

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152, 153, 156, 157, 162, 165, 172, 180, 185, 186

[OPP-00409; FRL-4955-1]

Pesticides; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revising its pesticide regulations by removing obsolete, superseded, expired and otherwise unnecessary sections from various parts of its regulations. These technical amendments will simplify and condense the regulations, and reduce regulatory burdens, without loss of health and environmental protection. EPA is also making associated revisions to cross-references reflecting the deletion of regulations. This final rule is a technical amendment for which notice and comment are unnecessary.

DATES: These amendments are effective August 18, 1995.

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SUPPLEMENTARY INFORMATION**I. Background**

On March 16, 1995, President Clinton announced a new initiative under which EPA (and other Agencies) would review all existing regulations. The Regulatory Reinvention initiative is intended to identify opportunities for streamlining, simplifying, reducing reporting and recordkeeping burdens, and promoting partnerships and stakeholder involvement in EPA regulation review.

As a result of the President's Regulatory Reinvention review, EPA has reviewed each of its pesticide regulations and identified provisions that should be removed, revised, or evaluated further for streamlining and simplification. This final rule accomplishes a number of changes, primarily deletions, that do not require notice and comment under the Administrative Procedure Act (APA). This is the first in a series of notices intended to accomplish the goals of the Regulatory Reinvention initiative. Other modifications to regulations will be proposed for notice and comment at a

later date. In addition, a number of pesticide regulations are being evaluated further for more significant and far-reaching streamlining opportunities, including evaluating the requirements of the underlying programs themselves as reflected in regulations. Elsewhere in today's **Federal Register**, EPA is issuing additional regulatory revisions under other statutes administered by the Agency.

II. Pesticide Regulations

EPA regulates pesticides under the authority of two statutes, the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), which regulates the sale, distribution and use of pesticides in the United States, and the Federal Food, Drug and Cosmetic Act (FFDCA), which regulates, among other things, pesticide residues in food and feed. Pesticide regulations administered by EPA are located in 40 CFR parts 150-189, and comprise approximately 525 pages in the Code of Federal Regulations.

A. The Federal Insecticide, Fungicide and Rodenticide Act

Because FIFRA is a licensing statute, its regulations are, in significant part, procedural in nature. They describe how pesticide registrants and other persons must interact with EPA to obtain and maintain permission to market and use pesticides without causing unreasonable adverse effects on man or the environment, and the policies that EPA will use in administering these licensing programs. Substantive requirements affecting pesticide sale, distribution or use, for the most part, are not issued in regulatory form, but are incorporated into the registration and other licensing decisions that EPA makes. Because most of its regulations are procedural, EPA believes that few pesticide regulations under FIFRA can be removed or substantially modified without interfering with efficient administration of the programs they describe. Similarly, many of the recordkeeping and reporting burdens associated with these regulations are necessary simply for pesticide producers, registrants and others to deal with EPA in licensing matters.

B. The Federal Food, Drug and Cosmetic Act

By contrast, the FFDCA broadly requires EPA to regulate pesticide residues in food and feed, to ensure that the American public is protected against harmful residues in its food supply. Although some procedural regulations are necessary to administer the program

(a petition process, together with an administrative hearing process), the bulk of regulations issued under the FFDCA consist of individual tolerances, exemptions or other clearances of pesticide chemicals in various foods and feeds. Of approximately 250 pages of regulations devoted to the FFDCA in EPA's pesticide regulations, procedural regulations comprise only about 20 percent. In addition, there are a number of finding aids and indexes that catalog and cross-reference these regulations.

III. Technical Changes to Pesticide Regulations

EPA has identified a number of technical amendments that can be made to its pesticide regulations at this time. For the most part, these consist of deletions of superseded or outmoded requirements, deletion of unnecessary material that conveys only guidance or information, but not regulatory requirements, deletion of regulations that are not required by law, or simple formatting changes to consolidate and clarify requirements. These changes are described in this Unit.

A. Part 152 - Pesticide Registration and Classification Procedures

Part 152 contains procedural regulations for registration. EPA is modifying this part as follows:

1. *Reregistration.* Subpart D contains procedural requirements for reregistration of pesticides. Shortly after these regulations were promulgated in 1988, Congress amended FIFRA (the amended law is commonly referred to as "FIFRA-88"), establishing a detailed set of requirements for reregistration. This subpart has therefore been superseded.

2. *Amendment or notification to change active ingredient source.* Section 152.85(c), promulgated in 1984, requires that registrants who wish to change from one registered source of active ingredient to another must submit an application for amended registration. Section 152.46(a)(4), promulgated in 1988, permits such a change by simple notification to the Agency. EPA is clarifying these conflicting sections by deleting the requirement in § 152.85(c) for an amended registration and retaining the notification requirement.

