was a typographical error because the document in no place mentions, or suggests, an intention of removing those tolerances. Public comment is unnecessary on an action to correct such a clear inadvertent error. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

IV. Do any of the statutory and executive order reviews apply to this action?

This final rule corrects a technical error and does not otherwise change the requirements in the final rule. As a technical correction, this action is not subject to the statutory and Executive Order review requirements. For information about the statutory and Executive Order review requirements as they related to the final rule, see Unit IV. in the Federal Register of March 2, 2012.

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 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: April 18, 2012.

Lois Rossi,
Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR 180.565 is corrected as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:


2. Section 180.565 is corrected by alphabetically adding: Caneberry subgroup 13–07A; mustard, seed; onion, dry bulb; papaya; safflower, seed; and nut, tree, group 14 to the table in paragraph [a] to read as follows:

§ 180.565 Thiamethoxam; tolerances for residues.

(a) * * *

<table>
<thead>
<tr>
<th>Commodity</th>
<th>Parts per million</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caneberry subgroup 13–07A</td>
<td>0.35</td>
</tr>
<tr>
<td>Mustard, seed</td>
<td>0.02</td>
</tr>
<tr>
<td>Nut, tree, group 14</td>
<td>0.02</td>
</tr>
<tr>
<td>Onion, dry bulb</td>
<td>0.03</td>
</tr>
<tr>
<td>Papaya</td>
<td>0.40</td>
</tr>
<tr>
<td>Safflower, seed</td>
<td>0.02</td>
</tr>
</tbody>
</table>

* * * * *

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[FR Doc. 2012–10343 Filed 5–1–12; 8:45 am]

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 those engaged in the following activities:

• 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 to provide 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 EPA’s tolerance regulations at 40 CFR part 180 through the Government Printing Office’s e-CFR.
C. How 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–2011–0449 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 July 2, 2012. 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 above, EPA will accept objections and requests for hearings by mail, fax, or in person.

II. Summary of Petitioned-For Tolerances

In the Federal Register of July 20, 2011 (76 FR 43231) (FRL–8880–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E7864) by IR–4, LifeScience North America LLC, the petitioner. In the petition, IR–4 requested that 40 CFR 180.599 be amended by removing the established tolerances for residues of the miticide acequinocyl, [2-(acetoxy)-3-dodecyl-1,4-naphthalenedione] and its metabolite, 2-dodecyl-3-hydroxy-1,4-naphthoquinone, expressed as acequinocyl equivalents, in or on bean, succulent shell bean at 0.15 parts per million (ppm); caneberry subgroup 13–07A at 4.5 ppm; cherry at 0.8 ppm; cowpea, forage at 9.0 ppm; cucumber at 0.15 ppm; melon subgroup 9A at 0.06 ppm; soybean, vegetable, succulent at 0.25 ppm; fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 1.6 ppm; and berry, low growing, subgroup 13–07G at 0.4 ppm. The petition additionally requested that 40 CFR 180.599 be amended by removing the established tolerances for residues of acequinocyl in or on grape at 1.6 ppm and strawberry at 0.4 ppm, as they will be superseded by inclusion in subgroup 13–07F and 13–07G, respectively. That notice referenced a summary of the petition prepared on behalf of IR–4 by Aryta LifeScience North America LLC, the registrant, which is available in the docket, http://www.regulations.gov. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the proposed tolerance levels for several commodities. Additionally, the Agency has determined that tolerances should be established on the meat byproducts of livestock commodities and the previously established tolerances on the liver of livestock commodities should be removed. The Agency also determined that a tolerance is necessary on cowpea, hay. Finally, EPA determined that the proposed tolerance on cherry should be established as two tolerances on sweet and tart cherry. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish 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 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 residues of the pesticide, 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 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 * * *.”

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for acequinocyl including exposure resulting from the tolerances established by this action. EPA’s assessment of exposures and risks associated with acequinocyl follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies 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.

Acequinocyl exhibits low acute toxicity via the oral, dermal and inhalation routes of exposure, as well as in primary eye and primary skin irritation studies. It is not a dermal sensitizer. Acequinocyl is a known Vitamin K antagonist; therefore, it is thought to produce adverse effects by disrupting the blood coagulation system, as indicated by increased prothrombin time, increased activated partial thromboplastin time, and internal hemorrhages. In rat studies, including a subchronic oral toxicity study, a 28-day dermal toxicity study, and a chronic feeding/oncogenicity study, acequinocyl increased prothrombin and activated partial thromboplastin time, and internal hemorrhages were observed in both a rat and rabbit developmental toxicity study, a mouse subchronic/chronic toxicity study, and in a 2-generation reproduction rat study. In a combined chronic toxicity/oncogenicity study in rats, enlarged eyeballs were observed. Hepatotoxicity in the mouse was evidenced by histopathology and increased liver enzymes.

