(ii) Proceed as directed by the Captain of the Port or his or her designated representative.

(d) *Effective period.* This section is in effect from 12:01 a.m. e.s.t., on January 13, 2004, to 12:01 a.m. e.d.t., on June 13, 2004.

Dated: January 13, 2004.

Jane M. Hartley,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, North Carolina.

[FR Doc. 04–2986 Filed 2–10–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0344; FRL–7338–3]

Aldicarb, Atrazine, Cacodylic Acid, Carbofuran, et al.; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule revokes specific meat, milk, poultry, and egg (MMPE) tolerances for residues of the insecticides aldicarb, carbofuran, diazinon, and dimethoate; herbicides atrazine, metolachlor, and sodium acifluorfen; fungicides fenarimol, propiconazole, and thiophanate-methyl; and the defoliant cacodylic acid. EPA determined that there are no reasonable expectations of finite residues in or on meat, milk, poultry, or eggs for the aforementioned pesticide active ingredients and that these tolerances are no longer needed. Also, this document modifies specific fenarimol tolerances. 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. Because all the tolerances were previously reassessed, no reassessments are counted here toward the August, 2006 review deadline.

DATES: This regulation is effective February 11, 2004. Objections and requests for hearings, identified by docket ID number OPP–2003–0344, must be received on or before April 12, 2004.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION.**

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*.

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 II.A. 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 Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0344. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., 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.

2. *Electronic access.* 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 *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html/*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

A. What Action Is the Agency Taking?

In this final rule, EPA is revoking 105 specific MMPE tolerances for residues of the insecticides aldicarb, carbofuran, diazinon, and dimethoate; herbicides atrazine, metolachlor, and sodium acifluorfen; fungicides fenarimol, propiconazole, and thiophanate-methyl; and the defoliant cacodylic acid because the Agency has concluded that there is no reasonable expectation of finite residues in or on the commodities associated with those tolerances, and therefore these tolerances are no longer needed. Also, EPA is modifying other specific fenarimol tolerances.

The determinations that there are no reasonable expectations of finite residues for the tolerances listed in this document were made based on feeding studies submitted since the time that the tolerances were originally established. These feeding studies used exaggerated amounts of the compound and did not show measurable residues of the pesticides tested. The Agency originally made these determinations in memoranda of March 6, 2002; March 25, 2002; April 21, 2002; July 1, 2002; and July 23, 2002. Because there was no expectation of finite residues, in subsequent memoranda of May 3, 2002; June 3, 2002; July 11, 2002; and July 23, 2002, respectively, the Agency declared these tolerances as safe and counted

these tolerances toward meeting the tolerance reassessment requirements listed in FFDCA section 408(q). Copies of these memoranda can be found in the public docket for the proposed rule which published in the **Federal Register** of July 16, 2003 (68 FR 41989) (FRL–7301–5), under docket number OPP–2003–0092. Because EPA determined that there is no reasonable expectation of finite residues, under 40 CFR 180.6 the tolerances are no longer needed under the FFDCA, and they can therefore be revoked.

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

1. Prior to EPA's issuance of a FFDCA section 408(f) order requesting additional data or issuance of a FFDCA 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.

This final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. In the **Federal Register** of July 16, 2003 (68 FR 41989), EPA issued a proposed rule to revoke specific MMPE tolerances for residues of the insecticides aldicarb, carbofuran, diazinon, and dimethoate; herbicides atrazine, metolachlor, and sodium acifluorfen; fungicides fenarimol, propiconazole, and thiophanate-methyl; and the defoliant cacodylic acid; and to modify specific fenarimol tolerances. Also, the July 16, 2003, proposal provided a 60–day comment period which invited public comment for consideration and for support of tolerance retention under the FFDCA standards. In response to the proposal published in the **Federal Register** of July 16, 2003 (68 FR 41989), EPA received two comments as follows:

- *Comments*. An individual from Michigan requested that the MMPE tolerances proposed for revocation not be revoked. Another individual from New Jersey requested that the aldicarb, cacodylic acid, and fenarimol MMPE tolerances proposed for revocation not be revoked. Both individuals expressed concern with pesticide use in general.

In addition, Syngenta Crop Protection objected to the revocation of poultry and egg tolerances for propiconazole. The Syngenta comment expressed a concern that the reregistration process for propiconazole might result in a requirement that new studies be conducted and that if new studies happen to show propiconazole residues of concern in/on these poultry and egg commodities, then tolerances might be needed.

- *Agency response*. None of the comments addressed any of the available feeding studies that EPA reviewed in making its determinations that there are no reasonable expectations of finite residues for the MMPE tolerances in question. Nor did the comments take issue with the Agency's conclusion that the tolerances were no longer needed under 40 CFR 180.6. When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, consideration must be given to the possible residues of those active ingredients in MMPE commodities produced by animals that are fed agricultural products (for example, grain or hay) containing pesticide residues (40 CFR 180.6). When considering this possibility, EPA can conclude that there is a reasonable expectation that finite residues will not exist. Based on the available data, EPA made such a determination and believes that the tolerances revoked in this final rule are no longer needed.

Should future data be made available to EPA that shows pesticide residues of concern in or on the specific MMPE commodities associated with the tolerances revoked herein, then the Agency will evaluate all the available data, including the availability of a practicable analytical method to determine the pesticide residue. The Agency may conclude from such new data that finite residues will actually be incurred, or that it is not possible to establish with certainty whether finite residues will be incurred, but that there is a reasonable expectation of finite residues or no reasonable expectation of finite residues (40 CFR 180.6). Should EPA determine that a tolerance is needed, the Agency will take appropriate action to establish the tolerance.

1. *Aldicarb*. Based on available ruminant feeding and storage stability data, EPA determined that there is no reasonable expectation of finite residues of aldicarb and its carbamate metabolites in milk and livestock commodities. The associated tolerances are no longer needed under 40 CFR 180.6(a)(3). Therefore, EPA is revoking the tolerances in 40 CFR 180.269 for the combined residues of the insecticide and nematocide aldicarb (2-methyl-2-(methylthio)propionaldehyde O-(methylcarbamoyl) oxime and its cholinesterase-inhibiting metabolites 2-methyl 2-(methylsulfinyl) propionaldehyde O-(methylcarbamoyl) oxime and 2-methyl-2-(methylsulfonyl) propionaldehyde O-(methylcarbamoyl) oxime in or on the following: Cattle, fat; cattle, meat; cattle, meat byproducts; goat, fat; goat, meat; goat, meat byproducts; hog, fat; hog, meat; hog, meat byproducts; horse, fat; horse, meat; horse, meat byproducts; sheep, fat; sheep, meat; sheep, meat byproducts; and milk.

2. *Atrazine*. Based on available ruminant and poultry feeding data, EPA determined that there is no reasonable expectation of finite residues of atrazine in fat, meat, and meat byproducts of hogs and poultry; and eggs. These tolerances are no longer needed under 40 CFR 180.6(a)(3). Therefore, EPA is revoking the tolerances in 40 CFR 180.220 for residues of the herbicide atrazine in or on hog, fat; hog, meat; hog, meat byproducts; poultry, fat; poultry, meat; poultry, meat byproducts; and egg.

3. *Cacodylic acid (dimethylarsinic acid)*. Arsenic is ubiquitous and abundant in the environment. Studies show that arsenicals are methylated in animals to potentially significant levels of dimethyl arsonate (cacodylate). Also, available data show that background levels of cacodylate found in beef tissues and milk may substantially exceed those incurred from the maximum theoretical dietary burden from ingestion of feed stuffs derived from raw agricultural commodities treated with cacodylic acid at the maximum supported use rates. Based on all these data, EPA determined that tolerances for residues of cacodylic acid in beef tissues and milk are no longer needed under 40 CFR 180.6(a)(3). Therefore, EPA is revoking the tolerances in 40 CFR 180.311 for residues of the defoliant cacodylic acid (dimethylarsinic acid), expressed as As2O3, in or on cattle, fat; cattle, kidney; cattle, liver; cattle, meat; cattle meat byproducts, except kidney; and cattle meat byproducts, except liver.

