

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).

**X. 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, Aliphatic alkyl quaternaries, Food-contact sanitizers, Pesticides and pests, Quaternary ammonium compounds, Reporting and recordkeeping requirements.

Dated: August 9, 2012.

**Joan Harrigan-Farrelly,**  
*Director, Antimicrobials 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 § 180.940(a), the table is amended by revising in its entirety, the entry for “Quaternary ammonium compounds, didecyl dimethyl ammonium carbonate/didecyl dimethyl ammonium bicarbonate” which immediately precedes the pesticide chemical which reads in part “Silver ions resulting \* \* \*” to read as follows:

**§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).**

\* \* \* \* \*

(a) \* \* \*

| Pesticide chemical  | CAS Reg. No.              | Limits  |
|---|---------------------------|---|
| * * * * *   | * * * * *                 | * * * * *   |
| Quaternary ammonium compounds, didecyl dimethyl ammonium carbonate/didecyl dimethyl ammonium bicarbonate. | 148788-55-0/148812-654-1. | When ready for use, the end-use concentration of these specific ammonium compounds is not to exceed 400 ppm of active quaternary ammonium compound. |
| * * * * *   | * * * * *                 | * * * * *   |

\* \* \* \* \*  
[FR Doc. 2012-20663 Filed 8-21-12; 8:45 am]  
**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2006-0766; FRL-9354-3]

RIN 2070-AJ28

**Pesticide Tolerance Crop Grouping Program III; Revisions to General Tolerance Regulations**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the current pesticide tolerance crop grouping regulations, which allow for the establishment of tolerances for multiple related crops based on data from a representative set of crops. This rule expands upon existing stone fruit and tree nut crop groups by establishing

new crop subgroups and adding new commodities. This is the third in a series of planned crop group updates expected to be promulgated over the next several years.

**DATES:** This final rule is effective October 22, 2012.

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2006-0766 is available electronically at <http://www.regulations.gov>, or in hard copy at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Laura Nollen, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (703) 305-7390; email address: [nollen.laura@epa.gov](mailto:nollen.laura@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Executive Summary**

*A. What action is the agency taking?*

This final rule, under the provisions of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, amends EPA’s regulations governing crop group tolerances for pesticides. Specifically, the rule expands upon existing stone fruit and tree nut crop groups by adding new commodities and establishes crop subgroups for the new stone fruit crop group. This final rule is the third in a series of planned crop group updates expected to be promulgated in the next several years.

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

EPA is authorized to establish tolerances for pesticide chemical residues in food under FFDCA section 408. EPA establishes tolerances for each pesticide based on the potential risks to human health posed by that pesticide. A tolerance is the maximum permissible residue level established for a pesticide in raw agricultural produce and processed foods. The crop group regulations currently in 40 CFR 180.40 and 180.41 enable the establishment of tolerances for a group of crops based on residue data for certain crops that are representative of the group. Crop group regulations are promulgated under section 408(e)(1)(C) which authorizes EPA to establish "general procedures and requirements to implement [section 408]." 21 U.S.C. 346a(e)(1)(C).

*C. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer or food manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document might apply to them. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112).
- Pesticide manufacturing (NAICS code 32532).

*D. What are the incremental costs and benefits of this action?*

EPA prepared an analysis of the potential costs and benefits associated with the establishment of crop groupings when it issued the first proposed rule in this series of rulemakings, which published in the **Federal Register** of May 23, 2007 (77 FR 28920). This analysis is contained in "Economic Analysis Proposed Expansion of Crop Grouping Program," a copy of which is available in the docket for this action. In general, the Agency anticipates that revisions to the crop grouping program will result in no appreciable costs or negative impacts to consumers, specialty crop producers, pesticide registrants, human health, or the environment. The impacts of this rule are measured primarily on a qualitative basis. However, the rule is expected to reduce the cost of generating residue data for pesticide

registration and new food uses, because it will have the effect of reducing the number of residue chemistry studies, because fewer representative crops would need to be tested under a crop grouping scheme than would otherwise be required.

Benefits of the rule can be shown through an example of the impact of the changes to Crop Group 3 that were accomplished in a prior rulemaking (72 FR 69150, December 7, 2007). That rulemaking expanded Crop Group 3, Bulb Vegetable, from 7 to 25 crops, an increase of 18 from the original crop group. Prior to the expansion of that subgroup, adding tolerances for 18 new crops would have required at least 18 field trials at a cost of approximately \$5.4 million (assuming \$300,000 per field trial).

