ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2013-0574; FRL-9920-62]

*Bacillus subtilis* strain IAB/BS03; Exemption from the Requirement of a Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of the fungicide *Bacillus subtilis* strain IAB/BS03 in or on all food commodities when used in accordance with label directions and good agricultural practices. Investigaciones y Aplicaciones Biotechnologicas (IAB, S.L.) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus subtilis* strain IAB/BS03.

**DATES:** This regulation 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.C. of the SUPPLEMENTARY INFORMATION).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2013-0574 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), West William Jefferson Clinton 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: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: BPPDFRNotices@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 Get Electronic Access to Other Related Information?

C. How Can I File an Objection or Hearing Request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation 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-2013-0574 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-2013-0574, 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.html](http://www.epa.gov/dockets/contacts.html).

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

### II. Background and Statutory Findings


In the *Federal Register* of December 3, 2014 (79 FR 71713) (FRL–9919–58), EPA reopened the comment period on this petition (PP 3F8177) for 30 days to allow comments on the petition. Two comments received in response to the notice of filing. EPA’s response is located in Unit III.

### III. Final Rule

#### A. EPA’s Safety Determination

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is “safe.” Section 408(c)(2)(A)(ii) of FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure...
to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption, and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....” Additionally, FFDCA section 408(b)(2)(D) requires that the Agency consider “available information concerning the cumulative effects of (a particular pesticide's)... residues and other substances that have a common mechanism of toxicity.”

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure to *Bacillus subtilis* strain IAB/BS03. EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. A full explanation of the data upon which EPA relied and a summary of its risk assessment based on that data can be found within October 15, 2014 document entitled “Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for *Bacillus subtilis* strain IAB/BS03.” This document, as well as other relevant information, is available in the docket for this action as described under ADDRESSES.
Based upon that evaluation, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Bacillus subtilis* strain IAB/BS03. Therefore, EPA is establishing an exemption from the requirement of a tolerance for residues of *Bacillus subtilis* strain IAB/BS03 in or on all food commodities when used in accordance with label directions and good agricultural practices.

**B. Analytical Enforcement Methodology**

An analytical method is not required for enforcement purposes for the reasons contained in the document entitled, “Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for *Bacillus subtilis* strain IAB/BS03” and because the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

**C. International Residue Limits**

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), which is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party.

The Codex has not established a MRL for *Bacillus subtilis* strain IAB/BS03.

**D. Response to Comments**

Two general comments were filed opposing the establishment of any tolerance or exemption. The Agency recognizes that some individuals believe that no residue of pesticides should be allowed on foods; however, under the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), EPA is authorized to establish pesticide
tolerances or exemptions where persons seeking such tolerances or exemptions have

demonstrated that the pesticide meets the safety standard imposed by the statute. Based on
the available information, EPA has determined that the use of *Bacillus subtilis* strain IAB/BS03 is

**IV. Statutory and Executive Order Reviews**

This action establishes a tolerance exemption under FFDCA section 408(d) in response
to a petition submitted to the Agency. 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 action has been exempted

from review under Executive Order 12866, this action is not subject to Executive Order 13211,

entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or
Use” (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled “Protection of Children

from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997). 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., nor does it 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).

Since tolerances and exemptions that are established on the basis of a petition under

FFDCA section 408(d), such as the tolerance exemption in this final rule, do 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.

This action 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 FFDCA section
408(n)(4). 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 action. In addition, this action 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. 1501 et seq.).

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).

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).
List of Subjects in 40 CFR Part 180

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


Jack E. Housenger,
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. Add § 180.1329 to subpart D to read as follows:

   § 180.1329 *Bacillus subtilis* strain IAB/BS03, exemption from the requirement of a tolerance.

   An exemption from the requirement of a tolerance is established for residues of *Bacillus subtilis* strain IAB/BS03 in or on all food commodities when used in accordance with label directions and good agricultural practices.

[FR Doc. 2015-03465 Filed 02/19/2015 at 8:45 am; Publication Date: 02/20/2015]