

**ADDRESSES:** Send comments to Andrew Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov), or submit comments at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mae Wang, EPA Region IX, (415) 947-4124, [wang.mae@epa.gov](mailto:wang.mae@epa.gov).

**SUPPLEMENTARY INFORMATION:** This proposal addresses a Clean Air Act section 111(d)/129 negative declaration submitted by the Nevada Division of Environmental Protection certifying that commercial/industrial solid waste incinerator units do not exist within its air pollution control jurisdiction. This negative declaration was submitted on October 16, 2003. For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. If no adverse comments are received in response to this action, no further activity will be contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

Dated: November 19, 2003.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*  
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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-2003-0265; FRL-7330-8]

#### Bitertanol, Chlorpropham, Cloprop, Combustion Product Gas, Cyanazine, et al.; Proposed Tolerance Actions

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to revoke certain tolerances and tolerance exemptions for residues of the fungicide and insecticide dinocap; insecticides combustion product gas, ethion, formetanate hydrochloride, nicotine-containing compounds, polyoxyethylene, and tartar emetic; herbicides chlorpropham, cyanazine, and tridiphane; fungicides bitertanol,

1,1,1-trichloroethane, and triforine; and the plant regulators cloprop and 4,6-dinitro-o-cresol because these specific tolerances are either no longer needed or are associated with food uses that are no longer current or registered in the United States. Also, EPA is proposing to modify certain ethion tolerances before they expire. 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 in this document pertain to the proposed revocation of 61 tolerances and tolerance exemptions. Because three tolerances were previously reassessed, 58 tolerances/exemptions would be counted as reassessed toward the August, 2006 review deadline.

**DATES:** Comments, identified by docket ID number OPP-2003-0265, must be received on or before February 9, 2004.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. 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](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 (NAI CS 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-2003-0265. 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](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. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will

not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. 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. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

### C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please

follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2003-0265. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to [opp-docket@epa.gov](mailto:opp-docket@epa.gov), Attention: Docket ID Number OPP-2003-0265. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid

the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: 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-2003-0265.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP-2003-0265. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

### D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, 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 CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any 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 and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

*F. 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 or tolerance exemption proposed for revocation. If EPA receives a comment within the 60-day period to that effect, EPA will not proceed to revoke the tolerance/exemption 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 the Federal Food, Drug, and Cosmetic Act (FFDCA) 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 FFDCA.

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 and tolerance exemptions for residues of the fungicide and insecticide dinocap; insecticides combustion product gas, ethion, formetanate hydrochloride, nicotine-containing compounds, polyoxyethylene, and tartar emetic; herbicides chlorpropham, cyanazine, and tridiphane; fungicides

bitertanol, 1,1,1-trichloroethane, and triforine; and the plant regulators cloprop and 4,6-dinitro-o-cresol because these specific tolerances and exemptions correspond to uses no longer current or registered under FIFRA in the United States. It is EPA's general practice to propose revocation of 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.

Concerning the Reregistration Eligibility Decisions (REDs) for chlorpropham and ethion and the Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision (TRED) for chlorpropham mentioned in this rule, printed copies of the REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242-2419, telephone 1-800-490-9198; fax 1-513-489-8695; internet at <http://www.epa.gov/ncepihom/> and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 1-800-553-6847 or 703-605-6000; internet at <http://www.ntis.gov/>. Electronic copies of REDs and TREDs are available on the internet at <http://www.epa.gov/pesticides/reregistration/status.htm>.

1. *Bitertanol*. EPA is proposing to revoke the tolerance in 40 CFR 180.457 for residues of beta-([1,1'-biphenyl]-4-yloxy)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol, also called bitertanol, in or on banana (whole) because no active U.S. registrations have existed for its associated commodity use since 1992 and the tolerance is no longer needed.

