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## II. What Action is the Agency Taking?

In a **Federal Register** Notice published on May 24, 2002, (67 FR 36534) (FRL-6834-8) EPA established a new § 180.950 to list the pesticide chemicals that are exempted from the requirement of a tolerance based on the Agency's determination that these chemicals are of "minimal risk." As the first step in populating this section, the Agency shifted the existing tolerance exemptions for commonly consumed food commodities, animal feed items, and edible fats and oils to this section.

In a proposed rule published in the **Federal Register** on November 20, 2002, (67 FR 70036) (FRL-7278-3) the Agency proposed to shift almost 90 tolerance exemptions for certain inert ingredients that have been classified by the Agency as List 4A, "minimal risk" to 40 CFR 180.950. This action merely moves certain tolerance exemptions from one section of the CFR to another section: no existing tolerance exemptions are lost or expanded, and no new tolerance exemptions are added, as a result of this action.

Four comments were received in response to the publication of the proposed rule. All four sets of comments concerned only the group of chemical substances referred to as "weathered materials." "Weathered materials" can be described as the materials in and of the earth, that is, rocks and minerals. This would include substances such as various clays, limestone, marble, graphite, gypsum, various silicates and various oxides. These "weathered materials" comprise over 40 tolerance exemptions. The Agency will address these comments at a later date through the publication of another proposed rule. No action on the Agency's prior proposal regarding weathered materials is being taken in this final rule.

However, no comments were received on shifting any of the other 44 tolerance exemptions such as the various citrate compounds or the various cellulose compounds. The decision documents supporting the minimal risk, List 4A classification were placed in the e-dockets for the proposed rule. Based on the information contained in those documents and in the proposed rule, and for the reasons explained above, 44 tolerance exemptions are being shifted to 40 CFR 180.950.

As explained in the proposed rule, for some of the chemical substances, EPA is making minor changes to the chemical names that were previously used, i.e., EPA is using different naming conventions for the chemicals to be listed in 40 CFR 180.950. Additionally, the Agency has attempted to identify each of the listed substances using the Chemical Abstracts Service Registry Number (CAS Reg. No.). The CAS Reg. No. provides one of the most distinct and universally accepted means of identifying chemical substances. The lack of a CAS Reg. No. will not preclude the Agency from including substances in 40 CFR 180.950. Generally, there will be only one CAS Reg. No. per listed substance; however, it is possible that more than one CAS Reg. No. may be appropriate for some substances, such as when there is both a hydrated and anhydrous form. EPA has both broadened and consolidated names to account for differing terminologies and current usage status.

The tolerance exemptions shifted from 40 CFR 180.2 to 40 CFR 180.950 are: Citric acid, fumaric acid, and sodium chloride.

The following tolerance exemptions are shifted from 40 CFR 180.1001(c): Animal glue; calcium citrate;  $\alpha$ -cellulose; citric acid; coffee grounds; corn dextrin; dextrin; guar gum; hydroxyethyl cellulose; hydroxypropyl

methylcellulose; lecithin; licorice root; methylcellulose; potassium chloride; potassium citrate; silica, hydrated; silicon dioxide, fumed, amorphous; sodium acetate; sodium alginate; sodium carboxymethylcellulose; sodium chloride; and xanthan gum.

The following tolerance exemptions are shifted from 40 CFR 180.1001(d): Cellulose acetate; hydroxypropyl cellulose; locust bean gum; paper fiber, deinked or recycled; paper fiber, produced by the kraft (sulfate) or sulfite pulping processes; silicon dioxide, fumed, amorphous; soapbark (quillaja); sodium citrate, and wool fat (anhydrous lanolin).

The following tolerance exemptions are shifted from 40 CFR 180.1001(e): Castor oil, u.s.p.;  $\alpha$ -cellulose; citric acid; dextrin; methyl cellulose; potassium citrate; silica, amorphous, fumed (crystalline free)...; sodium carboxymethylcellulose, and xanthan gum.

The tolerance exemptions in § 180.1036 (hydrogenated castor oil) are also being shifted to § 180.950.

Because today's action merely moves certain tolerance exemptions from one section of the CFR to another section, it will have no substantive or procedural effect on the moved tolerance exemptions. No tolerance exemptions are lost as a result of this action.

## B. What is the Agency's Authority for Taking This Action?

This proposed rule is issued under section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104-170). Section 408(e) of FFDCA authorizes EPA to establish, modify, or revoke tolerances, or exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities and processed foods.

## III. Statutory and Executive Order Reviews

This final rule merely shifts existing exemptions in 40 CFR part 180. This has no substantive effect and hence causes no impact. The Agency is acting on its own initiative under FFDCA section 408(e) in shifting these existing tolerance exemptions to a new section. 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 rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions*