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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2009-0601; FRL-8812-3]

Inert Ingredients; Extension of Effective Date of Revocation of Certain Tolerance Exemptions with Insufficient Data for Reassessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This document moves the effective date of the revocation of six inert ingredient tolerance exemptions as set forth in the **Federal Register** on October 9, 2009 (74 FR 52148).

DATES: In the final rule published August 9, 2006 (71 FR 45415), and delayed on August 4, 2008 (73 FR 45312), August 7, 2009 (74 FR 39543), and October 9, 2009 (74 FR 52148):

1. The effective date is delayed from February 9, 2010, to May 9, 2010, for the following amendments to §180.910: 2.m., n., and cc.

2. The effective date is delayed from February 9, 2010, to May 9, 2010, for the following amendments to §180.930: 4.t., u., and v.

Objections and requests for hearings must be received on or before April 12, 2010, 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: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2009-0601. 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: Kerry Leifer, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8811; e-mail address: leifer.kerry@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 those engaged in the following activities:

- 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 to provide 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 EPA’s tolerance regulations at 40 CFR part 180 through the Government Printing Office’s e-CFR cite at <http://www.gpoaccess.gov/ecfr>.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, 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-2009-0601 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 as required by 40 CFR part 178 on or before April 12, 2010.

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 that does not contain any CBI for inclusion in the public docket that is described in

ADDRESSES. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA-HQ-OPP-2009-0601, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility’s normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

II. Background and Statutory Findings

A. Background

In a final rule published in the **Federal Register** on August 9, 2006 (71 FR 45415)(FRL-8084-1), EPA revoked inert ingredient tolerance exemptions because insufficient data were available to the Agency to make the safety determination required by Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(c)(2). In reassessing the safety of the tolerance exemptions, EPA considered the validity, completeness, and reliability of the data that are available to the Agency [FFDCA section 408 (b)(2)(D)] and the available information concerning the special susceptibility of infants and children (including developmental effects from *in utero* exposure) [FFDCA section 408(b)(2)(C)]. EPA concluded it has insufficient data to make the safety finding of FFDCA section 408(c)(2) and revoked the inert ingredient tolerance

exemptions identified in the final rule under 40 CFR 180.910, 180.920, 180.930, and 180.940, with the revocations effective on August 9, 2008.

In a direct final rule published in the **Federal Register** on August 4, 2008 (73 FR 45312)(FRL-8372-7), EPA moved the effective date of the revocation of certain inert ingredient tolerance exemptions from August 9, 2008, until August 9, 2009. This determination was made based on requests for an extension of the revocation date from pesticide registrants and inert ingredient manufacturers who had demonstrated their intent to support certain inert ingredient tolerance exemptions and who had provided data development plans and schedules for data submission to the Agency. In a subsequent direct final rule published in the **Federal Register** on August 7, 2009 (74 FR 39543)(FRL-8431-8), EPA moved the effective date of the revocation of six inert ingredient tolerance exemptions from August 9, 2009, until October 9, 2009. This action was based on the fact that EPA had received petitions for the establishment of tolerance exemptions which included the submission of data for these inert ingredients. Notices of filing of these petitions (PP 8E7466 and PP 8E7478) were published in the **Federal Register** on March 25, 2009 (74 FR 12856)(FRL-8399-4). The August 7, 2009, direct final rule was published to allow for the completion of the Agency's risk assessments needed to evaluate the petitions and to complete the safety determinations for the six tolerance exemptions. The October 9, 2009 (74 FR 52148)(FRL-8794-1), direct final rule was published to move the effective date of the revocation of six inert ingredient tolerance exemptions from October 9, 2009 to February 9, 2010 to allow for the review and evaluation of significant additional toxicity, metabolism and environmental fate data submitted by the petitioners in further support of pesticide tolerance petitions 8E7466 and 8E7478.

B. Moving the Effective Date of the Revocation for Six Tolerance Exemptions

Following the publication of the October 9, 2009, final rule delaying the effective date for the six revoked tolerance exemptions, EPA did its own search of the public literature and found new information that the Agency determined would have significant bearing on its safety evaluation under FFDCA section 408(c)(2) of the petitions (8E7466 and 8E7478) which are proposing that these exemptions be reestablished. EPA, therefore, concludes that additional time is necessary to

complete the safety determinations for these six tolerance exemptions in order to allow time to review and evaluate this new information and that the effective date of the revocation of these tolerance exemptions should be moved by three months to May 9, 2010.

