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*Docket:* The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Mae Wang, EPA Region IX, (415) 947-4124, [wang.mae@epa.gov](mailto:wang.mae@epa.gov).

**SUPPLEMENTARY INFORMATION:** This document concerns the delegation of unchanged NESHAPs to the Maricopa County Air Quality Department, the San Joaquin Valley Unified Air Pollution Control District, and the Nevada Division of Environmental Protection. In the Rules and Regulations section of this **Federal Register**, EPA is amending regulations to reflect the current delegation status of NESHAPs in Arizona, California, and Nevada. EPA is taking direct final action without prior proposal because the Agency believes these actions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

**Authority:** This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. Section 7412.

Dated: June 8, 2006.

**Deborah Jordan,**

*Director, Air Division, Region IX.*

[FR Doc. 06-5842 Filed 6-27-06; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2006-0561; FRL-8075-5]

### Phosphorous Acid; Proposed Amendment to Exemption From Tolerance

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the existing tolerance exemption for residues of phosphorous acid and its ammonium, sodium, and potassium salts in or on all food commodities to allow for post-harvest application to stored potatoes at 35,600 ppm or less phosphorous acid.

**DATES:** Comments must be received on or before July 13, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2006-0561, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- Mail: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- Delivery: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

*Instructions:* Direct your comments to docket ID number EPA-HQ-OPP-2006-0561. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The Federal [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact

information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are 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:** Linda Hollis, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460-0001; telephone number: (703) 308-8733; e-mail address: [hollis.linda@epa.gov](mailto:hollis.linda@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 the entities listed above. 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. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Background and Statutory Findings

Pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a(e), EPA is proposing, on its own initiative, to amend the existing exemption from the requirement of a tolerance for residues of phosphorous acid and its ammonium, sodium and potassium salts, in or on all food commodities when applied as an agricultural fungicide by adding the post-harvest treatment of stored potatoes.

40 CFR 180.1(i) states, “unless otherwise specified, tolerances and exemptions established under the regulation in this part apply to residues from only pre harvest application of the chemical.” As a result, a tolerance exemption must specify post-harvest application where the Agency intends to exempt such applications. The existing tolerance exemption for phosphorous acid (40 CFR 180.1210) does not expressly allow for post-harvest application of this chemical. Therefore, the Agency has, of its own initiative, prepared this proposed amendment to the tolerance exemption for phosphorous acid to allow post-harvest applications of this active ingredient.

As discussed below, in order to determine the exposure and risks resulting from post-harvest treatment of potatoes with phosphorous acid, the Agency conducted a conservative dietary exposure and risk assessment and has concluded that the use of phosphorous acid as a post-harvest treatment on stored potatoes presents no new risks as an agricultural fungicide because the fungicide is applied at very dilute levels, the lack of acute oral toxicity for the tested end use product at >5,000 mg/kg body weight, and the rapid degradation of phosphorous acid. The Agency concludes that the use of phosphorous acid as a post harvest treatment at these application rates meets the FFDCA standard of reasonable certainty of no harm.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is “safe.” Section 408(c)(2)(A)(ii) of the FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all

other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....” Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider “available information concerning the cumulative effects of a particular pesticide’s residues” and “other substances that have a common mechanism of toxicity.”

Section 408(c)(1)(B) of the FFDCA allows the EPA to modify a regulation on its own initiative under section 408(e). Section 408(e) requires the EPA to issue a notice of proposed rulemaking and provide a public comment period of not less than 60 days. However, this provision also allows the EPA to shorten the comment period “if the Administrator for good cause finds that it would be in the public interest to do so and states the reasons for the finding in the notice of proposed rulemaking.” For this particular rule, EPA has shortened the public comment period to 30 days because the Agency believes that it is in the public interest to do so. Potatoes are an important commodity to the agricultural food supply. Post harvest treatment of potatoes using fungicides will be initiated in late summer. Phosphorous acid provides a safe alternative to other fungicides used on stored potatoes. It is therefore important to expedite this tolerance exemption on order for phosphorous acid to be applied post harvest to potatoes this use season.

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see <http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm>.