In both rat and rabbit developmental toxicity studies, acequinocyl increased the number of resorptions noted. Developmental effects (i.e., resorptions) occurred at a dose that was higher than or the same as the dose that caused maternal toxicity. In the 2-generation
reproduction toxicity study in the rat, there was no evidence of reproductive toxicity, though there were notable toxic effects observed in offspring that were not observed in adults including swollen body parts, protruding eyes, clinical signs, delays in pupil development and increased mortality occurring mainly after weaning.

There was no evidence of carcinogenic potential in either the rat or mouse carcinogenicity studies. There was also no concern for mutagenic activity as indicated by several mutagenicity studies. Therefore, acequinocyl is classified as “not likely to be carcinogenic to humans.”

Specific information on the studies received and the nature of the adverse effects caused by acequinocyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at http://www.regulations.gov in document: “Acequinocyl; Human-Health Risk Assessment for Proposed Section 3 Uses on Succulent Soybean Vegetable; Succulent Shelled Beans; Cowpea Forage; Caneberry Subgroup 13–07A; Melon Subgroup 9A; Cucumber, Cherry; Low-Growing Berry Subgroup 13–07G; and Small Fruit Vine Climbing, Except Fuzzy Kiwifruit, Subgroup 13–07F.” pp. 31–33 in docket ID number EPA–HQ–OPP–2011–0449.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide’s toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RID)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see http://www.epa.gov/pesticides/factsheets/riskassess.htm. A summary of the toxicological endpoints for acequinocyl used for human risk assessment is shown in the Table of this unit.

<table>
<thead>
<tr>
<th>Exposure/scenario</th>
<th>Point of departure and uncertainty/safety factors</th>
<th>RID, PAD, LOC for risk assessment</th>
<th>Study and toxicological effects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acute dietary (General population including infants and children).</td>
<td>N/A ........................................</td>
<td>N/A ........................................</td>
<td>An endpoint attributable to a single dose was not identified in the database.</td>
</tr>
<tr>
<td>Chronic dietary (All populations).</td>
<td>NOAEL = 2.7 mg/kg/day ...</td>
<td>Chronic RID = 0.027 mg/kg/day.</td>
<td>Carcinogenicity study in mice (18 month); LOAEL = 7.0 mg/kg/day based on the clinical chemistry and microscopic non-neoplastic lesions (brown pigmented cells and perivascular inflammatory cells in liver).</td>
</tr>
<tr>
<td></td>
<td>UF_A = 10x</td>
<td>cPAD = 0.027 mg/kg/day</td>
<td>28-day dermal study in rats;</td>
</tr>
<tr>
<td></td>
<td>UF_H = 10x</td>
<td></td>
<td>LOAEL = 1,000 mg/kg/day based on increased clotting factor times.</td>
</tr>
<tr>
<td></td>
<td>FQPA SF = 1x</td>
<td></td>
<td>Developmental toxicity study in rabbits; Maternal LOAEL = 120 mg/kg/day based on clinical signs (hematuria, reduced fecal output, body weight loss, and reduced food consumption) and gross necropsy findings (pale lungs and liver, hemorrhaging uterus, fluid in the cecum, fur in the stomach, blood stained vaginal opening, blood-stained urinary bladder contents/urine).</td>
</tr>
<tr>
<td>Dermal, short-term (1 to 30 days) .................</td>
<td>Dermal study NOAEL = 200 mg/kg/day.</td>
<td>LOC (occupational/residential) for MOE = 100.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Oral NOAEL = 60 mg/kg/day (inhalation absorption rate = 100%).</td>
<td>LOC (occupational/residential) = MOE &lt;100.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>UF_A = 10x</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>UF_H = 10x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Catholic (Oral, dermal, inhalation).</td>
<td>Classification: “Not likely to be Carcinogenic to Humans.”</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RID = reference dose. MOE = margin of exposure. LOC = level of concern. mg/kg/day = milligram/kilogram/day.