2. *Chlorpropham*. In the 1996 RED for chlorpropham, EPA required environmental fate and ecological effects data to maintain the spinach registration, which was registered as a Special Local Need under FIFRA 24(c) and was not being supported by the primary registrants of technical chlorpropham. In February 2002, EPA canceled the last Special Local Need registration, but allowed use until December 31, 2002. On July 19, 2002, EPA reassessed the spinach tolerance in a TRED for chlorpropham. That reassessment decision was a recommendation to revoke the spinach tolerance because there are no active

registrations and the tolerance is no longer needed. The Agency believes that there has been sufficient time for chlorpropham-treated spinach to clear the channels of trade. Therefore, EPA is proposing to revoke the interim tolerance in 40 CFR 180.319 regarding isopropyl m-chlorocarbanilate (CIPC), called chlorpropham, for residues in or on spinach.

3. *Cloprop*. On January 21, 1998 (63 FR 3057)(FRL-5743-8), EPA published a Notice of Proposed Rulemaking in the **Federal Register** in which the Agency proposed to revoke all cloprop tolerances. On January 26, 1998, the Pineapple Growers Association of Hawaii commented and requested that the pineapple tolerance for cloprop not be revoked for 5 years. On October 26, 1998 (63 FR 57062)(FRL-6035-8), EPA published a final rule in the **Federal Register** in which the Agency responded and stated that it would not revoke the cloprop tolerance on pineapple at that time. On September 21, 2001, EPA amended its authorization of a specific emergency exemption under Section 18 of FIFRA for application of cloprop on pineapple in Hawaii (which was to expire on August 3, 2001) until August 2, 2002. The Agency believes that there has been sufficient time for cloprop-treated pineapple to clear the channels of trade. Therefore, EPA is now proposing to revoke the tolerance in 40 CFR 180.325 for residues of 2-(m-chlorophenoxy) propionic acid, called cloprop, from application of the acid or of 2-(m-chlorophenoxy) propionamide in or on pineapple because no active registration exists and the tolerance is no longer needed.

4. *Combustion product gas*. EPA is proposing to revoke the tolerance exemption in 40 CFR 180.1051 for residues of the gas produced by the controlled combustion in air of butane, propane, or natural gas in or on all food commodities (except fresh meat) when used after harvest in modified atmospheres for stored product with prescribed conditions. The Agency is proposing this revocation because no active U.S. registrations have existed since 1993.

5. *Cyanazine*. In November 1994, EPA initiated a Special Review of cyanazine based on concerns that cyanazine may pose a risk of inducing cancer in humans from dietary, occupational, and residential exposure. In the **Federal Register** of July 25, 1996 (61 FR 39023) (FRL-5385-7), EPA announced a final determination to terminate the cyanazine Special Review. In the same notice, EPA accepted requests for the voluntary cancellation of cyanazine

registrations effective December 31, 1999 and ordered the cancellations to take effect on January 1, 2000, authorized sale and distribution of such products in the channels of trade in accordance with their labels through September 30, 2002, and prohibited the use of cyanazine products after December 31, 2002. EPA issued an order confirming the cyanazine cancellation on January 6, 2000 (65 FR 771) (FRL-6486-7).

EPA proposed to revoke the tolerances for cyanazine on April 23, 1999 (64 FR 19961) (FRL-6076-4). Only one significant comment was received in response to that document. Griffin L.L.C. requested that EPA not revoke the tolerances for cyanazine and due to Griffin's interest in maintaining those tolerances as import tolerances, the Agency did not take action on cyanazine at that time (64 FR 39078, July 21, 1999) (FRL-6093-9). However, in a letter to the Agency dated August 24, 1999, Griffin L.L.C. stated that it no longer needs EPA to maintain import tolerances for cyanazine. The Agency believes that there has been sufficient time for cyanazine-treated commodities to clear the channels of trade. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.307 for residues of the herbicide 2-[[4-Chloro-6-(ethylamino)-s-triazin-2-yl]amino]-2-methylpropionitrile, called cyanazine, in or on corn, forage; corn, fresh, kernal plus cob with husks removed; corn, grain; corn, stover; cotton, undelinted seed; sorghum, forage; sorghum, grain; sorghum, grain, stover; wheat, forage; wheat, grain; and wheat, straw.

6. *4,6-Dinitro-o-cresol*. EPA is proposing to revoke the tolerance in 40 CFR 180.344 for residues of 4,6-dinitro-o-cresol (DNOC) and its sodium salt in or on apple from application to apple trees at the blossom stage because no active U.S. registrations have existed for its associated commodity use since 1993.

