

and this final action was inappropriate, EPA will either propose or take final action finding that the State has not corrected the original disapproval deficiency. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiency has not been corrected. Until EPA takes such an action, the application of sanctions will continue to be deferred and/or stayed.

This action does not stop the sanctions clock that started for this area on September 29, 1993. However, this action will defer the application of the offsets sanctions and will defer the imposition of the highway sanctions. See 59 FR 39832 (Aug. 4, 1994). If EPA publishes a notice of final rulemaking fully approving the State's submittal, such action will permanently stop the sanctions clock and will permanently lift any applied, stayed or deferred sanctions. If EPA must withdraw the proposed full approval based on adverse comments and EPA subsequently determines that the State, in fact, did not correct the disapproval deficiency, the sanctions consequences described in the sanctions rule will apply. See 59 FR 39832, to be codified at 40 CFR 52.31.

II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiency that started the sanctions clocks. Based on this action, imposition of the offset sanctions will be deferred and imposition of the highway sanctions will be deferred until EPA's final action fully approving the State's submittal becomes effective or until EPA takes action proposing or disapproving in whole or part the State submittal. If EPA's proposed rulemaking action fully approving the State submittal becomes final, at that time any sanctions clocks will be permanently stopped and any applied, stayed or deferred sanctions will be permanently lifted.

Because EPA has preliminarily determined that the State has corrected the deficiency identified in EPA's limited disapproval actions, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act in not providing an opportunity for comment before this action takes effect.¹ 5 U.S.C. 553(b)(3). EPA believes that notice-and-comment rulemaking before the effective date of this action is

¹ As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action.

impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks.

Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to temporarily stay or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

III. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action temporarily relieves sources of an additional burden potentially placed on them by the sanctions provisions of the Act. Therefore, I certify that it does not have an impact on any small entities.

The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: April 12, 1995.

John C. Wise,

Acting Regional Administrator.

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40 CFR Part 180

[PP 4F4334/R2114; FRL-4941-2]

RIN 2070-AB78

Poly-D-Glucosamine (Chitosan); Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of the biochemical growth regulator poly-D-glucosamine (hereafter referred to as chitosan) when used as a seed treatment in or on rice. Based on the nontoxic nature of this chemical, the Agency is also establishing an exemption from the requirement of a tolerance for residues of poly-D-glucosamine when used as a pesticide in the production of any raw agricultural commodities. Vanson L.P. requested this exemption.

EFFECTIVE DATE: This regulation becomes effective April 19, 1995.

ADDRESSES: Written objections, identified by the document control number, [PP 4F4334/R2114], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM) 23, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7830; E-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 2, 1994 (59 FR 54907), EPA issued a notice that Vanson L.P., 8840, 152nd Ave.,

Northeast, Redmond, WA 98052, had submitted pesticide petition (PP 4F4334) to EPA proposing that an exemption from the requirement of a tolerance be established for residues of the biochemical growth regulator chitosan when used as a seed treatment on rice.

Chitosan is a naturally occurring substance produced from chitin extracts of crustacean shells (e.g., crab, shrimp, and lobster). The product is intended for use in treatment of seed prior to planting. Plant root growth is stimulated and stem strength enhanced, helping to prevent lodging (when the plants fall over because weak stems are unable to support it) in rice. Plants which lodge are difficult to harvest; therefore, yields may be decreased.

The chemical is taken up by plant cells where it enters the nucleus and stimulates messenger RNA and enzyme production. In the case of rice, such enzymes are thought to be responsible for stimulating the plant to produce more lignin in the stems, resulting in stronger stems and decreased lodging.

The Agency considered the following factors in support of this request for exemption from the requirement of a tolerance: Chitosan (1) is not toxic, as demonstrated in acute toxicity studies in mice, rats, and rabbits; (2) is naturally occurring in the environment in large concentrations; (3) has been exempted from the requirement of a tolerance in or on barley, beans, oats, peas, and wheat (40 CFR 180.1072) when used as a seed treatment at an application rate of 4 oz./100 lbs. seed; (4) has been approved by the State of Oregon for use in unrestricted amounts as a soil amendment (fertilizer), a use not regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act. Certain chitin-based products are permitted to be used in foods as hypocholesterolemic agents, as dietary fiber in low-calorie diets, and as agents to increase the specific loaf volume of bread.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this exemption request. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request.

Chitosan is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation is established as set forth below.

Based on the nontoxic nature of this chemical, the Agency is also establishing an exemption from the requirement of a tolerance for residues of poly-D-glucosamine when used as a pesticide in the production of any raw agricultural commodities.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients

thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

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 3, 1995.

Daniel M. Barolo,
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. 346a and 371.

2. Section 180.1072 is revised to read as follows:

§ 180.1072 Poly-D-glucosamine (chitosan); exemption from the requirement of a tolerance.

(a) An exemption from the requirement of a tolerance is established for residues of the biological plant growth regulator poly-D-glucosamine when used as a seed treatment in or on barley, beans, oats, peas, rice, and wheat.

(b) An exemption from the requirement of a tolerance is established for residues of the biological plant growth regulator poly-D-glucosamine when used as a pesticide in the production any raw agricultural commodity.

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