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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2010-0033; FRL-8827-4]

#### 2-Propenoic acid polymer, with 1,3-butadiene and ethenylbenzene; 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 polymer, with 1,3-butadiene and ethenylbenzene, minimum number average molecular weight (in AMU) 9400 (CAS Reg. No. 25085-39-6); when used as an inert ingredient in a pesticide chemical formulation under 40 CFR 180.960. 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 polymer, with 1,3-butadiene and ethenylbenzene on food or feed commodities.

**DATES:** This regulation is effective June 4, 2010. Objections and requests for hearings must be received on or before August 3, 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-2010-0033. 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 FFDCA section 408(g), 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. 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-2010-0033 in the subject line on the first page of your submission. All

objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 3, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

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. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA-HQ-OPP-2010-0033, 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 March 19, 2010 (75 FR 13277) (FRL-8813-2), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 9E7649) 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 polymer, with 1,3-butadiene and ethenylbenzene, minimum number average molecular weight (in AMU) 9400; CAS Reg. No. 25085-39-6. 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 comments in the docket. However, the Agency did receive one comment by e-mail. The comment was received from a private citizen who opposed the authorization to sell any pesticide that leaves a residue on food. The Agency understands the commenter's concerns

and recognizes that some individuals believe that no residue of pesticides should be allowed. However, under the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by the statute.

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 exemption 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 FFDCA section 408(b)(2)(D), 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 polymer, with 1,3-butadiene and ethenylbenzene 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 9400 is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, 2-propenoic acid polymer, with 1,3-butadiene and ethenylbenzene 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 polymer, with 1,3-butadiene and ethenylbenzene.

### IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-propenoic acid polymer, with 1,3-butadiene and ethenylbenzene 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 polymer, with 1,3-butadiene and ethenylbenzene is 9400 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 polymer, with 1,3-butadiene and ethenylbenzene 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 From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found 2-propenoic acid polymer, with 1,3-butadiene and ethenylbenzene to share a common mechanism of toxicity with any other substances, and 2-propenoic acid polymer, with 1,3-butadiene and ethenylbenzene does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that 2-propenoic acid polymer, with 1,3-butadiene and ethenylbenzene does not have a common mechanism of toxicity with other substances. 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 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 polymer, with 1,3-butadiene and ethenylbenzene, 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 polymer, with 1,3-butadiene and ethenylbenzene.

## 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 Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for 2-propenoic acid polymer, with 1,3-butadiene and ethenylbenzene.

## IX. Conclusion

Accordingly, EPA finds that exempting residues of 2-propenoic acid polymer, with 1,3-butadiene and ethenylbenzene 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.

## 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: May 24, 2010.

**Daniel Rosenblatt,**

*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.
2-propenoic acid polymer, with 1,3-butadiene and ethenylbenzene, minimum number average molecular weight (in amu), 9400 .....	25085-39-6

\* \* \* \* \*

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## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Parts 260, 261, 262, 263, 264, 265, 266, 268, and 270**

[EPA-RCRA-2008-0678; FRL-9158-5]

RIN 2050-AG52

### Hazardous Waste Technical Corrections and Clarifications Rule

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

**ACTION:** Partial withdrawal of direct final rule.

**SUMMARY:** On March 18, 2010, EPA published in the **Federal Register** a Direct Final rule entitled, *Hazardous Waste Technical Corrections and Clarifications Rule* (75 FR 12989). This Direct Final rule included a number of specific technical changes to correct or clarify several parts of the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. At the same time, EPA also published a parallel Proposed Rule (75 FR 13006) for the same changes. EPA received adverse comment on four of the specific amendments and thus is withdrawing them. The four amendments being withdrawn are: 40 CFR 262.34(a); 40 CFR 262.34(a)(2); 40 CFR 262.34(a)(5), and 40 CFR 266.20(b). As a result of withdrawing the amendment at 40 CFR 262.34(a)(5), we also are withdrawing the related amendment at 40 CFR 262.34(a)(1)(iv)(B). Finally, because of a typographical error, we also are withdrawing the amendment to the entry "K107" in the table at 40 CFR 261.32(a).

