

DRAFT 3/10/08

## EUP ACREAGE EXEMPTION ISSUE PAPER

For consideration by POM - April 2008

**TOPIC: Revision of 40 CFR 172.3(c)(1)- Exemptions from the requirements from large-scale tests and federal experimental use permits (EUP)**

Section 5 of FIFRA provides that any person wishing to conduct “large-scale” experimental testing of new pesticides or new uses of existing pesticides must apply for a federal EUP. Regulations in 40 CFR Part 172 specifies the circumstances when a federal EUP is required. Large-scale tests include any terrestrial application on a cumulative total of more than 10 acres of land or any aquatic application on more than 1 surface acre of water. Obtaining a federal EUP (typically for less than 5,000 acres) and take up to 12 months, particularly if a temporary tolerance is involved, and can be cost prohibitive to some researchers. As stated in the preamble “The purpose behind section 5 is to facilitate the generation of data necessary to support an application for registration under section 3 and yet provide sufficient regulatory control to prevent adverse environmental effects.” The current definition for “small-scale tests” is unclear to state regulators, limits the proper evaluation of certain uses of new pesticides and does not adequately provide for allowance to conduct “medium-scale tests” involving registered pesticides without a federal EUP. Researchers have requested that EPA consider modifying the acreage exemptions on which experimental tests may be conducted without a federal EUP.

### **A. Clarification of acreage limits for terrestrial sites**

Background: EPA has previously informed the states that “The 10 acre limit for terrestrial EUPs is not a national limit (e.g. Washington and Oregon could have EUPs for 10 acres in each state).

Issue: SLA’s may not clearly know or agree upon what is exempted under “small-scale tests”.

### **RECOMMENDED ACTION:**

EPA should clarify part 172.3 (c) (1) as follows: A small-scale test involving use of a particular pesticide [formulation](#) that is conducted on a cumulative total of no more than 10 acres of land per pest [per site per state per year](#).

### **B. Modify Acreage Exemption for Small-Scale Aquatic Tests**

Dr. Kim Patten, Professor, Washington State University has spent a large part of the last 18 years conducting pest management research in aquatic environments (e.g. lakes, estuaries, ponds, drainage ditches and irrigation canals) for an array of aquatic invasive pests. During the past 5 years he has been researching alternative insecticides to carbaryl for control of burrowing shrimp in shellfish beds (estuaries). Oyster growers have long battled with the management of “ghost” shrimp that burrow into mud beneath oysters. The shellfish will suffocate and die if they sink into the voids the shrimp leave behind. Because of a 2012 settlement agreement to stop using carbaryl, the time to register an alternative to carbaryl is very limited.

In 2006, researchers determined that imidacloprid was the most appropriate candidate replacement product suitable for various studies. The IR-4 study in 2007 took up almost the entire 1 acre state EUP, whereby severely limiting research efforts to obtain other data (environmental fate, persistence, and efficacy) using industry standard application methods, which usually involves either replicated trials (e.g. 20’ x 60’ plots, 4 replications, 3 timings, 3 sites) and/or aerial methods. Neither of these two types of data can be easily collected in sites of less than 1 acre. Consequently the projects are often put on hold or done over numerous years or with major constraints without an approved federal EUP.

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Issue: The current federal exemption for small-scale testing lacks flexibility and researchers are being hampered in the development of the necessary data. As a result, it is taking longer in the development of new replacement pesticides without an approved federal EUP.

### **RECOMMENDED ACTION:**

Revised 40 CFR 172.3 (c) (1) to allow small-scale aquatic pesticide tests up to 5 acres or less per site per state per year.

### **C. Acreage Exemption - Medium-Scale Terrestrial Tests Involving Registered Pesticides Background**

1. Terrestrial Sites (Aerial Application): Most forestry pest control in the Pacific Northwest is accomplished using helicopters for aerial application. One of the issues registrants have repeatedly faced when trying to develop performance data for non-food/non-feed crop pesticide candidates is the ability to do this without an approved federal EUP. This is especially true for forest site prep and release trials where the aerial method of application is critical to the overall evaluation of performance. It is important to the success of the programs to evaluate helicopter application of experimental products to check on product performance.

Issues Researchers unknown to a basic registrant could “use-up” the 10 acre experimental acreage allocation per state, whereby limiting a basic registrant from developing data necessary for registration. The 10 acre exemption from a federal EUP is overly restrictive to effectively conduct small-scale testing with anything more than one or two treatments at a single location by air. In 2007, The Washington State Dept. of Agriculture (WSDA) had to confine “small-scale testing” and development of a couple of products from a registrant. The 10 acre limitation was unduly burdensome to develop the necessary data, both on the researchers and WSDA. As a result, it can take longer in the development of the new uses of pesticides (if at all), which may hamper the introduction of safer products.

2. Terrestrial Sites (Chemigation): The majority of agricultural in the Pacific Northwest is irrigated using center pivot or sprinklers (including linear move systems, wheel lines and hand lines). Mites are increasingly a pest problem in irrigated potato fields in the Northwest with an average size of 100 acres. According to Dr. Alan Schreiber, Administrator, Washington State Commission on Pesticide, propargite does not seem to provide the level of control that it once did and growers are seeking additional mite control products. The current definition for “small-scale tests” is limiting the development of new miticides for potatoes.

Issue: It is very difficult to generate data using commercial chemigation equipment given the 10-acre federal EUP limitation. Ag research scientists using small plot applications with a simulated irrigation system may not adequately duplicate the results using center pivot systems. Much better data could be generated if researchers were allowed a medium-scale treatment sites (50 acre/site with a total 250 terrestrial acres/state/year) for this use pattern.

### **RECOMMENDED ACTION:**

Revised 40 CFR 172.3 (c) by adding a new exemption:

A medium-scale test involving an unregistered use of a registered pesticide formulation that is conducted under a state experimental use permit or program on a cumulative total of no more than 250 acres of land per state per year with no more than 10 acres per treatment rate using aerial methods and no more than 50 acres per treatment rate using chemigation methods.