

travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading, or examination or review of a grader's decision, discloses that a material error was made in the original determination, no fee or expenses will be charged.

9. In § 70.76, paragraph (a)(2) is revised to read as follows:

§ 70.76 Charges for continuous poultry grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of \$225 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

10. In § 70.77, paragraphs (a)(4) and (a)(5) are revised to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by \$0.00033, except that the minimum charge per billing period shall be \$225 and the maximum charge shall be \$2,250. The minimum charge also applies where an approved application is in effect and no product is handled.

(5) For rabbit grading: An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of \$225 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Dated: January 27, 1997.

Lon Hatamiya,
Administrator.

[FR Doc. 97-2404 Filed 1-30-97; 8:45 am]

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Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96-063-3]

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 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. Research has demonstrated that a 10 parts per million dosage of granular tefluthrin is efficacious for 18 months, which is 12 months longer than the current certification period for that dosage and 6 months longer than the current 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 would reduce the amount of insecticide used, which would reduce the costs incurred by persons moving containerized nursery stock interstate from areas quarantined for the imported fire ant.

DATES: Consideration will be given only to comments received on or before March 17, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96-063-3, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 96-063-3. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

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."

Currently, the appendix offers three dosage rate/certification period options for granular tefluthrin: 0 to 6 months for a 10 parts per million (ppm) dosage, 0 to 12 months for a 15 ppm dosage, and a continuous certification period for a 25 ppm dosage.

Tests conducted by the Animal and Plant Health Inspection Service (APHIS) at its Imported Fire Ant Methods Development Station (IFAMDS) in Gulfport, MS, have demonstrated 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. This is 12 months longer than the current certification period for a 10 ppm dosage and 6 months longer than the current certification period for a 15 ppm dosage. Based on that efficacy data, we have determined that containerized nursery stock could be certified for interstate movement for 18 months after treatment with granular tefluthrin at a dosage rate of 10 ppm.

Therefore, we are proposing to amend the appendix to the regulations by increasing the certification period for the 10 ppm dosage of granular tefluthrin from 0-6 months to 0-18 months. In light of that longer certification period for the lower 10 ppm dosage, the 15 ppm dosage, which has a certification period of 0 to 12 months, would no longer be necessary and would be removed. The dosage rate of 25 ppm would be required for certification of containerized nursery stock for interstate movement from quarantined areas for more than 18 months.

Previous Direct Final Rule

On October 15, 1996, we published in the Federal Register (61 FR 53601–53603, Docket No. 96–063–1) a direct final rule to amend the regulations in the same way as proposed in this document, i.e., to lengthen the certification period for 10 ppm dosage of granular tefluthrin and remove the 15 ppm dosage rate. In response to that direct final rule, we received two adverse comments. Therefore, in accordance with our published policy on direct final rules, we withdrew the direct final rule prior to its effective date in a document published in the Federal Register on December 13, 1996 (61 FR 65459, Docket No. 96–063–2).

Both of the adverse comments we received stated that the research conducted at IFAMDS did not demonstrate that a 10 ppm dosage of tefluthrin will provide 18 months of control. The commenters focused on the regression equation used to chart the data generated by that research. While they acknowledged that the regression equation did indeed show that a 10 ppm dosage of tefluthrin would provide 18 months of control, they questioned the validity of the equation itself.

The tefluthrin trials conducted by IFAMDS covered 46 individual tests conducted over 15 different projects using a 1.5 percent granular formulation of the insecticide incorporated with nursery potting media. The dosage rates tested in those projects ranged from 2.5 ppm to 86.3 ppm. Those dosage rates were shown to provide residual activity—i.e., fire ant control—for periods ranging from greater than 1 month for the 2.5 ppm dosage to 43 months for the 86.3 ppm dosage. When those research results were charted and the generated regression equation of $Y = 16.29 + 0.19X$ was applied, the data indicated that a 10 ppm dosage of tefluthrin would provide greater than 18 months of control. Based on that research, APHIS personnel at IFAMDS recommended that the regulations be amended to reflect a 0–18 month certification period for a 10 ppm dosage of tefluthrin and a continuous certification period for a 25 ppm dosage, which is what we attempted to do in the October 1996 direct final rule that was withdrawn due to our receipt of adverse comments.

The adverse comments we received were based on two arguments. The first argument is that the regression equation used by APHIS to support an 18-month certification period for a 10 ppm dosage of tefluthrin also predicts that a 0 ppm dosage—i.e., no insecticidal treatment at all—would provide greater than 16

months of control. We believe that this argument is a misinterpretation of the facts in that the commenters are merely pointing to the chart used to represent the results of the tefluthrin trials and noting that the regression line to the data points, when extended to 0 on the X axis (dose rate/ppm), intersects the Y axis (months residual activity) at 16. That line is unsupported by data points at 0 on the X axis and cannot reasonably be represented as unequivocally supporting a 16-month certification period for a 0 ppm dosage. We believe that such an interpretation is an extreme inference that misrepresents the function of regression equation methodology and mischaracterizes the nature of the conclusions that can be logically drawn from the research conducted by IFAMDS.