7. *Dinocap*. 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 dinocap product registrations. EPA approved the registrants' requests for voluntary cancellation and issued cancellation orders with an effective date of October 24, 2002 which allowed the registrants to sell and distribute existing stocks of the canceled products until February 14, 2003. The Agency believes that there is sufficient time for end users to exhaust those existing stocks and treated commodities to clear the channels of trade by February 14,

2004. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.341 for combined residues that is a mixture of 2,4-dinitro-6-octylphenyl crotonate and 2,6-dinitro-4-octylphenyl crotonate, called dinocap, in or on apple and grape with a expiration/revocation date of February 14, 2004.

8. *Ethion*. On July 31, 2002 (67 FR 49606)(FRL-7191-4), EPA published a final rule in the **Federal Register** which revoked ethion tolerances on citrus fruit; dried citrus pulp, and certain animal commodities with expiration/revocation dates of October 1, 2008. The Agency acknowledged that citrus and animal feed (citrus, dried pulp) with legal residues of ethion can take several years to clear channels of trade from ethion's last legal use date of December 31, 2004.

In the July 2002 final rule, EPA did not act on the cattle and milk fat tolerances for ethion because of an existing cattle ear tag product. On October 16, 2002 (67 FR 63909)(FRL-7276-6), 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 cattle ear tag product for ethion. EPA approved the registrant's request for voluntary cancellation and on June 4, 2003 issued a cancellation order with an effective date of May 31, 2003, i.e., the order allowed the basic registrant to distribute and sell existing stocks of the canceled product until May 31, 2003. Therefore, EPA is now proposing to revoke tolerances in 40 CFR 180.173 for residues of the insecticide ethion (*O,O,O',O'*-tetraethyl *S,S'*-methylene bisphosphorodithioate) including its oxygen analog (*S*-[[diethoxyphosphinothioyl]thio]methyl] *O,O*-diethyl phosphorothioate) in or on cattle, fat; cattle, meat byproducts; cattle, meat (fat basis); and milk fat (reflecting (n) residues in milk), each with an expiration/revocation date of October 1, 2008. These proposed dates are consistent with the expiration/revocation date concerning the ethion tolerance on dried citrus pulp, an animal feed. In addition and in accordance with the 2001 RED for ethion, EPA is proposing not only to revoke the cattle tolerances, but also to decrease them based on an available ruminant feeding study to 0.2 ppm during the period before they expire on October 1, 2008. In the RED, EPA found that these revised tolerances are safe in accordance with section 408 of the FFDCA. (A copy of the ethion RED will be made available in the docket for this proposed rule. See the ethion RED Part IV(C)(1)(b): Tolerance Summary).

Also, in the 2001 RED for ethion, EPA recommended that the citrus tolerances should be revoked, but also be raised during the period before they expire (from 10.0 to 25.0 ppm for dehydrated pulp and from 2.0 to 5.0 ppm for citrus fruits) based on the available citrus field trial and processing data. In the RED, EPA found that these revised tolerances are safe in accordance with section 408 of the FFDCA. (See the ethion RED Part IV(C)(1)(b): Tolerance Summary). Therefore, in 40 CFR 180.173, while the citrus, dried pulp and fruit, citrus tolerances will continue to expire on October 1, 2008, the Agency is proposing to increase the tolerances for citrus, dried pulp (10 ppm) and fruit, citrus (2.0 ppm) during the period before they expire to 25.0 and 5.0 ppm, respectively.

In addition, to conform to current Agency practice, EPA is proposing in 40 CFR 180.173 to revise the commodity terminologies for "fruit, citrus" to "fruit, citrus, group 10;" and "milk fat (reflecting (N) residues in milk)" to "milk, fat, reflecting negligible residues in milk."

9. *Formetanate hydrochloride*. EPA had initiated negotiations with the registrant for formetanate hydrochloride due to Agency concerns. As one measure to reduce concerns, the registrant agreed to delete the product use on plums and prunes, which appear to benefit little from use of the product. Pursuant to section 6(f) of FIFRA, EPA received the request for voluntary amendments to delete the aforementioned uses from the registrations. On February 8, 2000, a 6(f)(1) notice of receipt of the request by the registrant was published in the **Federal Register** (65 FR 6208) (FRL-6489-6). EPA granted the registrant's request to waive the 180-day comment period, but the Agency provided a 30-day public comment period, and granted the requested amendments to delete those uses from registration labels on May 31, 2000. Except for the purpose of relabeling, the Agency had prohibited sale and distribution by the registrant after December 1, 1999 and by persons other than the registrant, including existing stocks, after June 1, 2000, of products labeled for use on plums and prunes.

