

necessary as part of the qualitative assessment conducted for bacteriophage active against *Xanthomonas citri* subsp. *citri*.

Based upon its evaluation, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of bacteriophage active against *Xanthomonas citri* subsp. *citri*. Therefore, an exemption from the requirement of a tolerance is established for residues of lytic bacteriophage active against *Xanthomonas citri* subsp. *citri* that are produced in *Xanthomonas citri* subsp. *citri* in or on food commodities included in the fruit, citrus groups 10 and 10–10, when used in accordance with label directions and good agricultural practices.

B. Analytical Enforcement Methodology

An analytical method is not required because EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Differences Between Petition and Tolerance Exemption Rule

In its petition, the petitioner requested generally that EPA issue an exemption from the requirement of a tolerance for residues of bacteriophage active against *Xanthomonas citri* subsp. *citri* in or on citrus fruit, including orange, grapefruit, pummelo, mandarin, lemon, lime, tangerine, tangelo, and kumquat. The petitioner's supporting materials indicated that the actual pesticide that would be used would be safe because the bacteriophage was lytic and were produced in *Xanthomonas citri* subsp. *citri*. EPA believes that only bacteriophage that have these same characteristics as the organism tested would be safe and should be exempt from the requirement of a tolerance. Therefore, EPA is issuing a tolerance exemption that differs slightly from the petition by limiting the exemption to residues of the bacteriophage that possess the same characteristics as the bacteriophage that were tested to support this exemption.

IV. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to EPA. 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 action has been exempted from review under

Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled "Reducing Regulations and Controlling Regulatory Costs" (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, 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).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this action, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, EPA has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require EPA's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology

Transfer and Advancement Act (15 U.S.C. 272 note).

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), 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 action 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 4, 2018.

Richard P. Keigwin, Jr.,
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.

■ 2. Add § 180.1360 to subpart D to read as follows:

§ 180.1360 Bacteriophage active against *Xanthomonas citri* subsp. *citri*; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of lytic bacteriophage active against *Xanthomonas citri* subsp. *citri* that are produced in *Xanthomonas citri* subsp. *citri* in or on food commodities included in the fruit, citrus groups 10 and 10–10, when used in accordance with label directions and good agricultural practices.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0525; FRL–9983–31]

Pepino Mosaic Virus, Strain CH2, Isolate 1906; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a

tolerance for residues of *Pepino mosaic virus*, strain CH2, isolate 1906 in or on tomato when this pesticide chemical is used in accordance with label directions and good agricultural practices.

Interregional Research Project Number 4 submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from a requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Pepino mosaic virus*, strain CH2, isolate 1906 in or on tomato under FFDCA.

DATES: This regulation is effective September 13, 2018. Objections and requests for hearings must be received on or before November 13, 2018, 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: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2017-0525, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: BPPDFRNotices@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. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), 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-2017-0525 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 13, 2018. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

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 (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2017-0525, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>. Additional instructions on commenting

or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. Background

In the **Federal Register** of December 15, 2017 (82 FR 59604) (FRL-9970-50), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 7E8567) by Interregional Research Project Number 4 (IR-4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the microbial pesticide *Pepino mosaic virus*, strain CH2, isolate 1906 in or on tomato. That document referenced a summary of the petition prepared by the petitioner IR-4 and available in the docket via <http://www.regulations.gov>. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit III.C.

III. Final Rule

A. EPA's Safety Determination

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of 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 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 FFDCA 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 FFDCA 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 or tolerance exemption 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, FFDCA section 408(b)(2)(D) requires that EPA consider "available information concerning the cumulative effects of [a particular pesticide's] . . . residues and

other substances that have a common mechanism of toxicity.”

EPA evaluated the available toxicological and exposure data on *Pepino mosaic virus*, strain CH2, isolate 1906 and considered their validity, completeness, and reliability, as well as the relationship of this information to human risk. A full explanation of the data upon which EPA relied and its risk assessment based on those data can be found within the document entitled “Federal Food, Drug, and Cosmetic Act (FFDCA) Safety Determination for *Pepino mosaic virus*, strain CH2, isolate 1906” (Safety Determination). This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

The available data demonstrated that in regard to humans *Pepino mosaic virus*, strain CH2, isolate 1906 is not likely to be toxic or pathogenic, is not infective, and is not able to replicate in human cells. Furthermore, humans, including infants and children, continuously consume plant viruses, including *Pepino mosaic virus*, strain CH2, isolate 1906, due to the ubiquitous nature of these viruses in plants and fruits, and no cases have been documented of any plant virus causing toxicity or diseases in humans or animals. Although there may be some exposure to residues of *Pepino mosaic virus*, strain CH2, isolate 1906 that are used on tomato in accordance with label directions and good agricultural practices, such exposure is unlikely to cause any adverse effects. EPA also determined in the Safety Determination that retention of the Food Quality Protection Act (FQPA) safety factor was not necessary as part of the qualitative assessment conducted for *Pepino mosaic virus*, strain CH2, isolate 1906.

Based upon its evaluation in the Safety Determination, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Pepino mosaic virus*, strain CH2, isolate 1906. Therefore, an exemption from the requirement of a tolerance is established for residues of *Pepino mosaic virus*, strain CH2, isolate 1906 in or on tomato when this pesticide chemical is used in accordance with label directions and good agricultural practices.

B. Analytical Enforcement Methodology

An analytical method is not required because EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Response to Comments

Three comments were received in response to the notice of filing. EPA reviewed the comments and determined that they are irrelevant to the tolerance exemption in this action.

IV. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to EPA. 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 action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) nor is it considered a regulatory action under Executive Order 13771, entitled “Reducing Regulations and Controlling Regulatory Costs” (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) 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).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this action, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between

the Federal Government and Indian tribes. Thus, EPA has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require EPA’s consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 272 note).

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), 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 action 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 6, 2018.

Richard P. Keigwin, Jr.,
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.

■ 2. Add § 180.1361 to subpart D to read as follows:

§ 180.1361 *Pepino mosaic virus*, strain CH2, isolate 1906; exemption from the requirement of a tolerance.

Residues of *Pepino mosaic virus*, strain CH2, isolate 1906 are exempt from the requirement of a tolerance in or on tomato when this pesticide chemical is used in accordance with label directions and good agricultural practices.

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