

NAICS code is that listed in the Small Business Administration (SBA) size standards (13 CFR 121).

After considering the economic impacts of today's proposed rule amendments on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. The proposed rule will not impose any requirements on small entities because it does not impose any additional regulatory requirements.

For additional information, see the direct final rule published in the Rules and Regulations section of this **Federal Register** publication.

#### List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 23, 2004.

**Jeffrey R. Holmstead**,  
Assistant Administrator.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-2004-0140; FRL-7362-2]

#### Allethrin, Bendiocarb, Burkholderia cepacia, Fenridazon potassium, and Molinate; Proposed Tolerance Actions

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to revoke all tolerances for residues of the insecticides allethrin and bendiocarb, plant growth regulator fenridazon potassium, herbicide molinate, and biological pesticide *Burkholderia cepacia*, because EPA canceled food registrations or deleted food uses from registrations following requests for voluntary cancellation or use deletion by the registrants. EPA expects to determine whether any individuals or groups want to support these tolerances. The regulatory actions proposed in this document contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA), section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. The regulatory actions proposed in this document pertain to

the proposed revocation of 110 tolerances and tolerance exemptions of which 106 would be counted as tolerance reassessments toward the August 2006 review deadline.

**DATES:** Comments must be received on or before September 7, 2004.

**ADDRESSES:** Submit your comments, identified by docket ID number OPP-2004-0140, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov/>. Follow the on-line instructions for submitting comments.

- *Agency Website:* <http://www.epa.gov/edocket/>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- *E-mail:* Comments may be sent by e-mail to [opp-docket@epa.gov](mailto:opp-docket@epa.gov), Attention: Docket ID Number OPP-2004-0140.

- *Mail:* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2004-0140.

- *Hand Delivery/carrier:* Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 Bell Street, Arlington, VA, Attention: Docket ID Number OPP-2004-0140. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to docket ID number OPP-2004-0140. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://www.regulations.gov/), or e-mail. The EPA EDOCKET and the [regulations.gov](http://www.regulations.gov) websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or

[regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL-7181-7).

*Docket:* All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460-0001; telephone number: (703) 308-8037; e-mail address: [nevola.joseph@epa.gov](mailto:nevola.joseph@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. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide

for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit IIA. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

*C. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

*D. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?*

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60-day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDC section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDC.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

## II. Background

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

EPA is proposing to revoke certain tolerances for residues of the insecticides allethrin and bendiocarb, plant growth regulator fenridazon potassium, herbicide molinate, and the biological pesticide *Burkholderia cepacia* because these specific tolerances correspond to uses no longer current or registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in the United States. It is

EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

1. *Allethrin.* Many food use registrations for allethrin were cancelled in 1989 and 1991 due to non-payment of maintenance fees. In the **Federal Register** of March 18, 2002, (67 FR 11965) (FRL-6826-6) EPA had proposed the revocation of 60 tolerances in 40 CFR 180.113 and tolerance exemptions in 40 CFR 180.1002 for residues of the insecticide allethrin in or on certain commodities because it was no longer registered under FIFRA for use on those commodities. Other tolerances were not proposed for revocation at that time, including tolerances for the grains of barley, corn, oats, popcorn, rye, sorghum, and wheat and tolerance exemptions for corn, popcorn, mushroom, and sorghum grain. During the 60-day public comment period provided by that proposal, the registrant, Valent BioSciences Corporation, expressed concern in a letter dated April 15, 2002 that allethrin needed to be defined prior to any revocations because there are several stereoisomers of allethrin (004001). Valent noted that such revocations would not affect domestic uses of the allethrins. However, Valent asked that the Agency identify the compound or compounds associated with the tolerances and tolerance exemptions proposed for revocation so that it could consider whether to support any tolerances for importation purposes concerning allethrin stereoisomers; i.e., bioallethrin, s-bioallethrin, or d-cis-trans-allethrin.

The other allethrin stereoisomers (bioallethrin, 004003; s-bioallethrin, 004004; and d-cis-trans-allethrin, 004005) are later mixtures that are more refined for the "d-trans of d" isomer, which appears to have the primary pesticidal effect. After reviewing labels for these allethrin-stereoisomer active ingredients, EPA has determined that their current active registered uses are not associated with any of the existing tolerances in 40 CFR 180.113 or tolerance exemptions in 40 CFR 180.1002 for allethrin (004001). These allethrin stereoisomers are primarily used as flying insect killers and repellents.

