

government and the States, or on the distribution of power and responsibilities among the various levels of government.” This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

**IX. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: September 13, 2005  
**Meredith F. Laws**,  
*Acting Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.589 is amended by adding text to paragraph (b) after the paragraph heading to read as follows:

**§ 180.589 Boscalid; tolerances for residues.**

\* \* \* \* \*

(b) \* \* \* Time-limited tolerances are established for residues of the fungicide boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl) in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. These tolerances will expire and are revoked on the dates specified in the following table:

Commodity	Parts per million	Expiration/Revocation Date
Tangerine .....	2.0	12/31/08

\* \* \* \* \*

[FR Doc. 05-18830 Filed 9-20-05; 8:45 am]

**BILLING CODE 6560-50-S**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP-2005-0069; FRL-7737-3]

**Inert Ingredients; Revocation of 34 Pesticide Tolerance Exemptions for 31 Chemicals**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is revoking 34 exemptions from the requirement of a tolerance that are associated with 31 inert ingredients because these substances are no longer contained in active Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticide product registrations. These ingredients are subject to reassessment by August 2006 under section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The 34

tolerance exemptions are considered “reassessed” for purposes of FFDCA’s section 408(q).

**DATES:** This regulation is effective September 21, 2005. Objections and requests for hearings must be received on or before November 21, 2005.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit XI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under docket identification (ID) number OPP-2005-0069. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Karen Angulo, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 306-0404; e-mail address: [angulo.karen@epa.gov](mailto:angulo.karen@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System

(NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### *B. How Can I Get Electronic Documents and Other Related Information?*

In addition to using EDOCKET at (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgrstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

## **II. What Action is the Agency Taking?**

In the **Federal Register** of June 1, 2005 (70 FR 31401) (FRL-7712-7), EPA issued a proposed rule to revoke 34 exemptions from the requirement of a tolerance that are associated with 31 inert ingredients because those substances are no longer contained in pesticide products registered in the United States. The proposed rule provided a 60-day comment period that invited public comment for consideration and for support of tolerance exemption retention under the FFDCA standards. An additional 30-day comment period was provided based on a request from certain industry representatives (70 FR 45625, August 8, 2005, (FRL-7729-4)).

In this final rule, EPA is revoking these same 34 tolerance exemptions. EPA has historically been concerned that retention of tolerances and tolerance exemptions that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances and tolerance exemptions for residues of pesticide chemicals for which there are no active registrations or uses under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Generally, EPA will proceed with the revocation of these tolerances and tolerance exemptions on the grounds discussed in Unit II. if one of the following conditions apply:

1. Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances or tolerance exemptions on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance or tolerance exemption is no longer needed.

3. The tolerance or tolerance exemption is not supported by data that demonstrate that the tolerance or tolerance exemption meets the requirements under FQPA.

The Agency received several comments in response to the proposed revocation notice. The Fluoride Action Network Pesticide Project (FAN) supported EPA's proposal to revoke the exemption from the requirement of a tolerance for sodium fluoride.

Two commenters requested clarification on EPA's policy concerning tolerance exemptions for inert ingredients that are reactive intermediates or reagents. The Agency confirms that the three reactive inert ingredients being revoked in this final rule (i.e., ethyl methacrylate, methyl methacrylate, and phosphorus oxychloride) do not require an exemption from the requirement of a tolerance because they are consumed during the manufacture of the final product. EPA intends to provide additional clarification and guidance in the future for reactive/reagent chemicals used in the manufacture of pesticide products.

In addition, two commenters suggested several areas where additional guidance and policy clarifications would be helpful, including inert ingredients in non-food use pesticide products, impurities in technical grade active ingredients and inert ingredients, and consistency in the nomenclature for inerts. Although not directly relevant to the proposal to revoke the 34 tolerance exemptions, the Agency appreciates these suggestions and agrees that clear guidance would be helpful. The Agency intends to provide guidance for topics such as these in the future.

Therefore, for the reasons stated herein and in the proposed rule, EPA is revoking the 34 exemptions from the requirement of a tolerance that were identified in the **Federal Register** of June 1, 2005 (70 FR 31401).

## **III. What is the Agency's Authority for Taking this Action?**

This final rule is issued pursuant to section 408(d) of FFDCA (21 U.S.C. 346a(d)). Section 408 of FFDCA authorizes the establishment of

tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or tolerance exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA. If food containing pesticide residues is found to be adulterated, the food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342 (a)).

