

Commodity	Parts per million
Vegetable, legume, group 06 .....	0.10
Vegetable, leafy, except brassica, group 04 .....	0.10
Vegetable, leaves of root and tuber, group 02 .....	0.10
Vegetable, root and tuber, group 01 .....	0.10
Wasabia, roots .....	0.10
Wax, Jambu .....	0.10

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP-2004-0260; FRL-7679-7]

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

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

**ACTION:** Final rule.

**SUMMARY:** EPA is revoking 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. The regulatory actions 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 in this document pertain to the revocation of 110 tolerances and tolerance exemptions of which 106 count as tolerance reassessments toward the August 2006 review deadline.

**DATES:** This regulation is effective September 29, 2004. However, certain regulatory actions will not occur until the date specified in the regulatory text. Objections and requests for hearings must be received on or before November 29, 2004.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION.** EPA has established a

docket for this action under docket identification (ID) number OPP-2004-0260. 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., Confidential Business Information (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 S. 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), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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. 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 at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

**II. Background**

*A. What Action is the Agency Taking?*

In the **Federal Register** of July 7, 2004 (69 FR 40831) (FRL-7362-2), EPA issued a proposed rule to revoke certain tolerances and tolerance exemptions for residues of the insecticides allethrin and bendiocarb, plant growth regulator fenridazon potassium, herbicide molinate, and biological pesticide *Burkholderia cepacia*. Also, the July 7, 2004 proposal provided a 60-day comment period which invited public comment for consideration and for support of tolerance retention under the Federal Food, Drug, and Cosmetic Act (FFDCA) standards.

In this final rule, EPA is revoking certain tolerances and tolerance exemptions 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 and exemptions correspond to uses no longer current or registered under FIFRA in the United States. The tolerances revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to revoke those tolerances and tolerance exemptions 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 or tolerance exemption to cover residues in or on imported commodities or domestic commodities legally treated.

EPA has historically expressed a concern that retention of tolerances that

are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of the following conditions applies:

1. Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance is no longer needed.

3. The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

Today's final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. In response to the proposal published in the **Federal Register** of July 7, 2004 (69 FR 40831), EPA received one comment during the 60-day comment period, as follows:

*Comment.* EPA received a comment from the California Rice Commission (CRC), who expressed support for EPA's decision to revoke the tolerances for residues of molinate in or on rice grain and rice straw, each with an expiration date of September 1, 2009. Also, the CRC expressed support for the molinate 5-year phase out and stated that the phase out allows rice growers a phase in period for newer pesticides while the registrants work with EPA in bringing replacement products to market. The CRC described itself as a statutory organization representing 2,500 rice growers who farm approximately 500,000 acres of California farmland.

*Agency response.* EPA appreciates the support of the CRC on the phase out of molinate, which has been a tool for California rice growers in controlling pests. The phase out and tolerance revocations for molinate are discussed in detail elsewhere in this document.

1. *Allethrin.* Many food use registrations for allethrin were canceled in 1989 and 1991 due to non-payment of maintenance fees. After reviewing labels for allethrin stereoisomer active ingredients (bioallethrin, 004003; s-bioallethrin, 004004; and d-cis-trans-allethrin, 004005), 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). The allethrin stereoisomers are primarily used as flying insect killers and repellents.

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 revoking 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, 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** of July 1, 2003 (68 FR 39435) (FRL-7316-9), which revised tolerance nomenclatures.

Also, EPA is revoking 43 tolerance exemptions in 40 CFR 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 will 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 revoking 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 the channels of trade. Because there are no active registrations and the tolerance exemption is no longer needed, EPA is revoking 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 revoking 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.

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 revoking 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 removing 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?*

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. 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.

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

With the exception of certain tolerances for bendiocarb and molinate, for which EPA is revoking certain tolerances/exemptions with specific expiration/revocation dates, the Agency is revoking specific tolerances/exemptions for allethrin, *Burkholderia cepacia*, and fenridazon potassium, and revising commodity terminologies

effective on September 29, 2004. With the exception of bendiocarb and molinate, the Agency believes that existing stocks of pesticide products labeled for the uses associated with the revoked tolerances have been completely exhausted and that treated commodities have cleared the channels of trade. EPA is revoking certain bendiocarb and molinate tolerances with expiration/revocation dates of April 26, 2005, and September 1, 2009, respectively.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDC section 408(1)(5), as established by the FQPA. Under this section, any residue 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 (FDA) 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 a 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 September 15, 2004, EPA has reassessed over 6,840 tolerances. In this final rule, EPA is revoking a total of 110 tolerances and tolerance exemptions. For FQPA tolerance reassessment counting purposes, EPA counts the 73 revocations for allethrin as 69 reassessments because the tolerances for huckleberry and plum are counted with blueberry and plum, prune, fresh; respectively, and the tolerance exemptions for escarole and sorghum milo are counted with endive and sorghum grain, respectively. Therefore, 106 tolerances/exemptions are counted as reassessed toward the August 2006 review deadline of FFDC section 408(q), as amended by FQPA in 1996.

### **III. Are There Any International Trade Issues Raised by this Final Action?**

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. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. 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 and Regulations," 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. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

##### A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA,

you must identify docket ID number OPP-2004-0260 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 29, 2004.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(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). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564-6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP-2004-0260, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: [opp-docket@epa.gov](mailto:opp-docket@epa.gov). Please use an ASCII file format and avoid 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 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy.

You may also submit an electronic copy of your request at many Federal Depository Libraries.

##### B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a 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 issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

#### V. Statutory and Executive Order Reviews

This final rule revokes specific tolerances established under section 408 of FFDCA. 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 final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final 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 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.*, 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 rule, the Agency hereby certifies that this final rule 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 final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. 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 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 section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this 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 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.

**VI. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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 this final rule in the **Federal Register**. This final rule 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.

Dated: September 17, 2004.

**James Jones,**  
*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.

**§ 180.113 [Removed]**

■ 2. Section 180.113 is removed.

■ 3. Section 180.228 is amended by revising the table in paragraph (a) 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. Section 180.530 is amended by revising paragraphs (a)(1) and (a)(2) 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.

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**§ 180.1002 [Removed]**

■ 6. Section 180.1002 is removed.

**§ 180.1115 [Removed]**

■ 7. Section 180.1115 is removed.

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