During April 2004, in communications with Valent BioSciences, EPA defined the tolerances

in 40 CFR 180.113 and tolerance exemptions in 40 CFR 180.1002 as associated with residues of allethrin (004001) as the sole active ingredient; i.e., these tolerances and exemptions are not associated with residues of other stereoisomers (004003, 004004, or 004005). Also, the Agency asked Valent to clarify any need to support tolerances for purposes of importation. In a communication dated April 21, 2004, Valent answered that it now has no concerns regarding a need to support import tolerances for allethrin (004001).

EPA defines the tolerances and exemptions in 40 CFR 180.113 and 180.1002 as pertaining solely to allethrin (004001) as the active ingredient. This is the earliest form of the allethrin stereoisomers, and may be referred to as a racemic mixture. Because there are no active registrations for use of allethrin (004001) on commodities associated with these tolerances or tolerance exemptions, these tolerances and tolerance exemptions are no longer needed. Therefore, EPA is proposing to revoke the 30 tolerances in 40 CFR 180.113 for residues of allethrin in or on apple, postharvest; barley, grain, postharvest; blackberry, postharvest; blueberry, postharvest; boysenberry, postharvest; cherry, postharvest; corn, grain, postharvest; crabapple, postharvest; currant, postharvest; dewberry, postharvest; fig, postharvest; gooseberry, postharvest; grape, postharvest; guava, postharvest; huckleberry, postharvest; loganberry, postharvest; mango, postharvest; muskmelon, postharvest; oat, grain, postharvest; orange, postharvest; peach, postharvest; pear, postharvest; pineapple, postharvest; plum, postharvest; plum, prune, fresh, postharvest; raspberry, postharvest; rye, grain, postharvest; sorghum, grain, postharvest; tomato, postharvest; and wheat, grain, postharvest. Note, huckleberry was listed separately from blueberry and plum was listed separately from plum, prune, fresh in a final rule published in the **Federal Register** on July 1, 2003 (68 FR 39435) (FRL-7316-9) which revised tolerance nomenclatures.

Also, EPA is proposing to revoke 43 tolerance exemptions in 180.1002 for residues of allethrin in or on apples, artichokes (Jerusalem), beans, beets, beets, sugar; broccoli, Brussels sprouts, cabbage, carrots, cauliflower, celery, chickory, chinese cabbage, citrus, collards, corn, endive, escarole, garlic, horseradish, kale, kohlrabi, leeks, lettuce, mushrooms, mustard greens, onions, parsley, parsnips, peaches, pears, peppers, potatoes, radishes, rutabagas, salsify, shallots, sorghum

(milo), sorghum, grain; spinach, sweet potatoes, tomatoes, and turnips.

For FQPA tolerance reassessment purposes, EPA expects to count the 73 revocations as a total of 69 tolerance reassessments because in the baseline of tolerances to be counted toward reassessment, the tolerance for huckleberry is counted with blueberry, the tolerance for plum is counted with plum, prune, fresh; the tolerance exemption for escarole is counted with endive, and the tolerance exemption for sorghum milo is counted with the sorghum grain exemption.

2. *Bendiocarb*. On April 26, 2002 (67 FR 20767)(FRL-6833-8), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant for cancellation of the last active bendiocarb registrations for food use. EPA approved the registrants' requests for voluntary cancellation and issued cancellation orders with an effective date of October 24, 2002 and allowed the registrant to sell and distribute existing stocks for a period of 12 months after the cancellation request was received; i.e., until approximately April 26, 2003. There are no active registrations and the tolerances are no longer needed. Therefore, EPA is proposing to revoke the non-numerical tolerances in 40 CFR 180.530 for residues of the insecticide 2,2-Dimethyl-1,3-benzodioxol-4-yl methylcarbamate, known as bendiocarb, in or on processed food and animal feed with an expiration/revocation date of April 26, 2005 in order to allow end-users sufficient time to exhaust existing stocks.