EPA's general practice is to revoke tolerances and tolerance exemptions for residues of pesticide chemicals on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances and tolerance exemptions that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances and tolerance exemptions even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances and tolerance exemptions for unregistered pesticide chemicals in order to prevent potential misuse.

## **IV. When Do These Actions Become Effective?**

These actions become effective on September 21, 2005. Any commodities listed in the regulatory text of this document that are treated with the pesticide chemicals subject to this final rule, and that are in the channels of trade following the tolerance exemption revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residues of these pesticide chemicals in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide chemical at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under an exemption from tolerance. Evidence to show that food was lawfully treated may include

records that verify the dates that the pesticide chemical was applied to such food.

#### V. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to “object” to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old FFDCA sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

##### A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP-2005-0069 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 21, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor’s contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L),

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564-6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit XI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP-2005-0069, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

##### B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

#### VI. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866,

entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. The Agency hereby certifies that this rule will not have significant negative economic impact on a substantial number of small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive order to include regulations that 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.” This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

#### VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: September 14, 2005.

**Meredith F. Laws,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

#### PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

#### § 180.1045 and § 180.1066 [Removed]

■ 2. Sections 180.1045 and 180.1066 are removed.

#### § 180.910 [Amended]

■ 3. Section 180.910 is amended by removing from the table the entries for Ethylene methylphenylglycidate; Phosphorus oxychloride; Sulfurous acid; and 1,1,1-Trichloroethane.

#### § 180.920 [Amended]

■ 4. Section 180.920 is amended by removing from the table the entries for:

- Acetonitrile;
- Almond, bitter;
- Aluminum 2-ethylhexanoate;
- 1,3-Butylene glycol dimethylacrylate;
- Calcium and sodium salts of certain sulfonated petroleum fractions (mahogany soaps); calcium salt molecular weight (in amu) 790–1,020, sodium salt molecular weight (in amu) 400–500;
- Copper salts of neodecanoic acid and 2-ethylhexanoic acid;
- Diallyl phthalate;
- Dipropylene glycol dibenzoate;
- Ethyl methacrylate;
- Furfural byproduct (a granular steam-acid sterilized, lignocellulosic residuum in the extraction of furfural from corn cobs, sugarcane bagasse, cottonseed hulls, oat hulls, and rice hulls);
- Isopropylbenzene;
- Methyl isoamyl ketone;
- Methyl methacrylate;
- X-(p-Nonylphenyl)-v-hydroxy-poly(oxyethylene) sulfosuccinate isopropylamine and N-hydroxyethyl isopropylamine salts of: The poly(oxyethylene) content averages r moles;
- Propylene dichloride;
- Sodium fluoride;
- Tetrasodium N-(1,2-dicarboxyethyl)-N-octadecyl-sulfosuccinamate;
- (2,2'(2,5-Thiophenediyl)bis(5-tert-butylbenzoxazole)) (CAS Reg. No. 7128–64–5); and

s. Tri-tert-butylphenol polyglycol ether (molecular weight (in amu) 746).

#### § 180.930 [Amended]

■ 5. Section 180.930 is amended by removing from the table the entries for:

- Acetylated lanolin alcohol;
- Calcium and sodium salts of certain sulfonated petroleum fractions (mahogany soaps); calcium salt molecular weight (in amu) 790–1020, sodium salt molecular weight (in amu) 400–500;
- Cumene (isopropylbenzene);
- Dibutyltin dilaurate (CAS Reg. No. 77–58–7);
- 4,4'-Isopropylidenediphenol alkyl (C<sub>12</sub>-C<sub>15</sub>) phosphites (CAS Reg. No. 92908–32–2);
- Polyethylene esters of fatty acids, conforming to 21 CFR 172.854;
- 1,1,1-Trichloroethane;
- Triethylene glycol diacetate (CAS Reg. No. 111–21–7); and
- Tri-tert-butylphenol polyglycol ether (molecular weight (in amu) 746).

[FR Doc. 05–18831 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–S

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 300

[FRL–7971–3]

#### National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final notice of partial deletion of the East Tailing Area of the Tar Lake Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA), Region 5 is publishing a notice of partial deletion of the East Tailing Area of the Tar Lake Superfund Site (Site), located in, Antrim County Michigan, from the National Priorities List (NPL).

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, in appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This notice of partial deletion is being published by EPA with the concurrence of the State of Michigan, through the Michigan Department of Environmental Quality (MDEQ). Remedial investigation results in the East Tailing Area of the Tar Lake Site