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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99-027-2]

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 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 will give the regulated community another choice with which to meet certification requirements. We are also updating 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.

EFFECTIVE DATE: October 28, 1999.

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.

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 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 June 7, 1999, we published in the **Federal Register** (64 FR 30250-30252, Docket No. 99-027-1) a proposal 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. We also proposed to update the imported fire ant regulations by amending dosages and formulations for currently authorized insecticides, by alphabetizing the list of authorized chemicals, and by adding a brand name to the list of authorized chemicals.

We solicited comments concerning our proposal for 60 days ending August 6, 1999. We received four comments by that date. They were from a chemical producer, a crop health service company, and two State agriculture departments. Three comments supported our proposal and one comment, which is discussed below, called for two changes.

First, the commenter stated that flowable formulations of tefluthrin have been approved as a treatment for the imported fire ant and that this should be reflected in our rule. However, no flowable formulation of tefluthrin has been developed; we believe the commenter has confused flowable tefluthrin with flowable bifenthrin. Second, the commenter stated that the application rate for flowable bifenthrin should be 50 ppm, as listed on the Talstar Nursery Flowable label, not 25 ppm as stated in the proposed rule. The

Talstar Nursery Flowable label does not list application rates in parts per million, but rather in pounds of chemical per volume of soil. According to our calculations, the application rate listed for flowable bifenthrin is equivalent to 25 ppm.

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 pyriproxyfen (Distance®) to benefit from its availability for treatment of the imported fire ant during the fall planting 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 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.

For our proposed rule, we performed an initial regulatory flexibility analysis in which we invited comments about the potential economic effects of this rule on small entities. We did not receive any comments addressing this issue. We have, therefore, prepared this final regulatory flexibility analysis using the data available to us. Based on the information that we have, there is no basis to conclude that this rule will result in any significant economic effects on a substantial number of small entities.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7U.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 rule amends the Appendix to the imported fire ant regulations by allowing 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.

There are approximately 13,266 nurseries in the quarantined areas. Approximately 82–99 percent of those nurseries would be considered small businesses with annual sales of less than \$500,000. It is unknown how many of these nurseries move containerized nursery stock interstate from quarantined areas each year, but any that do would be likely to benefit from the availability of pyriproxyfen (Distance®) as an approved pesticide for treating the imported fire ant.

Prior to this final rule, for certification, containerized nursery plants and field-grown woody ornamentals had to be treated with a bait insecticide, either fenoxycarb (AWARD®) or hydramethylnon (AMDRO®), in conjunction with a contact insecticide, bifenthrin (Talstar®). This action allows pyriproxyfen (Distance®) to be used as an alternative to fenoxycarb (AWARD®) and hydramethylnon (AMDRO®) in order to give nurseries another option by which they can certify their products for interstate movement. All three bait insecticides fall within the same price range, \$8–10 per pound, 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 final 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 final 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 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 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. 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 is amended as follows:

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

b. In paragraph III.C.3.d., under the heading “Method C—Topical Application,” a fourth paragraph is 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” is removed and a comma is added in its place, and immediately following the word “(AWARD®),” the words “, or pyriproxyfen (Distance®)” are added.

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

e. In paragraph III.C.4., under the heading “Exclusion,” under “Bifenthrin,” first paragraph, the last sentence is 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,” is added.

g. In paragraph III.C.5., the “Material” and “Dosage” paragraphs are 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)” is removed and the phrase “1.0–1.5 lb (0.45–0.68 kg)” is added in its place.

i. In paragraph III.C.5., in the “Method” and “Special Information” paragraphs, the words “fenoxycarb (AWARD®) or hydramethylnon (AMDRO®)” are removed and the words “fenoxycarb (AWARD®), hydramethylnon (AMDRO®), or pyriproxyfen (Distance®)” are 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 (wettable powder) formulation was discontinued in 1998; however, the EPA will allow this product to be utilized until supplies are exhausted.

* * * * *

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.

* * * * *

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.

* * * * *

⁸A 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 135, Riverdale, Maryland 20737–1236.

Done in Washington, DC, this 22nd day of October 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99-28181 Filed 10-27-99; 8:45 am]

BILLING CODE 3410-34-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-SW-07-AD; Amendment 39-11391; AD 99-22-13]

RIN 2120-AA64

Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to BHTC Model 407 helicopters, that requires visually inspecting the vertical fin (fin) for reduced skin thickness; repairing or replacing the fin, if necessary; and identifying fins that have been inspected or repaired. This amendment is prompted by a report of an inboard skin damaged during production. The actions specified by this AD are intended to detect fin assemblies with reduced skin thickness which, if not corrected, reduce the strength of the skin and could lead to failure of the fin and loss of control of the helicopter.

DATES: Effective December 2, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of December 2, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463-3036, fax (514) 433-0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Kohner, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193-0170, telephone (817) 222-5447, fax (817) 222-5783.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to BHTC Model 407 helicopters was published in the **Federal Register** on August 2, 1999 (64 FR 41841). That action proposed to require visually inspecting the fin for reduced skin thickness; repairing or replacing the fin, if necessary; and identifying fins that have been inspected or repaired.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 124 helicopters of U.S. registry will be affected by this AD, that it will take approximately 3.0 work hours to accomplish the visual inspection; 4.0 work hours to accomplish the vertical fin replacement, and 0.5 work hour to mark the fin, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$18,770. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$19,220 per helicopter, or a total of \$2,383,280 for the entire fleet, to accomplish all the actions including replacing the fin.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99-22-13 Bell Helicopter Textron

Canada: Amendment 39-11391. Docket No. 99-SW-07-AD.

Applicability: Model 407 helicopters, with vertical fin (fin) assembly, part number (P/N) 206-020-113-223A, -223B, or -223S, with a serial number with a prefix of "BP", up to and including 2266 (except BP2260, BP2262, and BP2265), installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 100 hours time-in-service, unless accomplished previously.

To detect fin assemblies with reduced skin thickness which, if not corrected, reduce the strength of the skin and could lead to failure of the vertical fin (fin) and subsequent loss of control of the helicopter, accomplish the following:

(a) Visually inspect the fin assembly for reduced skin thickness, indicated by notches, scratches, or grooves on the skin, in accordance with Part I of the Accomplishment Instructions contained in Bell Helicopter Textron Alert Service Bulletin No. 407-98-17, Revision A, dated June 26, 1998 (ASB). If notches, scratches, or grooves are found, repair or replace the fin assembly in accordance with Part II of the Accomplishment Instructions contained in the ASB.