

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under the Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (4321–4370f).

NEPA sets forth a national policy that encourages and promotes productive harmony between man and the environment. NEPA procedures require that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The NEPA process is intended to help public officials to make decisions that are based on an understanding of environmental consequences and take actions that protect, restore and/or enhance the environment.

The USCG and the MARAD are responsible for processing license applications to own, construct, and operate deepwater ports. To meet the requirements of NEPA, the Coast Guard prepared an Environmental Assessment (EA) for this deepwater port project.

The EA assessed the potential environmental impacts associated with the installation, and operation of the deepwater port, the offshore pipelines and the future decommissioning of the deepwater port. The EA also assessed the alternatives considered for the deepwater port location, type of port (e.g., fixed or mobile structure), offshore pipelines as well as alternative technologies.

The primary purposes of the EA were to:

(1) Provide an environmental analysis sufficient to support the Maritime Administrator's licensing decisions;

(2) Facilitate a determination of whether the Applicant has demonstrated that the Proposed Deepwater Port would be located, constructed, operated, and decommissioned in a manner that represents the best available technology necessary to prevent or minimize any adverse effects on marine, coastal, and onshore environments;

(3) Aid the USCG's and the MARAD's compliance with National Environmental Policy Act (NEPA); and

(4) Facilitate public involvement in the decision-making process.

The final EA is available in the docket where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 150

Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 150 as follows:

#### PART 150—DEEPWATER PORTS: OPERATIONS

■ 1. The authority citation for part 150 continues to read as follows:

**Authority:** 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6), (m)(2); 33 U.S.C. 1509(a); E.O. 12777, sec. 2; E.O. 13286, sec. 34, 68 FR 10619; Department of Homeland Security Delegation No. 0170.1(70), (73), (75), (80).

■ 2. Add § 150.940(b) to read as follows:

#### § 150.940 Safety zones for specific deepwater ports.

\* \* \* \* \*

(b) *The Gulf Gateway Deepwater Port (GGDWP)*

(1) *Description.* The GGDWP safety zone is centered at the following coordinates: 28°05'16" N, 093°03'07" W. This safety zone, encompassed within a circle having a 500 meter radius around the primary component of the Gulf Gateway Deepwater Port, the submerged loading turret (buoy) and the pipeline end manifold (STL/PLEM), is located approximately 116 miles off the Louisiana coast at West Cameron Area, South Addition Block 603 "A".

(2) *Regulations.* Deepwater port support vessels desiring to enter the safety zone must contact and obtain permission from the LNG Regasification Vessel (LNGRV) stationed at the deepwater port. The LNGRV can be contacted on VHF-FM Channel 13.

Dated: May 4, 2005.

**B.M. Salerno,**

*Captain, U.S. Coast Guard, Acting Assistant Commandant for Marine, Safety, Security & Environmental Protection.*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 180

[OPP-2005-0118; FRL-7713-4]

#### Dimethenamid; Pesticide Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for residues of dimethenamid

in or on horseradish. The Interregional Research Project No. 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). In addition, this regulatory action is part of the tolerance reassessment requirements of section 408(q) of FFDCA, 21 U.S.C. 346a(q), as amended by the FQPA of 1996. By law, EPA is required to reassess all tolerances in existence on August 2, 1996 by August 2006. This regulatory action will count towards this August 2006 deadline. This regulation establishes a maximum permissible level for residues of dimethenamid in this food commodity. EPA has previously published all relevant scientific conclusions and analysis related to this tolerance action. Due to an inadvertent oversight, a final rule published in the **Federal Register** on September 24, 2004, which outlined EPA action to establish several tolerances for residues of dimethenamid on various commodities, including horseradish, did not contain necessary information in a table to actually add the tolerance for dimethenamid residues on horseradish into 40 CFR 180.464. This action corrects that error.

**DATES:** This regulation is effective May 11, 2005. Objections and requests for hearings must be received on or before July 11, 2005.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP-2005-0118. 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., 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 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:** Barbara Madden, Registration Division (7505C), Office of Pesticide Programs,

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6463; e-mail address: [madden.barbara@epa.gov](mailto:madden.barbara@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 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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 on E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm/>.

##### II. Background and Statutory Findings

In the **Federal Register** of March 12, 2003 (68 FR 11850) (FRL-7295-9), EPA

issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0E6196) by Interregional Research Project No. 4 (IR-4), Technology Center of New Jersey, Rutgers, the State University of New Jersey, 681 U.S. Highway 1 South, North Brunswick, NJ 08902-3390. The petition requested that 40 CFR 180.464 be amended by establishing a tolerance for residues of the herbicide dimethenamid, (R,S)-2-chloro-N-[(1-methyl-2-methoxy)ethyl]-N-(2,4-dimethyl-thien-3-yl)-acetamide, in or on various commodities including horseradish (the other commodities were: Onions [dry bulb], garlic, shallots [dry bulb], tuberous and corm vegetables, sugar beets and garden beets) at 0.01 parts per million (ppm). That notice included a summary of the petition prepared by IR-4, the registrant. There were no comments received in response to the notice of filing.

