

Commodity	Parts per million	Expiration/Revocation Date
Milk .....	6.0	None
Milk, fat .....	75	None
Nut, tree, group 14 .....	0.02	None
Okra .....	0.40	None
Papaya .....	0.3	None
Passionfruit .....	0.3	None
Peanut .....	0.02	None
Pistachio .....	0.020	None
Poultry, fat .....	0.5	None
Poultry, meat byproducts .....	0.03	None
Poultry, meat .....	0.02	None
Pulasan .....	0.3	None
Rambutan .....	0.3	None
Rice, hulls .....	4.0	None
Salal .....	0.250	None
Sapodilla .....	0.3	None
Sapote, black .....	0.3	None
Sapote, mamey .....	0.3	None
Sapote, white .....	0.3	None
Sheep, fat .....	33	None
Sheep, meat byproducts .....	8.0	None
Sheep, meat .....	1.5	None
Sorghum, forage .....	1.0	None
Sorghum, forage, hay .....	1.0	None
Sorghum, grain, stover .....	1.0	None
Sorghum, straw .....	1.0	None
Soursop .....	0.3	None
Soybean .....	0.02	None
Spanish lime .....	0.3	None
Star apple .....	0.3	None
Starfruit .....	0.3	None
Strawberry .....	1.0	None
Sugar apple .....	0.3	None
Ti, leaves .....	10.0	None
Vegetable, brassica, leafy, group 5 .....	10.0	None
Vegetable, cucurbit (cucumber, melon, squashes), group 9 .....	0.3	None
Vegetable, foliage of legume, group 7 .....	8.0	None
Vegetable, fruiting, group 8 .....	0.4	None
Vegetable, leaves of root and tuber, group 2 .....	10.0	None
Vegetable, root and tuber, group 1 .....	0.10	None
Watercress .....	8.0	None
Wax jambu .....	0.3	None
Wheat, forage .....	1.0	None
Wheat, hay .....	1.0	None
Wheat, straw .....	1.0	None

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180**

[OPP-2005-0001; FRL-7694-5]

**Peanuts, Tree Nuts, Milk, Soybeans, Eggs, Fish, Crustacea, and Wheat; 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 peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and/or wheat when used as

inert or active ingredients in pesticide products, for certain use patterns, under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The Agency is acting on its own initiative.

**DATES:** This regulation is effective on January 7, 2005.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit IV. of the SUPPLEMENTARY INFORMATION. EPA has established a docket for this action under Docket identification (ID) number OPP-2005-0001. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material,

is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:**

Kathryn Boyle, Registration Division (7505C), 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:

- Industry (NAICS code 111), e.g., Crop production
- Industry (NAICS code 32532), e.g., Pesticide manufacturing.

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 and Other Related Information?

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

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

This final rule is issued under section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170). Section 408(e) of FFDCA authorizes EPA to establish, modify, or revoke tolerances, or exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities and processed foods.

## III. Background and Statutory Findings

In the **Federal Register** of July 21, 2004 (69 FR 43548) (FRL–7365–5), EPA issued a proposed rule under section 408 (e) of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170). The Agency proposed to establish in 40 CFR 180.1071 an exemption from the requirement for tolerance for peanuts, tree nuts, milk (including caseins), soybeans, eggs, fish, crustacea, and/or wheat when used

according to the use patterns specified by the Agency as being unlikely to result in residues of an allergen-containing material mixed-in with other (different) food commodities as a result of a pesticide application.

One comment was received from a private citizen opposing the establishment of this exemption, particularly the animal feed-through use, but the commentor gave no reason for opposing the exemption other than a general objection to pesticides. The Agency recognizes that some individuals believe that pesticides should be banned completely. However, under the existing legal framework provided by section 408(e) of FFDCA, EPA can establish or modify pesticide tolerances or exemptions by demonstrating that the pesticide meets the safety standard imposed by that statute. The commentor has not provided the Agency with a specific rationale or additional information pertaining to the legal standards in FFDCA Section 408 for opposing the establishment of a tolerance exemption for residues of peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and/or wheat. In the absence of any additional information of a factual nature, the Agency can not respond further to the commentor's disagreement with the Agency's decision.

A late comment was received from the Monterey Chemical Company requesting that the use patterns specified in the proposed rule be changed to include the use on bearing citrus. The requester indicated their belief that because of the washing and waxing of the harvested crop that it would be “unlikely that any residue of casein would remain on the harvested crop.” The Agency has considered the commentor's request, but believes that additional information is needed. The casein is being intentionally used as a sticking agent, that is, the casein is formulated to stick to the surface of the developing citrus fruit. The Agency simply does not know if the casein would be degraded in the environment by sunlight or by microflora, or if the casein would still be present on the surface of the fruit after washing. If the Agency were in possession of data (for example, casein-specific enzyme-linked immunosorbent assays (ELISA) wipe tests performed on citrus fruits as harvested, and as washed and waxed with detection levels of less than 10 ppm), then its ability to make a determination would increase.