3. *Voluntary cancellation.* Section 6(f) of FIFRA-88 established new procedures for registrants and EPA to effect voluntary cancellations of registration. The current regulation in 40 CFR 152.138 is therefore incomplete and no longer reflects the procedures EPA uses. Rather than continue regulations that are incomplete, EPA is deleting parts of these regulations, and moving still-current material on

supplemental distributor products into § 152.132.

4. *Actions affecting registration.* Subpart H of part 152 describes the various types of actions that are associated with registration, and refers readers to other parts of the regulations for elaboration of those requirements. Since this material is largely informational and guidance, it is not necessary in regulations and is being deleted.

5. *Obsolete restricted use chemicals.* Section 152.175 contains a list of pesticides that have been restricted by regulation. These were promulgated originally between 1978 and 1981 and a number of the chemicals are no longer registered. EPA is deleting obsolete listings for 16 pesticides from § 152.175.

6. *Intrastate pesticide products.* Subpart L describes requirements applicable to the conversion of intrastate pesticide products to Federally-registered products. FIFRA as enacted in 1972 no longer permitted pesticides to be registered solely by States; Federal registration was required.

The process of converting these products began in 1972 and by 1988 was winding down. Subpart L permitted continued sale and distribution of intrastate products until EPA could determine the acceptability of their Federal registration. EPA believes that all intrastate products have been converted or are no longer being marketed. Accordingly, EPA is deleting subpart L.

B. Subpart 153 - Registration Policies and Interpretations

This part contains various non-procedural policies and interpretations that are associated with registration. EPA is modifying this part as follows:

1. *Reporting of adverse effects information.* Subpart D of part 153 (promulgated in 1985) contains a set of regulations implementing FIFRA section 6(a)(2), describing when and how registrants must report adverse effects information to the Agency. Although promulgated in 1985, this subpart has never been made effective, and EPA is currently preparing to promulgate an updated adverse effects reporting rule, which will be clearer, simpler, and contain reduced reporting requirements. Because subpart D is not effective, and in anticipation of a replacement regulation being issued, EPA is deleting subpart D.

2. *Inert ingredients in antimicrobial products.* Section 153.139 contains a list of chemicals that EPA has determined generally to be inert (as opposed to pesticidally active) in antimicrobial

products. The listing is still valid, and EPA intends to continue to use it as the basis for inert ingredient determinations, but EPA believes that the list can be more efficiently updated informally by the Agency outside of the regulations. EPA intends to maintain the list within the Agency, and make it available as needed to registrants. Accordingly, EPA is deleting § 153.139.

3. *Coloration of pesticides.* Subpart H addresses the circumstances when pesticide products must be colored or discolored. The individual pesticides listed in this subpart (arsenicals and fluosilicate compounds) are no longer registered and not sold for pesticide use. Accordingly, EPA is deleting four sections in this subpart requiring coloration or discoloration of individual pesticide products. EPA is also revising § 153.140 to delete references to the coloration system. EPA will retain § 153.155 which requires that seed treatment products be colored with an EPA-approved dye to avoid the possibility that treated seeds may be inadvertently used as animal feed.

4. *Devices.* Subpart M contains a listing of FIFRA requirements pertaining to pesticide devices. Although not required to be registered, devices are subject to a variety of requirements, such as labeling, and compliance activities such as recordkeeping and registration of establishments. This section simply refers the reader to those requirements in FIFRA and the regulations that apply to devices. Even though individually these requirements are stated elsewhere, EPA believes that the compilation of requirements in a single location is useful to the regulated industry. EPA is transferring the material, however, into part 152 as subpart Z.

C. Part 157 - Packaging Requirements for Pesticides and Devices

This part, promulgated in 1986, consists solely of requirements for child-resistant packaging at this time. EPA is removing § 157.39, which stated the compliance date for the rule, now past.

D. Part 165 - Regulations for the Acceptance of Certain Pesticides and Recommended Procedures for the Disposal and Storage of Pesticides and Pesticide Containers

This part, promulgated in 1974, addresses two discrete topics. Subpart B contains regulations under which EPA was required to accept for disposal pesticides that were both suspended and canceled. Subsequent to promulgation, FIFRA-88 transferred to pesticide registrants the responsibility

for such disposal. EPA has completed the disposal of all pesticides for which it was responsible under these regulations and subpart B is no longer needed. Subparts C and D contain recommended procedures for storage and disposal of pesticides and containers. These subparts were superseded by the passage of the Resource Conservation and Recovery Act in 1976. Moreover, FIFRA section 19 contains new authority for EPA in the area of pesticide storage and disposal, and regulations under current section 19 have been proposed that would replace part 165. Accordingly, EPA is deleting part 165.