EPA took action on this tolerance petition in the **Federal Register** of September 24, 2004 (69 FR 57197) (FRL-7680-1). The final rule published by EPA on September 24, 2004, discussed in detail the findings of EPA's scientific and regulatory review of the request to establish a tolerance for residues of dimethenamid on onions [dry bulb], garlic, shallots [dry bulb], tuberous and corm vegetables, sugar beets, garden beets and horseradish at 0.01 ppm. As outlined in that final rule, EPA has concluded that a tolerance can be established at that level on those crops, and in reaching that conclusion EPA took action to establish those tolerances. However, in the final table of that September 24, 2004 final rule, which directly modifies the contents of 40 CFR 180.464, a listing of horseradish was inadvertently not included. Without including a line for horseradish in that final table, the tolerance for horseradish was not added to 40 CFR 180.464. Today's action completes EPA's action on the March 2003 petition by establishing the dimethenamid tolerance on horseradish.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is “safe.” Section 408(b)(2)(A)(ii) of FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings, but does not include

occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....”

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL-5754-7).

##### III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of dimethenamid on horseradish at 0.01 ppm.

The action being taken by EPA in this regulatory action is to correct that oversight and formally revise 40 CFR 180.464 to include the tolerance on horseradish as requested in the March 2003 petition. Refer to the September 24, 2004 **Federal Register** final rule for a detailed discussion of the aggregate risk assessments and determination of safety that were conducted in support of the tolerance-setting action for dimethenamid and horseradish. EPA relies upon those risk assessments and the findings made in the September 24, 2004 **Federal Register** final rule in support of the current action being taken.

Based on the risk assessments discussed in the final rule published in the **Federal Register** of September 24, 2004 (69 FR 57197) (FRL-7680-1), EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to dimethenamid residues.

##### IV. Other Considerations

###### A. Analytical Enforcement Methodology

Adequate enforcement methodology (AM-0884-0193-1) is available to enforce the tolerance expression. AM-0884-0193-1 is a GC method using an HP-1 or HP-5 column and mass selective

detection (MSD). The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

#### B. International Residue Limits

There are no Codex maximum residue levels (MRL's) for dimethenamid.

#### C. Conditions

There are no conditions of registration for the establishment of tolerances on horseradish.

#### V. Conclusion

Therefore, the tolerance is established for residues of dimethenamid, (R,S)-2-chloro-N-[(1-methyl-2-methoxy) ethyl]-N-(2,4-dimethyl-thien-3-yl)-acetamide, in or on horseradish at 0.01 ppm.

#### VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

##### A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP-2005-0118 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 on or before July 11, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). 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 objector (40 CFR 178.27). 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.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564-6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP-2005-0118, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: [opp-docket@epa.gov](mailto:opp-docket@epa.gov). Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

##### B. When Will the Agency Grant a Request for a Hearing?

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 issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

#### VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition 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 rule has been exempted from review under Executive Order 12866 due to its lack of significance, this 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 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) (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). 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. 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 final 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 FFDCFA. For these same reasons, the Agency has determined that this 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 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 rule.

**VIII. Congressional Review Act**

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 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: April 29, 2005.

**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.

■ 2. Section 180.464 is amended by revising the section heading and alphabetically adding a commodity to the table in paragraph (a) to read as follows:

**§ 180.464 Dimethenamid; tolerances for residues.**

(a) \* \* \*

Commodity	Parts per million
* * *	* *
Horseradish .....	0.01
* * *	* *

\* \* \* \* \*

[FR Doc. 05-9399 Filed 5-10-05; 8:45 am]

**BILLING CODE 6560-50-S**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1, 2, 25, and 90**

[ET Docket No. 04-151, WT Docket No. 05-96, ET Docket No. 02-380, and ET Docket No. 98-237; FCC 05-56]

**Wireless Operations in the 3650-3700 MHz Band**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document adopted rules that provide for nationwide, non-exclusive, licensing of terrestrial operations, utilizing technology with a

contention-based protocol, in the 3650-3700 MHz band (3650 MHz) band. It also adopted a streamlined licensing mechanism with minimal regulatory entry requirements that will encourage multiple entrants and stimulate the rapid expansion of wireless broadband services—especially in rural America—and will also serve as a safeguard to protect incumbent satellite earth stations from harmful interference. The Report and Order (R&O) established licensing, service and technical rules that allow fixed and base-station-enabled mobile terrestrial operations. Finally, the R&O maintained the existing Fixed Satellite Service (FSS) and Fixed Service (FS) allocations and modified the Mobile Service (MS) allocation to delete the restriction against mobile operations in the 3650 MHz band. The R&O also maintained the international/intercontinental operation requirements for FSS earth stations.

**DATES:** Effective June 10, 2005, except for 47 CFR 90.203(o), 90.1323, which contain information collections that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

**FOR FURTHER INFORMATION CONTACT:** Gary Thayer, Office of Engineering and Technology, (202) 418-2290, or Eli Johnson, 418-1395, Wireless Telecommunications Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s *Report and Order, and Memorandum Opinion and Order* ET Docket No. 04-151, ET Docket No. 02-380, ET Docket No. 98-237, WT Docket No. 05-96, FCC 05-56, adopted March 10, 2005 and released March 16, 2005. The full text of this document is available on the Commission’s Internet site at <http://www.fcc.gov>. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission’s duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY-B402, Washington, DC 20554; telephone (202) 488-5300; fax (202) 488-5563; e-mail [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM).

**Summary of the Report and Order**

1. The Report and Order (R&O), adopted rules that provide for nationwide, non-exclusive, licensing of terrestrial operations, utilizing technology with a contention-based