

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2009-0699; FRL- 8807-4]

#### 2-Propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate; Tolerance Exemption

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate; when used as an inert ingredient in a pesticide chemical formulation. BASF Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate on food or feed commodities.

**DATES:** This regulation is effective January 27, 2010. Objections and requests for hearings must be received on or before March 29, 2010, 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-2009-0699. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. 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 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 Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket

Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Fertich, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 347-8560; e-mail address: [fertich.elizabeth@epa.gov](mailto:fertich.elizabeth@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 Get Electronic Access to Other Related Information?*

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at <http://www.gpoaccess.gov/ecfr>.

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

Under section 408(g) of FFDCA, 21 U.S.C. 346a, 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-2009-0699 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 March 29, 2010.

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-2009-0699, 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 Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility'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 Facility telephone number is (703) 305-5805.

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

In the **Federal Register** of October 7, 2009 (74 FR 51597) (FRL-8792-7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 9E7609) filed by BASF Corporation, 100 Campus Drive, Florham Park, NJ 07932. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate; CAS Reg. No. 68240-06-2. That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any substantive comments.

Section 408(c)(2)(A)(i) of 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(c)(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 use 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 an exemption from the requirement of 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. . . ." and specifies factors EPA is to consider in establishing an exemption.

### III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

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 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. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion

criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate.

### IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was

possible. The number average MW of 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate is 18,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

### V. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." For the purposes of this tolerance action, EPA has not assumed that 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate has a common mechanism of toxicity with other substances, based on the anticipated absence of mammalian toxicity. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at <http://www.epa.gov/pesticides/cumulative>.

### VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

**VII. Determination of Safety**

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate.

**VIII. Other Considerations**

*A. Analytical Enforcement Methodology*

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 limitation.

*B. International Tolerances*

The Agency is not aware of any country requiring a tolerance for 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

**IX. Conclusion**

Accordingly, EPA finds that exempting residues of 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate from the requirement of a tolerance will be safe.

**X. 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 rules from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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.*, nor does it 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.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts on local governments. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not 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).

Although this action does not 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), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or

low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population. If you received specific comments-consider addressing them here.

**XI. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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 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 19, 2010.

**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. In §180.960, the table is amended by adding alphabetically the following polymer to read as follows:

**§ 180.960 Polymers; exemptions from the requirement of a tolerance.**

Polymer	CAS No.
<p style="text-align: center;">* * * * *</p> <p>2-Propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate, minimum number average molecular weight (in amu), 18,000</p>	<p style="text-align: center;">* *</p> <p style="text-align: right;">68240–06–2</p>

Polymer	CAS No.
* * * * *	* *

[FR Doc. 2010-1578 Filed 1-26-10; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 723

[EPA-HQ-OPPT-2002-0051; FRL-8805-5]

RIN 2070-AD58

### Premanufacture Notification Exemption for Polymers; Amendment of Polymer Exemption Rule to Exclude Certain Perfluorinated Polymers

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

**ACTION:** Final rule.

**SUMMARY:** EPA is amending the polymer exemption rule, which provides an exemption from the premanufacture notification (PMN) requirements of the Toxic Substances Control Act (TSCA), to exclude from eligibility polymers containing as an integral part of their composition, except as impurities, certain perfluoroalkyl moieties consisting of a CF<sub>3</sub>- or longer chain length. This exclusion includes polymers that contain any one or more of the following: Perfluoroalkyl sulfonates (PFAS), perfluoroalkyl carboxylates (PFAC), fluorotelomers, or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule (affected polymers). In general, any person who intends to manufacture (which is defined by TSCA to include import into the customs territory of the United States) any of these polymers not already on the TSCA Inventory (Inventory) must complete the TSCA PMN review process prior to commencing the manufacture or import of such polymers. Alternatively, manufacturers or importers may submit a request for a different exemption, such as the Low Volume Exemption (LVE) or Low Release and Exposure Exemption (LoREX), for affected polymers that they reasonably believe may qualify for such exemptions. Those persons who are currently manufacturing or importing affected polymers, or who have previously manufactured or imported them but are not doing so now, in full compliance with the 1995 polymer exemption rule, may continue manufacturing or importing them until

January 27, 2012. After that date, manufacture of these polymers will no longer be authorized under the polymer exemption rule, and continued manufacture or import must be authorized under a different TSCA section 5(h)(4) exemption or under a different TSCA section 5 authority, such as TSCA section 5(a)(1) or section 5(e). This change is necessary because, based on current information, EPA can no longer conclude that these polymers “will not present an unreasonable risk to human health or the environment” under the terms of the polymer exemption rule, which is the determination necessary to support an exemption under TSCA section 5(h)(4).

**DATES:** This final rule is effective February 26, 2010.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPPT-2002-0051. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. 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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**FOR FURTHER INFORMATION CONTACT:** For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division

(7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

For technical information contact: Geraldine Hilton, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8986; e-mail address: [hilton.geraldine@epa.gov](mailto:hilton.geraldine@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or import polymers that contain as an integral part of their composition, except as impurities, certain perfluoroalkyl moieties consisting of a CF<sub>3</sub>- or longer chain length (affected polymers). As specified in the regulatory text of this final rule (40 CFR 723.250(d)(6)), these perfluoroalkyl moieties include any one or more of the following: PFAS, PFAC, fluorotelomers, or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule. Persons who import or intend to import polymers that are covered by this final rule would be subject to TSCA section 13 (15 U.S.C. 2612) import certification requirements, and to the regulations codified at 19 CFR 12.118 through 12.127 and 127.28. Those persons must certify that they are in compliance with the PMN requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. Importers of formulated products that contain a polymer that is subject to this final rule as a component (for example, for use as a water-proof coating for textiles or as a top anti-reflective coating (TARC) used to manufacture integrated circuits) may also be potentially affected. A list of potential monomers and reactants that could be used to manufacture polymers that would be affected by this final rule may be found in the public docket (Ref. 7). Potentially affected entities may include, but are not limited to: Chemical manufacturers or importers (NAICS code 325), e.g., persons who manufacture (defined by statute to include import) one or more of the subject chemical substances.