

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180**

[OPP-300540A; FRL-5769-2]

2070-AB78

**Vinclozolin; Revocation of Certain Tolerances**

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rule.

**SUMMARY:** EPA is revoking the tolerances for residues of the pesticide vinclozolin in or on the raw agricultural commodities tomatoes, plums, prunes, grapes (other than wine grapes), and the food additive tolerances for prunes and raisins. EPA is revoking these tolerances because the uses associated with them have been voluntarily deleted from vinclozolin labels.

**DATES:** This regulation becomes effective February 13, 1998. Written objections and requests for hearings must be received on or before April 14, 1998.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number [OPP-300540A], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300540A], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of

electronic objections and hearing requests must be identified by the docket number [OPP-300540A]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** By mail: Mark Wilhite, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Special Review Branch, Crystal Station #1, 3rd floor, 2800 Crystal Drive, Arlington, VA 22202, telephone: (703) 308-8029; e-mail: wilhite.mark@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:****I. Introduction**

Vinclozolin (trade names Ronilan, Curalan, and Ornilan) is a fungicide first registered in 1981 to control various types of rot caused by *Botrytis spp.*, *Sclerotinia spp.*, and other types of mold and blight causing organisms, on strawberries, lettuce (all types), stonefruit, grapes, raspberries, onions, succulent beans, and turf in golf courses, commercial and industrial sites. Vinclozolin is also registered for use on ornamentals in green houses and nurseries.

**II. Legal Authority**

The Federal Food, Drug, and Cosmetic Act (FFDCA, 21 U.S.C. 301 et seq., as amended by the Food Quality Protection Act of 1996 (FQPA), Pub. L. 104-170) authorizes the establishment of tolerances (maximum residue levels), 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 pursuant to section 408 (21 U.S.C. 346(a), as amended). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA, and hence may not legally be moved in interstate commerce (21 U.S.C. 342). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136 et seq.).

**III. Regulatory Background**

In May 1997, when BASF requested amendment of its labels to include a use for succulent beans, BASF also

requested deletion of several food and non-food uses from its vinclozolin registrations. These deletions were announced in the **Federal Register** Notice of August 13, 1997 (62 FR 43327)(FRL-5736-2). Since no comments were received they became effective on September 13, 1997. The proposal to revoke the tolerances for the pesticide vinclozolin on the raw agricultural commodities tomatoes, plums, prunes, grapes (other than wine grapes), the food additive tolerances for prunes and raisins, and the animal feed tolerance for dry grape pomace was published on August 27, 1997 (62 FR 45377)(FRL-5739-6). EPA proposed these revocations because it is EPA's general practice to revoke tolerances where the associated pesticide use has been deleted from all FIFRA labels. See 40 CFR 180.32(b).

In response to the proposal to revoke these tolerances, EPA received one comment from the California Environmental Protection Agency on behalf of the States FIFRA Issues Research and Evaluation Group (SFIREG). These comments are located in the OPP Docket under docket number OPP-300540. The commenter pointed out that EPA had not established a deadline for use of existing stocks of product labeled for the deleted uses, other than exhaustion of supplies, but had indicated that it intends to publish its final revocation notice relatively soon after the proposal was published. The commenter noted that this short time frame for final revocation would not allow for exhaustion of existing stocks, since the residues on these commodities which were treated with existing stocks after the revocation date would not be legal, but would be considered adulterated by FDA or states which have residue monitoring programs. In an earlier inquiry about this discrepancy, the commenter had been told by the Agency that it was using section 408(l)(5) to allow product in the channels of trade to be used legally, under the existing stocks provision, even if the use was after the tolerance has been revoked. Further, the commenter pointed out, these upcoming actions should be better communicated to the states and other interested parties so that they can prepare their laboratories and authorities for their implementation. The commenter suggested that the Agency's home page on the internet present up to date information.