Because there are no active registrations for use of formetanate hydrochloride on plums and prunes, the tolerances are no longer needed. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.276(a)(1) for residues of the insecticide formetanate hydrochloride in or on plum, prune, fresh and in 40 CFR 180.276(a)(2) for residues of the

insecticide formetanate hydrochloride in or on dried prunes.

10. *Nicotine-containing compounds.* On December 6, 2002 (67 FR 72673)(FRL-7281-5), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant to amend a registration for a product whose active ingredient is a nicotine-containing compound and delete greenhouse food crop uses, including cucumber, lettuce, and tomato. (These were the last active food use registrations for nicotine-containing compounds). EPA approved the registrants' requests for voluntary deletion of these uses and allowed a period of 18 months for the registrant to sell and distribute existing stocks until December 4, 2004. The Agency believes that there is sufficient time for end users to exhaust those existing stocks and treated commodities to clear the channels of trade by December 4, 2005. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.167 for residues of nicotine-containing compounds in or on cucumber, lettuce, and tomato with expiration/revocation dates of December 4, 2005.

11. *Polyoxyethylene.* EPA is proposing to revoke the tolerance exemptions in 40 CFR 180.1078 for residues of poly(oxy-1,2-ethanediyl), alpha-isooctadyl-omega-hydroxy, also called polyoxyethylene, in or on fish, shellfish, irrigated crops, meat, milk, poultry, and eggs because no active U.S. registrations have existed since 1990.

12. *Tartar emetic.* EPA is proposing to revoke the tolerances in 40 CFR 180.179 for residues, calculated as combined antimony trioxide, in or on fruit, citrus; grape, and onion because no active U.S. registrations have existed for their associated commodity uses since 1992.

13. *1,1,1-Trichloroethane.* EPA is proposing to revoke the tolerance exemption in 40 CFR 180.1012 for residues of 1,1,1-trichloroethane when used in the postharvest fumigation of citrus fruits because no active U.S. registrations have existed since 1989.

14. *Tridiphane.* On September 26, 2001 (66 FR 49184)(FRL-6802-1), 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 tridiphane product registration. EPA approved the registrants' request for voluntary cancellation and issued a cancellation order with an effective date of April 5, 2002 which allowed the registrant to sell and distribute existing stocks of the canceled product until July 17, 2002. The Agency believes that there has been sufficient time for end users to

exhaust those existing stocks and for treated commodities to clear the channels of trade. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.424 for residues of 2-(3,5-dichlorophenyl)-2-(2,2,2-trichloroethyl)-oxirane, called tridiphane, in or on corn, grain, field; corn, forage; and corn, stover.

15. *Triforine.* On December 24, 1997 (62 FR 67365)(FRL-5761-8), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant to amend a triforine product registration and delete certain triforine uses, including almonds, apples, apricots, asparagus, blueberries, cherries, cranberries, nectarines, plums, and prunes. EPA approved the registrants' requests for voluntary deletion of these uses and allowed a period of 18 months for the registrant to sell and distribute existing stocks (until approximately the end of 1999). Also, on July 31, 1998 (63 FR 41145)(FRL-6015-8), EPA published a notice in the **Federal Register** which announced cancellation of a triforine registration for non-payment of 1998 maintenance fee and issuance of a cancellation order which permitted the registrant to sell and distribute existing stocks of the canceled product until January 15, 1999.

The Agency believes that end users had sufficient time (at least 3½ years beyond the endpoint for sale and distribution by registrants) to exhaust those existing stocks and for treated commodities to have cleared the channels of trade. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.382(a) for residues of triforine in or on almond, hulls; almond; apple; apricot; bell pepper; blueberry; cantaloupe; cherry; cranberry; cucumber; eggplant; hop, dried cone; hop, spent; nectarine; peach; plum; plum, prune, fresh; strawberry; and watermelon; and in § 180.382(c) for residues of triforine in or on asparagus because no active U.S. registrations exist which cover those commodities.