The second argument employed in the adverse comments is that the regression equation is inappropriate because it fails to consider that the equation was generated using the least squares technique to fit the best line to the data points. That means, one comment stated, that roughly half of the data points will fall above the regression line and half will fall below. Thus, the comment continued, the data can be interpreted as showing tefluthrin applied at 10 ppm would fail to provide 18 months of control 50 percent of the time and at 25 ppm would fail to provide 18 months of control 33 percent of the time. We continue to believe that the methodology used is valid and appropriate and provides a rational basis for our proposal to amend the regulations to reflect a 0–18 month certification period for a 10 ppm dosage of tefluthrin and a continuous certification period for a 25 ppm dosage. The methodology used in the tefluthrin trials has been used by IFAMDS in conducting trials for the other insecticidal chemicals and formulations that are currently approved for use—and are being used to good effect—in the imported fire ant program.

A recent example of the application of this methodology to the imported fire ant program was the approval of reduced rates of granular bifenthrin for incorporation in containerized nursery stock. (Those reduced rates were added to the regulations by a direct final rule published in the Federal Register of October 28, 1993 [58 FR 57952–57955, Docket No. 93–082–1].) The regression equation used for bifenthrin in that case could be interpreted as predicting that a 0 ppm dosage of granular bifenthrin would provide approximately 13 months of control; that a 15 ppm dosage would fail to provide 24 months of control 50 percent of the time; and that

a 25 ppm dosage would fail to provide 24 months of control 20 percent of the time. Granular bifenthrin has been used as an efficacious and dependable component of the imported fire ant program since that direct final rule became effective on December 27, 1993; the research conducted by IFAMDS leads us to fully expect that tefluthrin applied at the rates proposed in this document would be similarly effective in preventing the spread of the imported fire ant.

Therefore, having considered the adverse comments received in response to the previous direct final rule, we still believe that efficacy data generated by IFAMDS and the methodology used to develop the data provide an appropriate scientific basis for our proposed lengthening of the certification period for a 10 ppm dosage of granular tefluthrin.

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.

This proposed rule would amend 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 would reduce the amount of insecticide used, which would 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 could result from this proposed 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 these are necessarily shipping restricted products requiring the application of granular tefluthrin or alternative chemicals out of the regulated areas. Moreover, most nurseries under compliance agreements currently use treatments other than tefluthrin. Therefore, it is difficult to estimate how many small entities would be affected by this proposed rule

change, but they may number in the hundreds.

Costs for most users of granular tefluthrin would be reduced because of the increased period of certification. Under the current regulations, a dose rate of 15 ppm is required for a certification period up to 12 months and a dose rate of 25 ppm is required for a certification period greater than 12 months. Thus, a cost savings of from 33 to 60 percent would be realized by 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 could mean a savings of about \$1.33 to \$2.40 in the application of one pound of granular tefluthrin.

We do not anticipate that there would 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 would 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 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, 7 CFR part 301 would be amended 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. 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. would be amended by revising the dosage table to read as follows:

Subpart—Imported Fire Ant

* * * * *

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

III. Regulatory Procedures

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C. *Approved Treatments.*

* * * * *

3. Plants—Balled or in Containers

* * * * *

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.

* * * * *

Done in Washington, DC, this 27th day of January 1997.

Terry L. Medley,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–2402 Filed 1–30–97; 8:45 am]

BILLING CODE 3410–34–P

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, MD 20737–1236.

Agricultural Marketing Service

7 CFR Part 1205

[CN–96–007]

Amendment to Cotton Board Rules and Regulations Regarding Import Assessment Exemptions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service is proposing to amend the regulations regarding import assessment exemptions by adjusting the provisions for automatic assessment exemptions on certain imports of textile and apparel products. The purpose of the proposed automatic exemption is to avoid multiple assessment of U.S. produced cotton that has been exported and then imported back into the U.S. in the form of textile and apparel products. Also, this proposed rule would lengthen the amount of time a person has to request an import reimbursement from 90 days from the date the assessment was paid to 180 days from the date the assessment was paid. This proposal would be consistent with the business practices of importers and would make it easier for importers to comply with the regulations.

DATES: Comments must be submitted on or before March 3, 1997.

ADDRESSES: Comments may be mailed to USDA, AMS, Cotton Division, STOP 0224, 1400 Independence Avenue S.W., Washington D.C., 20250–0224. Comments will be made available for public inspection during the hours 8:00 a.m. to 4:00 p.m. Monday through Friday at this address.

FOR FURTHER INFORMATION CONTACT: Craig Shackelford, (202) 720–2259.

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

Executive Orders 12866 and 12988; the Regulatory Flexibility Act and the Paperwork Reduction Act

This rule has been determined to be “not significant” for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Cotton Research and Promotion Act, 7 U.S.C. 2101–2118