

\$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office

of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

The Coast Guard analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) 42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) from further environmental documentation. A final "Environmental Analysis Checklist" and a "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T01–132 to read as follows:

#### § 165.T01–132 Safety Zone: Wantagh Parkway Number 3 Bridge over the Sloop Channel, Town of Hempstead, NY.

(a) *Location:* The following area is a safety zone: All waters of the Sloop Channel in Hempstead, NY, from surface to bottom, within 300 yards of the Wantagh Parkway Number 3 Bridge over the Sloop Channel.

(b) *Effective date:* This rule is effective from 11:59 p.m. on January 22, 2007 until 11:59 p.m. December 31, 2007.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone by any person or vessel is prohibited unless authorized by the Captain of the Port (COTP), Long Island Sound.

(2) All persons and vessels must comply with the Coast Guard COTP or designated on-scene patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, State, and Federal law enforcement vessels. Upon being hailed by siren, radio, flashing light or other means from a U.S. Coast Guard vessel or other vessel with on-scene patrol personnel aboard, the operator of the vessel shall proceed as directed.

Dated: January 22, 2007.

**J.J. Plunkett,**

*Commander, U.S. Coast Guard, Acting Captain of the Port, Long Island Sound.*

[FR Doc. E7–1978 Filed 2–6–07; 8:45 am]

**BILLING CODE 4910–15–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 180

[EPA–HQ–OPP–2006–0970; FRL–8112–2]

#### Tris (2-ethylhexyl) Phosphate; Exemption from the Requirement of a Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of tris (2-ethylhexyl) phosphate (TEHP, CAS Reg. No. 78–42–2) when used as an inert ingredient in pesticide formulations with the active ingredients pinoxaden, clodinafop-propargyl, and tralkoxydium, with no more than two applications per season when applied to wheat and barley up to the pre-boot

stage (prior to formation of edible grain). Syngenta Crop Protection, LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of TEHP.

**DATES:** This regulation is effective February 7, 2007. Objections and requests for hearings must be received on or before April 9, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2006-0970. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The 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:** R. Tracy Ward, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9361; e-mail address: [ward.tracyh@epa.gov](mailto:ward.tracyh@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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in [insert appropriate cite to either another unit in the preamble or a section in a rule]. 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?*

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office’s pilot e-CFR site at <http://www.gpoaccess.gov/ecfr>.

###### *C. Can I File an Objection or Hearing Request?*

Under section 408(g) of the FFDCA, as amended by the 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. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2006-0970 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 April 9, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2

may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA-HQ-OPP-2006-0970, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket’s normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

##### **II. Background and Statutory Findings**

In the **Federal Register** of August 9, 2006 (71 FR 45559) (FRL-8082-9), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104-170), announcing the filing of a pesticide petition (PP 6E7078) by Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27410. The petition requested that 40 CFR 180.910 be amended by establishing an exemption from the requirement of a tolerance for residues of tris (2-ethylhexyl) phosphate (TEHP, CAS Reg. No. 78-42-2). That notice referenced a summary of the petition prepared by the petitioner. Syngenta Crop Protection, LLC requested the use of TEHP as an adjuvant in pesticide formulations with the active ingredients pinoxaden, clodinafop-propargyl, and tralkoxydium applied to the growing crops wheat and barley. There were no substantive comments received in response to the notice of filing.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for 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 the 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 the 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. . . ."

### III. Risk Characterization and Conclusion

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by TEHP are discussed in this unit. The following provides a brief summary of the risk assessment and conclusions for the Agency's review of TEHP. The full decision document for this action is available on EPA's Electronic Docket at <http://www.regulations.gov> under docket number EPA-HQ-OPP-2006-0970.