This action is intended to promote more extensive use of crop group tolerances; in particular, it will assist in making available lower-risk pesticides for minor crops both domestically and in countries that export food to the United States. In addition, expanding crop groups will greatly increase the efficiency of IR-4 and EPA in registering pesticides on specialty crops and reduce the administrative costs of both the IR-4 testing process and the EPA review process.

## II. The Proposed Rule

EPA published a notice of proposed rulemaking in the **Federal Register** of November 9, 2011 (76 FR 69693) (FRL-8887-8). Written comments were received from three parties in response to the proposal: A private citizen; The Embassy of the Republic of Korea; and from the American Pistachio Growers trade association.

## III. Response to Comments

In this section, EPA describes the major provisions of the proposed rule, the comments received on each provision and EPA's responses to those comments, including EPA's determination if any modification of the proposed rule is warranted.

### *A. Crop Group 12-12: Stone Fruit Group*

1. *Revise the proposed crop group name.* The final rule retains the pre-existing Crop Group 12 and adds a new group titled "Crop Group 12-12: Stone Fruit Group." Although the new group was proposed as "Crop Group 12-11: Stone Fruit Group," this change has been effected in order to reflect the correct year of establishment, which is 2012. Therefore, this final rule adds a new stone fruit group, "Crop Group 12-12: Stone Fruit Group," but retains the pre-existing Crop Group 12.

2. *Add commodities.* The final rule expands the stone fruit crop group from the existing 11 commodities to 22 commodities in Crop Group 12-12: Stone Fruit Group.

EPA received one comment from a private citizen that noted that the commodity chokecherry, which was proposed to be included in the revised Crop Group 12-12: Stone Fruit Group and Cherry subgroup 12-12A, is already established in Crop Group 13-07: Berry and Small Fruit Group and Large Shrub/Tree Berry Subgroup 13-07C. As a general practice, the Agency will avoid having a commodity as a member of more than one crop group. Accordingly, EPA revisited the proposal to include chokecherry in the revised crop group.

Although chokecherry is a stone fruit, its fruit size is closer to elderberry and mulberry, the representative commodities for Large Shrub/Tree Berry Subgroup 13-07C, rather than sweet or tart cherry, the representative commodities for Cherry Subgroup 12-12A. The diameter for chokecherry is 0.3 inches (0.8 cm), elderberry is 0.3-0.5 inches (0.8-1.3 cm), mulberry is 0.5 inches (1.3 cm), and sweet cherry is 1.4 inches (3.6 cm). Cherry, the commodity proposed as the representative for chokecherry in the revised Crop Subgroup 12-12A, has a diameter that is approximately 4.7 times larger than the chokecherry, while both elderberry and mulberry are approximately the same size as chokecherry. The application of pesticides on commodities with smaller diameters (surface area to volume ratio) often results in higher residues than on larger commodities. Therefore, the EPA has determined that it is appropriate to retain chokecherry in the previously established Crop Group 13-07 and Subgroup 13-07C and will not include chokecherry in Crop Group 12-12: Stone Fruit Group or Cherry Subgroup 12-12A.

Additionally, a comment was received from the Embassy of the Republic of Korea requesting that Chinese jujube (*Ziziphus jujuba* Mill.) be reconsidered as a member of Crop Group 12-12: Stone Fruit Group. Chinese jujube was originally included in the petition to the Agency as a proposed member of the revised stone fruit crop group. However, when EPA first reviewed the available supporting information, EPA concluded that it might be more appropriate to include Chinese jujube in a future proposed tropical fruit, edible peel crop group. The Agency noted that Chinese jujube is a member of a different plant family (*Rhamnaceae* instead of *Rosaceae*) as a rationale for this decision. Further information about the original petition

to the Agency to include Chinese jujube and EPA's previous review of the commodity can be found in the docket, identified by document ID No. EPA-HQ-OPP-2006-0766-0044.

However, after reviewing the Korean data submitted with the comment and literature from the United States, EPA finds that Chinese jujube growth and cultural practices are similar to some stone fruits, such as cherries and small varieties of plums, and should therefore be similar to other stone fruit in terms of pesticide residue exposure.

Chinese jujube is a traditional East Asian fruit crop mainly cultivated in temperate regions of China, Korea, Taiwan, and Japan. Chinese jujube has large leaf canopies shading the small sized fruits, and the fruit is botanically considered a stone fruit or "drupe." The Chinese jujube is also deciduous; the crop loses its leaves in the fall and has a dormant period in the winter, similar to other members of Crop Group 12-12: Stone Fruit Group. Additionally, the flower to harvest time as well as the fruit shape, size, and smooth skin texture is similar to the plum.