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

A "tolerance" represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA, Public Law 104-170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under FFDCA section 402(a), 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under FFDCA, but also must be registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)(7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States. Under FFDCA section 408(e)(1)(B), 21 U.S.C. 346a(e)(1)(B), EPA may take action establishing, modifying, suspending, or revoking a tolerance exemption.

III. Delayed Effective Date for Certain Tolerance Exemptions

The amendatory designations listed in this unit are reprinted from the final rule published in the **Federal Register** issue of October 9, 2009 (74 FR 52148) for the convenience of the user. The structure mirrors the amendatory designations in the original document. The amendatory designations shown are those with the effective date delayed until May 9, 2010.

Section 180.910

m. α -(p-Nonylphenyl)- ω -hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly

(oxyethylene) content averages 4-14 moles or 30 moles.

n. α -(p-Nonylphenyl)- ω -hydroxypoly(oxyethylene)sulfate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4 moles.

cc. α -[p-(1,1,3,3-Tetramethylbutyl)phenyl]- ω -hydroxypoly(oxyethylene) produced by the condensation of 1 mole of p-(1,1,3,3-tetramethylbutyl)phenol with a range of 1-14 or 30-70 moles of ethylene oxide; if a blend of products is used, the average range number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range of 1-14 or 30-70.

Section 180.930

t. α -(p-Nonylphenyl)- ω -hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4-14 moles.

u. α -(p-Nonylphenyl)- ω -hydroxypoly(oxyethylene)sulfate, and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4 moles.

v. α -(p-Nonylphenyl)- ω -hydroxypoly(oxyethylene)sulfate, and its ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4-14 or 30-90 moles of ethylene oxide.

IV. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to petitions submitted to the Agency. 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 final rule has been exempted from review under Executive Order 12866, this final rule 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). 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.*, 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 section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency 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, the Agency 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 final rule. In addition, this final rule does not 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).

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).

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: February 2, 2010.

Lois Rossi,

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.

§180.910 [AMENDED]

■ 2. In the final rule published August 9, 2006 (71 FR 45415), and delayed on August 4, 2008 (73 FR 45312), August 7, 2009 (74 FR 39543) and October 9, 2009 (74 FR 52148) the effective date is delayed from February 9, 2010, to May 9, 2010, for the following amendments to §180.910: 2.m., n., and cc.

§180.930 [AMENDED]

■ 3. In the final rule published August 9, 2006 (71 FR 45415), and delayed on August 4, 2008 (73 FR 45312), August 7, 2009 (74 FR 39543) and October 9, 2009 (74 FR 52148) the effective date is delayed from February 9, 2010, to May 9, 2010, for the following amendments to §180.930: 4.t., u., and v.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[WT Docket No. 08-166, 08-167; ET Docket No. 10-24; FCC 10-16]

Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: On January 15, 2010, the Commission released a Report and Order in the matter of "Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition." This document contains corrections to the final regulations that appeared in the **Federal Register** of January 22, 2010 (75 FR 3622).

DATES: February 9, 2010.

FOR FURTHER INFORMATION CONTACT: Paul D'Ari, Wireless Telecommunications Bureau, (202) 418-1550, e-mail Paul.Dari@fcc.gov, or Hugh Van Tuyl, Office of Engineering and Technology, (202) 418-7506, e-mail Hugh.VanTuyl@fcc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Federal Communications Commission published a document amending part 2 in the **Federal Register** of January 22, 2010 (75 FR 3622). The Commission makes the following correction to § 2.106 of the rules.

Need for Correction

As published, the final regulations contain an error, which requires immediate correction.

List of Subjects in 47 CFR Part 2

Communications equipment.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ Accordingly, 47 CFR part 2 is corrected by making the following correcting amendments:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, Table of Frequency Allocations, is amended by revising page 27 and footnote NG 159 to read as follows:

§ 2.106 Table of Frequency Allocations.

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