In the **Federal Register** of July 16, 2003 (68 FR 41989), EPA issued a rule which proposed the tolerance revocations made in this final rule. The July 16, 2003 document proposed to revoke 105 tolerances. The proposal was signed on June 17, 2003. Later, in the **Federal Register** of July 1, 2003 (68 FR 39435) (FRL–7316–9), EPA made terminology revisions in 40 CFR 180.311 for cacodylic acid which created two tolerances for meat byproducts of cattle (cattle, meat byproducts, except kidney and cattle, meat byproducts, except liver, both at 0.7 ppm). This specific terminology revision was in error. The Agency

considers the preferred terminology to be one tolerance; i.e. cattle, meat byproducts, except kidney and liver. While EPA is revoking both tolerances, the Agency will count them as one revocation in a total of 105 revocations in this final rule.

In the **Federal Register** of July 1, 2003 (68 FR 39435), EPA issued a final rule that revised specific tolerance nomenclatures, including the terminology for ''cottonseed'' to ''cotton, undelinted seed'' in 40 CFR 180.311, making the proposal in the **Federal Register** of July 16, 2003 (68 FR 41989) to revise cottonseed in 40 CFR 180.311 no longer needed.

4. *Carbofuran*. Based on available dairy cattle feeding data, EPA determined that there is no reasonable expectation of finite residues of carbofuran and its metabolites in fat, meat, and meat byproducts of cattle, goat, hog, horse, and sheep. These tolerances are no longer needed under 40 CFR 180.6(a)(3). Therefore, EPA is revoking the tolerances in 40 CFR 180.254 for the combined residues of the insecticide carbofuran (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*N*-methylcarbamate), its carbamate metabolite (2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*N*-methylcarbamate), and its phenolic metabolites (2,3-dihydro-2,2-dimethyl-7-benzofuranol, 2,3-dihydro-2,2-dimethyl-3,-oxo-7-benzofuranol and 2,3-dihydro-2,2-dimethyl-3,7-benzofurandiol) in or on the following commodities: Cattle, fat (of which no more than 0.02 parts per million (ppm) is carbamates); cattle, meat (of which no more than 0.02 ppm is carbamates); cattle, meat byproducts (of which no more than 0.02 ppm is carbamates); goat, fat (of which no more than 0.02 ppm is carbamates); goat, meat (of which no more than 0.02 ppm is carbamates); goat, meat byproducts (of which no more than 0.02 ppm is carbamates); hog, fat (of which no more than 0.02 ppm is carbamates); hog, meat (of which no more than 0.02 ppm is carbamates); hog, meat byproducts (of which no more than 0.02 ppm is carbamates); horse, fat (of which no more than 0.02 ppm is carbamates); horse, meat (of which no more than 0.02 ppm is carbamates); horse, meat byproducts (of which no more than 0.02 ppm is carbamates); sheep, fat (of which no more than 0.02 ppm is carbamates); sheep, meat (of which no more than 0.02 ppm is carbamates); and sheep, meat byproducts (of which no more than 0.02 ppm is carbamates).

5. *Diazinon*. Based on available cattle dermal treatment and feeding data, EPA determined that there is no reasonable expectation of finite residues in or on meat and meat byproducts from the registered uses of cattle ear tags or from consumption of diazinon treated feed items by cattle. These tolerances are no longer needed under 40 CFR 180.6(a)(3). A tolerance for milk is not required as long as the ear tag labels maintain that use is for beef cattle and non-lactating dairy cattle, only. Therefore, EPA is revoking the tolerances in 40 CFR 180.153 for residues of the insecticide diazinon in or on cattle, meat (fat basis) and cattle, meat byproducts (fat basis).

6. *Dimethoate*. Metabolism and feeding studies in ruminants and poultry showed no detectable residues of dimethoate in muscle, fat, kidney, liver, milk, and egg samples. However, residues of omethoate, its oxygen analog, were found in liver and egg whites samples and residues of dimethoate carboxylic acid were found in liver, egg whites, and milk samples. Based on these available ruminant and poultry metabolism and feeding data, EPA determined that there is no reasonable expectation of finite residues of concern in meat, fat, and kidney of livestock (ruminants and poultry) from ingestion of dimethoate treated crop and feed items. These tolerances are no longer needed under 40 CFR 180.6(a)(3). Therefore, EPA is revoking the tolerances in 40 CFR 180.204 for total residues of the insecticide dimethoate (*O,O*-dimethyl S-(*N*-methylcarbamoylmethyl) phosphorodithioate) including its oxygen analog (*O,O*-dimethyl S-(*N*-methylcarbamoylmethyl) phosphorothioate) in or on the following commodities: Cattle, fat; cattle, meat; goat, fat; goat, meat; hog, fat; hog, meat; horse, fat; horse, meat; poultry, fat; poultry, meat; sheep, fat; and sheep, meat. Use of dimethoate on other commodities, including food and feed commodities, will be addressed in the ''Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision'' (IRED), which EPA will complete in the near future.

