

recordkeeping requirements, Water pollution control.

Dated: December 30, 2005.

**Stephen L. Johnson,**  
Administrator.

For the reasons set forth in the preamble, Chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

1. The authority citation for part 122 continues to read as follows:

**Authority:** The Clean Water Act, 33 U.S.C. 1251 *et seq.*

**Subpart B—[Amended]**

2. Section 122.26 is amended by revising paragraphs (a)(2) and (e)(8) to read as follows:

**§ 122.26 Storm water discharges (applicable to State NPDES programs, see 122.35).**

(a) \* \* \*

(2) The Director may not require a permit for discharges of storm water runoff from the following:

(i) Mining operations composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that have not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations, except in accordance with § 122.26(c)(1)(iv).

(ii) All field activities or operations associated with oil and gas exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities, except in accordance with § 122.26(c)(1)(iii). Discharges of sediment from construction activities associated with oil and gas exploration, production, processing, or treatment operations, or transmission facilities are not subject to the provisions of § 122.26(c)(1)(iii)(C).

**Note to § 122.26(a)(2)(ii):** EPA encourages operators of oil and gas field activities or operations to implement and maintain Best Management Practices (BMPs) to minimize discharges of pollutants, including sediment,

in storm water both during and after construction activities to help ensure protection of surface water quality during storm events. Appropriate controls would be those suitable to the site conditions and consistent with generally accepted engineering design criteria and manufacturer specifications. Selection of BMPs could also be affected by seasonal or climate conditions.

\* \* \* \* \*

(e) \* \* \*

(8) For any storm water discharge associated with small construction activities identified in paragraph (b)(15)(i) of this section, see § 122.21(c)(1). Discharges from these sources require permit authorization by March 10, 2003, unless designated for coverage before then.

\* \* \* \* \*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2005-0252; FRL-7755-6]

**Iodomethane; Pesticide Chemical Not Requiring a Tolerance or an Exemption from Tolerance**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to designate the use of the active ingredient, iodomethane as a non-food use pesticide when applied as a pre-plant soil fumigant for peppers, strawberries and tomatoes by adding an entry to 40 CFR 180.2020 noting the non-food use determination. This determination is based on the Agency's evaluation of data which indicates that residues of iodomethane (CH<sub>3</sub>I) are quickly degraded or metabolized into non-toxic degradates and subsequently incorporated into natural plant constituents. The effect of this proposed designation is that EPA does not require that a tolerance or exemption from tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, be established as a condition of registration of the pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*

**DATES:** Comments must be received on or before February 6, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2005-0252, by one of the following methods:

• **Federal eRulemaking Portal:** <http://www.regulations.gov/>. Follow the on-

line instructions for submitting comments.

• **Agency Website:** EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005 by an enhanced federal-wide electronic docket management and comment system located at <http://www.regulations.gov/>. Follow the on-line instructions.

• **E-mail:** Comments may be sent by e-mail to [opp-docket@epa.gov](mailto:opp-docket@epa.gov), Attention: Docket ID Number EPA-HQ-OPP-2005-0252.

• **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 EPA-HQ-OPP-2005-0252.

• **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 EPA-HQ-OPP-2005-0252. 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 EPA-HQ-OPP-2005-0252. 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](http://www.regulations.gov/), or e-mail. The EPA EDOCKET and the [regulations.gov](http://www.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](http://www.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:** Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9354; e-mail address: [waller.mary@epa.gov](mailto:waller.mary@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](http://www.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

On February 4, 2002 and February 18, 2005, the Agency received applications to register pesticide products containing the new active ingredient, iodomethane as a pre-plant fumigant for peppers, strawberries, and tomatoes. The registrant, Arysta LifeScience North America, Corp. (formerly known as Arvesta Corp.) asserted that the uses should be considered non-food uses based on data submitted with the applications.

EPA on its own initiative, under section 408 of the FFDCA, 21 U.S.C. 346a, is proposing to add an entry to 40 CFR 180.2020 noting the non-food use determination for iodomethane when used as a pre-plant fumigant for peppers, strawberries and tomatoes. This determination is based on the Agency's evaluation of metabolism and crop field trial data which included analysis for residues of iodomethane (CH<sub>3</sub>I) and free iodide (I<sup>-</sup>). Analytical method descriptions and validations used to measure iodomethane and free iodide were also submitted to the Agency.

The Agency does not believe that there is a reasonable expectation of iodomethane residues *per se* in peppers, strawberries and tomatoes at harvest. Iodomethane is quickly metabolized/degraded into iodide at levels lower than those which would cause toxic effects, and into other non-toxic degradates which are incorporated into natural plant constituents. Iodide, the major degradate, is an ubiquitous, naturally-occurring component of all soils, plants, and animals, and as such, there is an existing background level of iodine and iodide in the environment which varies depending on the naturally-occurring sources of iodine chemicals in the region. As a result, enforcement of tolerances would not be possible since no iodide-free samples are available and residue field trials showed evidence of control samples with higher iodide residues than iodomethane treated samples. Additionally, iodine is an essential human dietary nutrient, and iodomethane residues must dissipate in the soil prior to planting as the chemical is phytotoxic. Therefore, the Agency concludes that tolerances are not required for iodomethane.

EPA lists in 40 CFR 180.2020 pesticide chemical uses EPA has determined do not need a tolerance or exemption from the requirement of a tolerance based on EPA's finding that

they are not likely to result in residues in or on food. It is under these provisions that the EPA proposes to designate the pre-plant fumigant use of iodomethane on peppers, strawberries and tomatoes as a non-food use because the use is not likely to result in residues in or on food for the reasons described in Unit II of this document.

**III. Conclusion**

A nonfood use determination is proposed for iodomethane when applied as a pre-plant soil fumigant for peppers, strawberries, and tomatoes.

**IV. Statutory and Executive Order Reviews**

This proposed rule establishes a non-food use determination under section 408(e) of the FFDCA in response to an application for registration of a pesticide product 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 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 requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this proposed action will not have significant negative economic impact on a substantial number of small entities. Listing a pesticide use as not requiring a tolerance or exemption from tolerance clarifies that regulation under the FFDCA is unnecessary as to that use and thus has no negative economic impact. 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: December 30, 2005.

**Donald R. Stubbs,**  
*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR chapter I 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.

2. In § 180.2020 the table is amended by adding alphabetically the following entry to read as follows:

**§ 180.2020 Non-food determinations.**

\* \* \* \* \*

Pesticide Chemical	CAS Reg. No.	Limits	Uses
* * Iodomethane (CH <sub>3</sub> I)	74-88-4	* * When applied as a pre-plant fumigant	* * Peppers, strawberries and tomatoes
* *	*	*	* *