## III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity,

completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The toxicity profile for phosphorous acid and its ammonium, potassium and sodium salts has already been assessed for its pesticidal use by the Agency and published in support of the tolerance exemption for residues of phosphorous acid in or on all food commodities when used as an agricultural fungicide. See the **Federal Register** of October 5, 2000 (65 FR 59346) (FRL-6599-1). For the purposes of this tolerance exemption amendment, the Agency has relied on the data and/or information previously submitted and has reassessed that data in order to evaluate the request to add post harvest uses to the tolerance exemption. Additionally, the Agency has reviewed publicly available data and information on phosphoric acid, which is chemically and structurally similar to phosphorous acid. The Agency believes that in combination, the data and other information relied upon for this tolerance exemption supports its conclusion that there is reasonable certainty of no harm that will result from the post harvest treatment of potatoes with phosphorous acid when used according to the recommended application rate.

The technical grade of the active ingredient of phosphorous acid has also been fully characterized and assessed by the Agency in the Mineral Acids RED (December 1993) since it is an ingredient which falls within the class of compounds known as the mineral acids. Information on phosphorous acid indicates that it is classified in Toxicity Category III for the oral and dermal routes of exposure, and that it is corrosive to the eyes and skin. The corrosive nature of concentrated or technical grade phosphorous acid is not of a concern because phosphorus acid is applied at very dilute solutions such as 0.25 pounds of phosphorus acid per ton of stored potatoes. Phosphorous acid as applied at such very dilute rates is only slightly irritating to the skin. Further, when applied at such permissible application rate, the residues of the applied phosphorous acid solution have an acute toxicity that is several hundred times lower than the acute toxicity of phosphorous acid in a 100% pure form.

As mentioned above, the Agency, on its own initiative, re-examined the previously reviewed toxicity data on an end use product that contains 35.6% phosphorus acid by weight and would be applied at 0.25 pounds of active

ingredient per ton of stored potatoes. The results demonstrated that there is a margin of exposure of nearly 1,000 for children or the equivalent of a 30 kg child consuming 932 pounds of potatoes at one time. This large margin of exposure provides reasonable certainty of no harm at application rates in excess of that for the reviewed end use product. Specifically, an end use product containing 53.8% phosphorous acid by volume (or 35.6% phosphorus acid by weight) was tested on rats at > 5,000 mg/kg bodyweight. The total amount of phosphorous acid that would be consumed for each kg of potatoes based on a 30 kg child was calculated. Based on these calculations the acute oral toxicity was estimated to be equivalent to 1,780 mg PA/kg bodyweight for a 30 kg child. This is a conservative scenario which assumes that all of the phosphorous acid that is applied to stored potatoes will remain on the crop such that a 30 kg child would need to consume 424 kg of potatoes (to include peel and flesh) in one sitting. The Agency further assumed that there are 2.2lbs/kg of potatoes which would mean that a child would need to consume 932 pounds of potatoes that have been treated post harvest with phosphorous acid in one sitting to achieve the equivalent of a limit dose in laboratory animals. This is a margin of exposure of nearly 1,000-fold.

The toxicological profile of a solution containing 53.8% phosphorous acid is briefly summarized below.

*Acute oral (rat) 449404-04.*  
LD<sub>50</sub>>5,000mg/kg body weight (53.8% phosphorous acid aqueous solution). The test material is classified as a Toxicity Category IV for acute oral toxicity which demonstrates low toxicity. These results also demonstrate that a dilution of the active ingredient significantly decreases the order of toxicity as compared to the TGAI and supports the Agency conclusion that use of the proposed end-use product eliminates the potential of the active ingredient to cause acute toxic effects. There were no adverse effects reported at 5,000 mg/kg.

*Acute dermal (rat) 449404-05.*  
LD<sub>50</sub>>5,000mg/kg body weight (53.8% phosphorous acid aqueous solution). The test material is classified as a Toxicity Category IV for acute dermal toxicity and demonstrates that a dilution of the active ingredient significantly decreases the order of toxicity as compared to the TGAI and supports the Agency conclusion that use of the proposed end-use product will be slightly irritating to the skin.

