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II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of August 1, 2001 (66 FR 39705) (FRL-6786-4), EPA issued a proposed rule to revoke all tolerances for oxadiazon and tetradifon. Also, the August 1, 2001 proposal provided a 60-day comment period which invited public comment for consideration and for support of tolerance retention under FFDCA standards.

This final rule revokes all FFDCA tolerances for residues of the herbicide oxadiazon because this pesticide active ingredient is not registered under FIFRA for food uses. The tolerances revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. Oxadiazon is no longer used on the commodities associated with those tolerances within the United States. No one commented that there was a need for EPA to retain the tolerances to cover oxadiazon residues in or on imported foods. However, EPA did receive a comment regarding the need for the Agency to retain tetradifon tolerances.

EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of these conditions applies, as follows:

1. Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance is no longer needed.

3. The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

Today's final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. In response to the proposal published in the **Federal Register** of August 1, 2001 (66 FR 39705), EPA did receive comment regarding the need to retain tetradifon tolerances, as follows:

1. *Tetradifon*. EPA received a comment from Uniroyal Chemical, who requested the retention of tetradifon tolerances. Uniroyal noted that it had submitted certain studies to EPA in 1998 and 1996 and awaits determination of their acceptability by the Agency, and until those determinations are made cannot decide whether to support the tetradifon tolerances. Uniroyal added it would support two tolerances to allow importation of those tetradifon-treated food commodities, but did not name them.

In follow-up communication, Uniroyal expressed interest in maintaining tolerances for apples, citrus, and some vegetables, but did not commit to support any tetradifon tolerances. Also, in follow-up communication, Uniroyal acknowledged that it has not pursued correspondence with EPA since 1998 regarding disposition of the submitted studies nor submitted a registration petition.

Agency Response. EPA is still evaluating the issues described in the comment. Therefore, EPA is not taking final action on the tetradifon tolerances in 40 CFR 180.174 at this time, but may do so after evaluation of these issues.

No comments were received by the Agency concerning oxadiazon.

2. *Oxadiazon*. There have been no active registrations for oxadiazon concerning food uses since 1991. In a confirmatory letter to EPA, dated January 24, 2001, the registrant maintained its previous position that it will not support the 16 oxadiazon tolerances; although, it is supporting the continued (noncrop) use of oxadiazon for turf and ornamentals. Therefore, EPA is revoking all the tolerances in 40 CFR 180.346 for the combined residues of the herbicide oxadiazon and its

metabolites in or on milk; cattle, fat; cattle, meat; cattle, meat byproducts; goats, fat; goats, meat; goats, meat byproducts; hogs, fat; hogs, meat; hogs, meat byproducts; horses, fat; horses, meat; horses, meat byproducts; sheep, fat; sheep, meat; and sheep, meat byproducts. The Agency is removing 40 CFR 180.346 in its entirety.

In addition, because EPA determined on April 21, 2002 that there is no reasonable expectation of finite residues of oxadiazon and its metabolites in or on meat, milk, poultry, and egg commodities, the 16 associated tolerances for livestock commodities were considered by the Agency to no longer be needed under 40 CFR 180.6(a)(3). Therefore, on June 3, 2002, the Agency considered the FQPA safety finding to be met and counted the 16 oxadiazon livestock tolerances as reassessed. Copies of these Agency memoranda will be placed in the public docket.

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

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

C. When Do These Actions Become Effective?

These actions become effective 90 days following publication of this final rule in the **Federal Register**. EPA has delayed the effectiveness of these revocations for 90 days following publication of this final rule to ensure that all affected parties receive notice of EPA's actions. Consequently, the effective date is April 24, 2003. For this final rule, tolerances that were revoked because registered uses did not exist concerned uses which have been canceled for more than a year. Therefore, commodities containing