Also, in 40 CFR 180.204, EPA is removing the ''(N)'' designation from all entries to conform to current Agency administrative practice (''(N)'' designation means negligible residues).

7. *Fenarimol*. Fenarimol tolerances were reassessed according to the FQPA standard in the August 2002 ''Report of the FQPA Tolerance Reassessment Progress and Risk Management Decision (TRED) for Fenarimol.'' The Agency extrapolated data from a 28–day ruminant feeding study of exaggerated dietary burdens to the 1x feeding rate, and examined the expected impact of the average theoretical dietary burden from wet apple pomace (calculated using Food and Drug Administration monitoring data for apples). Of the currently registered uses of fenarimol, wet apple pomace is the only commodity considered a livestock feed item. (Dry apple pomace is no longer considered a significant feed item). For cattle, goats, horses, and sheep, the Agency concluded from monitoring, feeding, and metabolism data that tolerances for liver should be effectively decreased from 0.1 to 0.05 ppm and tolerances for meat byproducts should be increased from 0.01 to 0.05 ppm based on the highest residue found on an organ tissue; i.e., liver. Because both liver and meat byproduct tolerances were reassessed at the same level (0.05 ppm) for cattle, goats, horses, and sheep, the Agency recommended covering residues in liver by the reassessed tolerances for meat byproducts, revising each commodity terminology to ''meat byproducts, except kidney,'' and revoking existing liver tolerances at 0.1 ppm since they are no longer needed. EPA issued a finding in this TRED that these revised tolerances are safe, as required by section 408 of FFDCA.

Therefore, EPA is revoking the separate tolerances in 40 CFR 180.421 for residues of the fungicide fenarimol in or on cattle, liver; goat, liver; horse, liver; and sheep, liver. Also in 40 CFR 180.421, EPA is increasing the tolerances for the meat byproducts of cattle, goats, horses, and sheep, each from 0.01 to 0.05 ppm, respectively, and revising their commodity terminologies to cattle, meat byproducts, except kidney; goat, meat byproducts, except kidney; horse, meat byproducts, except kidney; and sheep, meat byproducts, except kidney, respectively.

Expected fenarimol residues in muscle, fat, and kidney are calculated from the 28–day data to be less than or near the enforcement method's limit of detection (0.003 ppm). Therefore, the Agency concluded that for muscle, fat, and kidney of ruminants it is not possible to establish with certainty whether finite residues will be incurred, but there is a reasonable expectation of finite residues under 40 CFR 180.6(a)(2). While EPA reassessed fenarimol tolerances for cattle, goats, horses, and sheep in the TRED, including meat, kidney, and fat tolerances at 0.01 ppm, the method limit of quantitation, the Agency will address them in a **Federal Register** document to be published in the near future.

In addition, the fenarimol tolerance for milk (0.003 ppm) should be revoked because residues in milk for dairy cattle are predicted to be significantly less than the enforcement method's limit of

detection (0.001 ppm). Based on the available data, EPA determined that there is no reasonable expectation of finite residues of fenarimol in milk and that the tolerance is no longer needed under 40 CFR 180.6(a)(3). Therefore, EPA is revoking the tolerance in 40 CFR 180.421 for residues of the fungicide fenarimol in milk.

Moreover, EPA determined that there is no reasonable expectation of residue transfer to livestock commodities via consumption of fenarimol treated crop and feed items because no feed items for poultry and hogs are associated with active fenarimol registrations. The tolerances for eggs, poultry, and hogs are no longer needed and should be revoked. Therefore, EPA is revoking the tolerances in 40 CFR 180.421 for residues of the fungicide fenarimol in or on the following commodities: Egg; hog, fat; hog, kidney; hog, liver; hog, meat; hog, meat byproducts; poultry, fat; poultry, meat; and poultry, meat byproducts.

