flowable bifenthrin it is 25 ppm; for wettable powder bifenthrin it is 50 ppm.

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5. Field-Grown Woody Ornamentals (In-Field Treatment Prior to Harvest)

Material: Chlorpyrifos used in combination with fenoxycarb (AWARD®), hydramethylnon (AMDRO®), or pyriproxyfen (Distance®) fire ant bait.

Dosage: Fenoxycarb (AWARD®), hydramethylnon (AMDRO®), or pyriproxyfen (Distance®) at 1.0–1.5 lb (0.45–0.68 kg) bait/acre. Chlorpyrifos at 6.0 lb (2.7 kg) a.i./acre.

* * * * *

Done in Washington, DC, this 1st day of June 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–14306 Filed 6–4–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Parts 916 and 917**

[Docket No. FV99–916–3 PR]

Nectarines and Peaches Grown in California; Revision of Reporting Requirements for Fresh Nectarines and Peaches; Request for Revision to Currently Approved Information Collections

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on proposed revisions to the rules and regulations of the marketing orders (orders) for fresh nectarines and peaches grown in California pertaining to reporting requirements. This rule also announces the Agricultural Marketing Service's (AMS) intention to request a revision to the currently approved information collection requirements issued under the orders. The orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). Under the orders, authority is provided for the committees to require handlers to file reports on the destinations of their shipments of fresh nectarines and peaches. This rule would require handlers to file such destination reports.

Additional and timely information would thus be available to the committees and industry, facilitating improved decisionmaking and program administration with regard to marketing research and development, and promotional activities.

DATES: Comments must be received by August 6, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 205–5698; or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreements Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the “orders.” The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as

amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

The Department of Agriculture (Department) is issuing this proposed rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on revisions to the orders' rules and regulations pertaining to reporting requirements under the orders. This rule would establish procedures in the orders' rules and regulations for handlers to file reports on the destinations of their shipments of fresh nectarines and peaches. Under the orders the term “handler” is synonymous with the term “shipper.” This proposal was unanimously recommended by the committees at their meetings on December 2, 1998.

In §§ 916.60 and 917.50 of the orders, authority is provided for the committees to require handlers to file reports with the committees. The information authorized includes, but is not limited to: (1) The name of the shipper and the shipping point; (2) the car or truck license number (or name of the trucker), and identification of the carrier; (3) the date and time of departure; (4) the number and type of containers in the shipment; (5) the quantities shipped, showing separately the variety, grade, and size of the fruit; (6) the destination; and (7) the identification of the inspection certificate or waiver pursuant to which the fruit was handled. Handlers have not been required to