

Proposed Rules

Federal Register

Vol. 67, No. 83

Tuesday, April 30, 2002

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. 01-115-1]

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 to add the insecticide fipronil (Chipco®) to the list of chemicals authorized for the treatment of regulated articles and to provide instructions for its use in soil or potting media and on grass sod. This action would make another authorized treatment available to persons wishing to move containerized plants and commercial grass sod interstate from quarantined areas. We are also proposing to update the regulations by making the rates of application for chlorpyrifos (Dursban®), a currently authorized insecticide, consistent with current product labeling.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by July 1, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01-115-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 01-115-1. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01-115-1" on the subject line.

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

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Brown, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-4838.

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 imported fire ant regulations (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 regulated articles to prevent the artificial spread of the imported fire ant. Regulated articles include soil, plants, and sod (§ 301.81-2).

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."

Tests conducted by the Animal and Plant Health Inspection Service's Gulfport Plant Methods Center in Mississippi have demonstrated that the insecticide fipronil (Chipco®), in granular form, is efficacious at variable dosage rates in treating plants in

containers and at a total of 0.025 lb a.i./acre (0.01134 kg a.i./acre) for two applications for grass sod to prevent the spread of imported fire ant. On December 4, 2000, fipronil was registered by the U.S. Environmental Protection Agency (EPA) for use against imported fire ant in potting media. On May 25, 2001, it was registered by EPA for use against imported fire ant in commercial grass sod.

Therefore, we are proposing to amend the appendix to the regulations to add the insecticide fipronil (Chipco®) as a treatment option for certain regulated articles requiring treatment against the imported fire ant. Specifically, we would amend the appendix to the regulations by adding:

- Granular fipronil to the list of authorized chemicals (III.B.);
- Granular fipronil as a treatment option for the soil or potting media of plants in containers, or prior to planting, as an alternative to bifenthrin and tefluthrin (III.C.3. and III.C.4.);
- Method F for granular incorporation of fipronil (III.C.3.);
- Fipronil, in III.C.4., under "Enforcement," in regard to a reference to chemical treatments for plants, balled or containerized, that are described in paragraph III.C.3. of the appendix; and
- Granular fipronil as a treatment option for grass sod, as an alternative to chlorpyrifos (III.C.8.).

In addition, we are proposing to amend paragraph III.C.8. by changing the dosage rates for applying chlorpyrifos, a currently approved insecticide, to grass sod so that the rate would be consistent with current product labeling. Currently, under approved treatments for grass sod, the amount and dosage of chlorpyrifos is 4.0 lb (1.8 kg) a.i./acre and 6.0 lb (2.7 kg) a.i./acre with a certification period of 4 weeks and 10 weeks (after the exposure period has been completed), respectively. We would change the amount and dosage of chlorpyrifos to 8.0 lb (3.6 kg) a.i./acre and the certification period to 6 weeks.

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 appendix to the imported fire ant

regulations to allow the use of the insecticide fipronil (Chipco®) against the imported fire ant. Fipronil is registered by the EPA for use against imported fire ant in potting media and commercial grass sod and has been found to be efficacious against the imported fire ant based on testing by the Gulfport Plant Methods Center in Mississippi.

Determining the cost of imported fire ant treatments is complicated because of the variety of insecticides that can be used, varying soil conditions, and the various nursery crops grown. For example, in two surveys conducted by Hall and Holloway (1994 and 1995) of 37 nursery crop growers in Texas—representing over one-half of all nursery crops produced in that State—chemical cost per treatment for imported fire ant control averaged \$12.10, with treatment costs making up to 4 percent of their production cost. Almost one-half (i.e., 47 percent) of those growers reported treating for imported fire ant, and most of them reported using more than one insecticide to treat for imported fire ant in their operations (range = 1 to 3; average = 1.5), making the average cost per acre for insecticides to control imported fire ants \$18.15 (i.e., 1.5 × \$12.10).

Fipronil would be the latest EPA-approved insecticide to be added to the regulations for the treatment of imported fire ant. Other approved insecticides—Pyriproxyfen (Distance®), Fenoxycarb (Award®), Hydramethylnon (AMDRO®), and Bifenthrin (Talstar®)—cost approximately the same in the bulk market, between \$5 per pound and \$12 per pound, with each pound treating 17 colonies (i.e., mounds) of imported fire ant. An 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 the inclusion of fipronil as an alternative treatment.

Affected Entities

Businesses such as nurseries, sod growers, farm equipment dealers, and construction companies that work with regulated articles are the entities most likely to be affected by this proposed rule. This proposed rule would result in a wider selection of treatment options for imported fire ant. The economic effect on affected entities would either be positive, since a wider selection of insecticides will provide greater choice, or would have no effect, if they choose not to use fipronil.

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 13,266 nurseries and greenhouses located in areas of the United States quarantined because of imported fire ant, of which 82 to 99 percent were small businesses, according to the U.S. Small Business Administration's criterion of annual sales of less than \$750,000.