#### A. Human Health

The Agency reviewed the available information submitted by the petitioner as well as additional information available to the Agency and has determined that TEHP is of low acute and subchronic oral and inhalation toxicity, but is a moderate skin irritant. TEHP is not a cancer concern, is not mutagenic and is not a neurotoxin. Although no developmental toxicity study is available on TEHP, the Agency has determined that tributyl phosphate is an acceptable analog and can be used to characterize the developmental toxicity of TEHP. Based on developmental and reproductive toxicity studies on the analog tributyl phosphate, TEHP is expected to produce developmental toxicity only at maternally toxic doses. One developmental study conducted on tributyl phosphate showed one incident of a rare fetal malformation. The observed effect is not likely to have resulted from exposure to tributyl phosphate. The petitioner has agreed to conduct an acceptable rat developmental study on TEHP and submit it to EPA within 18 months in order to confirm that this malformation is not an effect of TEHP.

The Agency concludes that dietary and drinking water exposures of concern are not anticipated from the inert ingredient use of TEHP considering its physical and chemical properties, including low volatility and rapid biodegradation, and the limitations imposed by its proposed use as an adjuvant in pesticide formulations only with the active ingredients pinoxaden, clodinafop-propargyl, and tralkoxydium, limited to no more than two applications per season on two crops, wheat and barley, up to the pre-boot stage (prior to formation of edible grain).

Residential exposures (inhalation and dermal) to TEHP are not expected due to its low volatility, limited use pattern in agricultural pesticides, and rapid biodegradation in the environment.

Taking into consideration all available information on TEHP, it has been determined that there is a reasonable certainty that no harm to any population subgroup will result from aggregate exposure to TEHP when used as an inert ingredient in pesticide formulations when considering dietary exposure and all other non-occupational sources of pesticide exposure for which there is reliable information. Therefore, the exemption from the requirement of a tolerance requested by the petitioner, Syngenta Crop Protection, LLC, for residues of TEHP, can be considered assessed as safe under section 408(q) of the FFDCA.

#### B. Analytical Methods

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitations.

#### C. International Tolerances

The Agency is not aware of any country requiring a tolerance for tris (2-ethylhexyl) phosphate nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

### IV. Conclusions

Based on the information in this preamble and in the decision document, EPA concludes that there is a reasonable certainty of no harm to the general population, including infants and children, from aggregate exposure to residues of tris (2-ethylhexyl) phosphate (TEHP). Accordingly, EPA finds that exempting TEHP from the requirement of a tolerance will be safe. EPA is establishing a tolerance exemption for TEHP on wheat and barley when it is used as an inert ingredient in pesticide formulations with the active ingredients

pinoxaden, clodinafop-propargyl, and tralkoxydium. TEHP is limited to no more than two applications per season and these applications must occur no later than the pre-boot stage (prior to formation of edible grain).

### V. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the 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 the FFDCA, such as the exemption 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 the FFDCA. 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.

## VI. 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: January 25, 2007.

**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 180.1274 is added to subpart D to read as follows:

#### § 180.1274 Tris (2-ethylhexyl) phosphate; exemption from the requirement of a tolerance.

Tris (2-ethylhexyl) phosphate (TEHP, CAS Reg. No. 78-42-2) is exempt from the requirement of a tolerance for residues in wheat and barley when used under the following conditions:

(a) The use is in accordance with good agricultural practices;

(b) Tris (2-ethylhexyl) phosphate is used as an inert ingredient in pesticide formulations with the active ingredients pinoxaden, clodinafop-propargyl, and tralkoxydium;

(c) Tris (2-ethylhexyl) phosphate is applied no more than twice per season; and

(d) The applications occur no later than the pre-boot stage (prior to formation of edible grain).

[FR Doc. 07-460 Filed 1-30-07; 12:41 pm]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2006-0918; FRL-8110-8]

### Avermectin; Pesticide Tolerances for Emergency Exemptions

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for combined residues of the insecticide avermectin B<sub>1</sub> and its delta-8,9-isomer in or on bulb onions. 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 this pesticide on bulb onions. This regulation establishes a maximum permissible level for residues of avermectin in this food commodity. The tolerance expires and is revoked on December 31, 2009.

**DATES:** This regulation is effective February 7, 2007. Objections and requests for hearings must be received on or before April 9, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178, see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2006-0918. All documents in the docket are listed on the regulations.gov website. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are 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:** Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9367; e-mail address: [ertman.andrew@epa.gov](mailto:ertman.andrew@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