

the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

### III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 8, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 180

[EPA-HQ-OPP-2009-0239; FRL-8411-5]

#### Metolachlor, S-Metolachlor, Bifenazate, Buprofezin, and 2,4-D; Proposed Tolerance Actions

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to modify, establish and revoke certain tolerances for the herbicides metolachlor and S-metolachlor and correct the tolerance guava (from guave) on bifenazate and buprofezin and 2,4-D on cranberry. The regulatory actions proposed in this document are in follow-up to the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and tolerance reassessment program under the Federal Food, Drug, and Cosmetic Act (FFDCA), section 408(q).

**DATES:** Comments must be received on or before August 25, 2009.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2009-0239, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One

Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

*Instructions:* Direct your comments to docket ID number EPA-HQ-OPP-2009-0239. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m.,

Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Jane Smith, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0048; e-mail address: [smith.jane-scott@epa.gov](mailto:smith.jane-scott@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 code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 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. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked

will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

**II. Background**

*A. What Action is the Agency Taking?*

EPA is proposing to modify, revoke, and establish specific tolerances for residues of the herbicides metolachlor, S-metolachlor, bifenazate, buprofezin, and 2,4-D in or on commodities listed in the regulatory text.

EPA is proposing these tolerance actions to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of FFDCA. The safety finding determination of "reasonable certainty of no harm" is discussed in detail in each Reregistration Eligibility Decision (RED) and Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision (TRED) for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, meet safety findings, and change commodity names and groupings in accordance with new EPA

policy. Printed copies of many 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 number: 1-800-490-9198; fax number: 1-513-489-8695; Internet at <http://www.epa.gov/ncepihom> and from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161; telephone number: 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> and in the public docket, at <http://www.regulations.gov>.

The selection of an individual tolerance level is based on crop field residue studies designed to produce the maximum residues under the existing or proposed product label. Generally, the level selected for a tolerance is a value slightly above the maximum residue found in such studies, provided that the tolerance is safe. The evaluation of whether a tolerance is safe is a separate inquiry. EPA recommends the raising of a tolerance when data show that:

1. Lawful use (sometimes through a label change) may result in a higher residue level on the commodity.
  2. The tolerance remains safe, notwithstanding increased residue level allowed under the tolerance.
- In REDs, Chapter IV on "Risk management, Reregistration, and Tolerance reassessment" typically describes the regulatory position, FQPA assessment, cumulative safety determination, determination of safety for U.S. general population, and safety for infants and children. In particular, the human health risk assessment document which supports the RED describes risk exposure estimates and whether the Agency has concerns. In TREDs, the Agency discusses its evaluation of the dietary risk associated with the active ingredient and whether it can determine that there is a reasonable certainty (with appropriate mitigation) that no harm to any population subgroup will result from aggregate exposure. EPA also seeks to harmonize tolerances with international standards set by the Codex Alimentarius Commission, as described in Unit III.

Explanations for proposed modifications in tolerances can be found in the RED and TRED document and in more detail in the Residue Chemistry Chapter document which supports the RED and TRED. Copies of the Residue Chemistry Chapter documents are found in the Administrative Record and EPA's

electronic copies are available through EPA's electronic public docket and comment system, regulations.gov at <http://www.regulations.gov>. You may search for docket ID number EPA-HQ-OPP-2009-0239, EPA-HQ-OPP-2002-0223, EPA-HQ-OPP-2007-0445, EPA-HQ-OPP-2007-0674, EPA-HQ-OPP-2007-0097, and EPA-HQ-OPP-2007-1170, then click on that docket ID number to view its contents.

EPA has determined that the aggregate exposures and risks are not of concern for the above-mentioned pesticide active ingredients based upon the data identified in the RED or TRED which lists the submitted studies that the Agency found acceptable.

EPA has found that the tolerances that are proposed in this document to be modified, are safe; i.e., that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residues, in accordance with FFDCA section 408(b)(2)(C). (Note that changes to tolerance nomenclature do not constitute modifications of tolerances). These findings are discussed in detail in each RED or TRED. The references are available for inspection as described in this document under **SUPPLEMENTARY INFORMATION**.