The Chinese jujube was introduced into the United States from China in 1908, and it is widely distributed in the southern states as both an ornamental crop and potential minor food crop. Improved varieties of Chinese jujube are available to growers from commercial nursery catalog companies, and there has been recent research in cultivating the crop in the United States as a potential profitable minor crop. For these reasons, EPA concludes it would be appropriate to include Chinese jujube as a member of Crop Group 12-12: Stone Fruit Group, and as a member of the Plum Subgroup 12-12C.

Finally, EPA has revised the taxonomic names for several commodities in Crop Group 12-12: Stone Fruit Group, in order to reflect the currently accepted taxonomic name or names. Based on the decision to remove chokecherry and add Chinese jujube to the revised Crop Group 12-12: Stone Fruit Group, the final rule expands Crop Group 12-12: Stone Fruit Group to include 22 commodities.

3. *Create new subgroups.* The final rule retains the proposed addition of three subgroups to Crop Group 12-12: Stone Fruit Group, and updates the names of the subgroups to reflect the correct year that the subgroups are being established. Based on the information considered, chokecherry has been removed from inclusion in Crop Subgroup 12-12A, and Chinese jujube has been added to Crop Subgroup 12-12C. Therefore, the three subgroups are being established as follows:

i. *Cherry Subgroup 12-12A.* (Representative commodities—Sweet cherry or Tart cherry). Five commodities are included in this subgroup.

ii. *Peach Subgroup 12-12B.* (Representative commodity—Peach). Two commodities are included in this subgroup.

iii. *Plum Subgroup 12-12C.* (Representative commodities—Plum or Prune plum). Fifteen commodities are included in this subgroup.

EPA adopts these proposals as final, with the changes noted in this section.

#### *B. Crop Group 14-12: Tree Nut Group*

1. *Revise the proposed crop group name.* The final rule retains the pre-existing Crop Group 14 and adds a new group titled "Crop Group 14-12: Tree Nut Group." Although the new group was proposed as "Crop Group 14-11: Tree Nut Group," this change has been effected in order to reflect the correct year of establishment, which is 2012. Therefore, this final rule adds a new tree nut group, "Crop Group 14-12: Tree Nut Group," but retains the pre-existing Crop Group 14.

2. *Add commodities.* The final rule expands the tree nut crop group from the existing 12 commodities to 39 commodities in Crop Group 14-12: Tree Nut Group.

EPA received one comment from the American Pistachio Growers trade association that supported including pistachio in the revised tree nut crop group. They noted that including pistachio will, "\* \* \* provide the pistachio growers with the ability to use crop tools necessary to combat pests," and further noted that, "\* \* \* growers, processors, marketers, and consumers \* \* \* will benefit from including pistachios in the tree nut group." EPA agrees with these comments.

EPA has revised the taxonomic names for several commodities in Crop Group 14-12: Tree Nut Group, in order to reflect the currently accepted taxonomic name or names. Therefore, EPA adopts these proposals as final, with the changes noted in this section.

#### **IV. The Final Rule**

After fully considering all comments, EPA is finalizing the proposed rule with the revisions discussed previously. Other than these revisions, EPA is finalizing the rule as proposed, based on the rationale set forth in the proposed rule.

#### **V. Implementation**

When a crop group is amended in a manner that expands or contracts its coverage of commodities, EPA will (1) retain the pre-existing crop group in 40

CFR 180.41; (2) insert the revised crop group immediately after the pre-existing crop group in the Code of Federal Regulations; and (3) title the revised crop group in a way that clearly differentiates it from the pre-existing crop group.

The revised crop group will retain roughly the same name and number as the pre-existing group, except the number will be followed by a dash and the final digits of the year established (e.g., Crop Group 8-10).

EPA will initially retain pre-existing crop groups that have been superseded by revised crop groups. EPA will not establish new tolerances under the pre-existing groups. Further, EPA plans to eventually convert tolerances for any pre-existing crop group to tolerances with coverage under the revised crop group. This conversion will be effected both through the registration review process and in the course of evaluating new uses for a pesticide. EPA requests that petitioners for tolerances address this issue in their petitions. For existing petitions for which a Notice of Filing has been published, the Agency will attempt to conform these petitions to this rule.