3. *Burkholderia cepacia* type *Wisconsin*. On August 28, 2002 (67 FR 55236)(FRL-7189-4), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant for cancellation of the last active *Burkholderia cepacia* type Wisconsin registrations for food use. EPA approved the registrant's requests for voluntary cancellation and issued cancellation orders with an effective date of February 27, 2003 and allowed the registrant to sell and distribute existing stocks for a period of 12 months after the cancellation request was received; i.e., until May 13, 2003. The Agency believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade. Because there are no active registrations and the tolerance exemption is no longer needed, EPA is proposing to revoke the tolerance exemption in 40 CFR 180.1115 for residues of *Burkholderia cepacia* type

Wisconsin in or on all raw agricultural commodities when applied to plant roots and seedling roots, or as a seed treatment for growing agricultural crops.

4. *Fenridazon potassium*. On July 25, 2003 (68 FR 44081) (FRL-7315-6), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant for cancellation of the last active fenridazon potassium product registration. EPA approved the registrants' requests for voluntary cancellation and issued cancellation orders on November 5, 2003 (68 FR 62582) (FRL-7328-7) with an effective date of November 5, 2003. The registrant has not manufactured the canceled product since 1989. No existing stocks are expected to be in the channels of trade. No active registrations exist and therefore the tolerances are no longer needed. Consequently, EPA is proposing to revoke the tolerances in 40 CFR 180.423 for residues of the hybridizing agent potassium salt of fenridazon in or on cattle, fat; cattle, kidney; cattle, liver; cattle, meat; cattle, meat byproducts; egg; goat, fat; goat, kidney; goat, liver; goat, meat; goat, meat byproducts; hog, fat; hog, kidney; hog, liver; hog, meat; hog, meat byproducts; horse, fat; horse, kidney; horse, liver; horse, meat; horse, meat byproducts; milk; poultry, fat; poultry, meat; poultry, meat byproducts; sheep, fat; sheep, kidney; sheep, liver; sheep, meat; sheep, meat byproducts; wheat, grain; and wheat, straw; all to be revoked effective on the date of publication of the final rule in the **Federal Register**.

5. *Molinate*. On September 17, 2003 (68 FR 54451) (FRL-7324-7), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of requests from the registrants to voluntarily cancel registrations of all their molinate products, and to modify the terms and conditions of their molinate registrations. After considering comments received, EPA decided to accept the registrants' requests for voluntary cancellation. On April 7, 2004 (69 FR 18368) (FRL-7350-9) the Agency issued a cancellation order with an effective date of June 30, 2008 and a modification of the terms and conditions of the molinate registrations. The 2002 sales level of the molinate active ingredient will be the maximum amount that the registrants will sell or distribute in 2004, 2005, and 2006. The registrants may not sell or distribute any more than 75% of the 2002 sales levels in the year 2007, and sell or distribute more than 50% of the 2002 sales levels in the year 2008.

As stated in the cancellation order of April 7, 2004 (69 FR 18368), registrants will provide annual production/sales reports to EPA beginning in the year 2004 through 2009, and inventory reports for the years 2007, 2008, and 2009. These reports will be submitted by September 30 of each year to the Agency's Chemical Review Manager for molinate. Failure by either registrant to comply with the sale or distribution limits contained in the molinate registration constitutes grounds for immediate cancellation of the registration without opportunity for a hearing.

After June 30, 2008, the registrants may not sell or distribute any molinate products except to distribute the molinate active ingredient in 2009 for the purposes of facilitating usage by August 31, 2009. No use of products containing molinate will be permitted after the 2009 growing season (August 31, 2009). Currently, this is a state registration under FIFRA section 24, active only in California, Tennessee, and Texas. Because the tolerances on rice are no longer needed beyond the 2009 growing season, EPA is proposing to revoke the tolerances in 40 CFR 180.228 for residues of the herbicide S-ethyl hexahydro-1H-azepine-1-carbothioate, known as molinate, in or on rice, grain and rice, straw with an expiration/revocation date of September 1, 2009.

Also, in 40 CFR 180.228, EPA is proposing to remove the "(N)" designation from all entries to conform to current Agency administrative practice ("(N)" designation means negligible residues).

