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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2005-0487; FRL-8062-3]

### Pesticides; Minimal Risk Tolerance Exemptions

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

**ACTION:** Final rule.

**SUMMARY:** This rule reorganizes the existing tolerance exemptions for 12 chemical substances that are now classified as "minimal risk." The Agency is shifting the existing tolerance exemptions for these chemicals to 40 CFR 180.950(e). The Agency is merely moving certain tolerance exemptions from one section of the CFR to another section. No tolerance exemptions are lost or added as a result of this action.

**DATES:** This regulation is effective May 31, 2006. Objections and requests for hearings must be received on or before July 31, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2005-0487. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 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 Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Boyle, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number:

(703) 305-6304; fax number: (703) 305-0599; e-mail address: [boyle.kathryn@epa.gov](mailto:boyle.kathryn@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. 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 Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this *Federal Register* document through the electronic docket at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at <http://www.gpoaccess.gov/ecfr>.

##### C. Can I File an Objection or Hearing Request?

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. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-

OPP-2005-0487 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 July 31, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA-HQ-OPP-2005-0487, 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 telephone number for the Docket Facility is (703) 305-5805.

## II. Background and Statutory Findings

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

This final rule is issued pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by Food Quality Protection Act (FQPA) (21 U.S.C. 346a(e)). 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 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)).

### B. What Action is the Agency Taking?

In the **Federal Register** of January 25, 2006 (71 FR 4087) (FRL-7754-8), EPA

issued a proposed rule under section 408(e) of the FFDCFA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104-170). In that rule, the Agency proposed to shift existing tolerance exemptions for certain inert ingredients that have been classified by the Agency as List 4A, "minimal risk," to 40 CFR 180.950(e).

One comment was received from the Washington State Department of Agriculture (WSDA). WSDA requested that "EPA consider revoking the tolerance exemption for sperm oil" since it is derived from the sperm whale, an endangered species. In light of this comment, the Agency will not shift the exemption for sperm oil to 40 CFR 180.950(e), and will consider in the future whether to take action to revoke this tolerance exemption. No other comments were received.

Accordingly, based on the reasons set forth in the preamble to the proposed rule, EPA is shifting the tolerance exemptions for the 12 chemical substances specified in the regulatory text to § 180.950(e).

### III. Statutory and Executive Order Reviews

This final rule re-organizes the tolerance exemptions for 12 chemical substances. Such reorganization does not impose any new requirements, has no impact, and is therefore, not subject to review by the Office of Management and Budget (OMB) 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) (Pub. L. 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). Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that re-organizing these tolerance exemptions 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 FFDCFA. 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.

### IV. 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 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 the rule in the **Federal Register**. This 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, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 16, 2006.

**Lois Rossi,**

*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 374

■ 2. In § 180.910, the table is amended by removing the entries for: Ascorbic acid (CAS Reg. No. 50-81-7); beeswax; carnauba wax; glycerol; isopropyl alcohol; soap (sodium or potassium salts of fatty acids); sodium benzoate; sodium bicarbonate; sorbitol, and sorbic acid (and potassium salt) and alphabetically adding the following entry to the table to read as follows:

**§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.**

\* \* \* \* \*

| Inert Ingredients                         | Limits | Uses                          |
|---|--------|-------------------------------|
| Sorbic acid (CAS Reg. No. 110-44-1) ..... | .....  | Preservative for formulations |

■ 3. In § 180.920, the table is amended by removing the entries for: Potassium carbonate and vanillin and adding the

following two entries to the table to read as follows:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

\* \* \* \* \*

| Inert Ingredients   | Limits | Uses            |
|---|--------|-----------------|
| Carbonic acid, dipotassium salt (CAS Reg. No. 584-08-7) .....               | .....  | Buffering agent |
| Carbonic acid, dipotassium salt, trihydrate (CAS Reg. No. 18662-52-7) ..... | .....  | Buffering agent |

§ 180.930 [Amended]

■ 4. In § 180.930, the table is amended by removing the entries for: Carnauba wax (CAS Reg. No. 8015-86-9); glycerol (glycerin); isopropyl alcohol; and sodium benzoate.

a. By removing from the table in paragraph (a) the entries for 2-propanol (isopropanol) and sodium bicarbonate.

b. By removing from the table in paragraph (b) the entry for 2-propanol (isopropanol).

c. By removing from the table in paragraph (c) the entries for 2-propanol (isopropanol) and sodium bicarbonate.

■ 6. In § 180.950, the table in paragraph (e) is amended by adding alphabetically the following 12 entries to read as follows:

§ 180.950 Tolerance exemptions for minimal risk active and inert ingredients.

\* \* \* \* \*

(e) \* \* \*

§ 180.940 [Amended]

■ 5. Section 180.940 is amended as follows:

| Chemical Name   | CAS Reg. No. |
|---|--------------|
| Ascorbic acid (vitamin C) .....   | 50-81-7      |
| Beeswax .....   | 8012-89-3    |
| Benzoic acid, sodium salt .....   | 532-32-1     |
| Carbonic acid, monopotassium salt .....   | 298-14-6     |
| Carbonic acid, monosodium salt (sodium bicarbonate) .....   | 144-55-8     |
| Carnauba wax .....  | 8015-86-9    |
| D-Glucitol (sorbitol) .....   | 50-70-4      |
| Glycerol (glycerin) (1,2,3-propanetriol) .....  | 56-81-5      |
| 2-Propanol (isopropyl alcohol) .....  | 67-63-0      |
| Soap (The water soluble sodium or potassium salts of fatty acids produced by either the saponification of fats and oils, or the neutralization of fatty acid) ..... | None         |
| Sorbic acid, potassium salt .....   | 24634-61-5   |
| Vanillin .....  | 121-33-5     |

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2005-0215; FRL-8057-9]

Terbacil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** This regulation establishes a tolerance for combined residues of terbacil in or on watermelon. The Interregional Research Project Number 4 (IR-4), on behalf of the registrant, DuPont Crop Protection, requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). EPA is also deleting an existing time-limited terbacil tolerance that is no longer needed as a result of this action.

**DATES:** This regulation is effective May 31, 2006. Objections and requests for

hearings must be received on or before July 31, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2005-0215. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information