#### **VI. Statutory and Executive Order Reviews**

##### *A. Executive Orders 12866 and 13563*

This action is not a "significant regulatory action" under the terms of Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993) and was therefore not reviewed by the Office of Management and Budget (OMB) under Executive Orders 12866 and 13563, entitled "Improving Regulation and Regulatory Review" (76 FR 3821, January 21, 2011).

##### *B. Paperwork Reduction Act*

This rule does not impose any new information collection requirements that would require additional review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument, or form, if applicable.

The information collection activities associated with the submission of a petition to request a tolerance are already approved under OMB control number 2070-0024 (EPA ICR No. 0597.10), and the changes to the crop grouping regulations do not change the covered activities such that additional OMB review or approval is required.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 551-553, or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under the RFA, small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purpose of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule does not have any direct adverse impacts on small businesses, small non-profit organizations, or small local governments. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities" (5 U.S.C. 603 and 604). Thus, an agency may certify under section 605(b) of the RFA if the rule relieves regulatory burdens or otherwise has a positive economic effect on all of the small entities subject to the rule.

As discussed previously, this rule provides regulatory relief and regulatory flexibility. The new crop groups ease the process for pesticide manufacturers

to obtain pesticide tolerances on greater numbers of crops. Pesticides will be more widely available to growers for use on crops, particularly specialty crops.

#### D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1531-1538, EPA has determined that this final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. Accordingly, this rule is not subject to the requirements of sections 202, 203, 204, and 205 of UMRA.

#### E. Executive Order 13132

This action will not have "federalism implications" as specified in Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), because this action will not have substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Order. Thus, Executive Order 13132 does not apply to this final rule.

#### F. Executive Order 13175

This action will not have "tribal implications" as specified in Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments:" (65 FR 67249, November 9, 2000), because it will not have any effect on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Thus, Executive Order 13175 does not apply to this final rule.

#### G. Executive Order 13045

EPA interprets Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. Executive Order 13045 does not apply to this rule because this action is not designated as an "economically significant regulatory action" as defined by Executive Order 12866 (see Unit III.A.), nor does it establish an environmental standard, or otherwise have a disproportionate effect on children.

#### H. Executive Order 13211

This action is not a "significant energy action" as defined in Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have any adverse effect on the supply, distribution, or use of energy.

#### I. National Technology Transfer and Advancement Act

This action does not involve technical standards that would require the consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), 15 U.S.C. 272 note.

#### J. Executive Order 12898

This action does not have an adverse impact on the environmental and health conditions in low-income and minority communities. Therefore, this action does not involve special consideration of environmental justice related issues as specified in Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

### VII. Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.*, 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 the 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, pesticides and pests.

Dated: July 31, 2012.

**James Jones,**

*Assistant Administrator for Chemical Safety and Pollution Prevention.*

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 180.41 is amended as follows:

■ a. Redesignate paragraphs (c)(17) through (c)(26) as paragraphs (c)(18)

through (c)(27), respectively, and add a new paragraph (c)(17).  
 ■ b. Redesignate newly redesignated paragraphs (c)(21) through (c)(27) as paragraphs (c)(22) through (c)(28), respectively, and add a new paragraph (c)(21).

These amendments read as follows:  
**§ 180.41 Crop group tables.**  
 \* \* \* \* \*  
 (c) \* \* \*  
 (17) *Crop Group 12–12: Stone Fruit Group.*

(i) *Representative commodities.* Sweet cherry or Tart cherry; Peach; and Plum or Prune plum.

(ii) *Commodities.* The following Table 1 is a list of all commodities included in Crop Group 12–12.