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

A "tolerance" represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 et seq., as amended by the FQPA of 1996, Public Law 104-170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA. Such food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342(a)). 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 FIFRA (7 U.S.C. et seq.). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. 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.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import

tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

#### *C. When do These Actions Become Effective?*

For this proposed rule, the proposed revocations will affect tolerances for uses which have been canceled, in some cases, for many years. With the exception of certain tolerances for bendiocarb and molinate, for which EPA is proposing specific expiration/revocation dates, the Agency is proposing that the revocations for allethrin, *Burkholderia cepacia* and fenridazole potassium become effective on the date of publication for the final rule in the **Federal Register**. With the exception of bendiocarb and molinate, the Agency believes that existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation have been completely exhausted and that treated commodities have cleared the channels of trade. EPA is proposing expiration/revocation dates of April 26, 2005 for specific bendiocarb tolerances and September 1, 2009 for specific molinate tolerances. The Agency believes that these revocation dates allow users to exhaust stocks and allow sufficient time for passage of treated commodities through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider extending the expiration date of the tolerance.

If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under **SUPPLEMENTARY INFORMATION**.

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any

residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

#### *D. What Is the Contribution to Tolerance Reassessment?*

By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. As of June 21, 2004, EPA has reassessed over 6,670 tolerances. This document proposes to revoke a total of 110 tolerances and tolerance exemptions of which 106 would be counted as tolerance reassessments toward the August, 2006 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

### **III. Are The Proposed Actions Consistent with International Obligations?**

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL-6559-3). This guidance will be

made available to interested persons. Electronic copies are available on the internet at <http://www.epa.gov/>. On the Home Page select "Laws, Regulations, and Dockets," then select "Regulations and Proposed Rules" and then look up the entry for this document under "Federal Register—Environmental Documents." You can also go directly to the "Federal Register" listings at <http://www.epa.gov/fedrgstr/>.

### **IV. Statutory and Executive Order Reviews**

In this proposed rule EPA is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule 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 proposed 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) (Public Law 104-4). Nor does it require any 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 OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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). 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. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposed revocations that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that 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). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the 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." This proposed 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 section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed 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). Executive Order 13175, requires EPA to develop an accountable

process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This proposed 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 proposed rule.

**List of Subjects in 40 CFR Part 180**

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

Dated: June 21, 2004.

**James Jones,**

*Director, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR chapter I be 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.

**§ 180.113 [Removed]**

■ 2. Section 180.113 is removed.

■ 3. In § 180.228, the table in paragraph (a), is revised to read as follows:

**§ 180.228 S-Ethyl hexahydro-1H-azepine-1-carbothioate; tolerances for residues.**

(a) \* \* \*

| Commodity        | Parts per million | Expiration/Revocation Date |
|------------------|-------------------|----------------------------|
| Rice, grain      | 0.1               | 9/1/09                     |
| Rice, straw .... | 0.1               | 9/1/09                     |

\* \* \* \* \*

**§ 180.423 [Removed]**

■ 4. Section 180.423 is removed.

■ 5. In § 180.530 paragraphs (a)(1) and (2) are revised to read as follows:

**§ 180.530 2,2-Dimethyl-1,3-benzodioxol-4-yl methylcarbamate; tolerances for residues.**

(a) *General.* (1) The insecticide 2,2-dimethyl-1,3-benzodioxol-4-yl

methylcarbamate may be safely used in spot and/or crack and crevice treatments in animal feed handling establishments, including feed manufacturing and processing establishments, such as stores, supermarkets, dairies, meat slaughtering and packing plants, and canneries until the tolerance expiration/revocation date of April 26, 2005.

(2) The insecticide 2,2-dimethyl-1,3-benzodioxol-4-yl methylcarbamate may be safely used in spot and/or crack and crevice treatments in food handling establishments, including food service, manufacturing and processing establishments, such as restaurants, cafeterias, supermarkets, bakeries, breweries, dairies, meat slaughtering and packing plants, and canneries until the tolerance expiration/revocation date of April 26, 2005.

\* \* \* \* \*

**§ 180.1002 [Removed]**

■ 6. Section 180.1002 is removed.

**§ 180.1115 [Removed]**

■ 7. Section 180.1115 is removed.

[FR Doc. 04-15211 Filed 7-6-04; 8:45 am]

**BILLING CODE 6560-50-S**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 67**

[Docket No. FEMA-P-7651]

**Proposed Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:**

Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2903.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

**National Environmental Policy Act**

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.