In the **Federal Register** notices published August 8, 2007 (72 FR 44439) (FRL-8138-8) and May 21, 2008 (73 FR 29456) (FRL-8362-1), EPA proposed to revoke, modify, and establish specific tolerances for residues of the herbicides metolachlor and S-metolachlor as well as tolerances for other pesticide chemicals. These proposals provided a 60-day comment period which invited public comment for consideration and for support of tolerance retention under FFDCA standards. These proposed actions were finalized on September 10, 2008 (73 FR 52607) (FRL-8379-3) and September 17, 2008 (73 FR 53732) (FRL-8375-2). The Agency received comments to the proposal published August 8, 2007 on S-metolachlor in which we indicated we would respond in the future. This action responds to those comments and addresses other tolerance actions associated with metolachlor, S-metolachlor, bifenazate and buprofezin. The proposal published May 21, 2008 provides related information on metolachlor and S-metolachlor.

1. *Metolachlor/S-metolachlor*. The Agency received comments from Syngenta (EPA-HQ-2007-0445-0013) in response to the **Federal Register** proposal published August 8, 2007 (73 FR 53732) as follows:

(i) Revocation of tolerance in stone fruit—Use of S-Metolachlor in stone fruit is an important tool for Canadian fruit producers and therefore, it would be beneficial to maintain U.S. tolerances to avoid any trade irritant issues for these crops being exported from Canada to the U.S. Canada currently has a tolerance of 0.1 ppm for S-metolachlor in apples, apricots, cherries, peaches/nectarines, pears and plums.

(ii) Increase in tolerance for Crop Group 6A from 0.3 ppm to 0.5 ppm—Canada currently has a tolerance of 0.3 ppm for S-metolachlor in peas and snap beans. An increase in the U.S. tolerance could result in a trade irritant for these crops exported from the U.S. to Canada.

(iii) Decrease in tolerance for Crop Group 6C from 0.3 ppm to 0.1 ppm—Canada currently has a tolerance of 0.3 ppm for S-metolachlor in dry beans. A decrease in the U.S. tolerance could result in a trade irritant for these crops exported from Canada to the U.S.

(iv) Increase in tolerance for egg and meat from 0.02 ppm to 0.04 ppm—Canada currently has a tolerance of 0.02 ppm for S-metolachlor in eggs, meat of cattle, goats, hogs, poultry and sheep. An increase in the U.S. tolerance could result in a trade irritant for these animal products exported from the U.S. to Canada.

(v) Increase tolerance in animal liver from 0.05 ppm to 0.1 ppm—Canada currently has a tolerance of 0.05 ppm for S-metolachlor in liver of cattle and poultry. An increase in the U.S. tolerance could result in a trade irritant for these animal products exported from the U.S. to Canada.

The Agency responded to Syngenta's first comment (i) on September 17, 2008 (73 FR 53732). In response to the remaining comments (ii)–(v), the Agency has re-evaluated new and existing data for the legume crop group 6, and existing data for cattle meat, fat and liver, poultry meat, fat and egg for both metolachlor and S-metolachlor which, in general, the Agency agrees with the comments. The maximum S-metolachlor residue field trial data in/on legume vegetables support the harmonization of the corresponding legume vegetable crop group 6 tolerances with the Canadian MRLs at 0.3 ppm for existing S-metolachlor tolerances and the establishment of a tolerance of 0.3 ppm in/on pea and bean, succulent shelled, subgroup 6B where maximum residues were 0.14 ppm. Extrapolating the residue data from the ruminant feeding study to a 1x feeding level for cattle, goats, horses, and sheep the maximum combined residues of concern for metolachlor and S-metolachlor would be 0.01 ppm in meat and fat and 0.03 ppm in liver; and considering the harmonization of tolerances with Canadian MRLs under the North American Free Trade Agreement (NAFTA), the Agency determined that the tolerances should