In response to these comments, the Agency agrees that it should have, in this case, established a formal date for exhaustion of existing stocks in the original use deletion notice (62 FR

43327). After conferring again with BASF about the status of the products with these deleted uses for which tolerances are being revoked and examining its registration records, the Agency believes that there is no product in the channels of trade which bears labeling allowing its use on either tomatoes, plums, prunes or table grapes, since tomatoes and grapes were never registered in the United States, and plums and prunes were removed from the product labels by BASF in 1991. Accordingly, the tolerances may be revoked with little chance that legal use of existing stocks will occur, since these uses have not been in the channels of trade for many years and it is therefore unlikely that it is still in the hands of end-users. Therefore, EPA believes it should proceed with the revocation of tolerances, but in future, a more concentrated effort to alert states, through its home page on the internet or other means, will be made as well as by providing a precise date for exhaustion of existing stocks before proceeding with final revocation of tolerances. In addition, EPA would like to clarify its interpretation of section 408(l)(5) of the FFDCA. That section states:

Notwithstanding any other provision of this Act, if a tolerance or exemption for a pesticide chemical residue is revoked, suspended or modified under this section, an article of food shall not be deemed unsafe solely because of the presence of such pesticide chemical residue in or on such food if it is shown... (A) the residue is present as the result of an application or use of a pesticide at a time and in manner that was lawful under the Federal Insecticide, Fungicide, and Rodenticide Act; and (B) the residue does not exceed a level that was authorized at the time of that application or use to be present on the food under a tolerance \*\*\*

This provision legalizes pesticide residues of cancelled pesticides if both the use under FIFRA was legal (e.g. because applied in accordance with an existing stocks provision) and the treatment occurred before revocation of the tolerance. If use occurs after revocation of the tolerance, this provision does not apply.

#### **IV. Regulatory Assessment Requirements**

This is a final revocation of a tolerance established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this rule does not contain any information collections subject to OMB approval under the Paperwork

Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require special OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. The factual basis and the Agency's certification under section 605(b) for tolerance revocations published on December 17, 1997 (62 FR 66020) (FRL-5753-1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Since no extraordinary circumstances exist as to the present revocation that would change EPA's previous analysis, the Agency is able to reference the general certification.

#### **V. Submission to Congress and the General Accounting Office**

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted 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 General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2)."

#### **VI. Objections and Hearing Request**

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the

submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person adversely affected by this regulation may, by April 14, 1998, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

#### **VII. Public Record and Electronic Submissions**

EPA has established a record for this rulemaking under docket control [OPP-300540A] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

#### List of Subjects 40 CFR Part 180

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

Dated: February 3, 1998.

**Lois Rossi,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

#### PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. Section 180.380 is amended by revising paragraph (a) to read as follows:

#### § 180.380 Vinclozolin; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the fungicide vinclozolin (3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione) and its metabolites containing the 3,5-dichloroaniline moiety in or on the food commodities in the table below. There are no U.S. registrations for Belgian endive, tops, cucumbers, grapes (wine), kiwi, pepper (bell) as of July 30, 1997. The tolerances will expire and are revoked on the date(s) listed in the following table:

Commodity	Parts per million	Expiration/Revocation Date
Beans, succulent .....	2.0	10/1/99
Belgian endive, tops ...	5.0	None
Cucumbers ....	1.0	None
Grapes, (wine)	6.0	None
Kiwifruit .....	10.0	None
Lettuce, head	10.0	None

Commodity	Parts per million	Expiration/Revocation Date
Lettuce (leaf)	10.0	None
Onions (dry bulb) .....	1.0	None
Peppers (bell)	3.0	None
Raspberries ...	10.0	None
Stonefruits, except plums/fresh prunes .....	25.0	None
Strawberries ..	10.0	None

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#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[MM Docket No. 97-47; RM-8992]

#### Radio Broadcasting Services; Westley, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 238A to Westley, California, as that community's first local aural transmission service, in response to a petition filed on behalf of Westley-Grayson Broadcasting Company. See 62 FR 6927, February 14, 1997. Coordinates used for Channel 238A at Westley are 37-28-13 and 121-11-14. With this action, the proceeding is terminated.

**DATES:** *Effective March 23, 1998.* A filing window for Channel 238A at Westley, California, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a separate Order.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process should be addressed to the Audio Services Division, (202) 418-2700.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 97-47, adopted January 28, 1998, and released February 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service,

Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Westley, Channel 238A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

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#### DEPARTMENT OF DEFENSE

#### 48 CFR Part 231

[DFARS Case 97-D313]

#### Defense Federal Acquisition Regulation Supplement; Restructuring Costs

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8092 of the National Defense Appropriations Act for Fiscal Year 1998 and Section 804 of the National Defense Authorization Act for Fiscal Year 1998 concerning the reimbursement of external restructuring costs associated with a business combination.

**DATES:** *Effective date:* February 13, 1998.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before April 14, 1998, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberman, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350.