While not as a result of a public comment, the Agency is also formally including the term putrescent eggs within the definition of eggs, even

though putrescent eggs would not be considered as a food commodity. It is a long-standing practice of the Pesticides Program to accept the use of the term putrescent eggs as being included under the descriptor egg solids (whole). In fact, putrescent whole egg solids are a minimum risk active ingredient per 40 CFR 152.25(f)(1).

Based on the reasons set forth in the preamble to the proposed rule, and considering the comments received by the Agency in response to the proposed rule, EPA is establishing a tolerance exemption for residues of peanuts, tree nuts, milk (including casein), soybeans, eggs (including putrescent egg solids), fish, crustacea, and/or wheat when used according to the use patterns as specified by the Agency as being unlikely to result in residues of an allergen-containing material mixed-in with other (different) food commodities as a result of a pesticide application.

## IV. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0001 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 March 8, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the

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

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564-6255.

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

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

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following:

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

#### **V. Statutory and Executive Order Reviews**

This final rule establishes an exemption from the tolerance requirement under section 408(e) of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

This final rule establishes new tolerance exemptions in 40 CFR 180.1071. Establishing a new tolerance exemption permits expanded use of pesticide products and thus has a positive economic impact. Under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that the proposed action to establish a new tolerance exemption for allergen-

containing materials will not have significant negative economic impact on a substantial number of small entities.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

## VI. 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 practices and procedures, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 29, 2004.

**Betty Shackelford,**

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

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

### PART 180—[AMENDED]

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

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

■ 2. Section 180.1071 is revised to read as follows:

#### **§ 180.1071 Peanuts, Tree Nuts, Milk, Soybeans, Eggs, Fish, Crustacea, and Wheat; exemption from the requirement of a tolerance.**

(a) *General.* Residues resulting from the following uses of the food commodity forms of peanuts, tree nuts, milk, soybeans, eggs (including putrescent eggs), fish, crustacea, and wheat are exempted from the requirement of a tolerance in or on all food commodities under FFDCA section 408 (when used as either an inert or an active ingredient in a pesticide formulation), if such use is in accordance with good agricultural practices:

(1) Use in pesticide products intended to treat seeds.

(2) Use in nursery and greenhouse operations, as defined in 40 CFR 170.3, which includes seeding, potting and transplanting activities.

(3) Pre-plant and at-transplant applications.

(4) Incorporation into seedling and planting beds.

(5) Applications to cuttings and bare roots.

(6) Applications to the field that occur after the harvested crop has been removed.

(7) Soil-directed applications around and adjacent to all plants.

(8) Applications to rangelands, which is land, mostly grasslands, whose plants can provide food (i.e., forage) for grazing or browsing animals.

(9) Use in chemigation and irrigation systems (via flood, drip, or furrow application with no overhead spray applications).

(10) Application as part of a dry fertilizer on which an active ingredient is impregnated.

(11) Aerial and ground applications that occur when no above-ground harvestable food commodities are present (usually pre-bloom).

(12) Application as part of an animal feed-through product.

(13) Applications as gel and solid (non-liquid/non-spray) crack and crevice treatments that place the gel or bait directly into or on top of the cracks and crevices via a mechanism such as a syringe.

(14) Applications to the same crop from which the food commodity is derived, whether the plant fraction(s) intended for harvest are present or not, e.g., applications of peanut meal when applied to peanut plants.

(b) *Specific chemical substances.* Residues resulting from the use of the following substances as either an inert or an active ingredient in a pesticide formulation are exempted from the requirement of a tolerance under FFDCA section 408, if such use is in accordance with good agricultural practices and such use is included in paragraph (a):

Chemical Substance	CAS No.
Caseins .....	9000-71-9
Caseins, ammonium complexes .....	9005-42-9
Caseins, hydrolyzates ....	65072-00-6
Caseins, potassium complexes .....	68131-54-4
Caseins, sodium complexes .....	9005-46-3

\* \* \* \* \*

[FR Doc. 05-344 Filed 1-6-05; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 15

[ET Docket No. 04-37 and ET Docket No. 03-104; FCC 04-245]

### Broadband Power Line Systems

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document adopts new requirements and measurement guidelines for a new type of carrier current system that provides access to broadband services using electric utility companies' power lines. This new technology offers the potential for the establishment of a significant new medium for extending broadband access to American homes and businesses. Given that power lines reach virtually every residence and business in every community and geographic area in this country, Access BPL service could be made available nearly everywhere. This new broadband delivery medium could also serve to introduce additional competition to existing cable, DSL, and other broadband services. We believe these actions will promote the development of BPL systems by removing regulatory uncertainties for BPL operators and equipment manufacturers while ensuring that licensed radio services are protected from harmful interference.

**DATES:** Effective February 7, 2005, except for §§ 15.615(a) through (e) which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

### Final Paperwork Reduction Act of 1995 Analysis

This document contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due March 8, 2005.

**ADDRESSES:** Comments on the information collection requirements should be addressed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a