TABLE 1—CROP GROUP 12–12: STONE FRUIT GROUP

| Commodities  | Related crop subgroup |
|--|-----------------------|
| Apricot ( <i>Prunus armeniaca</i> L.)  | 12–12C                |
| Apricot, Japanese ( <i>Prunus mume</i> Siebold & Zucc.)  | 12–12C                |
| Capulin ( <i>Prunus serotina</i> Ehrh. var. <i>salicifolia</i> (Kunth) Koehne)                   | 12–12A                |
| Cherry, black ( <i>Prunus serotina</i> Ehrh.)  | 12–12A                |
| Cherry, Nanking ( <i>Prunus tomentosa</i> Thunb.)  | 12–12A                |
| Cherry, sweet ( <i>Prunus avium</i> (L.) L.)   | 12–12A                |
| Cherry, tart ( <i>Prunus cerasus</i> L.)   | 12–12A                |
| Jujube, Chinese ( <i>Ziziphus jujuba</i> Mill.)  | 12–12C                |
| Nectarine ( <i>Prunus persica</i> (L.) Batsch var. <i>nucipersica</i> (Suckow) C.K. Schneid)     | 12–12B                |
| Peach ( <i>Prunus persica</i> (L.) Batsch var. <i>persica</i> )                                  | 12–12B                |
| Plum ( <i>Prunus domestica</i> L. subsp. <i>domestica</i> )                                      | 12–12C                |
| Plum, American ( <i>Prunus americana</i> Marshall)   | 12–12C                |
| Plum, beach ( <i>Prunus maritima</i> Marshall)   | 12–12C                |
| Plum, Canada ( <i>Prunus nigra</i> Aiton)  | 12–12C                |
| Plum, cherry ( <i>Prunus cerasifera</i> Ehrh.)   | 12–12C                |
| Plum, Chickasaw ( <i>Prunus angustifolia</i> Marshall)   | 12–12C                |
| Plum, Damson ( <i>Prunus domestica</i> L. subsp. <i>insititia</i> (L.) C.K. Schneid.)            | 12–12C                |
| Plum, Japanese ( <i>Prunus salicina</i> Lindl.; <i>P. salicina</i> Lindl. var. <i>salicina</i> ) | 12–12C                |
| Plum, Klamath ( <i>Prunus subcordata</i> Benth.)   | 12–12C                |
| Plum, prune ( <i>Prunus domestica</i> L. subsp. <i>domestica</i> )                               | 12–12C                |
| Plumcot ( <i>Prunus</i> hybr.)   | 12–12C                |
| Sloe ( <i>Prunus spinosa</i> L.)   | 12–12C                |
| Cultivars, varieties, and/or hybrids of these.   |                       |

(iii) *Crop subgroups.* The following Table 2 identifies the crop subgroups for Crop Group 12–12, specifies the representative commodities for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 12–12: SUBGROUP LISTING

| Representative commodities                   | Commodities  |
|--|--|
| <b>Crop subgroup 12–12A. Cherry subgroup</b> |  |
| Cherry, sweet or Cherry, tart                | Capulin; Cherry, black; Cherry, Nanking; Cherry, sweet; Cherry, tart; cultivars, varieties, and/or hybrids of these.   |
| <b>Crop subgroup 12–12B. Peach subgroup</b>  |  |
| Peach  | Peach; Nectarine; cultivars, varieties, and/or hybrids of these.   |
| <b>Crop subgroup 12–12C. Plum subgroup</b>   |  |
| Plum or Prune plum                           | Apricot; Apricot, Japanese; Jujube, Chinese; Plum; Plum, American; Plum, beach; Plum, Canada; Plum, cherry; Plum, Chickasaw; Plum, Damson; Plum, Japanese; Plum, Klamath; Plumcot; Plum, prune; Sloe; cultivars, varieties, and/or hybrids of these. |

\* \* \* \* \*  
 (21) *Crop Group 14–12. Tree Nut Group.*

(i) *Representative commodities.*  
 Almond and Pecan.

(ii) *Commodities.* The following is a list of all commodities included in Crop Group 14–12.

CROP GROUP 14–12: TREE NUT GROUP

- African nut-tree (*Ricnodendron heudelotii* (Baill.) Heckel)
- Almond (*Prunus dulcis* (Mill.) D.A. Webb)
- Beechnut (*Fagus grandifolia* Ehrh.; *F. sylvatica* L.)
- Brazil nut (*Bertholletia excelsa* Humb. & Bonpl.)
- Brazilian pine (*Araucaria angustifolia* (Bertol.) Kuntze)
- Bunya (*Araucaria bidwillii* Hook.)