Furthermore, in order to conform to current Agency practice, in 40 CFR 180.421, EPA is revising the tolerance commodity terminology for ''pecans'' to ''pecan.''

8. *Metolachlor*. Based on available ruminant feeding data and the maximum theoretical dietary burden for swine, EPA determined that there is no reasonable expectation of finite residues of metolachlor and its metabolites in fat, kidney, liver, meat, and meat byproducts of hogs. These tolerances are no longer needed under 40 CFR 180.6(a)(3). Therefore, EPA is revoking the tolerances in 40 CFR 180.368 for the combined residues (free and bound) of the herbicide metolachlor [2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide] and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on hog, fat; hog, kidney; hog, liver; hog, meat; and hog, meat byproducts, except kidney and liver.

9. *Propiconazole*. Based on available poultry metabolism and feeding data, EPA determined that there is no reasonable expectation of finite residues of propiconazole and its metabolites (determined as 2,4-dichlorobenzoic acid) in poultry muscle, liver, fat, and egg samples from hens fed 10X the maximum theoretical dietary burden for poultry. These tolerances are no longer needed under 40 CFR 180.6(a)(3). Therefore, EPA is revoking tolerances in 40 CFR 180.434 for the combined residues of the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl] methyl]-1H-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound in or on egg; poultry, fat; poultry, kidney; poultry, liver; poultry, meat; and poultry, meat byproducts, except kidney and liver.

10. *Sodium acifluorfen*. Label restrictions prohibit use of sodium acifluorfen treated peanut and soybean forage or hay for feed and grazing livestock on these treated crops. As noted in a memorandum dated April 21, 2002, available under docket ID number OPP–2003–0092, EPA evaluated available ruminant and poultry metabolism data and determined that there is no reasonable expectation of residues being transferred to livestock commodities via consumption of feed items derived from crops treated with sodium acifluorfen according to current use directions. Based on the registered food/feed use patterns and metabolism data, EPA determined that there is no reasonable expectation of finite residues of sodium acifluorfen and its metabolites in eggs; kidney and liver of cattle, goats, hogs, horses, and sheep; fat, meat, and meat byproducts of poultry; and milk. These tolerances are no longer needed under 40 CFR 180.6(a)(3). Therefore, EPA is revoking the tolerances in 40 CFR 180.383 for combined residues of the herbicide sodium salt of acifluorfen (sodium 5-[2-chloro-4-trifluoromethyl) phenoxy]-2-nitrobenzoic acid) and its metabolites (the corresponding acid, methyl ester, and amino analogues) in or on the following commodities: Cattle, kidney; cattle, liver; egg; goat, kidney; goat, liver; hog, kidney; hog, liver; horse, kidney; horse, liver; milk; poultry, fat; poultry, meat; poultry, meat byproducts; sheep, kidney; and sheep, liver.

11. *Thiophanate-methyl*. Based on available ruminant and poultry feeding data, EPA determined that there is no reasonable expectation of finite residues of thiophanate-methyl, its oxygen analogue, and benzimidazole metabolites in fat, liver, meat, and meat byproducts of hogs and poultry. These tolerances are no longer needed under 40 CFR 180.6(a)(3). Therefore, EPA is revoking the tolerances in 40 CFR 180.371 for residues of the fungicide thiophanate-methyl (dimethyl[(1,2-phenylene)-bis(iminocarbonothioyl)] bis [carbamate]), its oxygen analogue dimethyl-4,4-o-phenylene bis(allophonate), and its benzimidazole-containing metabolites (calculated as thiophanate-methyl) in or on hog, fat; hog, liver; hog, meat; hog, meat byproducts, except liver; poultry, fat; poultry, liver; poultry, meat; and poultry, meat byproducts, except liver.

B. What Is the Agency's Authority for Taking This Action?

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, the Agency gives consideration to possible pesticide residues in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticide residues (40 CFR 180.6). When considering this possibility, EPA can conclude that:

1. Finite residues will exist in meat, milk, poultry and/or eggs, or

2. There is a reasonable expectation that finite residues will exist, or

3. There is a reasonable expectation that finite residues will not exist.

If there is no reasonable expectation of finite pesticide residues in or on meat, milk, poultry, or eggs, then tolerances do not need to be established for these commodities (40 CFR 180.6(b) and 40 CFR 180.6(c)). EPA has evaluated specific meat, milk, poultry, and egg tolerances in this final rule, concluded that there is no reasonable expectation of finite residues of the listed pesticide active ingredients in or on those commodities, and is revoking them.

Regarding the modification of specific fenarimol tolerances, EPA is required to determine whether each of the amended tolerances meets the safety standards under the FQPA. A safety finding determination is found in detail in the August 2002 TRED for fenarimol. An electronic copy of the TRED for fenarimol is available on EPA's website at *http://www.epa.gov/pesticides/reregistration/status.htm*.

C. When Do These Actions Become Effective?

These actions become effective on February 11, 2004. The Agency has determined that this revocation date allows users to continue utilizing existing pesticide stocks and that commodities treated with these pesticides in a manner that is lawful under FIFRA will continue to clear the channels of trade since there is no reasonable expectation of finite residues. Also, while certain individual liver tolerances for fenarimol are revoked, residues in/on liver of cattle, goat, horse, and sheep are covered by revised ''meat byproduct, except kidney'' tolerances.

In addition, because the modifications to specific fenarimol tolerances increased herein are safe, as required by section 408 of FFDCA, the Agency has

determined that these modifications are effective on February 11, 2004.

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 January 27, 2004, EPA has reassessed 6,628 tolerances. In this final rule, EPA is revoking 105 tolerances. These tolerances were previously reassessed and counted as described in Unit II.A.

In the July 1, 2003 version of 40 CFR 180.311, there are two cattle meat byproducts tolerances in the table in paragraph (a). However, when converting the text in 40 CFR 180.311 to tabular form, the tolerance for meat, fat, and meat byproducts, except kidney and liver, of cattle was erroneously published as two seperate entries. Therefore, for tolerance reassessment counting purposes, the meat byproducts tolerance for cattle was previously counted as one reassessment; i.e., cattle, meat byproducts, except kidney and liver.

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. The 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. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the 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 the 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 the 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–2003–0344 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 April 12, 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 (1900C), 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 Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. 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 (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0344, 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 Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *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 and modifies tolerances established under section 408 of FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions (i.e., modification of a tolerance and 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 rule has been exempted from review under Executive Order 12866 due to its lack of significance, this 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 raising of tolerance levels or 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. These analyses were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account these analyses, and the fact that there is no reasonable expectation that residues of the pesticides listed in this final rule will be found on the commodities discussed in this final rule (so that the lack of the tolerance could not prevent sale of the commodity), I certify that this action will not have a significant economic impact on a substantial number of small entities. Furthermore, 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: January 21, 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), 346(a) and 371.

§ 180.153 [Amended]

■ 2. Section 180.153 is amended by removing the entries for cattle, meat (fat basis) and cattle, meat byproducts (fat basis) from the table in paragraph (a)(1).

§ 180.204 [Amended]

■ 3. Section 180.204 is amended by removing the entries for cattle, fat; cattle, meat; goat, fat; goat, meat; hog, fat; hog, meat; horse, fat; horse, meat; poultry, fat; poultry, meat; sheep, fat; and sheep, meat; from the table in paragraph (a), and by also removing from the table in paragraph (a) the ''(N)'' designation from any entry where it appears.

§ 180.220 [Amended]

■ 4. Section 180.220 is amended by removing the entries for egg; hog, fat; hog, meat byproducts; hog, meat; poultry, fat; poultry, meat byproducts; and poultry, meat from the table in paragraph (a)(1).

§ 180.254 [Amended]

■ 5. Section 180.254 is amended by removing the entries for cattle, fat (of which no more than 0.02 ppm is carbamates); cattle, meat (of which no more than 0.02 ppm is carbamates); cattle, meat byproducts (of which no more than 0.02 ppm is carbamates); goat, fat (of which no more than 0.02 ppm is carbamates); goat, meat (of which no more than 0.02 ppm is carbamates); goat, meat byproducts (of which no more than 0.02 ppm is carbamates); hog, fat (of which no more than 0.02 ppm is carbamates); hog, meat (of which no more than 0.02 ppm is carbamates); hog, meat byproducts (of which no more than 0.02 ppm is carbamates); horse, fat (of which no more than 0.02 ppm is carbamates); horse, meat (of which no more than 0.02 ppm is carbamates); horse, meat byproducts (of which no more than 0.02 ppm is carbamates); sheep, fat (of which no more than 0.02 ppm is carbamates); sheep, meat (of which no more than 0.02 ppm is carbamates); and sheep, meat byproducts (of which no more than 0.02 ppm is carbamates) from the table in paragraph (a).