*Acute inhalation (rat) 449404-06.*  
LC<sub>50</sub>>2.06 mg/L (53.8% phosphorous acid aqueous solution). The test material is classified as a Toxicity Category IV for acute inhalation toxicity and demonstrates that a dilution of the active ingredient to a level that is comparable to concentration of phosphorous acid in the proposed end use product will not cause acute inhalation effects at greater than 2.06 mg/L.

*Developmental/reproductive effects, chronic effects and carcinogenicity.*  
There is adequate information available from literature sources to characterize the toxicity of phosphorous acid. Phosphorous acid can affect human health through inhalation of mist, ingestion, and contact with the skin and eyes. In a concentrated form, it will cause corrosive effects (burns or irreversible damage) to the eyes, skin, throat, digestive tract, upper respiratory tract and nose. Signs of overexposure to this chemical are severe burning of eyes and skin, possible nausea and vomiting, coughing, burning and tightness of the chest and shortness of breath. Based on corrosivity and the current use patterns for the mineral acids, EPA did not require these studies as part of the Reregistration Eligibility Decision (RED) on the Mineral Acids (EPA 738-R-029; December 1993).

A typical end use product was tested for acute toxicity. As described above, a 53.8% phosphorous acid product did not cause acute toxicity at >5,000 mg/kg bodyweight. This product would be further diluted when applied to stored potatoes so that something on the order of a quarter of a pound of phosphorous acid would be applied to a ton of stored potatoes. Calculated estimates of the residue from such an application would give a margin of exposure near 1,000 for young children

The Agency concludes therefore that the primary hazards such as corrosivity and irritation that are associated with concentrated phosphorous acid are significantly reduced when used as a post harvest treatment on potatoes at dilute application rates such as those in the typical end use product tested and evaluated by the Agency.

#### IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or

buildings (residential and other indoor uses).

The primary issue for adding post-harvest applications to a tolerance exemption is whether such application causes any new exposure that would not be safe. In order to evaluate that issue, the Agency relied on the existing toxicology data already reviewed on phosphorous acid to conduct a conservative dietary exposure and risk assessment to evaluate any additional risk that might result from post-harvest application of this chemical. In the absence of acute oral studies and any magnitude of residue data, the Agency based its risk assessment on default assumptions, (i.e. information from the inhalation data base was used to compare to dietary risks, a common approach in the Agency), to ensure that the maximum application rates will not result in unacceptable dietary risks. As a result of this risk assessment, the Agency concludes that the use of phosphorous acid as a post harvest treatment to stored potatoes at the recommended application rate will not add any new exposures or risks and is considered safe.

Phosphorous acid rapidly dissociates to form hydrogen and phosphite ions when applied to growing crops in the environment and therefore, it has already been established that no dietary exposure is expected from pre-harvest applications. The degradation products of phosphorous acid, hydrogen and phosphite ions are important nutrients for plants and animals. Formation of these degradation products however, may be compromised when phosphorous acid is applied as a post harvest treatment. Since post harvest treatment of phosphorous acid to potatoes is likely to occur in indoor storage facilities, the oxidation process of phosphorous acid will most likely be slowed down. The fact that the phosphorous acid at the time of post harvest treatment has not been oxidized to its degradation products is clear and it is unknown how much this oxidation process reduces the potential dietary exposure to phosphorous acid under the conditions of post harvest treatment. However, even with these uncertainties, the Agency believes that when phosphorous acid is used as a post harvest treatment at the recommended application rate, the remaining residues of PA on stored potatoes will not increase toxicity or add any new dietary exposure or risks and the toxicity of phosphorous acid would still be classified in category IV (which is low toxicity) and will be safe.

1. *Dietary exposure.* The Agency has determined that post harvest treatment of phosphorous acid to stored potatoes

at the typical application rate evaluated by the Agency may reduce any new anticipated exposure to phosphorous acid. However, even if dietary exposure is not reduced, the Agency believes, based on its reassessment of the data and information, that post harvest application of phosphorous acid to potatoes is safe.

2. *Drinking water exposure.* No significant drinking water exposure is expected to result from phosphorous acid when applied as a post harvest treatment to potatoes because phosphorous acid rapidly degrades, is very soluble in water and is applied in storage facilities.

