

the EPA regulation that determines the pollutants subject to the Federal PSD program under the Clean Air Act (Act). Under Title I, Part C of the Act, the PSD program preconstruction permit requirement applies to any new major stationary source or modified existing major stationary source of regulated air pollutants located in an area that is either attaining the National Ambient Air Quality Standards (NAAQS) or unclassifiable. Under the Federal PSD permitting regulations, only new or modified major sources that emit one or more "regulated NSR pollutants," as that term is defined in the regulations, are subject to the requirements of the PSD program, including the requirement to install the best available control technology (BACT) for those regulated NSR pollutants that the facility has the potential to emit in significant amounts. This memorandum contains EPA's definitive interpretation of "regulated NSR pollutant" and is intended to resolve any ambiguity in the definition, which includes "any pollutant that otherwise is subject to regulation under the Act." As of the date of the memorandum, EPA interprets this definition of "regulated NSR pollutant" to exclude pollutants for which EPA regulations only require monitoring or reporting but include all pollutants subject to a provision in the Act or regulation adopted by EPA under the Act that requires actual control of emissions of that pollutant.

**FOR FURTHER INFORMATION CONTACT:** Mike Sewell, Office of Air Quality Planning and Standards, Air Quality Policy Division (C 504-03), Environmental Protection Agency, 109 TW Alexander Drive, Research Triangle Park, NC 27709; telephone number: (919) 541-0873; fax number: (919) 541-5509; e-mail address: [sewell.mike@epa.gov](mailto:sewell.mike@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. How Can I Get Copies of This Document and Other Related Information?

1. *Electronic Access.* 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 access the memorandum at <http://www.epa.gov/nsr>.

###### Statutory and Executive Orders

This action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for

rules and regulations under Executive Order 12866.

In addition, this is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. section (601)(2). Therefore, EPA has not prepared a regulatory flexibility analysis addressing the impact of this action on small business activities.

##### Judicial Review

Because we have designated this interpretation as nationally significant under section 307(b) of the Act, challenges must be brought to the United States Court of Appeals for the District of Columbia Circuit by March 2, 2009.

Dated: December 23, 2008.

**Robert J. Meyers,**

*Principal Deputy Assistant Administrator.*

[FR Doc. E8-31114 Filed 12-30-08; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2007-0674; FRL-8393-9]

#### 2, 4-D, Bensulide, Chlorpyrifos, DCPA, Desmedipham, Dimethoate, Fenamiphos, Metolachlor, Phorate, Sethoxydim, Terbufos, Tetrachlorvinphos, and Triallate; Technical Amendment

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** EPA issued a final rule in the **Federal Register** of September 17, 2008, concerning the modification of certain tolerances for a number of pesticides including the herbicides DCPA and sethoxydim as a follow-up to the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and tolerance reassessment program under the Federal Food, Drug, and Cosmetic Act (FFDCA). This document corrects clerical errors made in the final rule.

**DATES:** This final rule is effective December 31, 2008.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-0674. All documents in the docket are listed in the docket index available in <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:** Jane Smith, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0048; e-mail address: [smith.jane-scott@epa.gov](mailto:smith.jane-scott@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have 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 accessing electronically available documents 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>.

##### II. What Does this Amendment Do?

FR Doc. E8-21589 published in the **Federal Register** of September 17, 2008 (73 FR 53732) (FRL-8375-2), is corrected as follows:

1. On page 53737, under § 180.185(a), in the table, the tolerance for "vegetable, brassica, leafy, group 5" is corrected to read 5.0 ppm. (EPA proposed a 5.0 ppm tolerance on February 6, 2008 (73 FR 6867) (FRL-8345-2), and received no comments on that proposed tolerance, but through typographical error the tolerance was listed at 0.05 ppm in the final rule. This technical amendment corrects that error.)

