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## II. Authority

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

This direct final rule is issued pursuant to section 408(e) of FFDCA, as amended by the FQPA (21 U.S.C. 346a(e)). Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or tolerance exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA. If food containing pesticide residues is found to be adulterated, the food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342(a)).

### B. Why is EPA Issuing this as a Direct Final Rule?

EPA is issuing this action as a direct final rule without prior proposal because the Agency believes that this action is not controversial and is not likely to result in any adverse comments, inasmuch as this action simply shifts existing tolerance exemptions to a new section in 40 CFR part 180. It will not alter the quantity or nature of residues that might lawfully be present in food or feed.

This rule is effective on May 27, 2003 without further notice, unless EPA receives adverse comment by March 28, 2003. If, however, EPA receives a relevant adverse comment during the comment period, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will also publish a notice of proposed rulemaking in a future edition of the **Federal Register**. EPA will address the comments on the direct final rule as part of that proposed rulemaking.

## III. What Action is the Agency Taking?

In the **Federal Register** of May 24, 2002, (67 FR 36525) (FRL-6834-2) the Agency published a direct final rule establishing a new section 40 CFR 180.960 to contain exemptions from the requirement of a tolerance for polymers that under reasonably foreseeable circumstances will pose no appreciable risks to human health.

The Agency is now shifting to 40 CFR 180.960 those existing tolerance exemptions for certain polymers that have previously been determined to meet the criteria of a low risk polymer. All of these polymers can be used as an inert ingredient in any pesticide product including antimicrobial pesticide products providing that such use is in accordance with good agricultural or manufacturing practices. As part of this shifting of tolerance exemptions from one part of the CFR to another, the Agency has combined as appropriate two or more chemical names under a single name and has eliminated duplicative entries.

## IV. Statutory and Executive Order Reviews

This direct final rule merely reorganizes existing exemptions in 40 CFR part 180, shifting them from one section to another within the same part. The Agency is acting on its own initiative under FFDCA section 408(e) in shifting these existing tolerance exemptions to a new section of part 180. This direct final rule has no substantive effect, and is not expected to have any adverse impact, or otherwise impose any new requirements. As such, this action is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB), under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

This direct 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.

Under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. As noted above, this action will have no substantive or procedural effect on the tolerance exemptions affected, and therefore, will not adversely impact small entities. However, by grouping tolerance exemptions for polymers that have been determined to be low risk in one location in the CFR, this action will make it easier for small entities to

efficiently use EPA's tolerance regulations.

Since this direct final rule simply shifts existing tolerance exemptions within part 180 without imposing any requirements, it 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) (Public Law 104-4).

In addition, this action will not have a substantial direct effect on 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 Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). This direct final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, this direct final rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

Since this direct final rule is not a "significant regulatory action" as defined by Executive Order 12866, it does not require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), and is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

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).

Nor does it require any special considerations under Executive Order 12898 entitled *Federal Actions to Address Environmental Justice in*