#### *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 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 or tolerance exemptions 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 rule, the proposed actions will affect tolerances and tolerance exemptions for uses which have been canceled, in some cases, for many years. With the exception of certain tolerances for dinocap, ethion, and nicotine-containing compounds for which EPA is proposing specific expiration/revocation dates, the Agency is proposing that these revocations, modifications, and commodity terminology revisions become effective 90 days following publication of a final rule in the **Federal Register**. EPA is proposing to delay the effectiveness of those revocations for 90 days following publication of a final rule to ensure that all affected parties receive notice of EPA's actions. With the exception of dinocap, ethion, and nicotine-containing compounds, the Agency believes that existing stocks of pesticide products labeled for the uses associated with the tolerances and tolerance exemptions proposed for revocation have been completely exhausted and that treated commodities have cleared the channels of trade.

EPA is proposing expiration/revocation dates of February 14, 2004 for the dinocap tolerances on apple and grape. Also, EPA is proposing expiration/revocation dates of October 1, 2008 for the ethion tolerances on milk fat and the fat, meat, and meat byproducts of cattle. In addition, EPA is proposing expiration/revocation dates of December 4, 2005 for the nicotine-containing compounds tolerances on

cucumber, lettuce, and tomato. The Agency believes that these revocation dates allow users time 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 Unit I.C. of the **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(l)(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 November 20, 2003, EPA has reassessed 6,628 tolerances. This document proposes to revoke a total of 61 tolerances and tolerance exemptions, 3 of which were previously counted as reassessed (1 via the chlorpropham TRED and 2 via the dinocap RED). Therefore, 58 tolerances/exemptions would be counted as reassessed 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 and tolerance exemption 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/fedrgrstr/>.

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

In this proposed rule EPA is proposing to modify and revoke specific tolerances and tolerance exemptions established under FFDCA section 408. 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 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 establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, 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 for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and December 17, 1997 (62 FR 66020), respectively, and were 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, 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 FFDCFA. 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: November 20, 2003.

**James Jones,**

*Director, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 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), 346(a) and 371.

2. Section 180.167 is amended by revising the table in paragraph (a) to read as follows:

**§ 180.167 Nicotine-containing compounds; tolerances for residues.**

(a) \* \* \*

Commodity	Parts per million	Expiration/Revocation Date
Cucumber .....	2.0	12/4/05
Lettuce .....	2.0	12/4/05
Tomato .....	2.0	12/4/05

\* \* \* \* \*

3. Section 180.173 is amended by revising the table in paragraph (a) to read as follows:

**§ 180.173 Ethion; tolerances for residues.**

(a) \* \* \*

Commodity	Parts per million	Expiration/Revocation Date
Cattle, fat .....	0.2	10/1/08
Cattle, meat (fat basis) .....	0.2	10/1/08
Cattle, meat by-products .....	0.2	10/1/08
Citrus, dried pulp .....	25.0	10/1/08
Fruit, citrus, group 10 .....	5.0	10/1/08
Goat, fat .....	0.2	10/1/08
Goat, meat .....	0.2	10/1/08
Goat, meat by-products .....	0.2	10/1/08
Hog, fat .....	0.2	10/1/08
Hog, meat .....	0.2	10/1/08
Hog, meat by-products .....	0.2	10/1/08
Horse, fat .....	0.2	10/1/08
Horse, meat .....	0.2	10/1/08
Horse, meat by-products .....	0.2	10/1/08
Milk, fat, reflecting negligible residues in milk .....	0.5	10/1/08
Sheep, fat .....	0.2	10/1/08
Sheep, meat .....	0.2	10/1/08
Sheep, meat by-products .....	0.2	10/1/08

\* \* \* \* \*

**§ 180.179 [Removed]**

4. Section 180.179 is removed.

5. Section 180.276 is revised to read as follows:

**§ 180.276 Formetanate hydrochloride; tolerances for residues.**

(a) *General.* Tolerances are established for residues of the insecticide formetanate hydrochloride (m-[[[(dimethylamino)methylene]amino]phenyl methylcarbamate hydrochloride) in or on raw agricultural commodities as follows:

Commodity	Parts per million
Apple .....	3.0
Grapefruit .....	4.0
Lemon .....	4.0
Lime .....	4.0
Nectarine .....	4.0
Orange, sweet .....	4.0
Peach .....	5.0
Pear .....	3.0
Tangerine .....	4.0

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

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

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

**§ 180.307 [Removed]**

6. Section 180.307 is removed.

**§ 180.319 [Amended]**

7. Section 180.319 is amended by removing the Isopropyl m-chlorocarbanilate (CIPC) entry for spinach.

**§ 180.325 [Removed]**

8. Section 180.325 is removed.

9. Section 180.341 is revised to read as follows:

**§ 180.341 2,4-Dinitro-6-octylphenyl crotonate and 2,6-dinitro-4-octylphenyl crotonate; tolerances for residues.**

(a) *General.* Tolerances are established for combined negligible residues of a fungicide and insecticide that is a mixture of 2,4-dinitro-6-octylphenyl crotonate and 2,6-dinitro-4-octylphenyl crotonate in or on a raw agricultural commodities as follows:

Commodity	Parts per million	Expiration/Revocation Date
Apple .....	0.1	2/14/04
Grape .....	0.1	2/14/04

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

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

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

**§§ 180.344, 180.382, 180.424, 180.457, 180.1012, 180.1051, and 180.1078 [Removed]**

10. Sections 180.344, 180.382, 180.424, 180.457, 180.1012, 180.1051, and 180.1078 are removed. [FR Doc. 03-30272 Filed 12-9-03; 8:45 am] BILLING CODE 6560-50-S

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 247**

[RCRA-2003-0005; SWH-FRL-7594-9]

RIN 2050-AE23

**Comprehensive Procurement Guideline V for Procurement of Products Containing Recovered Materials**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA or the Agency) today is proposing an amendment to the May 1, 1995, Comprehensive Procurement Guideline (CPG) under the Resource Conservation and Recovery Act (RCRA) and the Executive Order "Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition." Specifically, EPA is proposing to revise the current compost designation to include compost made from manure or biosolids, and designate fertilizers made from recovered organic materials. EPA is also proposing to consolidate all compost designations under one item called "compost made from recovered organic materials."

EPA is required to designate items that are or can be made with recovered materials and to recommend practices that procuring agencies can use to procure designated items. Once EPA designates an item, any procuring agency that uses appropriated federal funds to procure that item must purchase the item containing the highest percentage of recovered materials practicable. Today's proposed action will use government purchasing power to stimulate the use of these materials in the manufacture of new products, thereby fostering markets for materials recovered from solid waste.

**DATES:** EPA will accept public comments on this proposed rule until February 9, 2004.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Send your comments by mail to: OSWER Docket Center, Environmental

Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. RCRA-2003-0005. Follow the detailed instructions as provided in Unit I.C of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** For general information contact the RCRA Call Center at (800) 424-9346 or TDD (800) 553-7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412-9810 or TDD (703) 412-3323. For technical information on individual item designations, contact Sue Nogas at (703) 308-0199.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Regulated Entities*

This action may potentially affect those "procuring agencies"—a term defined in RCRA section 1004(17)—that purchase the following: composts made from manure or biosolids and fertilizers made from recovered organic materials. For purposes of RCRA section 6002, procuring agencies include the following: (1) Any federal agency; (2) any state or local agencies using appropriated federal funds for a procurement; or (3) any contractors with these agencies (with respect to work performed under the contract). The requirements of section 6002 apply to such procuring agencies only when procuring designated items where the price of the item exceeds \$10,000 or the quantity of the item purchased in the previous year exceeded \$10,000. Potential regulated entities for this rule are shown in Table 1.

**TABLE 1.—ENTITIES POTENTIALLY SUBJECT TO SECTION 6002 REQUIREMENTS TRIGGERED BY CPG AMENDMENTS**

Category	Examples of regulated entities
Federal Government	Federal departments or agencies that procure \$10,000 or more of a designated item in a given year.
State Government .....	A state agency that uses appropriated Federal funds to procure \$10,000 or more of a designated item in a given year.