

lowering the floor to 1,200 feet MSL within a 45 NM radius of Deering Airport, AK. The purpose of this proposal is to establish controlled airspace to support instrument flight rules operations at Deering Airport, AK. The FAA Instrument Flight Procedures Production and Maintenance Branch has developed four new instrument approach procedures for the Deering Airport. New controlled airspace extending upward from 1,200 feet MSL above the surface in international airspace would be created by this action. The proposed airspace is sufficient to support instrument operations at the Deering airport.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of System Operations Airspace and AIM, Airspace & Rules, in areas outside the United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction

of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

#### PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

##### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

*Paragraph 6007 Offshore Airspace Areas*  
\* \* \* \* \*

##### Norton Sound Low, AK [Amended]

That airspace extending upward from 1,200 MSL within a 45-mile radius of the Deering Airport Alaska, and airspace extending upward from 14,500 feet MSL within an area bounded by a line beginning at lat. 59°59'57" N., long. 168°00'08" W.; to

lat. 62°35'00" N., long. 175°00'00" W.; to lat. 65°00'00" N., long. 168°58'23" W.; to lat. 68°00'00" N., long. 168°58'23" W.; to a point 12 miles offshore at lat. 68°00'00" N.; thence by a line 12 miles from and parallel to the shoreline to lat. 56°42'59" N., long. 160°00'00" W.; to lat. 58°06'57" N., long. 160°00'00" W.; to lat. 57°45'57" N., long. 161°46'08" W.; to the point of beginning, excluding that portion that lies within Class E airspace above 14,500 feet MSL, Federal airways and the Nome and Kotzebue, AK, Class E airspace areas.

\* \* \* \* \*

Issued in Washington, DC, on September 14, 2005.

**Edith V. Parish,**

*Acting Manager, Airspace and Rules.*

[FR Doc. 05–18812 Filed 9–20–05; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP–2004–0344; FRL–7719–7]

### C8, C10, and C12 Straight-Chain Fatty Acid Monoesters of Glycerol and Propylene Glycol; Amendment to Tolerance Exemption

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend an exemption from the requirement of a tolerance for residues of the C8, C10, and C12 straight-chain fatty acid monoesters of glycerol and propylene glycol on all food commodities when applied/used for both pre-harvest and post-harvest purposes. On June 23, 2004, EPA established an exemption from the requirement of a tolerance for these residues but did not expressly approve post-harvest uses in accordance with 40 CFR 180.1(i). Therefore, EPA is proposing this regulation, to amend the existing tolerance exemption to allow for post-harvest uses of C8, C10, and C12 straight-chain fatty acid monoesters of glycerol and propylene glycol in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** Comments, identified by docket ID number OPP–2004–0344, must be received on or before October 6, 2005.

**ADDRESSES:** Submit your comments, identified by docket ID number OPP–2004–0344, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov/>. Follow the on-

line instructions for submitting comments.

- *Agency Website:* <http://www.epa.gov/edocket/>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- *E-mail:* Comments may be sent by e-mail to [opp-docket@epa.gov](mailto:opp-docket@epa.gov), Attention: Docket ID Number OPP-2004-0344.

- *Mail:* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2004-0344.

- *Hand delivery:* Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP-2004-0344. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to docket ID number OPP-2004-0344. 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.epa.gov/edocket/>, 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 EDOCKET, [regulations.gov](http://regulations.gov), or e-mail. The EPA EDOCKET and the [regulations.gov](http://regulations.gov) websites are "anonymous access" systems, 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 EDOCKET or [regulations.gov](http://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. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL-7181-7).

*Docket:* 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 S. Bell St., Arlington, VA. This Docket Facility is open 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:**

Carol E. Frazer, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8810; fax number: (703) 308-7026; e-mail address: [frazer.carol@epa.gov](mailto:frazer.carol@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)
- Pesticide manufacturing (NAICS code 32532)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)

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/>.

*C. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, [regulations.gov](http://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:

- Identify the rulemaking by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- 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

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

EPA on its own initiative, pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a(e), is proposing to amend 40 CFR part 180 by adding post-harvest uses to the language in 40 CFR 180.1250. In the **Federal Register** of June 23, 2004 (69 FR 34937) (FRL-7352-6), EPA issued a final rule pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), establishing an exemption from the requirement of a tolerance for residues of the C8, C10, and C12 straight-chain fatty acid monoesters of glycerol and propylene glycol after reviewing a petition for a tolerance exemption (PP 1F6314) submitted by 3M Corporation, 3M Center, St. Paul MN 55144-1000.

The Notice of Filing of a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food (66 FR 64251, December 12, 2001) (FRL-6809-8) failed to notify the public that the C8, C10, and C12 straight-chain fatty acid monoesters would be used for post-harvest applications “to control spoilage of food and feed crops after harvest.” Even though the first page of 3M’s petition for a tolerance exemption stated that its proposed end use products, which contain the fatty acid monoesters that are the subject of this tolerance rule amendment, were to be used for the “treatment of potatoes after harvest to prevent spoilage in storage,” the summary of the petition that was published in the **Federal Register** Notice did not specifically mention the post-harvest use. Under 40 CFR 180.1(i), “[u]nless otherwise specified, tolerances and exemptions established under the regulations in this part apply to residues from only pre-harvest application of this chemical.”