The addition of fipronil to the imported fire ant regulations would provide the regulated community with a greater selection of treatment options. Thus, it is expected that the economic effect on these businesses would either be positive (a wider selection of insecticides would provide greater choice) or neutral (if they choose not to use fipronil). The majority (i.e., 82 to 99 percent) of firms that may potentially be affected by this proposed rule are 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 new 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. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 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).

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

a. In paragraph III.B., under the heading INSECTICIDES, by adding “Fipronil (Chipco®)” in alphabetical order.

b. By redesignating paragraph III.C.3.d. as paragraph III.C.3.e. and adding a new paragraph III.C.3.d. to read as follows.

c. In newly redesignated paragraph III.C.3.e., by adding a new “Method F—Granular Incorporation (Fipronil)” in alphabetical order to read as follows.

d. In paragraph III.C.4., under the heading *Exclusion*, by adding a new entry for *Fipronil*, following the *Tefluthrin* entry, to read as follows.

e. In paragraph III.C.4., under the heading *Enforcement*, the sixth paragraph, second sentence, by removing the words “or tefluthrin” and adding the words “tefluthrin, or fipronil” in their place.

f. In paragraph III.C.8., by revising the entry for *Material* to read as follows.

APPENDIX TO SUBPART “IMPORTED FIRE ANT”

III. Regulatory Procedures

* * * * *

C. Approved Treatments.

* * * * *

3. Plants—Balled or in Containers

* * * * *

d. Fipronil: Granular Formulation.

Material: Granular fipronil incorporation into soil or potting media for containerized nursery stock.

Dosage: The amount of granular fipronil needed to achieve a specified dosage varies with the bulk density of the soil or potting media. Follow label directions to calculate the amount of granular fipronil needed to achieve a specified dosage.

Granular fipronil dosage (parts per million)	Certification period (months after treatment)
10 ppm	0–6 months.

Granular fipronil dosage (parts per million)	Certification period (months after treatment)
12 ppm	0–12 months.
15 ppm	0–24 months.
25 ppm	Continuous.

Exposure Period: Containerized nursery stock can be certified for interstate movement from quarantined areas 2 weeks after completion of treatment.
e. * * *

Method F—Granular Incorporation (Fipronil)

Apply fipronil according to the label instructions for granular incorporation. Mix thoroughly to distribute product evenly throughout the soil or potting

Material	Amount and dosage of material	Certification period
Chlorpyrifos	8.0 lb (3.6 kg) a.i./acre	6 weeks (after exposure period has been completed).

Exposure Period: 48 hours.

Method

1. Apply a single broadcast application of chlorpyrifos with ground equipment.

media. After potting, containers must be watered to the point of saturation.

Precautions: Saturation of the soil or potting media with the granular fipronil is essential. Water that drains from the treatment area, which may contain fipronil, must be disposed of in accordance with State and local laws.

4. Imported-Fire-Ant-Free Nursery Containerized Plants Only

* * * * *

Exclusion

* * * * *

Fipronil

For plants grown on the premises: Treatment of soil or potting media with granular fipronil prior to planting is permitted as an alternative to treatment

with granular formulations of bifenthrin or tefluthrin. This treatment reduces the risk of infestation of containers by alate queens flying in from adjacent or nearby infested premises. The dosage rate is variable, determined by the selected certification period, for the granular fipronil.

Apply this treatment according to the label directions.

Mixing must be adequate to blend the required dosage of granular fipronil throughout the entire soil or potting media.

* * * * *

8. Grass Sod

Material

a. Chlorpyrifos.

2. Immediately after treatment, water the treated areas with at least 1/2 inch of water.

Chlorpyrifos wettable powder Dursban® 50-WP: Follow label

directions for regulatory treatment for IFA.

b. Fipronil.

Material	Amount and dosage of material	Certification period
Fipronil	Dosage per application: 0.0125 lb (0.00567 kg) a.i./acre. Total amount over two applications: 0.025 lb (0.01134 kg) a.i./acre	20 weeks (after exposure period has been completed).

Exposure Period: 30 days from the second application.

Method

1. Apply in two applications approximately 1 week apart for a total of 0.025 lb (0.01134 kg) a.i./acre.

2. Follow label directions for regulatory treatment for IFA.

* * * * *

Done in Washington, DC, this 17th day of April, 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–10109 Filed 4–29–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–73–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, 222U, 230, and 430 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 222, 222B, 222U, 230, and 430 helicopters. This proposal would require removing sealant from the forward tooling hole in the right-hand upper fuel enclosure area. This proposal is prompted by the

determination that fuel or water could accumulate in the right-hand upper fuel enclosure. The actions specified by this proposed AD are intended to prevent accumulation of fuel in the right-hand upper fuel enclosure area, a fire, and a subsequent forced landing.

DATES: Comments must be received on or before July 1, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001-SW–73-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul Madej, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft