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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96-063-4]

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 lengthen the certification period for containerized nursery stock treated with a 10 parts per million dosage of the insecticide tefluthrin in its granular formulation and to remove the 15 parts per million dosage rate for granular tefluthrin. These changes are based on research showing that a 10 parts per million dosage of granular tefluthrin is efficacious for 18 months, which is 12 months longer than the original certification period for that dosage and 6 months longer than the original certification period for a 15 parts per million dosage. Lengthening the certification period for the 10 parts per million dosage and removing the 15 parts per million dosage will reduce the amount of insecticide used, which will reduce the costs incurred by persons moving containerized nursery stock interstate from areas quarantined for the imported fire ant.

EFFECTIVE DATE: July 7, 1997.

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: rmilberg@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Imported fire ants, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, are aggressive, stinging insects 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.

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."

In a proposed rule published in the **Federal Register** on January 31, 1997 (62 FR 4664-4666, Docket No. 96-063-3), we proposed to amend the regulations to lengthen the certification period for containerized nursery stock treated with a 10 parts per million (ppm) dosage of the insecticide tefluthrin in its granular formulation and to remove the 15 ppm dosage for granular tefluthrin.

We solicited comments concerning the proposed rule for 45 days ending March 17, 1997. We received 3 comments by that date. The comments we received were from a State agricultural agency, a nursery and landscape industry trade organization, and an agricultural products manufacturer. One commenter strongly supported the proposed rule, while the two remaining commenters questioned the accuracy and validity of the statistical analysis used to support the proposed lengthening of the certification period for a 10 ppm dosage of granular tefluthrin.

One of the two commenters who opposed an 18-month certification period for a 10 ppm dosage of granular tefluthrin stated that his own statistical analysis of the raw data led him to conclude that a 10 ppm dosage rate can

be expected to provide protection from fire ant infestation for only 13.4 months, rather than the 18 months cited by the Animal and Plant Health Inspection Service (APHIS). The second commenter stated that APHIS had utilized a flawed regression equation and that data had been inappropriately omitted from the regression analysis; this commenter suggested that a second analysis be conducted that included data points for a 0 ppm dosage and a regression of the square root of the dependent variable (months) on the log of the dose (ppm).

We continue to believe that the testing and analysis conducted by APHIS at its Imported Fire Ant Methods Development Station (IFAMDS) in Gulfport, MS, were properly conducted and support our conclusion that granular tefluthrin incorporated at a dosage rate of 10 ppm into soil or potting media for containerized nursery stock is efficacious for 18 months. IFAMDS researchers used regression analysis (SPSS Inc., "SPSS/PC+™ Base System User's Guide: Version 6," Chicago, IL, 1992) of all valid data points from dozens of different field trials of tefluthrin conducted between 1988 and 1995. That regression analysis indicated that, on average, 18 months of residual activity could be expected from tefluthrin at a dose rate of 10 ppm based on dry weight bulk density of the potting media.

However, because two of the commenters disputed the validity of the regression analysis used to support the proposed rule, researchers at IFAMDS sought to corroborate the results of the regression analysis by reevaluating the data from the tefluthrin field trials using the exact same method that was used to obtain the variable dose rate schedule for granular bifenthrin, another insecticidal formulation currently approved for use in the imported fire ant program.

Specifically, the IFAMDS researchers used simple arithmetic means of various data points from a variety of trials to determine the average residual activity of tefluthrin at various dose rates, then averaged all data from the trials that included a 10 ppm dose rate. A compilation of the data collected in those trials yielded six valid data points—12, 16, 16, 17, 20, and 31 months—that were used to arrive at an average residual activity of 18.6 months

for granular tefluthrin incorporated in potting media at a 10 ppm dosage rate.

