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**SUPPLEMENTARY INFORMATION:** EPA published a document on October 26, 1998 (63 FR 57062) (FRL-6035-7), announcing the revocation of tolerances for residues of the pesticides listed in the regulatory text. In the final rule, EPA responded to a comment from Rhone-Poulenc AG Company which requested that certain tolerances for phosalone not be revoked, but retained so that those commodities could be legally imported into the United States. One of the tolerances Rhone-Poulenc wanted to retain was for almonds which was covered by the "nuts" crop group tolerance. The Agency revoked the tolerances for phosalone on nuts and should have added an entry for almonds; however, this was inadvertently not done. Therefore, the amendatory language to § 180.263 for phosalone was incorrect. This document will correct that language.

**I. Regulatory Assessment Requirements**

This final rule does not impose any new requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). 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), Pub. L. 104-113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act (APA) or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

**II. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, 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 rule in the **Federal Register**. This is a technical correction to the **Federal Register** and 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 record keeping requirements.

Dated: December 24, 1998.

**Jack E. Housenger,**

*Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

In FR Doc. 98-28486 published on October 26, 1998 (63 FR 57062), make the following correction:

**§ 180.263 [Corrected]**

On page 57066, in the third column, the amendatory language for § 180.263 is corrected to read as follows:

e. By removing from § 180.263, the entries for "artichokes"; "cattle, fat"; "cattle, meat"; "cattle, mby"; "citrus fruits"; "goats, fat"; "goats, meat"; "goats, mby"; "hogs, fat"; "hogs, meat"; "hogs, mby"; "horses, fat"; "horses, meat"; "horses, mby"; "nectarines"; "Nuts"; "potatoes"; "sheep, fat"; "sheep, meat"; and "sheep, mby"; and by adding the entry for "almonds" to read as follows:

**§ 180.263 Phosalone; tolerances for residues.**

\* \* \* \* \*

Commodity	Parts per million
Almond .....	0.1
* * *	* *

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP-300774; FRL-6053-4]

RIN 2070-AB78

**Tebufenozide; Extension of Tolerance for Emergency Exemptions**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation extends a time-limited tolerance for residues of the insecticide tebufenozide and its metabolites in or on sugarcane at 0.3 part per million (ppm) for an additional 2-year period. This tolerance will expire and is revoked on December 31, 2000. This regulation also amends the tolerance level, due to a typographical error in the original document published by EPA in the **Federal Register** on November 26, 1997. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on sugarcane. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

**DATES:** This regulation becomes effective January 22, 1999. Objections and requests for hearings must be received by EPA, on or before March 23, 1999.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number OPP-300774, must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations

Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300774], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number OPP-300774. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9358, deegan.dave@epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA issued a final rule, published in the *Federal Register* of November 26, 1997 (62 FR 62979) (FRL-5751-1), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) it established a time-limited tolerance for the residues of tebufenozide and its metabolites in or on sugarcane at 0.3 ppm, with an expiration date of December 31, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under

an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of tebufenozide on sugarcane for this year's growing season due to the continuing need to control the pest, sugarcane borer. The applicant, the Louisiana Dept. of Agriculture & Forestry, had for several years used the chemical azinphos-methyl to control this pest. However, use of that product has been eliminated, leaving no registered alternative measures to control the borer. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of tebufenozide on sugarcane for control of sugarcane borer.

EPA is also, at this time, amending the tolerance value for the time-limited tolerance for residues of tebufenozide on sugarcane resulting from use authorized by EPA under section 18. The regulation published by EPA in the *Federal Register* on November 26, 1997, (FRL-5751-1), contained a typographical error which identified the tolerance level as "0.03 ppm" instead of the correct tolerance level, which is "0.3 ppm." The risk assessment performed by EPA in response to this action in 1997, and discussed in detail in the November 26, 1997 *Federal Register* document, had identified the appropriate tolerance level at "0.3 ppm." EPA is taking this current action on its own initiative.

EPA assessed the potential risks presented by residues of tebufenozide in or on sugarcane. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of November 26, 1997 (62 FR 62979) (FRL-5751-1). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6).

Therefore, the time-limited tolerance is extended for an additional 2-year period. EPA will publish a document in the *Federal Register* to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in

or on sugarcane after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

### **I. Objections and Hearing Requests**

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by March 23, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (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). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (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 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 issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

## II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP-300774] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically

into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

## III. Regulatory Assessment Requirements

### A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 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). 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.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) 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. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

### B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon

a State, local or tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

### C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of

section 3(b) of Executive Order 13084 do not apply to this rule.

#### IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, 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: December 29, 1998.

**Tina E. Levine,**

*Acting 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. 346a and 371.

#### § 180.482 [Amended]

2. In § 180.482, paragraph (b), in the table, amend the entry "Sugar cane" by revising the tolerance level "0.03" to read "0.3" and the date "12/31/98" to read "12/31/00".

[FR Doc. 99-1479 Filed 1-21-99; 8:45 am]

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 229

[Docket No. 990104001-9001-01; I.D. 111398D]

RIN 0648-AM05

#### Taking of Marine Mammals Incidental to Commercial Fishing Operations; Pacific Offshore Cetacean Take Reduction Plan Regulations

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** This rule will allow acoustic deterrent devices to be deployed farther away from the net in the California/Oregon drift gillnet fishery (CA/OR DGN fishery). The intended effect of this action is to allow acoustic devices to be more safely and efficiently attached to drift gillnets.

**DATES:** Effective January 22, 1999. NMFS will accept comments until February 22, 1999.

**ADDRESSES:** Submit comments on the interim final rule to Dr. William T. Hogarth, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

**FOR FURTHER INFORMATION CONTACT:** Irma Lagomarsino, NMFS, Southwest Region, 562-980-4016.

**SUPPLEMENTARY INFORMATION:** On October 3, 1997 (62 FR 51805), NMFS published a final rule requiring training, equipment, and gear modifications for operators and vessels in the CA/OR DGN fishery to reduce the mortality and serious injury of several marine mammal stocks that occurs incidental to fishing operations. The regulatory text was codified in subpart C of 50 CFR part 229. To correct and clarify the meaning of the final rule, NMFS amended the regulations on May 21, 1998 (63 FR 27860).

Section 229.31(c) (1) and (2) require acoustic deterrent devices (pingers) to be used on all vessels in the CA/OR DGN fishery during every set and this section specifies pinger sound characteristics. Under § 229.31(c)(3), pingers must be attached on or near the floatline and on or near the leadline and spaced no more than 300 ft (90.0 m) apart. Pingers attached on extenders (buoy lines) or attached to the floatline with lanyards (lines) must be within 3

ft (0.91 m) of the floatline. Pingers attached with lanyards to the leadline must be within 6 ft (1.82 m) of the leadline. These pinger deployment distances were based on the same lengths of the lanyards used to attach pingers to the net in NMFS' pinger experiments in the CA/OR DGN fishery during 1996 to 1997. Results from these experiments indicated that over time, fishers became proficient at placing and removing pingers from both the floatline and leadline. The final Environmental Assessment of the final rule to implement the Pacific Offshore Cetacean Take Reduction Plan (NMFS, 1997) concluded that deploying pingers on the floatline is easier than the leadline because as the net is payed out the leadline is often buried by slack in the net. For this reason, the net reel may need to be slowed or stopped to safely attach and detach pingers to/from the leadline.

After the final rule became effective and the entire fishery was required to use pingers, NMFS learned that allowing pingers to be deployed farther away from the net could provide greater flexibility for attaching and removing pingers. Representatives of the CA/OR DGN fishery reported to NMFS that allowing pingers to be deployed farther away from the net could facilitate more efficient (faster) attachment of pingers during the "setting" of the net and removal of pingers during net retrieval. Also, at a series of skipper education workshops held in August and September 1998, CA/OR DGN fishers stated that pingers could be more efficiently and safely attached and removed to and from the net with longer pinger lanyards. Specifically, they suggested that allowing pingers to be deployed within 30 ft (9.14 m) of the floatline and within 36 ft (10.97 m) of the leadline should allow for more efficient and safe placement of pingers on the net. In particular, for some drift gillnet fishing operations, if longer pinger lanyards were attached permanently to the leadline, pingers may be deployed without slowing down the net reel because direct handling of the leadline to attach and/or remove pingers would not be necessary. For instance, after removing a "leadline" pinger from a permanently attached 36-ft (10.97 m) leadline lanyard during net retrieval, the lanyard could be temporarily tied to the floatline before the net was spun on the net reel. During the next fishing set, the leadline pinger lanyard would be readily accessible near the floatline for attachment of a leadline pinger. This rule allows greater