



## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2011-0104; FRL-9363-1]

### 40 CFR Part 180

#### Endosulfan; Pesticide Tolerance

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

**ACTION:** Order Reestablishing Tolerance.

**SUMMARY:** EPA has granted an objection to the timing of the revocation of the tolerance for endosulfan on tea. The objection was filed by the Chamber of Commerce of Zhejiang International Tea Industry. With this document, EPA is amending the tolerances for endosulfan to reestablish a time-limited tolerance for residues on tea.

**DATES:** This document is effective [*insert date of publication in the Federal Register*].

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2011-0104, 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:** Andrea Mojica, Pesticide Reevaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0122; fax number: (703) 308-8005; email address: *mojica.andrea@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

In this document EPA grants an objection by the Chamber of Commerce of Zhejiang International Tea Industry to the timing of a revocation action concerning the endosulfan tolerance on tea. This action may also be of interest to agricultural producers, food manufacturers, or pesticide manufacturers. 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 Get Copies of this Document and Other Related Information?*

The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2011-0104, 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>. The electronic version of EPA's tolerance regulations in 40 CFR part 180 are available through the Government Printing Office's e-CFR site at <http://www.gpoaccess.gov/ecfr>.

## **II. Response to Objection**

### *A. What Action is the Agency Taking?*

In this order, EPA grants the objection of the Chamber of Commerce of Zhejiang International Tea Industry (“Zhejiang Chamber of Commerce”) to the immediate revocation of the tolerance. On May 4, 2011, EPA proposed to revoke all tolerances for endosulfan (76 FR 25281) (FRL-8870-4). Many of the tolerances were not proposed to be revoked immediately but had proposed revocation dates from 1 to 5 years in the future to allow phase-out of endosulfan. However, as to the tea tolerance, EPA proposed immediate revocation based upon the fact that “[t]here are no active registrations for use of endosulfan in the United States for growing tea and there may never have been one.” EPA concluded that “these tolerances are no longer needed and should be revoked.” EPA received no comments on proposed revocation of the tea tolerance and accordingly, the tolerance was revoked on September 14, 2011 (76 FR 56648) (FRL-8883-9).

The Zhejiang Chamber of Commerce filed a timely objection to EPA's action noting that endosulfan has been used in China tea production. While the Zhejiang Chamber of Commerce agrees with the phase out of endosulfan, it asserts that for tea,

similar to other crops, additional time is needed to transition to an alternative to endosulfan. The Zhejiang Chamber of Commerce seeks a phase out period not to exceed 5 years. Finally, the Zhejiang Chamber of Commerce indicates that it did not comment on the proposed rule because EPA failed to follow established procedures for providing notice of such proposed actions under the World Trade Organization (WTO). The Zhejiang Chamber of Commerce objection can be found in docket number EPA-HQ-OPP-2011-0104 at <http://www.regulations.gov>.

After having reviewed this objection, EPA finds that it erred in basing its immediate revocation of the tea tolerance on the fact that there are no registrations for use of endosulfan on tea in the United States. Tea is not widely grown in the United States and the tea tolerance served as an “import” tolerance to allow importation of tea grown in foreign countries to the United States. However, EPA believes that revocation, albeit on a different timeframe, is still appropriate because the objector has indicated that China intends to phase out use of endosulfan on tea.

Accordingly, consistent with the phase out of tolerances for pineapple, strawberry, animal ear tag and vegetables grown for seed uses, EPA is granting the objection and re-instating the tea tolerance with an expiration date of July 31, 2016. This date, which is consistent with the objections, allows time for phase out of endosulfan and transition to alternatives as well as for treated commodities to clear the channels of trade. Although EPA would not normally consider an objection that could have been, but was not, filed as a comment, EPA believes an exception is appropriate here given EPA’s failure to provide proper notice of the proposed revocation under WTO procedures to the foreign community.

The granting of this objection is in response to an objection calling to EPA's attention an error in the basis for the original action to revoke the tea tolerance. Granting the objection does not indicate that EPA has re-examined the endosulfan tea tolerance and found it to be in accord with the statutory standards of the Federal Food, Drug and Cosmetic Act (FFDCA) section 408. EPA may in the future initiate revocation proceedings as to this tolerance on other grounds.

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

Final rules issued under section 408(d)(4)(i) are subject to a statutorily-created administrative review process (21 U.S.C. 346a(g)(2)). Any person may file objections to a section 408(d)(4)(iii) order with EPA and request a hearing on those objections. EPA is required by section 408(g)(2)(C) to issue a final order resolving the objections to the section 408(d)(4)(iii) order (21 U.S.C. 346a(g)(2)(C)).

### **III. Regulatory Assessment Requirements**

This action announces the Agency's final order regarding objections filed under section 408 of FFDCA. As such, this action is an adjudication and not a rule. Under the Administrative Procedures Act (APA), orders are expressly excluded from the definition of a rule. (5 U.S.C. 551(4)). The regulatory assessment requirements imposed on rulemaking do not, therefore, apply to this action.

*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 contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), *44 U.S.C. 3501 et seq.*

*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 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 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: January 24, 2013.

Steven Bradbury,

*Director, 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. Section 180.182 is amended as follows:

i. Redesignate paragraph (a) introductory text and the table as paragraph (a)(1);

and

ii. Add paragraph (a)(2).

The addition reads as follows:

**§ 180.182 Endosulfan; tolerances for residues.**

(a) \* \* \*

(2) A tolerance is established for the combined residues of the insecticide endosulfan, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2, 4,3-benzodioxathiepin-3-oxide (alpha and beta isomers), and its metabolite endosulfan sulfate, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2, 4,3-benzodioxathiepin-3,3-dioxide in or on the commodity in the following table:

Commodity	Parts per million	Expiration/revocation date
Tea, dried	24 (reflecting less than 0.1 ppm in beverage tea) resulting from application of the insecticide to growing tea	7/31/16

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