

actions 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 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).

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. 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) (Pub. L. 104-4).

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 final rule will not have significant negative economic impact on

a substantial number of small entities. In fact, this rule will have no impact because it merely corrects an error in the propylene oxide tolerance regulation that was inserted in the regulation without proper authority and thus was without legal effect.

**V. 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 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: June 16, 2011.

**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 180.491 is amended by revising “Nut, tree, group 14” in the table in paragraphs (a)(1) and (a)(2) to read as follows:

**§ 180.491 Propylene oxide; tolerances for residues.**

(a) *General.* (1) \* \* \*

Commodity	Parts per million
* * * * *	*
Nutmeat, processed, except peanuts .....	300
* * * * *	*

(2) \* \* \*

Commodity	Parts per million
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Commodity	Parts per million
* * * * *	*
Nutmeat, processed, except peanuts .....	10.0
* * * * *	*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2010-0423; FRL-8879-2]

**Mevinphos; Data Call-in Order for Pesticide Tolerances**

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

**ACTION:** Final order.

**SUMMARY:** This order requires the submission of various data to support the continuation of the tolerances for the pesticide mevinphos. Pesticide tolerances are established under the Federal Food, Drug, and Cosmetic Act (FFDCA). Following publication of this order, persons who are interested in the continuation of the mevinphos tolerances must notify the Agency by completing and submitting the required section 408(f) Order Response form (available in the docket) within 90 days. If the Agency does not receive within 90 days after publication of the final order a section 408(f) Response Form identifying a person who agrees to submit the required data, EPA will revoke the mevinphos tolerances.

**DATES:** This final order is effective June 29, 2011. A section 408(f) Order Response form must be received on or before September 27, 2011.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2010-0423. 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.

Submit your section 408(f) Order Response form, identified by docket identification (ID) number EPA-HQ-OPP-2010-0423, by one of the following methods:

- **Federal eRulemaking Portal:**

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.

- **Instructions:** Direct your section 408(f) Order Response form to docket ID number EPA-HQ-OPP-2010-0423. EPA's policy is that all information and comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the information or 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 [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send information or comments via an e-mail directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the information or comment that is placed in the docket and made available on the Internet. If you submit information or a comment electronically, EPA recommends that you include your name and other contact information in the body of your information or comment and with any disk or CD-ROM

you submit. If EPA cannot read your information or comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your submission. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

- **Docket:** 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., 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 Bldg.), 2777 S. Crystal Dr., 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 Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Susan Bartow, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; *telephone number:* (703) 603-0065; *fax number:* (703) 308-8090; *e-mail address:* [bartow.susan@epa.gov](mailto:bartow.susan@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 cite at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab02.tpl> <http://www.gpoaccess.gov/ecfr>. To access the harmonized test guidelines referenced in this document electronically, please go to <http://www.epa.gov/ocspp> and select "Test Methods and Guidelines."

## II. Background

### A. What action is the agency taking?

In this document EPA issues an order requiring the submission of various data to support the continuation of the mevinphos tolerances at 40 CFR 180.157 under section 408 of the Federal Food, Drug, and Cosmetic Act ("FFDCA"), 21 U.S.C. 346a.

Mevinphos is not currently registered under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. 136 *et seq.*, and may not be sold, distributed, or used in the United States. Mevinphos' FIFRA registration was canceled in 1994. However, 15 FFDCA tolerances remain for residues of mevinphos on the following commodities: Broccoli, cabbage, cauliflower, celery, spinach, strawberries, grapes, lettuce, melons, watermelon, peas, peppers, summer squash, cucumbers, and tomatoes (40 CFR 180.157). Since there are currently no domestic registrations for mevinphos, these tolerances are referred to as "import tolerances." It is these tolerances that are addressed by the data call-in order.

### B. What is the agency's authority for taking this action?

Under section 408(f) of the FFDCA, EPA is authorized to require, by order, submission of data "reasonably required to support the continuation of a tolerance" when such data cannot be obtained under the Data Call-In authority of FIFRA section 3(c)(2)(B), or section 4 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. 2603. A FFDCA section 408 data call-in order may only be issued following publication of notice of the order and a 60-day public comment provision.

A section 408(f) Data Call-In order must contain the following elements:

1. A requirement that one or more persons submit to EPA a notice identifying the person(s) who commit to submit the data required in the order;

2. A description of the required data and the required reports connected to such data;

3. An explanation of why the required data could not be obtained under section 3(c)(2)(B) of FIFRA or section 4 of TSCA; and

4. The required submission date for the notice identifying one or more interested persons who commit to submit the required data and the required submission dates for all the data and reports required in the order. (21 U.S.C. 346a(f)(1)(C)).

EPA may by order modify or revoke the affected tolerances if any one of the following submissions are not made in a timely manner:

1. A notice identifying the one or more interested persons who commit to submit the data;

2. The data itself; or

3. The reports required under a section 408(f) order are not submitted by the date specified in the order. (21 U.S.C. 346a(f)(2)).

*C. What preliminary steps were taken by EPA prior to issuing this final order?*

On July 28, 2010, EPA issued a proposed data call-in order for the pesticide mevinphos in connection with tolerances for that pesticide under section 408 of the FFDCA, 21 U.S.C. 346a. (75 FR 44181). The proposed data

call-in order included the following studies:

1. Comparative Cholinesterase Assay (870.6300);

2. Immunotoxicity Study (870.7800);

3. Directions for Use (860.1200);

4. Crop Field Trials (860.1500)—(broccoli, cabbage, cauliflower, celery, grapes, lettuce, peas, peppers, spinach, summer squash, strawberries, and tomatoes); and

5. Processing Study (tomatoes) (860.1520).

**III. Summary of Public Comments Received and Agency Response to Comments**

EPA received no comments in response to the July 28, 2010 **Federal Register** notice announcing the Agency's proposed data call-in order for mevinphos. In addition, the Agency has not received any of the data identified in the proposed order as needed to support the mevinphos tolerances.

**IV. Final Data Call-in Order**

Because no comments were submitted on the proposed order and the data deficiencies identified in the proposed order remain, EPA is today issuing the final data call-in order under FFDCA section 408(f)(1)(C) for mevinphos in the same form as the proposed order and for the reasons set forth in that proposed order. Specifically, EPA is requiring:

1. *Notice of intent to submit data.* A notice identifying the person or persons who commit to submit the data and

reports in accordance with Unit V.2. must be submitted to EPA if any person wishes to support the mevinphos tolerances. The notice must be submitted on a section 408(f) Order Response form which is available on the Federal Government's electronic docket, <http://www.regulations.gov>, under docket ID number EPA-HQ-OPP-2010-0423.

2. *Deadline for submission of notice identifying data submitters.* The notice described in Unit V.1. identifying data submitters must be submitted to and received by EPA on or before *June 29, 2011*. Instructions on methods for submitting this notice (referred to in this order as a "section 408(f) Order Response form") are set out under the **ADDRESSES** heading above.

3. *Required data and reports and readlines for submission.* The table below lists the data and reports required to be submitted on mevinphos under this order and the deadlines for the submission of each study and report. The required submission date is calculated from the close of the 90-day period following **Federal Register** publication of the order for providing notice of intent to submit the data. Thus, for example, if EPA generally allows 12 months to complete a study, the required submission date for such a study under this order would be 15 months from the date of publication of the order in the **Federal Register**.

TABLE—REQUIRED DATA AND REPORTS

Harmonized guideline requirement No.	Study title	Timeframe for protocol report submission	Timeframe for data submission
870.6300 .....	Comparative Cholinesterase Assay .....	March 29, 2012 .....	October 1, 2012.
870.7800 .....	Immunotoxicity Study .....	March 29, 2012 .....	October 1, 2012.
860.1200 .....	Directions for use .....	Not required .....	October 1, 2012.
860.1500 .....	Crop Field Trials (broccoli, cabbage, cauliflower, celery, grapes, lettuce, peas, peppers, spinach, summer squash, strawberries, and tomatoes).	Not Required .....	September 30, 2013.
860.1520 .....	Processing studies (tomatoes) .....	Not Required .....	September 30, 2013.

EPA provided a description of why the required data could not be obtained under section 3(c)(2)(B) of FIFRA or section 4 of TSCA in the proposed order and relies on that description in this final order.

**V. Failure To Submit Notice of Intent To Submit Data or Data and Reports**

If, within 90 days after publication of this final order, the Agency does not receive a section 408(f) Order Response Form identifying a person who agrees to submit the required data, EPA will revoke the mevinphos tolerances at 40

CFR 180.157. Such revocation is subject to the objection and hearing procedure in FFDCA section 408(g)(2) but the only material issue in such a procedure is whether a submission required by the order was made in a timely fashion.

Additional events that may be the basis for modification or revocation of mevinphos tolerances include, but are not limited to the following:

1. No person submits on the required schedule an acceptable protocol report when such report is required to be submitted to the Agency for review.

2. No person submits on the required schedule acceptable data as required by the final order.

**VI. Statutory and Executive Order Reviews**

As required by statute, this action requiring submission of data in support of tolerances is in the form of an order and not a rule. (21 U.S.C. 346a(f)(1)(C)). Under the Administrative Procedures Act, orders are expressly excluded from the definition of a rule. (5 U.S.C. 551(4)). Accordingly, the regulatory assessment requirements imposed on

rulemaking do not, therefore, apply to this action.

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 22, 2010.