be decreased for cattle, goat, horse, and sheep liver to 0.05 ppm and meat and fat to 0.02 ppm. Based on feeding studies in hens dosed up to 3.9x the maximum theoretical dietary burden, metolachlor and S-metolachlor residues of concern were not detected (< 0.02 ppm the levels of quantitation (LOQ)) in eggs, liver, fat, meat and meat byproducts and the importance of harmonizing MRLs with Canada, the Agency determined the tolerances for eggs and poultry meat and fat should be 0.02 ppm and poultry meat byproducts (which includes liver) should be 0.05 ppm. The Agency inadvertently published the harmonized tolerances for residues of S-metolachlor in/on cattle meat and liver, poultry meat and egg in the **Federal Register** published September 17, 2008 (73 FR 53732) before proposing and receiving comment which we are correcting with this action. Therefore, EPA proposes the tolerances in 40 CFR 180.368(a)(2) for the combined S-metolachlor residues of concern be established for pea and bean, succulent shelled, subgroup 6B at 0.30 ppm; increased in/on pea and bean, dried shelled, except soybean, subgroup 6C from 0.10 ppm to 0.30 ppm; decreased in/on vegetable, legume, edible podded, subgroup 6A from 0.50 ppm to 0.30 ppm; cattle, goat, horse, and sheep, liver from 0.10 to 0.05 ppm; cattle, goat, horse, and sheep, meat and fat from 0.04 to 0.02 ppm; egg and poultry, meat and fat from 0.04 to 0.02 ppm; and poultry, meat byproducts from 0.04 to 0.05 ppm. Also, EPA proposes the tolerances in 40 CFR 180.368(a)(1) for the combined metolachlor residues of concern be increased in/on pea and bean, dried shelled, except soybean, subgroup 6C from 0.10 ppm to 0.3 ppm; decreased in/on vegetable, legume, edible podded, subgroup 6A from 0.50 ppm to 0.30 ppm; cattle, goat, horse, and sheep, liver from 0.10 to 0.05 ppm; cattle, goat, horse, and sheep, meat and fat from 0.04 to 0.02 ppm; egg and poultry, meat and fat from 0.04 to 0.02 ppm; and poultry, meat byproducts from 0.04 to 0.05 ppm. The Agency determined that the increased tolerances are safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Additional rotational crop field trials conducted with S-metolachlor on wheat and oats indicate that the maximum residues levels were 0.40 ppm in/on oat forage, 0.50 ppm in/on oat hay, 0.09 ppm in/on oat straw, <0.08 ppm in/on wheat and oat grain, 0.47 ppm in/on wheat forage, 0.26 ppm in/on wheat hay, and 0.28 ppm in/on wheat straw.

Based on these residues levels and translating these data to the other small grains, the Agency has determined that the tolerances should be 0.50 ppm for barley, oat, wheat and millet hay; 0.10 ppm for millet, grain; and 0.50 ppm for millet, forage and straw. Based on residue data conducted on soybean, corn, wheat and sorghum, the maximum residues found on aspirated grain fractions were 0.63 ppm; therefore, the Agency has determined that the tolerance for aspirated grain fractions (AGF) should be 0.7 ppm. Rice straw is no longer considered a significant animal feed item, therefore, tolerances are no longer required for rice straw. Therefore, EPA proposes tolerances in 40 CFR 180.368(a)(2) be established for the combined S-metolachlor residues of concern in/on grain, aspirated fractions at 0.70 ppm; and in 40 CFR 180.368(d)(2) be revoked on rice, straw at 0.50 ppm; decreased on barley, oat, and wheat, hay from 1.0 ppm to 0.50 ppm; established on millet, grain at 0.10 ppm; millet, forage at 0.50 ppm; millet, hay at 0.50 ppm; and millet, straw at 0.50 ppm.

Additional rotational crop field trials conducted on wheat and oats with metolachlor indicate that the maximum total residue levels were 0.35 ppm in/on forage, 0.45 ppm in/on hay, 0.42 ppm in/on straw, and 0.03 ppm in/on grain. Based on these residue levels and translating these data to the other small grains, the Agency has determined that the tolerances for metolachlor residues should be 0.80 ppm for barley, millet, oat, and wheat hay; 0.10 ppm for barley, buckwheat, millet, oat, rice, rye, and wheat grain; and 0.50 ppm for millet, oat, rye, and wheat forage and 0.80 ppm for barley, millet, oat, rye, and wheat straw. Rice straw is no longer considered a significant animal feed item, therefore, tolerances are no longer required for rice straw. Currently, since there are no active registrations with uses of metolachlor on spinach, the tolerance on spinach at 0.50 ppm should be revoked. Therefore, EPA proposes the tolerances in 40 CFR 180.368(d)(1) for the combined residues of concern for metolachlor be established on barley, millet, oat, and wheat, hay at 0.80 ppm; increased on barley, millet, oat, rye, and wheat straw from 0.50 ppm to 0.80 ppm; and revoked on rice, straw at 0.50 ppm and in 40 CFR 180.368(a)(1) revoked on spinach at 0.50 ppm. The Agency determined that the increased tolerances are safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