2. On page 53742, under § 180.412(a), the table is corrected to include the following tolerances which were

inadvertently omitted: Crambe, meal at 40.0 ppm; crambe, seed at 35.0 ppm; cuphea, seed at 35.0 ppm; echium, seed at 35.0 ppm; gold of pleasure, meal at 40.0 ppm; gold of pleasure, seed at 35.0 ppm; hare's ear mustard, seed at 35.0 ppm; lesquerella, seed at 35.0 ppm; lunaria, seed at 35.0 ppm; meadowfoam, seed at 35.0 ppm; milkweed, seed at 35.0 ppm; mustard, seed at 35.0 ppm; oil radish, seed at 35.0 ppm; poppy, seed at 35.0 ppm; sesame, seed at 35.0 ppm; and sweet rocket, seed at 35.0 ppm. (These oil seed commodity tolerances for sethoxydim were published in the **Federal Register** of July 9, 2008 (73 FR 39256) (FRL-8370-9). When EPA published the September 17, 2008 (73 FR 53732), final rule pertaining to sethoxydim tolerances for other commodities, the amendatory language in the final rule mistakenly omitted the tolerances finalized on July 9, 2008, rather than adding to them, as had been intended. EPA has not proposed revoking these tolerances. This technical amendment corrects that error).

**III. Why is this Amendment Issued as a Final Rule?**

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the Agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical amendment final without prior proposal and opportunity for comment, because the erroneous changes being corrected were the result of clerical error, and were neither proposed nor commented upon. Notice and comment is therefore unnecessary.

**IV. Do Any of the Statutory and Executive Order Reviews Apply to this Action?**

No. This action only corrects typographical omissions and errors for a previously published final rule and does not impose any new requirements. EPA's compliance with the statues and Executive Orders for the underlying rule is discussed in Unit VI. of the final rule published September 17, 2008 (73 FR 53732).

**V. 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: December 22, 2008.

**Debra Edwards,**  
*Director, Office of Pesticide Programs.*

■ Therefore, 40 CFR part 180 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 180.185 is amended by revising the entry for "Vegetable, brassica, leafy, group 5" in the table in paragraph (a) to read as follows:

**§ 180.185 DCPA; tolerances for residues.**

(a) *General.* \* \* \*

Commodity	Parts per million
* * * * *	*
Vegetable, brassica, leafy, group 5 .....	5.0
* * * * *	*

■ 3. Section 180.412 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

**§ 180.412 Sethoxydim; tolerances for residues.**

(a) *General.* \* \* \*

Commodity	Parts per million
* * * * *	*
Crambe, meal .....	40.0
Crambe, seed .....	35.0
* * * * *	*
Cuphea, seed .....	35.0
* * * * *	*
Echium, seed .....	35.0
* * * * *	*
Gold of pleasure, meal .....	40.0
Gold of pleasure, seed .....	35.0
* * * * *	*
Hare's ear mustard, seed .....	35.0

Commodity	Parts per million
* * * * *	*
Lesquerella, seed .....	35.0
* * * * *	*
Lunaria, seed .....	35.0
Meadowfoam, seed .....	35.0
* * * * *	*
Milkweed, seed .....	35.0
Mustard, seed .....	35.0
* * * * *	*
Oil radish, seed .....	35.0
* * * * *	*
Poppy, seed .....	35.0
* * * * *	*
Sesame, seed .....	35.0
* * * * *	*
Sweet rocket, seed .....	35.0
* * * * *	*

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[FR Doc. E8-31010 Filed 12-30-08; 8:45 am]  
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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Parts 405, 409, 410, 411, 413, 414, 415, 423, 424, 485, 486, and 489**

[CMS-1403-CN2]

RIN 0938-AP18

**Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2009; E-Prescribing Exemption for Computer Generated Facsimile Transmissions; Corrections**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Correction of final rule with comment period.

**SUMMARY:** This document corrects several technical and typographical errors in the final rule with comment period that appeared in the November 19, 2008 **Federal Register** entitled "Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2009; E-Prescribing Exemption for Computer-Generated Facsimile Transmissions; and Payment for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS); Final Rule" (73 FR 69726).

**DATES:** *Effective Date:* This correction notice is effective January 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Diane Milstead, (410) 786-3355.

**SUPPLEMENTARY INFORMATION:**