



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2012-0441; FRL-9386-5]

Difenzoquat; Order Revoking Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Order of revocation.

SUMMARY: EPA is revoking all the tolerances for the pesticide difenzoquat. EPA previously required that data be submitted to support these tolerances and that notice of intent to submit that data be submitted to the Agency by March 19, 2013. No notice of intent to provide the required data was submitted.

DATES: This order of revocation is effective [*insert date of publication in the Federal Register*]. Objections and requests for hearings must be received on or before [*insert date 60 days after date of publication in the Federal Register*], and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.B. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2012-0441, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC 20460-0001. 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: Joseph Nevola, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8037; email address: *nevola.joseph@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. 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 applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I file an objection or hearing request?

Under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this order and may also request a hearing on those objections. You must file your objection or request a hearing on this order 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-2012- 0441 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 [insert date 60 days after date of publication in the **Federal Register**]. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2012- 0441, by one of the following methods:

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail*: OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Hand Delivery*: To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.htm>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. EPA's Order to Revoke Tolerances

A. *What action is the Agency taking?*

Pursuant to FFDCFA section 408(f), EPA determined that additional data are reasonably required to support the continuation of the tolerances for difenzoquat which are codified at 40 CFR 180.369. In the **Federal Register** of December 19, 2012 (77 FR 75037) (FRL-9372-9), EPA issued a final data call-in order in follow-up to a proposed order which published in the **Federal Register** on July 6, 2012 (77 FR 39962) (FRL-9352-9). In the final data call-in order of December 19, 2012, EPA required the submission of various data to support the continuation of the tolerances for the pesticide difenzoquat. Because there are currently no domestic registrations for difenzoquat, these tolerances are referred to as "import tolerances." According to the terms of the order, if the Agency did not receive a section 408(f) Response Form identifying a person who agrees to submit the required data within 90 days after publication of the final order (March 19, 2013), EPA would proceed to revoke the difenzoquat tolerances at 40 CFR 180.369.

Subsequent to the final data call-in order of December 19, 2012, EPA received no submissions of the "section 408(f) Order Response" form within the required 90-day period. Therefore, in this order, EPA is revoking all the tolerances for the pesticide difenzoquat in 40 CFR 180.369, which includes tolerances for the following commodities: barley, bran; barley, grain; barley, straw; cattle, fat; cattle, meat; cattle, meat byproducts; goat, fat; goat, meat; goat, meat byproducts; hog, fat; hog, meat; hog, meat byproducts; horse, fat; horse, meat; horse, meat byproducts; poultry, fat; poultry, meat; poultry, meat byproducts; sheep, fat; sheep, meat; sheep, meat byproducts; wheat,

bran; wheat, grain; wheat, shorts; and wheat, straw.

This tolerance revocation order for difenzoquat 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.

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

Under FFDCa section 408(f)(2), if a submission required by an order issued pursuant to section 408(f)(1) is not received by the date specified in that order, EPA may by order published in the **Federal Register** revoke the tolerance that is the subject of that order.

C. When do these actions become effective?

As stated in the **DATES** section, this order is effective on the date of publication in the **Federal Register**. An order issued under FFDCa section 408(f)(2) shall take effect upon publication unless the regulation or order specifies otherwise. However, the Agency may stay the effectiveness of the regulation or order if, after issuance of such regulation or order, objections are filed with respect to such regulation or order pursuant to FFDCa section 408(g)(2). (21 U.S.C. 346a(g)(1)).

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this order, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCa section 408(1)(5), as established by the Food Quality Protection Act (FQPA). Under this unit, any residues of the pesticide in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a

time and in a manner that was lawful under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

III. Statutory and Executive Order Reviews

This action, which revokes tolerances due to a failure to comply with a data call-in order, is in the form of an order and not a rule. (21 U.S.C. 346a (f)(1)(C)). Under the Administrative Procedure Act (APA), orders are expressly excluded from the definition of a rule. (5 U.S.C. 551(4)). Accordingly, the regulatory assessment requirements imposed on a rulemaking do not apply to this action, as explained further in the following discussion.

A. Executive Order 12866 and Executive Order 13563

Because this order is not a “regulatory action” as that term is defined in Executive Order 12866, entitled “*Regulatory Planning and Review*” (58 FR 51735, October 4, 1993), this action is not subject to review 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 action does not impose additional burdens that require approval by OMB under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). The information collection activities associated with the prior order requesting data from any party

interested in supporting the tolerances being revoked today were approved by OMB under OMB Control No. 2070-0174, and are identified by EPA ICR No. 2288.01.

Burden is defined at 5 CFR 1320.3(b). Under the PRA, 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.

C. Regulatory Flexibility Act

Since this order is not a rule under the APA (5 U.S.C. 551(4)), and does 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.

D. Unfunded Mandates Reform Act; and Executive Orders 13132 and 13175

This order 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 FFDCFA. 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 order. In addition, this order does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531-1538).

E. Executive Orders 13045, 13211, and 12898

As indicated previously, this action is not a “regulatory action” as defined by Executive Order 12866. As a result, this action is not subject to Executive Order 13045, entitled “*Protection of Children from Environmental Health Risks and Safety Risks*” (62 FR 19885, April 23, 1997), and Executive Order 13211 entitled “*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*” (66 FR 28355, May 22, 2001). In addition, this order also does not require any special considerations under Executive Order 12898, entitled “*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*” (59 FR 7629, February 16, 1994).

F. National Technology Transfer and Advancement Act

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 (NTTAA), (15 U.S.C. 272 note).

IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, does not apply because this action is not a rule as that term is defined in 5 U.S.C. 804(3).

List of Subjects in 40 CFR Part 180

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

Dated: May 7, 2013.

Steven Bradbury,
Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180--TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

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

Authority: 21 U.S.C. 321(q), 346a and 371.

§180.369 [Removed]

2. Remove §180.369.