C. Exposure Assessment

1. Dietary exposure from food and feed uses. In evaluating dietary exposure to acequinocyl, EPA considered exposure under the petitioned-for tolerances as well as all existing acequinocyl tolerances in 40 CFR 180.599. EPA assessed dietary exposures from acequinocyl in food as follows:

   i. Acute exposure. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for acequinocyl; therefore, a quantitative acute dietary exposure assessment is unnecessary.

   ii. Chronic exposure. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA utilized tolerance level residues and 100 percent crop treated (PCT) information for all registered and proposed uses. The assessment also used Dietary Exposure Units (DEU) or an equivalent, if no DEU data were available. The DEU calculation is based on the dietary exposure assessment.

   The DEU calculation is: 

   DEU = dietary exposure/chronic RfD

   where the dietary exposure is the intake estimated to be received from a food product via the consumption of that product by a member of a particular population. The chronic RfD is the reference dose for the chronic dietary exposure assessment. The DEU calculation is used to determine whether the dietary exposure is acceptable.
Evaluation Model (DEEM–FCID™ ver.
7.81 default processing factors, with the
exception of those for grape juice and
raisins.

iii. Cancer. Based on the data
summarized in Unit III.A., EPA has
concluded that acequinocyl does not
pose a cancer risk to humans. Therefore,
a dietary exposure assessment for
the purpose of assessing cancer risk is
unnecessary.

iv. Anticipated residue and PCT
information. EPA did not use
anticipated residue and/or PCT
information in the dietary assessment
for acequinocyl. Tolerance level
residues and 100 PCT were assumed for
all food commodities.

2. Dietary exposure from drinking
water. The Agency used screening level
water exposure models in the dietary
exposure analysis and risk assessment
for acequinocyl in drinking water. These
simulation models take into account
data on the physical, chemical, and fate/transport characteristics of acequinocyl.
Further information regarding EPA
drinking water models used in pesticide
exposure assessment can be found at
http://www.epa.gov/oppefed1/models/
water/index.htm.

Based on the Pesticide Root Zone
Model/Exposure Analysis Modeling
System (PRZM/EXAMS) and Screening
Concentration in Ground Water (SCI–
GROW) models, the estimated drinking
water concentrations (EDWCs) of
acequinocyl for chronic exposures for
non-cancer assessments are estimated to
be 6.69 parts per billion (ppb) for
surface water and 0.0036 ppb for ground
water.

Modeled estimates of drinking water
centration and inhalation exposures to residential
handlers from these scenarios.

Residential handler exposure scenarios
are considered to be short-term only,
due to the infrequent use patterns
associated with homeowner products.
Postapplication exposure was not
anticipated for the registered residential
uses; therefore, a quantitative
postapplication assessment was not
conducted. Further information
regarding EPA standard assumptions
and generic inputs for residential
exposures may be found at http://
www.epa.gov/pesticides/trac/science/
trac6a05.pdf.

4. 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 acequinocyl to
share a common mechanism of toxicity
with any other substances, and
acequinocyl does not appear to produce
a toxic metabolite produced by other
substances. For the purposes of this
tolerance action, therefore, EPA has
assumed that acequinocyl 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 Web site at
http://www.epa.gov/pesticides/
cumulative.

D. Safety Factor for Infants and
Children

1. In general. Section 408(b)(2)(C) of
FFDCA provides that EPA shall apply
an additional tenfold (10X) 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 database on toxicity
and exposure unless EPA determines
based on reliable data that a different
margin of safety will be safe for infants
and children. This additional margin of
safety is commonly referred to as the
FQPA Safety Factor (SF). In applying
this provision, EPA either retains the
default value of 10X, or uses a different
additional safety factor when reliable
data available to EPA support the choice
of a different factor.

2. Prenatal and postnatal sensitivity.

The acequinocyl toxicity database is
adequate to evaluate potential increased
susceptibility of infants and children,
and includes developmental toxicity
studies in rats and rabbits and a 2-
generation reproduction study in rats. In
the rat prenatal developmental toxicity
study, developmental toxicity was
indicated by increased resorptions and
fetal variations. The developmental
toxicity study in rabbits identified an
increased number of complete
resorptions. In the rat 2-generation
reproductive toxicity study, both the
maternal and reproductive toxicity
LOAELs were not observed; however,
the LOAEL for parental males was 58.9/
69.2 mg/kg/day, based on hemorrhagic
effects. The offspring systemic LOAEL
was also 58.9 mg/kg/day. Though the
offspring LOAEL was similar to that of
parental males, the study noted
increased qualitative susceptibility of
pups (swollen body parts, protruding
eyes, clinical signs, delays in pupil
development and increased mortality).
These effects occurred mainly after
weaning.

3. Conclusion. EPA has determined
that reliable data show the safety of
infants and children would be
adequately protected if the FQPA SF
were reduced to 1X. That decision is
based on the following findings:

i. The toxicity database for
acequinocyl is complete except for
immunotoxicity and acute and
subchronic neurotoxicity testing. Recent
changes to 40 CFR part 158 imposed
new data requirements for
immunotoxicity testing (OPPTS
Guideline 870.7860) and acute and
subchronic neurotoxicity testing
(OPPTS Guideline 870.6200) for
pesticide registration. The toxicity
database for acequinocyl does not show
any evidence of treatment-related effects
on the immune system, and the overall
weight-of-evidence suggests that this
chemical does not directly target the
immune system. Therefore, the Agency
does not believe that conducting a
functional immunotoxicity study will
result in a lower POD than that
currently in use for overall risk
assessment, and additional UF’s are not
needed to account for a lack of this
study.

Previously, EPA concluded that
exposure to acequinocyl does not pose
a neurotoxicity concern. Acequinocyl is
a known Vitamin K antagonist;
neurotoxic compounds of similar
structure were not identified. While
there is potential evidence of
neurotoxicity or neuropathology in the
2-generation reproduction study as well
as the rat subchronic oral toxicity study,
these toxicities are not considered to be
necessary effects because they were
observed at very high doses and in the
presence of more severe systemic effects
in both studies. The Agency does not believe that conducting the acute and subchronic neurotoxicity studies will result in a lower POD than that currently used for overall risk assessment; therefore, additional UF values are not necessary.

ii. There is no evidence of increased susceptibility of rat or rabbit fetuses to in utero exposure to acequinocyl. In the 2-generation reproduction study in rats, increased qualitative susceptibility was observed in offspring. However, EPA determined that the degree of concern is low for the noted effects because the effects were observed at the same doses as parental effects, and there is a clear NOAEL established which was used in endpoint selection.

iii. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to acequinocyl in drinking water. Residential uses are not expected to result in postapplication exposure to infants and children. These assessments will not underestimate the exposure and risks posed by acequinocyl.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute and chronic dietary toxicological reference values. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. Acute risk. An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, acequinocyl is not expected to pose an acute risk.

2. Chronic risk. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to acequinocyl from food and water will utilize 55% of the cPADD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of acequinocyl is not expected.

3. Short-term risk. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Acequinocyl is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to acequinocyl.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 2,500 for the general U.S. population, and 5,600 for females 13–49 years old. Because EPA’s level of concern for acequinocyl is a MOE of 100 or below, these MOEs are not of concern.

4. Intermediate-term risk. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, acequinocyl is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPADD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for acequinocyl.

5. Aggregate cancer risk for U.S. population. Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, acequinocyl is not expected to pose a cancer risk to humans.

6. Determination of safety. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to acequinocyl residues.
that a tolerance is necessary on cowpea, hay at 18 ppm. Based on the results of the data supporting the cowpea tolerance, the appropriate tolerance for residues of acequinocyl in or on cowpea, forage is 6.0 ppm. Typically, forage is harvested before the plant has bloomed. Because it was not specified at what plant stage the product can be applied, EPA deemed it necessary to establish a tolerance on cowpea, hay as well. There is typically a 3-fold drying factor between forage and hay; therefore, EPA is establishing a tolerance for residues of acequinocyl in or on cowpea, hay at 18 ppm.

Finally, because cowpea forage and hay are significant feedstuff commodities for livestock, the maximum reasonable dietary burdens of acequinocyl were recalculated for acequinocyl using the Agency’s most recent guidance on constructing reasonably balanced livestock diets. The Agency determined that the currently established tolerance level of 0.02 ppm for residues of acequinocyl in the fat of cattle, goat, horse, and sheep are still appropriate. Furthermore, the established 0.02 ppm tolerance level in the liver of cattle, goat, horse, and sheep is appropriate. However, EPA is revising the commodity definition to meat byproducts rather than liver in order to reflect the correct terminology. Therefore, EPA determined that tolerances should be established at 0.02 ppm for the meat byproducts of cattle, goat, horse, and sheep; and the established tolerances in the liver of cattle, goat, horse, and sheep should be removed.

V. Conclusion

Therefore, tolerances are established for residues of acequinocyl, including its metabolites and degradates, in or on the commodities in the table in paragraph (a) of §180.599. Compliance with the tolerance levels specified in the table of paragraph (a) of §180.599 is to be determined by measuring only the sum of acequinocyl [2-(acetyloxy)-3-dodecyl-1,4-naphthalenedione] and its metabolite, 2-dodecyl-3-hydroxy-1,4-naphthoquinone, calculated as the stoichiometric equivalent of acequinocyl, in or on soybean, vegetable, succulent at 0.25 ppm; berry, low growing, subgroup 13–07G at 0.50 ppm; fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 1.6 ppm; bean, succulent shelled at 0.30 ppm; cowpea, forage at 6.0 ppm; cowpea, hay at 18 ppm; caneberry subgroup 13–07A at 4.0 ppm; melon subgroup 13–07B at 0.15 ppm; cherry, tart at 1.0 ppm; cherry, sweet at 0.50; cattle, meat byproducts at 0.02 ppm; goat, meat byproducts at 0.02 ppm; horse, meat byproducts at 0.02 ppm; and sheep, meat byproducts at 0.02 ppm. This regulation additionally removes established tolerances in or on grape at 1.6 ppm; strawberry at 0.40 ppm; cattle, liver at 0.02 ppm; goat, liver at 0.02 ppm; horse, liver at 0.02 ppm; and sheep, liver at 0.02 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances 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 types of 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). 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. 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).

VII. 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.


Daniel J. Rosenblatt, Acting 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:


2. Section 180.599, paragraph (a), the table is amended by removing the entries for “Cattle, liver”; “Goat, liver”; “Grape”; “Horse, liver”; “Sheep, liver”; and “Strawberry” and by alphabetically adding the following commodities to read as follows:

§ 180.599 Acequinocyl; tolerances for residues.

(a) General. * * *
DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1152

[Docket No. EP 702]

National Trails System Act and Railroad Rights-of-Way

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board or STB) is changing, clarifying, and updating some of its existing regulations and procedures regarding the use of railroad rights-of-way (ROW) for rail banking and interim trail use under the National Trails System Act (Trails Act). New rules are adopted that require the parties jointly to notify the Board when an interim trail use/rail banking agreement has been reached. The new rules also require the parties to ask the Board to vacate a trail condition and issue a replacement trail condition covering the portion of right-of-way subject to the trail use agreement if their trail use agreement covers only part of the right-of-way. In addition, the final rules clarify that a new party who assumes responsibility for a recreational trail must acknowledge that the interim trail use is subject to future reactivation of the railroad line.

DATES: This rule is effective on May 30, 2012.

ADDRESSES: Information or questions regarding this final rule should reference Docket No. EP 702 and be in writing addressed to: Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.


SUPPLEMENTARY INFORMATION: On February 16, 2011, the Board served a notice of proposed rulemaking (NPRM), in which it proposed to change, clarify, and update some of its existing regulations at 49 CFR 1152.29 regarding the use of railroad rights-of-way for rail banking and interim trail use under the Trails Act, 16 U.S.C. 1247(d).1 The Board asked for comments on a proposed rule requiring the railroad and the trail sponsor jointly to notify the Board when a trail use agreement has been reached and to notify the Board of the exact location of the right-of-way subject to the interim trail use agreement by including a map and milepost marker information. We also proposed a rule to require parties to ask the Board to vacate the Certificate of Interim Trail Use (CITU) or Notice of Interim Trail Use (NITU) when an interim trail use agreement covers only a portion of the right-of-way and request a replacement CITU/NITU to cover the portion of the right-of-way subject to the trail use agreement. Finally, we proposed a rule to clarify that a substitute trail sponsor must acknowledge that interim trail use is subject to reactivation at any time and suggested other minor modifications to clarify and update the existing regulations at 49 CFR 1152.29. In addition to these specific proposals, we invited comments on what, if any, changes to the Trails Act rules would address concerns about the Board’s regulations specifying what a state must do to satisfy the Trails Act’s assumption-of-liability requirement, and whether the current methods of providing notice to adjoining landowners could be augmented by additional methods of indirect notice that take advantage of advances in technology without creating an undue burden on rail carriers.


The enactment of the “Rails-to-Trails” provision followed a history of Congressional concern about the loss of rail corridors as a national transportation resource. See id. at 5; Birt v. STB, 90 F.3d 582, 582–83 (DC Cir. 1996). Under 16 U.S.C. 1247(d), the STB must “preserve established railroad rights-of-way for future reactivation of rail service” by prohibiting abandonment where a trail sponsor offers to assume managerial, tax, and legal responsibility for a right-of-way for use in the interim as a trail. Nat’l Wildlife Fed’n v. ICC, 850 F.2d 694, 699–702 (DC Cir. 1988). The statute provides that, if such interim use is subject to restoration or reconstruction for railroad purposes, the “interim use shall not be treated, for purposes of any law or rule of law, as an abandonment.”

The notice of proposed rulemaking was published at 76 FR 8992–95.

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