§ 180.269 [Amended]

■ 6. Section 180.269 is amended by removing the entries for cattle, fat; cattle, meat byproducts; cattle, meat; goat, fat; goat, meat byproducts; goat, meat; hog, fat; hog, meat byproducts; hog, meat; horse, fat; horse, meat byproducts; horse, meat; milk; sheep, fat; sheep, meat byproducts; and sheep, meat from the table in paragraph (a).

■ 7. Section 180.311 is revised to read as follows:

§ 180.311 Cacodylic acid; tolerances for residues.

(a) *General.* Tolerances are established for residues of the defoliant cacodylic acid (dimethylarsinic acid), expressed as As2O3, in or on the following raw agricultural commodity as follows:

Commodity	Parts per million
Cotton, undelinted seed	2.8

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.368 [Amended]

■ 8. Section 180.368 is amended by removing the entries for hog, fat; hog, kidney; hog, liver; hog, meat; and hog, meat byproducts, except kidney and liver from the table in paragraph (a)(1).

§ 180.371 [Amended]

■ 9. Section 180.371 is amended by removing the entries for hog, fat; hog, liver; hog, meat byproducts, except liver; hog, meat; poultry, fat; poultry, liver; poultry, meat byproducts, except liver; and poultry, meat from the table in paragraph (a).

■ 10. Section 180.383 is amended by revising the table in paragraph (a) to read as follows:

§ 180.383 Sodium salt of acifluorfen; tolerances for residues.

(a) * * *

Commodity	Parts per million
Peanut	0.1
Rice, grain	0.1
Rice, straw	0.1
Soybean	0.1
Strawberry	0.05

* * * * *

■ 11. Section 180.421 is amended by revising the table in paragraph (a)(1) to read as follows:

§ 180.421 Fenarimol; tolerances for residues.

(a) * * * (1) * * *

Commodity	Parts per million
Apple	0.1
Apple, dry pomace	2.0
Apple, wet pomace	2.0
Cattle, fat	0.1
Cattle, kidney	0.1
Cattle, meat	0.01
Cattle, meat byproducts, except kidney	0.05
Goat, fat	0.1
Goat, kidney	0.1
Goat, meat	0.01
Goat, meat byproducts, except kidney	0.05
Horse, fat	0.1
Horse, kidney	0.1
Horse, meat	0.01
Horse, meat byproducts, except kidney	0.05
Pear	0.1
Pecan	0.1
Sheep, fat	0.1
Sheep, kidney	0.1
Sheep, meat	0.01
Sheep, meat byproducts, except kidney	0.05

* * * * *

§ 180.434 [Amended]

■ 12. Section 180.434 is amended by removing the entries for egg; poultry, fat; poultry, kidney; poultry, liver; poultry, meat byproducts, except kidney and liver; and poultry, meat; from the table in paragraph (a).

[FR Doc. 04–2956 Filed 2–10–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[RCRA–2003–0025; FRL–7620–2]

Land Disposal Restrictions: Site-Specific Treatment Variances for Heritage Environmental Services LLC and Chemical Waste Management Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is today granting three site-specific treatment variances from the Land Disposal Restrictions (LDR) treatment standards for selenium-bearing hazardous wastes generated by the glass manufacturing industry. EPA is granting these variances because the chemical properties of the wastes differ significantly from those from the waste used to establish the current LDR standard for selenium (5.7 mg/L, as measured by the Toxicity Characteristic Leaching Procedure (TCLP)), and the petitions have adequately demonstrated that the wastes cannot be treated to meet this treatment standard.

In the first action, EPA is granting a variance to Heritage Environmental Services LLC (Heritage) to stabilize a selenium-bearing hazardous waste generated by Guardian Industries Corp. (Guardian) at their RCRA permitted facility in Indianapolis, Indiana. With