## CROP GROUP 14–12: TREE NUT GROUP—Continued

Bur oak (*Quercus macrocarpa* Michx.)  
 Butternut (*Juglans cinerea* L.)  
 Cajou nut (*Anacardium giganteum* Hance ex Engl.)  
 Candlenut (*Aleurites moluccanus* (L.) Willd.)  
 Cashew (*Anacardium occidentale* L.)  
 Chestnut (*Castanea crenata* Siebold & Zucc.; *C. dentata* (Marshall) Borkh.; *C. mollissima* Blume; *C. sativa* Mill.)  
 Chinquapin (*Castaneapumila* (L.) Mill.)  
 Coconut (*Cocos nucifera* L.)  
 Coquito nut (*Jubaea chilensis* (Molina) Baill.)  
 Dika nut (*Irvingia gabonensis* (Aubry-Lecomte ex O'Rorke) Baill.)  
 Ginkgo (*Ginkgo biloba* L.)  
 Guiana chestnut (*Pachira aquatica* Aubl.)  
 Hazelnut (Filbert) (*Corylus americana* Marshall; *C. avellana* L.; *C. californica* (A. DC.) Rose; *C. chinensis* Franch.)  
 Heartnut (*Juglans ailantifolia* Carrière var. *cordiformis* (Makino) Rehder)  
 Hickory nut (*Carya cathayensis* Sarg.; *C. glabra* (Mill.) Sweet; *C. laciniosa* (F. Michx.) W. P. C. Barton; *C. myristiciformis* (F. Michx.) Elliott; *C. ovata* (Mill.) K. Koch; *C. tomentosa* (Lam.) Nutt.)  
 Japanese horse-chestnut (*Aesculus turbinata* Blume)  
 Macadamia nut (*Macadamia integrifolia* Maiden & Betche; *M. tetraphylla* L.A.S. Johnson)  
 Mongongo nut (*Schinziophyton rautanenii* (Schinz) Radcl.-Sm.)  
 Monkey-pot (*Lecythis pisonis* Cambess.)  
 Monkey puzzle nut (*Araucaria araucana* (Molina) K. Koch)  
 Okari nut (*Terminalia kaernbachii* Warb.)  
 Pachira nut (*Pachira insignis* (Sw.) Savigny)  
 Peach palm nut (*Bactris gasipaes* Kunth var. *gasipaes*)  
 Pecan (*Carya illinoensis* (Wangenh.) K. Koch)  
 Pequi (*Caryocar brasiliense* Cambess.; *C. villosum* (Aubl.) Pers; *C. nuciferum* L.)  
 Pili nut (*Canarium ovatum* Engl.; *C. vulgare* Leenh.)  
 Pine nut (*Pinus edulis* Engelm.; *P. koraiensis* Siebold & Zucc.; *P. sibirica* Du Tour; *P. pumila* (Pall.) Regel; *P. gerardiana* Wall. ex D. Don; *P. monophylla* Torr. & Frém.; *P. quadrifolia* Parl. ex Sudw.; *P. pinea* L.)  
 Pistachio (*Pistacia vera* L.)  
 Sapucaia nut (*Lecythis zabucaja* Aubl.)  
 Tropical almond (*Terminalia catappa* L.)  
 Walnut, black (*Juglans nigra* L.; *J. hindsii* Jeps. ex R. E. Sm.; *J. microcarpa* Berland.)  
 Walnut, English (*Juglans regia* L.)  
 Yellowhorn (*Xanthoceras sorbifolium* Bunge)  
 Cultivars, varieties, and/or hybrids of these

\* \* \* \* \*

[FR Doc. 2012–20667 Filed 8–21–12; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 268**

[EPA–HQ–RCRA–2010–0851; FRL–9715–3]

**Land Disposal Restrictions: Site-Specific Treatment Variance for Hazardous Selenium-Bearing Waste Treated by U.S. Ecology Nevada in Beatty, NV****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA (or the Agency) is granting a site-specific treatment variance, under the Land Disposal Restrictions program, to U.S. Ecology Nevada in Beatty, Nevada for the treatment of a hazardous selenium-bearing waste generated by the Owens-Brockway Glass Container Company in Vernon, California. The Agency has determined that the chemical properties of the waste generated by the Owens-

Brockway Glass Container Corporation differ significantly from the waste used in developing the Land Disposal Restrictions treatment standard for selenium-bearing wastes, and as such cannot be treated to the specified treatment level of 5.7 mg/L for selenium, as measured by the Toxicity Characteristic Leaching Procedure (TCLP). The site-specific treatment variance provides an alternative treatment standard of 59 mg/L TCLP for selenium, with the condition that the waste-to-reagent ratio not exceed 1:0.45.

**DATES:** This final rule will be effective August 22, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2010–0851. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information may not be publicly available, because for example, it may be Confidential Business Information (CBI) or other information, the disclosure of which is restricted by statute. Certain 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 electronically through <http://www.regulations.gov> or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. A reasonable fee may be charged for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** For more information on this rulemaking, contact Jesse Miller, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery (MC 5304 P), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone (703) 308–1180; fax (703) 308–0522; or [miller.jesse@epa.gov](mailto:miller.jesse@epa.gov).

**SUPPLEMENTARY INFORMATION:****A. Does this action apply to me?**

This action applies only to U.S. Ecology Nevada located in Beatty, Nevada.

**B. Table of Contents**

I. Background