

(3) Barclays Official California Code of Regulations, Title 17 Public Health, Division 3 Air Resources, Chapter 1 Air Resources Board, Subchapter 8.5 Consumer Products, Article 3 Aerosol Coating Products, amendment filed 11–8–2007, operative 12–8–2007.

[FR Doc. E9–26417 Filed 11–3–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–1125; FRL–8350–6]

Pesticide Inert Ingredients; Revocation of Tolerance Exemption for Sperm Oil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing this final rule to revoke the existing obsolete tolerance exemption for residues of sperm oil conforming to 21 CFR 172.210. There have not been any active Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticide product registrations containing this inert ingredient for many years. In addition, the sperm whale (from which sperm oil is derived) is a federally listed endangered species, and taking (or harming) this species is prohibited under the U.S. Endangered Species Act. Therefore, since this exemption corresponds to uses no longer current or registered under FIFRA in the United States, EPA is revoking the existing tolerance exemption under 40 CFR 180.910 because it is no longer necessary.

DATES: This regulation is effective November 4, 2009. Objections and requests for hearings must be received on or before January 4, 2010, 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–2007–1125. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. 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 Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Karen Samek, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8825; e-mail address: samek.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. 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 Federal Food, Drug, and Cosmetic Act, (FFDCA), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. 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–2007–1125 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 as required by 40 CFR part 178 on or before January 4, 2010.

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–2007–1125, 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 Bldg.), 2777 S. Crystal Dr., 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 Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

A. What Action Is the Agency Taking?

EPA is revoking the existing tolerance exemption under 40 CFR 180.910 for residues of sperm oil conforming to 21 CFR 172.210 as part of a broader administrative effort to correct errors and clarify permitted uses of pesticide inert ingredients in the Code of Federal Regulations. It is EPA’s general practice to revoke tolerances and tolerance exemptions for pesticide chemical residues (which include both active and inert ingredients) for which there are no

associated active registered uses under FIFRA, or for which there are no registered products to which the tolerance or tolerance exemption applies, or for tolerances or tolerance exemptions that have been superseded.

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.

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

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.

EPA issued a proposed rule in the **Federal Register** of May 16, 2008 (73 FR 28391) (FRL-8363-6) proposing to revoke the tolerance exemption under 40 CFR 180.910 for residues of sperm oil conforming to 21 CFR 172.210. There were no comments received in response to the proposed rule.

EPA believes it is appropriate to revoke the tolerance exemption associated with this inert ingredient because there are no longer any active FIFRA pesticide product registrations for pesticide products containing sperm oil. Additionally, since sperm oil is derived from the sperm whale and the sperm whale is a federally listed endangered species, taking (or harming) this species to obtain sperm oil is prohibited by the Endangered Species Act. EPA does not expect there to be existing stocks of pesticides containing sperm oil in the hands of users because the sperm whale has been listed as an endangered species since 1970. Also, EPA is not aware of any food or feed commodities treated with pesticides containing sperm oil imported into the United States.

Therefore, for the reasons stated herein, EPA is revoking the existing exemption from the requirement of a tolerance for residues of sperm oil conforming to 21 CFR 172.210 under 40 CFR 180.910.

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

This rule is issued pursuant to section 408(l) of FFDCA (21 U.S.C. 346a(l)). Section 408(l) 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.

C. When do These Actions Become Effective?

This action becomes effective on the date of publication of this final rule in the **Federal Register**. Any commodities listed in the regulatory text of this document that are treated with Sperm oil, and that are in the channels of trade following the tolerance exemption revocations, shall be subject to FFDCA section 408(l)(5), as established by the FQPA. Under this section, any residues of this pesticide chemical 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 (FDA) 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.

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.

III. Statutory and Executive Order Reviews

In this final rule, EPA is revoking a specific tolerance exemption established under FFDCA section 408. EPA establishes tolerances under FFDCA section 408(e), and also modifies and revokes specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) 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). Pursuant to

the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticide listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Furthermore, for the inert ingredient named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocation that would change the EPA's previous analysis. 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 9, 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.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, 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: October 23, 2009.

Donald J. Rosenblatt,

Acting Director, 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.

§ 180.910 [Amended]

■ 2. Section 180.910 is amended by removing from the table the entry for "Sperm oil conforming to 21 CFR 172.210."

[FR Doc. E9-26540 Filed 11-3-09 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2007-0261; FRL-8796-1]

Methamidophos; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking tolerances for the insecticide methamidophos on cucumber, eggplant and melon. The regulatory actions finalized in this document are in follow-up to the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and tolerance reassessment program under section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective November 4, 2009. Objections and requests for hearings must be received on or before January 4, 2010, 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-2007-0261. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. 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 Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Joy Schnackenberg, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8072; e-mail address: schnackenberg.joy@epa.gov.

SUPPLEMENTARY INFORMATION: