

Dated: April 19, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2005-0068; FRL-7709-1]

Inert Ingredients; Proposal to Revoke Pesticide Tolerance Exemptions for Three CFC Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke exemptions from the requirement of a tolerance for three inert ingredients (dichlorodifluoromethane, dichlorotetrafluoroethane, and trichlorofluoromethane) because these substances are no longer in active Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticide product registrations and/or their use in pesticide products sold in the U.S. has been prohibited under the Clean Air Act for over a decade by EPA's ban on the sale or distribution, or offer for sale or distribution in interstate commerce of certain nonessential products that contain or are manufactured with ozone depleting compounds. These ingredients are subject to reassessment by August, 2006 under section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). Upon the issuance of the final rule revoking the tolerance exemptions, five tolerances will be counted as "reassessed" for purposes of FFDCA's section 408(q).

DATES: Comments must be received on or before June 27, 2005.

ADDRESSES: Submit your comments, identified by docket identification (ID) number OPP-2005-0068, 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, Attention: Docket ID Number OPP-2005-0068.

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-2005-0068.

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-2005-0068. 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-2005-0068. 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, or e-mail. The EPA EDOCKET and the 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, 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:

Karen Angulo, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460-0001; telephone number: (703) 306-0404; e-mail address: angulo.karen@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 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, 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:

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

This proposed rule is issued pursuant to section 408(d) of FFDCA (21 U.S.C. 346a(d)). Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, 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 tolerance

exemption, food containing pesticide residues is considered to be unsafe and therefore “adulterated” under section 402(a) of the FFDCA. If food containing pesticide residues is found to be adulterated, the food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342 (a)).

III. What Action Is the Agency Taking?

EPA, acting on its own initiative, is proposing to revoke five exemptions from the requirement of a tolerance for three inert ingredients because those substances are either no longer contained in pesticide products and/or their use in pesticide products sold in the U.S. has been prohibited for over a decade by EPA’s ban on the sale or distribution, or offer for sale or distribution in interstate commerce of certain nonessential products that contain or are manufactured with ozone depleting compounds.

It is EPA’s general practice to revoke those tolerances and tolerance exemptions for pesticide chemical residues (which includes both active and inert ingredients) for which there are no active registered uses under FIFRA, or for which there are no registered products to which the tolerance or tolerance exemption applies, or for tolerances or tolerance exemptions that have been superseded, unless a person commenting on the proposal indicates a need for the tolerance or exemption to cover residues in or on imported commodities or legally treated domestic commodities.

EPA believes this rationale also extends to ingredients whose use in pesticide products is prohibited as a result of EPA’s 1994 ban, under the Clean Air Act, on certain non-essential aerosol and pressurized products containing ozone depleting compounds (see 40 CFR part 82, subpart C). Accordingly, while EPA records indicate that one of the ingredients subject to this notice, dichlorodifluoromethane, is still listed as an ingredient in a registered pesticide, EPA believes it is appropriate to propose the revocation of the tolerance exemption associated with this ingredient at this time because no product containing this ingredient may lawfully be sold or distributed in the U.S. Given that production and sale of such products was prohibited by the non-essential product ban since 1994, the Agency does not expect that there would be existing stocks in the hands of users. In the absence of lawful sale and distribution and the unlikelihood of existing stocks, EPA does not expect there to be residues resulting from application of a pesticide containing

any of these ingredients, and any tolerance exemptions would therefore be superfluous.

Listed below are the three inert ingredients and their associated five tolerance exemptions that are subject to this notice. EPA is proposing that the revocation of these five tolerance exemptions will become effective on the date of the final rule’s publication in the **Federal Register**.

1. Dichlorodifluoromethane, (40 CFR 180.910 and 930).

2. Dichlorotetrafluoroethane, (40 CFR 180.910).

3. Trichlorofluoromethane, (40 CFR 180.910 and 930).

These ingredients are currently subject to reassessment under section 408(q) of the FFDCA. Reassessment activities for such ingredients must be completed by August, 2006. Upon the issuance of the final rule revoking the tolerance exemptions, five tolerances will be counted as “reassessed” for purposes of FFDCA’s section 408(q).

IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to revoke specific tolerance exemptions established under section 408(d) 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 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). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this proposed action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. 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 FFDCA. 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.

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 14, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be 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. Section 180.910 is amended by removing the following exemptions and any associated Limits and Uses from the table: Dichlorodifluoromethane, Dichlorotetrafluoroethane, and Trichlorofluoromethane.

§ 180.930 [Amended]

3. Section 180.930 is amended by removing the following exemptions and any associated Limits and Uses from the

table: Dichlorodifluoromethane and Trichlorofluoromethane.

[FR Doc. 05-8186 Filed 4-26-05; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL 7904-8]

Central Characterization Project Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From Los Alamos National Laboratory Proposed for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents applicable to characterization by the Central Characterization Project (CCP) of transuranic (TRU) radioactive waste at the Los Alamos National Laboratory (LANL) proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents are available for review in the public dockets listed in **ADDRESSES**. We will consider public comments received on or before the due date mentioned in **DATES**. In accordance with EPA's WIPP Compliance Criteria, we conducted an inspection of the Central Characterization Project (CCP) at LANL to verify that, using the systems and processes developed as part of the DOE Carlsbad Office's CCP, DOE can characterize TRU waste consistent with the Compliance Criteria. EPA performed this inspection the week of April 11, 2005. This notice of the inspection and comment period accords with 40 CFR 194.8.

DATES: EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before May 27, 2005.

ADDRESSES: Comments may be submitted by mail to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR-2005-0105. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in