**Richard P. Keigwin, Jr.,**

*Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2011-16355 Filed 6-28-11; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109; FCC 11-97]**

#### Lifeline and Link Up Reform and Modernization, Federal-State Joint Board on Universal Service, Lifeline and Link Up

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) takes immediate action to address potential waste in the universal service Lifeline and Link Up program (Lifeline/Link Up or the program) by preventing duplicative program payments for multiple Lifeline-supported services to the same individual. On March 4, 2011, the Commission released a Notice of Proposed Rulemaking to reform and modernize Lifeline/Link Up. In the Notice of Proposed Rulemaking, the Commission underscored its commitment to eliminating waste, fraud, and abuse in Lifeline/Link Up and presented a comprehensive set of proposals to better target support to needy consumers and maximize the number of Americans with access to modern communications services. To ensure that Lifeline support is limited to the amount necessary to provide access to telecommunications service to qualifying low-income consumers, we adopt measures to prevent, detect and resolve duplicative Lifeline claims for the same consumer. The near-term reforms we adopt here will reduce waste in the Fund and give the Commission flexibility to modernize the Low-Income Program in order to align it with changes in technology and market dynamics, such as the proposal we

currently are reviewing to support broadband pilot projects for low-income consumers.

**DATES:** Effective July 29, 2011.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Scardino, Attorney Advisor, at 202-418-1442, Telecommunications Access Policy Division, Wireline Competition Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order (Order) in WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109, FCC 11-97, released on June 21, 2011. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554.

#### I. Introduction

1. In this order we take immediate action to address potential waste in the universal service Lifeline and Link Up program (Lifeline/Link Up or the program) by preventing duplicative program payments for multiple Lifeline-supported services to the same individual. On March 4, 2011, the Commission released a Notice of Proposed Rulemaking to reform and modernize Lifeline/Link Up. In the *2011 Lifeline and Link Up NPRM*, 76 FR 16482, March 23, 2011, the Commission underscored its commitment to eliminating waste, fraud, and abuse in Lifeline/Link Up and presented a comprehensive set of proposals to better target support to needy consumers and maximize the number of Americans with access to modern communications services. We explained that, while we are considering broader reforms to the program, which we remain committed to complete as soon as possible, it may be necessary for the Commission to take action to address immediately the harm done to the Universal Service Fund (Fund) by duplicative claims for Lifeline support. To ensure that Lifeline support is limited to the amount necessary to provide access to telecommunications service to qualifying low-income consumers, we adopt measures to prevent, detect and resolve duplicative Lifeline claims for the same consumer. The near-term reforms we adopt here will reduce waste in the Fund and give the Commission flexibility to modernize the Low-Income Program in order to align it with changes in technology and market dynamics, such as the proposal we currently are reviewing to support broadband pilot projects for low-income consumers.

2. In May 2010, the Commission asked the Federal-State Joint Board on

Universal Service to review the low income program to ensure that it is effectively reaching eligible consumers and that oversight continues to be appropriately structured to minimize waste, fraud, and abuse. Meanwhile, under the Commission's oversight and pursuant to the Commission's rules, the Universal Service Administrative Company (USAC) has conducted a series of audits to test compliance with our low income program rules, including audits to determine if there was a problem with duplicative claims for Lifeline. The audits revealed that some low-income subscribers are receiving multiple Lifeline benefits contrary to our program restrictions. The agency already has taken steps to address the situation; in particular, the Office of the Managing Director (OMD) directed USAC to perform a significant number of in-depth data validations (IDVs), which are streamlined inquiries of Lifeline recipients targeted at uncovering duplicative claims for Lifeline support in select states. To ensure prompt action to eliminate duplicative Lifeline support, we not only make clear that qualifying low-income consumers may receive no more than a single Lifeline benefit; we also require an ETC, upon notification from USAC, to de-enroll any subscriber that is receiving multiple benefits in violation of that rule. Further, we direct the Wireline Competition Bureau (Bureau) to send a letter to USAC to implement an administrative process to detect and resolve duplicative claims.

#### II. Discussion

3. In this order, we amend §§ 54.401 and 54.405 of the Commission's rules to codify the restriction that an eligible low-income consumer cannot receive more than one Lifeline-supported service at a time. We also amend § 54.405 of the Commission's rules to provide that, upon a finding by USAC that a low-income consumer is the recipient of multiple Lifeline subsidies, any ETC notified that it has not been selected to continue providing Lifeline-discounted service to the consumer shall de-enroll that subscriber from participation in that ETC's Lifeline program pursuant to the procedures described below. As noted below, we do not require a total termination of Lifeline discounts to the consumer in this situation, as the consumer will be permitted to maintain a single Lifeline service with one of the ETCs. We expect USAC to continue to perform in-depth data validations targeted at uncovering duplicative claims for Lifeline support, and we direct the Bureau to send a letter to USAC to implement a process to