Both our original regression analysis and the subsequent arithmetic means analysis indicated that, on average, 18 months of residual activity could be expected from tefluthrin at a dose rate of 10 ppm. We recognize that the 18-month certification period is based on an average and, as is the case with any average, there may be instances in which tefluthrin incorporated at 10 ppm may not provide a full 18 months of residual activity. We believe, however, that any increased risk that may be present in such instances is mitigated by the certification requirements and movement restrictions of the regulations. Additionally, granular tefluthrin is approved for use only for the treatment of containerized nursery stock, and most persons moving containerized nursery stock out of the regulated areas do so as participants in the Imported-Fire-Ant-Free Nursery program, which combines the control aspect of insecticidal formulations with detection, exclusion, and enforcement provisions in order to prevent the artificial spread of the imported fire ant.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal 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 process required by Executive Order 12866.

This rule amends the regulations by lengthening the certification period for containerized nursery stock treated with a 10 ppm dosage of granular tefluthrin and by removing the 15 ppm dosage rate for granular tefluthrin. Lengthening the certification period for the 10 ppm dosage and removing the 15 ppm dosage will reduce the amount of insecticide used, which will reduce the costs incurred by persons moving containerized nursery stock interstate from areas quarantined for the imported fire ant.

The number of current users of granular tefluthrin—and the number of potential new users that may result from this rule change—is not known, but most are assumed to be small entities (wholesalers of nursery stock having fewer than 100 employees, and retail nurseries having less than \$5 million in annual revenue). Several thousand nursery wholesalers and retailers have signed compliance agreements under

the imported fire ant regulations, but not all of them are necessarily shipping restricted products out of the regulated areas that require the application of granular tefluthrin or alternative chemicals. Moreover, most nurseries under compliance agreements currently use treatments other than tefluthrin. Therefore, it is difficult to estimate how many small entities will be affected by this rule change, but they may number in the hundreds.

Costs for most users of granular tefluthrin will be reduced because of the increased period of certification. Because the regulations had required a dose rate of 15 ppm for a certification period of 0–12 months and a dose rate of 25 ppm for a certification period greater than 12 months, the 18-month certification period for the 10 ppm dose rate will result in a cost savings of from 33 to 60 percent for purchasers of granular tefluthrin who ship their products out of the restricted areas between 12 and 18 months after treatment. The current retail price of granular tefluthrin is about \$4.00 per pound, but prices can vary considerably depending upon whether or not it is purchased in bulk. A 33 to 60 percent cost savings realized by applying tefluthrin at a 10 ppm dose rate rather than a 15 or 25 ppm dose rate is expected to result in a savings of about \$1.33 to \$2.40 in the application of one pound of granular tefluthrin.

We do not anticipate that there will be a significant economic impact on small entities that distribute agricultural chemicals. Distributors of agricultural chemicals are diversified businesses that sell a wide variety of chemicals, fertilizers, and other farm and nursery supplies. We also do not expect any significant economic impact on any other 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 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, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues 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, in the appendix to the subpart, paragraph III.C.3.c. is amended by revising the dosage table to read as follows:

Subpart—Imported Fire Ant

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Appendix to Subpart “Imported Fire Ant”—Portion of “Imported Fire Ant Program Manual”⁸

III. Regulatory Procedures

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C. Approved Treatments.

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3. Plants—Balled or in Containers

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c. Tefluthrin: Granular Formulation.

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Dosage: * * *

Granular tefluthrin dosage (parts per million)	Certification period (months after treatment)
10 ppm	0–18 months.
25 ppm	Continuous.
* * * * *	

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.

Done in Washington, DC, this 30th day of May 1997.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-14725 Filed 6-4-97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 285

[Docket No. 960816226-7124-03; I.D. 111396A]

RIN 0648-AJ04

Atlantic Tuna Fisheries; Regulatory Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS amends the regulations governing the Atlantic tuna fisheries to: Divide the large school-small medium size class quota and the large medium-giant quotas of Atlantic bluefin tuna (ABT) Angling category into north and south regional subquotas; establish a new tuna permit program to provide for category changes, annual renewals, and the collection of fees; require self-reporting for ABT landed under the Angling category; prohibit the retention of ABT less than the large medium size class by vessels permitted in the General category; and prohibit fishing for ABT by persons aboard vessels permitted in the General category on designated restricted-fishing days. The regulatory amendments are necessary to achieve domestic management objectives for the Atlantic tuna fisheries.