**DATES:** On June 16, 2010, all amendments go into effect that were published in the **Federal Register** at 75 FR 12989 on March 18, 2010, except the following: The amendment to the entry "K107" in the table at 40 CFR 261.32(a); the amendment to 40 CFR 262.34(a); the amendment to 40 CFR 262.34(a)(1)(iv)(B); the amendment to 40 CFR 262.34(a)(2); the amendment to 40 CFR 262.34(a)(5), and the amendment at

40 CFR 266.20(b) which are withdrawn effective June 4, 2010.

**FOR FURTHER INFORMATION CONTACT:** Jim O'Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery (MC:5304P), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, *Phone:* (703) 308-8827; or *e-mail:* [oleary.jim@epa.gov](mailto:oleary.jim@epa.gov).

**SUPPLEMENTARY INFORMATION:** On March 18, 2010, EPA published in the **Federal Register** a Direct Final rule entitled, *Hazardous Waste Technical Corrections and Clarifications Rule* (75 FR 12989). This Direct Final rule included a number of specific technical changes to correct or clarify several parts of the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. At the same time, EPA also published a parallel Proposed Rule (75 FR 13006) for the same changes.

We stated in that Direct Final rule that if we received adverse comment on any amendments by May 3, 2010, the affected amendments in the Direct Final rule would not take effect and we would publish a timely withdrawal in the **Federal Register** of those specific amendments. We subsequently received adverse comment on four specific amendments:

- 40 CFR 262.34(a) related to the hazardous waste accumulation time for large quantity generators;
- 40 CFR 262.34(a)(2) related to the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container and tank;
- 40 CFR 262.34(a)(5) related to the closure requirements for tanks, containers, drip pads and containment buildings
- 40 CFR 266.20(b) related to recyclable materials used in a manner constituting disposal.

Because EPA received adverse comment on these four amendments, we are withdrawing them.

As a result of withdrawing 40 CFR 262.34(a)(5), the related amendment at 40 CFR 262.34(a)(1)(iv)(B) must also be withdrawn because the Agency had deleted the latter part of this particular regulatory citation in the Direct Final rule in an effort to clarify the closure requirements for tanks, containers, drip pads and containment buildings. Also, there was a typographical error related to the entry for EPA hazardous waste No. K107 in the table at 40 CFR 261.32(a). We therefore are withdrawing this amendment as well. Thus, we are withdrawing six of the original amendments from the March 18, 2010 Direct Final rule.

EPA published a parallel Proposed Rule on the same day as the Direct Final rule (75 FR 13006). The Proposed Rule invited comment on the substance of the Direct Final rule. We intend to review the adverse comments we received with respect to the amendments at 40 CFR 262.34(a), 40 CFR 262.34(a)(1)(iv)(B), 40 CFR 262.34(a)(2), 40 CFR 262.34(a)(5), and 40 CFR 266.20(b) to determine the appropriate course of action for each amendment. With respect to the typographical error in the amendment to the entry for EPA hazardous waste No. K107 in the table at 40 CFR 261.32(a), we intend to publish a final rulemaking that will correct this mistake. As stated in the parallel proposal, we will not institute a second comment period on these proposed actions.

The amendments for which we did not receive adverse comment will become effective on June 16, 2010, as provided in the March 18, 2010, Direct Final rule.

### Effective Dates

Because there may be some confusion about the effective dates for the amendments in the Final *Hazardous Waste Technical Corrections and Clarifications Rule* (75 FR 12989) which are not being withdrawn and which go into effect on June 16, 2010, EPA is here providing further explanation for the three types of amendments in the Final Rule. The three types of amendments result from the fact that the amendments are promulgated in part under the authority of the Hazardous and Solid Waste Amendments of 1984 (HSWA), and in part under non-HSWA RCRA authority. In addition, some amendments are jointly promulgated under the authority of the Hazardous Materials Transportation Act (HMTA).

First, the following amendments to the manifest regulations are promulgated under non-HSWA RCRA authority and the authority of the Hazardous Materials Transportation Act:

- 40 CFR 262.23,
- 40 CFR 262.41, and
- 40 CFR 262.42, and
- 40 CFR 262.60(b).

These non-HSWA manifest amendments will be implemented under RCRA authority on the effective date only in those states that do not have final authorization of their base RCRA programs. These changes will not therefore be implemented and enforced *under RCRA authority* in authorized states until the authorized states have revised their programs and received authorization for these program revisions. However, because these hazardous waste manifest requirements