3. *Other non-occupational exposure.* There are no residential, school or day care uses proposed for this product. Since the proposed use pattern is for agricultural food crops and post-harvest treatment on potatoes, the potential for non-occupational, non-dietary exposures to phosphorous acid by the general population, including infants and children, is highly unlikely. Further, even if persons were exposed via the non-occupational route, the Agency believes that the low toxicity from a dilute application such as the one evaluated by the Agency is safe and the primary hazards associated with concentrated phosphorous acid (corrosivity and irritation) will be significantly reduced because the end use products are diluted and the residues following application are very low.

## V. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." These considerations include the possible cumulative effects of such residues on infants and children.

BPPD has considered the potential for cumulative effects of phosphorous acid and other substances in relation to a common mechanism of toxicity. Phosphorous Acid may share a common metabolic mechanism with other salts of phosphorous acid (such as calcium); however, due to the low order of toxicity associated with and lack of reported dietary toxicity associated with the use of phosphorous fertilizers on crops, no cumulative effect from the use of phosphorous acid is expected.

## VI. Determination of Safety for U.S. Population, Infants and Children

1. *U.S. population.* There is reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of phosphorous acid as a result of preharvest and post-harvest uses, as that toxicity and exposure is expected to be minimal. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. This chemical will be applied as a fungicide to agricultural food crops and as a post-harvest treatment potatoes to stored potatoes at 35,600 ppm or less. There is very little potential for dietary exposure to phosphorous acid, exposure in drinking water, and from non-dietary, non-occupational exposures. Once released into the environment, the chemical rapidly dissociates to form hydrogen and phosphite ions, important nutrients for plants and animals. While the formation of these degradation products may be compromised when phosphorous acid is applied as a post harvest treatment, the recommended application rate will significantly reduce any new dietary exposure or risks and is considered to be safe.

Many phosphite salts are generally recognized as safe (GRAS). Therefore, the health risk to humans is negligible based on the low toxicity of these ions and a low application rate and magnitude of dilution for post-harvest use of the active ingredient, and one can conclude that there is a reasonable certainty that no harm will result from aggregate exposure to phosphorous acid.

2. *Infants and children.* FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold margin of exposure (MOE) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure, unless EPA determines that a different MOE will be safe for infants and children. Margins of exposure which are often referred to as uncertainty (safety) factors, are incorporated into EPA risk assessments either directly, or through the use of a MOE analysis, or by using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk. In this instance, based on all reliable available information the Agency has reviewed on Phosphorous Acid, the Agency concludes that the additional MOE is not necessary to protect infants and children and that not adding any additional MOE will be safe for infants and children. Aggregate exposure to phosphorous acid is

expected to be minimal. There is very little potential for exposure to phosphorous acid in drinking water and from non-dietary, non-occupational exposures. This chemical will be applied preharvest to agricultural food crops and as a post harvest treatment on potatoes. Once released into the environment, the chemical rapidly dissociates to form hydrogen and phosphite ions. The hydrogen ions affect pH, but this is moderated by natural means. Many phosphite salts are GRAS. Therefore, the health risk to humans is negligible based on the low toxicity of dilute applications of phosphorous acid. One can conclude that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to phosphorous acid residues.

#### VII. Other Considerations

Phosphorous acid and its salts are rapidly dissociated in the environment to yield hydrogen and phosphite ions. Release of hydrogen ions will increase the pH of the plant's surface, which will be moderated by the amount of neutralizing ions present, the buffering capacity, and the amount of dilution possible. Phosphite ions are available for uptake by plants usually in the form of ammonium, calcium, and potassium and sodium phosphites (phosphite salts).

##### A. Endocrine Disruption

EPA is required under section 408(p) of the FFDCFA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) "may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen, or other such endocrine effects as the Administrator may designate." Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there was scientific basis for including, as part of the program, the androgen- and thyroid hormone systems, in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCFA authority to require the wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP).