DATES: Effective June 16, 1997.

ADDRESSES: Copies of supporting documents, including an Environmental Assessment and Regulatory Impact Review (EA/RIR), are available from, Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282.

Comments regarding the collection-of-information requirement contained in this rule should be sent to Rebecca Lent, Chief, Highly Migratory Species Division and to the Office of Information and Regulatory Affairs, Office of Management and Budget

(OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: John Kelly, 301-713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under the authority of the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to implement regulations as may be necessary to carry out the recommendations of the International Commission for the Conservation of Atlantic tunas (ICCAT). The authority to implement ICCAT recommendations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Background information about the need for revisions to Atlantic tunas fishery regulations was provided in the preamble to the proposed rule (62 FR 9726, March 4, 1997) and is not repeated here. These regulatory changes will improve NMFS' ability to achieve domestic management objectives for the Atlantic tuna fisheries.

Relation to Proposed Consolidation

The regulatory amendments contained in this final rule were originally written to be consistent with a proposed rule consolidating all regulations pertaining to Atlantic HMS under 50 CFR part 630 (61 FR 57361, November 6, 1996). A final rule consolidating the regulations has not yet been issued. Thus, for the Atlantic tunas regulations contained in this final rule to be effective prior to the consolidation, they must be written to conform with existing text at 50 CFR part 285. The regulatory amendments contained in this final rule will eventually be incorporated into the final consolidated regulations at 50 CFR part 630. Copies of the proposed consolidation rule may be obtained by writing (see **ADDRESSES**) or calling the contact person (see **FOR FURTHER INFORMATION CONTACT**).

Angling Category

In this final rule, the large school-small medium and large medium-giant ABT Angling category quotas are subdivided, allocating 53 percent of landings to the northern region and 47 percent to the southern region. Subdividing the quotas serves to minimize impacts on northern fisheries and increases the temporal and geographic scope of scientific monitoring. The effect of this measure has been included in the proposed ABT 1997 quota specifications (62 FR 19296, April 21, 1997).

General Category

This final rule prohibits persons aboard vessels permitted in the General category from retaining ABT less than the large medium size class. This action effectively separates the commercial and recreational fisheries, with the exception of charter/headboats. Anglers aboard vessels permitted in the Charter/Headboat category may collectively fish under either the daily Angling category limits or the daily General category limit as applicable on that day. The size category of the first ABT retained or possessed will determine the fishing category of the vessel, and the applicable catch limits, for that day. This action will not be effective until 1998 to provide time for all vessel owners to change permit categories.

Additionally, this rule prohibits persons aboard vessels permitted in the General category from fishing for, catching, retaining, or landing large medium or giant ABT on designated restricted-fishing days. As explained below, the prohibition has been modified from the proposed rule, which would have prohibited all fishing for any fish species on restricted fishing days. Fee-paying anglers aboard vessels permitted in the Charter/Headboat category may fish only under the Angling category rules on designated restricted-fishing days.

Permits and Catch Reporting

This rule revises the Atlantic tunas permit and reporting program to provide for annual permit renewals, collection of fees, and mandatory reporting for ABT landed under the Angling category. Under the new permit system, reissued 1997 tuna permits are required for all permit holders, regardless of the date of expiration indicated on current permits. Vessel owners holding valid Atlantic Tunas permits issued prior to January 1, 1997 must obtain a renewal permit through the automated system by September 1, 1997 and may fish under the old permit only until that date.

Beginning in calendar year 1997, a fee is assessed to recover the administrative costs of permit issuance. The permit fee has been established according to the NOAA schedule for recovery of administrative costs. All new permit applications, renewals and requests for category changes must be made under the automated system. Recorded information and instructions on the automated permit system can be obtained by phone (toll-free, 1-888-USA-TUNA) or over the internet (<http://www.usatuna.com>).

The automated system implemented for the permit program will also provide