In the preamble to the June 23, 2004 rule establishing the exemption for these monoesters (69 FR 34937) (Unit IV.A.1, Aggregate Exposures), EPA relies upon the aggregate dietary exposure estimates generated by 3M using EPA’s Dietary Exposure Potential Model. Although not expressly stated in that rule, those residue estimates included post-harvest exposures. In order to simulate a worst-case exposure analysis, 18 different raw agricultural commodities from seeds for sprouts to leafy vegetables like spinach to solid produce like apple and potato were obtained from local supermarkets in St. Paul, Minnesota and soaked in a typical diluted treatment solution for 15 minutes to provide an idea about post-

harvest residues on agricultural commodities. As can be seen from this, the Agency’s evaluation of residue levels of these chemicals’ pesticide usage included both the extant residues resulting from pre-harvest applications and the residues resulting from the proposed post-harvest use.

Even if the exposure resulting from post-harvest use was significantly higher than exposure based on only pre-harvest use of monoesters as pesticides, the Agency is not concerned due to the low to non-existent toxicity level of these fatty acids. The preamble to the June 23, 2004 rule (69 FR 34937) discusses the long history of consumption by humans of fatty acids and their monoesters in food and the Agency knows of no instance where these have been associated with any toxic effects related to the consumption of the food. Due to this knowledge of fatty acid monoesters’ presence and function in the human system and the acute testing, EPA believes the fatty acid monoesters are unlikely to be carcinogenic or have other long-term toxic effects. The data from the residue information, the toxicity studies, and the additional information from the scientific literature submitted by the registrant are sufficient to demonstrate that no substantial risks to human health are expected from the use of glycerol or propylene glycol fatty acid monoesters, even when used on crops post-harvest, when used in accordance with good agricultural practices and in accordance with all relevant labeling.

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

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 EPA to modify a regulation on its own initiative under section 408(e). Section 408(e) requires 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 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 15 days because the Agency believes that it is in the public interest to do so. The first end-use product using one of these pesticide active ingredients has been approved, and growers face a potential hardship if a decision is not made expeditiously.

EPA on its own initiative, under section 408(e) of the FFDCA, 21 U.S.C. 346a(e), is proposing to amend 40 CFR 180.1250.

## III. Statutory and Executive Order Reviews

This proposed rule amends an exemption from the tolerance requirement under section 408(e) of the FFDCA, as an action taken on the Agency’s own initiative to correct an oversight in establishing the current tolerance exemption for the C8, C10, and C12 straight-chain fatty acid monoesters of glycerol and propylene glycol to allow for both pre-harvest and post-harvest uses. 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) (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). The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental organizations. After considering the economic impact of this proposed rule on small entities, the Agency hereby certifies that this proposed rule will not have significant negative economic impact on a substantial number of small entities. Establishing an exemption from the requirement of a pesticide tolerance (or, amending a tolerance exemption, as is proposed), is in effect, the removal of a regulatory restriction on pesticide residues in food and thus such an action will not have any negative economic impact on any entities, including 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 FFDCFA. 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. The Agency hereby certifies that this proposed action will not have significant negative economic impact on a substantial number of small entities.

#### 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 7, 2005.

**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 would continue to read as follows:

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

2. By revising § 180.1250 to read as follows:

#### **§ 180.1250 C8, C10, and C12 straight-chain fatty acid monoesters of glycerol and propylene glycol; exemption from the requirement of a tolerance.**

The C8, C10, and C12 straight-chain fatty acid monoesters of glycerol (glycerol monocaprylate, glycerol monocaprate, and glycerol monolaurate) and propylene glycol (propylene glycol monocaprylate, propylene glycol monocaprate, and propylene glycol monolaurate) are exempt from the requirement of a tolerance in or on all food commodities when used for both pre-harvest and post-harvest purposes, in accordance with approved label rates and good agricultural practice.

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**BILLING CODE 6560-50-S**

#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 300**

[FRL-7971-4]

#### **National Oil and Hazardous Substance; Pollution Contingency Plan; National Priorities List**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule; notice of intent to partially delete the East Tailing portion of the Tar Lake Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency, (EPA) Region 5 is issuing a notice of intent to partially delete the East Tailing Area of the Tar Lake Superfund Site (Site) located in Antrim County, Michigan, from the National Priorities List (NPL) and requests public comments on this notice of intent to partially delete. The East Tailing Area, as defined in the Remedial Investigation Report dated August 7, 2000, includes all soil, subsurface soil and groundwater associated with that part of the Tar Lake Superfund Site. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Michigan, through the Michigan Department of Environmental Quality, have determined that all appropriate response actions under CERCLA have been completed.