At this time, the Agency is not requiring information on the endocrine effects of this active ingredient, phosphorous acid. Based on the weight of the evidence of available data and the absence of any reports to the Agency of sensitivity or other adverse effects, no endocrine system related effects are identified for phosphorous acid and none is expected because of its use. To date there is no evidence that phosphorous acid affects the immune system, functions in a manner similar to any known hormone, or that it acts as an endocrine disruptor. Thus, there is no impact via endocrine-related effects on the Agency's safety finding set forth in this proposed rule amending the phosphorous acid exemption from the requirement of a tolerance.

##### B. Analytical Method

Through this action, the Agency proposes to amend the existing exemption from the requirement of a tolerance for phosphorous acid to include post harvest treatment on potatoes for the reasons stated above which include low toxicity to mammals and negligible exposure from the pesticidal use of products containing phosphorous acid. For the same reasons, the Agency concludes that an analytical method is not required for enforcement purposes for phosphorous acid.

##### C. Codex Maximum Residue Level

No maximum residue levels (MRLs) have been established for phosphorous acid by the Codex Alimentarius Commission (CODEX).

#### VIII. Conclusions

The Agency concludes that if products containing phosphorous acid as an active ingredient are used in accordance with label directions, there is a reasonable certainty that no harm to the U.S. population, including infants and children, will result from aggregate exposure to residues of phosphorous acid, when used as an agricultural fungicide on all food commodities or when used as a post-harvest treatment on potatoes.

#### IX. Statutory and Executive Order Reviews

This proposed rule amends an exemption from the requirement of a tolerance under section 408(e) of the FFDCFA 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 proposed rule has been

exempted from review under Executive Order 12866 due to its lack of significance, this proposed 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 proposed 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) (Pub. 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 this Agency initiated amendment to an exemption from tolerance requirement, issued section 408(e) of the FFDCFA, requires the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) apply. The Agency hereby certifies that this proposed action 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 proposed 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 proposed 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 proposed 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 proposed rule.

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

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 20, 2006.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR chapter I be 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 180.1210 is revised to read as follows:

#### § 180.1210 Phosphorous acid; exemption from the requirement of a tolerance .

An exemption from the requirement of a tolerance is established for residues

of phosphorous acid and its ammonium, sodium, and potassium salts in or on all food commodities when used as an agricultural fungicide and in or on potatoes when applied as a post-harvest treatment at 35,600 ppm or less phosphorous acid.

[FR Doc. E6–10031 Filed 6–27–06; 8:45 am]

**BILLING CODE 6560–50–S**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 300

[EPA–HQ–SFUND–1990–0011; FRL–8188–9]

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

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

**ACTION:** Notice of intent for partial deletion of the Ellsworth Air Force Base Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency, Region 8 (EPA) announces its intent to delete portions of the Ellsworth Air Force Base (AFB) Site located in Meade and Pennington Counties, South Dakota, from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

The EPA has determined, with the concurrence of the State of South Dakota through the Department of Environment and Natural Resources (SDDENR) that for the parcels proposed for deletion, all appropriate actions under CERCLA have been implemented to protect human health, welfare and the environment and no further response action by responsible parties is appropriate. This partial deletion pertains to surface soil, unsaturated subsurface soil, surface water, and sediments at Operable Units 2, 3, 4, 5, 6, 7, 8, 9, 10 and 12, and excludes the ground water medium at these parcels. The ground water medium at the Ellsworth AFB Site (OU–11, Basewide Ground Water), and the soil medium (surface and unsaturated subsurface soils) at OU–1, Fire Protection Training Area, will remain on the NPL and response activities will continue for those OUs. Two additional areas not associated with an operable unit, the Gateway Lake Ash Study Area and the

Pride Hangar Study Area, are currently under investigation and are also not part of this partial deletion.

**DATES:** Comments concerning this proposed partial deletion may be submitted on or before July 28, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1990–0011, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail*:

[dalton.john@epamail.epa.gov](mailto:dalton.john@epamail.epa.gov).

- *Fax*: 303–312–6961.

- *Mail*: Mr. John Dalton, Community Involvement Coordinator (8OC), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466.

- *Hand Delivery*: 999 18th Street, Suite 300, Denver, CO 80202–2466.

**Instructions:** Direct your comments to Docket ID No. EPA–HQ–SFUND–1990–0011. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other