E. Part 172 - Experimental Use Permits

This part describes the procedures for applying for and obtaining an experimental use permit under FIFRA section 5. The holder of an experimental use permit is required by § 172.8 to submit quarterly progress reports on his or her experimental work, and a final report. EPA finds that the quarterly progress reports are not needed, and rarely used by the Agency, and is deleting the requirement for such reports contained in § 172.8(b)(1). The final report, however, required by § 172.8(b)(2) is being retained: the information required in the final report is used to evaluate the experimental program and the data generated during the program are used in future determinations on the registrability of the pesticide.

F. Parts 180, 185, and 186 - Pesticide Tolerances

These three parts contain listings of individual tolerances for raw foods, processed foods, and processed animal feeds, respectively. Some of these tolerances are time-limited and have expired. EPA is deleting expired time-limited tolerances from various regulations in these parts.

IV. Effect of Deletion of Regulations

The removal or modification of these regulatory provisions from the Code of Federal Regulations is not intended to affect the status of any civil or criminal actions initiated prior to June 19, 1995, or which may be initiated in the future to redress violations of the rules that occurred when the rules were still legally in effect.

V. Good Cause Exemption From Notice and Comment Rulemaking Procedures

The Administrative Procedure Act generally requires agencies to provide prior notice and opportunity for public comments before issuing a final rule. Rules are exempt from the requirement

if the agency finds for good cause that notice and comment are unnecessary. For the reasons discussed in Unit III of this preamble, EPA has determined that providing prior notice and opportunity for comment on the modification or deletion from the CFR of these rules is unnecessary.

VI. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, 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 section of the economy, productivity, competition, jobs, the environmental, 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 (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.

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

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), EPA has determined that this is not a significant regulation. These amendments lessen burdens rather than add burdens; therefore review under the RFA is not required.

C. Paperwork Reduction Act

This rule contains no information collection requirements, and, therefore is not required to be reviewed under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Parts 152, 153, 156, 157, 162, 165, 172, 180, 185, 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Animal feeds, Food additives, Infants and children, Intergovernmental relations, Labeling, Packaging and containers,

Pesticides and pests, Reporting and recordkeeping requirements, Research.

Dated: June 14, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, under the Administrator's authority, 7 U.S.C. 136 *et seq.* and 21 U.S.C. 346 *et seq.*, title 40, chapter I of the Code of Federal Regulations, is amended as follows:

1. In part 152:

PART 152—[AMENDED]

a. The authority citation continues to read as follows:

Authority: 7 U.S.C. 136–136y; Subpart U is also issued under 31 U.S.C. 9701.

§ 152.1 [Amended]

b. Section 152.1 is amended by removing the last sentence.

§ 152.50 [Amended]

c. In § 152.50, paragraph (f)(3) is amended by removing the last sentence.

Subpart D [Removed and Reserved]

d. Subpart D, consisting of §§ 152.60 through 152.70, is removed and reserved.

§ 152.85 [Amended]

e. In § 152.85, paragraph (c) is amended by removing the second sentence.

§ 152.115 [Amended]

f. In § 152.115(d), the words "and § 152.148" are removed.

§ 152.125 [Amended]

g. In § 152.125, the words "and subpart D of part 153 of this chapter" are removed.

§ 152.132 [Amended]

§ 152.138 [Partially Redesignated and Removed]

h. Section § 152.138 is amended by redesignating paragraph (c) as paragraph (e) of § 152.132, and by removing the remainder of § 152.138.

Subpart H [Removed and Reserved]

i. Subpart H, consisting of §§ 152.140 through 152.159, is removed and reserved.

§ 152.175 [Amended]

j. In the table in § 152.175, the complete entries for acrylonitrile, allyl alcohol, calcium cyanide, chlorfenvinphos, cycloheximide, demeton, dioxathion, endrin, EPN, fensulfothion, fluoracetamide/1081,

hydrocyanic acid, mevinphos, monocrotophos, phosacetim and TEPP are removed.

Subpart L [Removed and Reserved]

k. Subpart L, consisting of §§ 152.220 through 152.230, is removed and reserved.

Subpart Z to part 152 [Redesignated From Subpart M to Part 153]

l. Subpart Z entitled Devices, is redesignated from subpart M, part 153. Subpart Z consists of § 152.500 which is redesignated from § 153.240.

