

State, local, or Tribal governments or the private sector. In addition, this rule does not significantly or uniquely affect small governments. This rule does not create new binding legal requirements and does not substantially and directly affect Indian Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes federal executive policy on environmental justice. EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it is a grant rule that does not affect the level of protection provided to human health or the environment. This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects. This rule does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an additional information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, 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 the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it

is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on April 15, 2009.

#### List of Subjects in 40 CFR Part 35

Environmental protection, Administrative practices and procedures, Reporting and recordkeeping requirements, Water pollution control.

Dated: April 9, 2009.

**Michael H. Shapiro,**

*Acting Assistant Administrator, Office of Water.*

■ EPA amends 40 CFR part 35 as follows:

#### PART 35—[AMENDED]

■ 1. The authority for citation for part 35, subpart A continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 300f *et seq.*; 42 U.S.C. 6901 *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 42 U.S.C. 13101 *et seq.*; Public Law 104-134, 110 Stat. 1321, 1321-299 (1966); Public Law 105-65, 111 Stat. 1344, 1373 (1997).

#### § 35.162 [Amended]

■ 2. Section 35.162 is amended by removing paragraph (e).

[FR Doc. E9-8644 Filed 4-14-09; 8:45 am]

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 180

[EPA-HQ-OPP-2007-1170; FRL-8410-1]

#### Modification of Pesticide Tolerance Revocation for Diazinon

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

**ACTION:** Final rule.

**SUMMARY:** This final rule resolves an objection filed by the California Grape and Tree Fruit League in response to a final rule on diazinon tolerances published on September 10, 2008 (73 FR 52607) by granting the objection and modifying the revocation of the diazinon tolerance on grapes to expire on September 10, 2010.

**DATES:** This final rule is effective April 15, 2009.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-1170. 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:** 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; fax number: (703) 308-8005; 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?

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 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>. 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>.

**II. Prior Diazinon Tolerance Rulemaking**

On May 21, 2008 (73 FR 29456) (FRL–8362–1), EPA proposed the revocation of the tolerance for residues of diazinon, O, O-diethyl O-[6-methyl-2-(1-methylethyl)-4-pyrimidinyl]phosphorothioate; (CAS Reg. No. 333–41–5), in or on the food commodity grape at 0.75 parts per million (ppm) in 40 CFR 180.153(a) because the use on grapes had been canceled. The proposal neither discussed nor took into account the fact that an existing stocks provision in the cancellations allowed continued use of existing diazinon stocks until December 2008. No comments were received in response to the proposal expressing objections to the revocation of the diazinon tolerance on grapes. EPA published a final rulemaking on September 10, 2008 (73 FR 52607) (FRL–8379–3) revoking the diazinon tolerance on grapes.

**III. The California Grape and Tree Fruit League Objection**

On November 10, 2008, the California Grape and Tree Fruit League filed an objection to the tolerance rulemaking pursuant to 21 U.S.C. 346a(g)(2)(A), objecting to the revocation of the diazinon tolerance on grapes. The basis of the California Grape and Tree Fruit League objection is that although the use on grapes has been canceled the tolerance is “still necessary to allow for the orderly exhaustion of existing stocks.” The California Grape and Tree Fruit League argued that a tolerance is therefore required for grapes treated with existing stocks of diazinon to allow the legally treated commodity to clear the channels of trade and preventing seizure of the treated grapes by the Food and Drug Administration.

**IV. Order on Objection**

Despite the fact that the California Grape and Tree Fruit League did not comment on this issue with respect to the proposed rule, because the proposal erroneously failed to take into account the existing stock provision, EPA in its discretion has considered the objection and found it to be sound. Accordingly, EPA, by this rule and order, and pursuant to section 408(g)(2)(C) of the Federal Food, Drug, and Cosmetic Act

(FFDCA), is amending the diazinon tolerance in 40 CFR 180.153(a) to add a tolerance for grape at 0.75 ppm. The tolerance will remain in effect until September 10, 2010. The Agency anticipates this should allow a reasonable period of time for the depletion of existing diazinon stocks and the clearance of diazinon treated grapes from the channels of trade.

**V. Conclusion**

Therefore, pursuant to section 408(g)(2)(C) of FFDCA, a tolerance for the residues of diazinon, O, O-diethyl O-[6-methyl-2-(1-methylethyl)-4-pyrimidinyl]phosphorothioate; (CAS Reg. No. 333–41–5), in or on the food commodity grapes is added at 0.75 ppm until September 10, 2010.

**VI. Statutory and Executive Order Reviews**

EPA included the required statutory discussion in the September 10, 2008 final rule (72 FR 52610).

**VII. 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 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 practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 2, 2009.

**Debra Edwards,**

*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. In § 180.153, is amended by alphabetically adding the commodity to the table in paragraph (a) to read as follows:

**§ 180.153 Diazinon; tolerances for residues.**

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

Commodity	Parts per million
* * *	* *
Grape <sup>2</sup> .....	0.75
* * *	* *

\* \* \* \* \*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 228**

[EPA–R10–OW–2008–0745; FRL–8791–2]

**Ocean Dumping; Designation of Ocean Dredged Material Disposal Site Offshore of the Rogue River, OR**

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

**ACTION:** Final rule.

**SUMMARY:** On October 14, 2008, EPA published a proposed rule at 73 FR 60662 to designate an ocean dredged material disposal site located offshore of the Rogue River, Oregon, and simultaneously withdrew an earlier proposal. EPA observed a typographical error in the proposed rule as published. In proposed rule, FR Doc. EPA–R10–OW–2008–0745, on page 60670 in the issue of October 14, 2008, in the first column, the very first coordinate was published as 42°24’5.40” N, but should have been published as 42°24’15.40” N. The coordinate was published correctly on page 60664 in the first column as 42°24’15.40” N. EPA received no comments on the proposed rule. EPA did receive one letter, dated November 12, 2008, from the Department of the Interior (DOI) stating that DOI had no comments. This action finalizes the designation of the Rogue River ocean dredged material disposal site, with the correct coordinates, pursuant to the Marine Protection, Research, and Sanctuaries Act, as amended (MPRSA), 33 U.S.C. 1401 to 1445. The new site is needed primarily to serve as a long-term location for the disposal of material dredged from the Rogue River navigation channel. The new site will also serve to provide a location for the disposal of dredged material for persons who have received a permit for such disposal. The newly designated site will be subject to ongoing monitoring and management as specified in this rule and in the Site Management and Monitoring Plan, which is also finalized as part of this action. The monitoring and management requirements will help to ensure continued protection of the marine environment.