2. In part 153:

PART 153—[AMENDED]

a. The authority citation is revised to read as follows:

Authority: 7 U.S.C. 136w.

Subpart D [Removed and Reserved]

b. Subpart D, consisting of §§ 153.61 through 153.78, is removed and reserved.

§ 153.125 [Amended]

c. In § 153.125, by removing the parenthetical text "(including those listed in § 153.139)," from paragraph (b) and by removing paragraph (c) and by redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

§§ 153.139, 153.142, 153.145, 153.150, and 153.158 [Removed]

d. Sections 153.139, 153.142, 153.145, 153.150, and 153.158 are removed.

e. Section 153.140 is revised to read as follows:

§ 153.140 General.

Section 25(c)(5) of the Act authorizes the Administrator to prescribe regulations requiring coloration or discoloration of any pesticide if the Administrator determines that such requirements are feasible and necessary for the protection of health and the environment. This subpart describes those pesticide products which must be colored or discolored.

Subpart M to part 153 [Redesignated]

f. Subpart M and § 153.240 are redesignated as Subpart Z in part 152 and § 152.500, respectively.

3. In part 156:

PART 156—[AMENDED]

a. The authority citation continues to read as follows:

Authority: 7 U.S.C. 136–136y.

§ 156.10 [Amended]

b. In § 156.10 paragraph (a)(5) introductory text is amended by

changing the reference to “§ 153.240” to read “§ 152.500”.

4. In part 157:

PART 157—[AMENDED]

a. The authority citation is revised to read as follows:

Authority: 7 U.S.C. 136w.

§ 157.39 [Removed]

b. Section 157.39 is removed.

5. In part 162:

PART 162—[AMENDED]

a. The authority citation for subpart D is revised to read as follows:

Authority: 7 U.S.C. 136v, 136w.

§ 162.150 [Amended]

b. In § 162.150, paragraph (b) is amended by removing the third sentence.

§ 162.153 [Amended]

c. In § 162.153, paragraph (c)(2), the reference to “subpart A of this part, and

of part 163 of this chapter,” is revised to read “part 152 of this chapter,” and in paragraph (d) the reference to “subpart A and of part 163”, is revised to read “part 152 of this chapter”.

PART 165—[REMOVED]

6. Part 165 is removed.

7. In part 172:

PART 172—[AMENDED]

a. The authority citation is revised to read as follows:

Authority: 7 U.S.C. 136c, 136w. Section 172.4 is also issued under 31 U.S.C. 9701.

§ 172.8 [Amended]

b. In § 172.8, paragraph (b)(1) is removed and reserved.

c. In § 172.25, by revising paragraphs (g)(1) and (g)(2) to read as follows:

§ 172.25 Administration of State programs.

* * * * *

(g) * * *

(1) Disposed of in accordance with a disposal plan approved as part of the experimental program; or

(2) Returned to the permittee for storage or disposal in accordance with the requirements of RCRA and rules there under; or

* * * * *

8. In part 180:

PART 180—[AMENDED]

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. Section 180.115 is revised to read as follows:

§ 180.115 Zineb; tolerances for residues.

Tolerances for residues of the fungicide zineb (zinc ethylene bisdithiocarbamate) in or on raw agricultural commodities are established as follows:

Commodity	Parts Per million	Expiration date
Grapes (wine use only) ¹	7	December 31, 1997

¹ Wine grapes grown for wine vintage years 1992 (Northern Hemisphere), 1993 (Southern Hemisphere), and earlier.

§§ 180.246, 180.285, and 180.1005 [Removed]

c. Sections 180.246, 180.285, and 180.1005 are removed.

§ 180.319 [Amended]

d. In the table in § 180.319, the entire entries for “sodium arsenite” and “zineb (zinc ethylene bisdithiocarbamate)” are removed.

§ 180.320 [Amended]

e. In § 180.320, by removing the designation for paragraph (a) and by removing paragraph (b).

9. In part 185:

PART 185—[AMENDED]

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.2275 [Removed]

b. Section 185.2275 is removed.

§ 185.2700 [Amended]

c. In § 185.2700, by removing the designation for paragraph (a), and by removing paragraphs (b) and (c).

10. In part 186:

PART 186—[AMENDED]

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

§§ 186.400, 186.750, 186.3415, 186.4725, and 186.5225 [Removed]

b. Sections 186.400, 186.750, 186.3415, 186.4725, and 186.5225 are removed.

§ 186.2275 [Amended]

c. In § 186.2275, by removing the designation for paragraph (a) and by removing paragraph (b).

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