In this action, the Agency has proposed modifications to the tolerances for the legume vegetable subgroups (6A, 6B, and 6C) such that all of the subgroups (6A, 6B, and 6C) have the same tolerance of 0.30 ppm for both metolachlor and S-metolachlor consequently, these tolerances should be consolidated as the vegetable, legume, group 6 at 0.30 ppm. Therefore, EPA proposes the tolerances be revised in 40 CFR 180.368(a)(1) and (a)(2) for the combined residues of concern for metolachlor and S-metolachlor from vegetable, legume, edible-podded, subgroup 6A; pea and bean, succulent shelled, subgroup 6B; and pea and bean, dried shelled, except soybean, subgroup 6C to vegetable, legume, succulent or dried, group 6.

2. *Bifenazate*. The Agency proposes the tolerance in 40 CFR 180.572(a) be corrected to read guava rather than guave.

3. *Buprofezin*. The Agency proposes the tolerance in 40 CFR 180.511(a) be corrected to read guava rather than guave.

4. *2,4-D*. In the **Federal Register** of June 6, 2007 (72 FR 31221) (FRL-8122-7), the Agency incorrectly proposed a tolerance action that included the commodity cranberry in berry, group 13 at 0.2 ppm in 40 CFR 180.142(a). That action removed the individual cranberry tolerance at 0.5 ppm in 40 CFR 180.142(a). The proposal was finalized September 12, 2007 (72 FR 52013) (FRL-8142-2). The berry crop group 13 is not inclusive of cranberries. Further, reestablishing the cranberry tolerance at 0.5 ppm will harmonize with the Canadian maximum residue level (MRL) under the North American Free Trade Agreement (NAFTA). Therefore, the Agency proposes reestablishing the tolerance in 40 CFR 180.142(a) for residues of 2,4-D in/on cranberry at 0.5 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

#### *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. 346a, as amended by 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. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(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. 136 *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.

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

EPA is proposing that the actions herein become effective on the date of publication of the final rule in the **Federal Register**.

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this unit, 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 the requirement of a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

#### **III. Are the Proposed Actions Consistent With International Obligations?**

The tolerance actions 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 FFDCA. The same food safety standards apply to domestically produced and imported foods.

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international Maximum Residue Limits (MRLs) established by the Codex

Alimentarius is a joint U.N. Food and Agriculture Organization/ World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level in a notice published for public comment. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs and TREDs, and in the Residue Chemistry document which supports the RED and TRED, as mentioned in Unit II.A. Specific tolerance actions in this proposed rule and how they compare to Codex MRLs (if any) are discussed in Unit II.A.

#### IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to establish tolerances under FFDCA section 408(e), and also modify and revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (e.g., establishment and 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, entitled *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 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 on December 17, 1997 (62 FR 66020) (FRL-5753-1), 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 proposed rule, the Agency hereby certifies that this proposed rule will not have a significant negative economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of this proposed rule). Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal 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 FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

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

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

Dated: June 19, 2009

**Steven Bradbury,**

*Acting Director, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

**PART 180—[AMENDED]**

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

**Authority:** 21 U.S.C. 321(q), 346a and 371.

2. Section 180.142 is amended by adding alphabetically the following commodity to the table in paragraph (a) to read as follows:

**§ 180.142 2,4-D; tolerances for residues.**

(a) General. \* \* \*

Commodity	Parts per million
Cranberry	0.5

\* \* \* \* \*

3. Section 180.368 is amended by revising the table in paragraph (a)(1), (a)(2), (d)(1) and (d)(2) to read as follows:

**§ 180.368 Metolachlor; tolerances for residues.**

(a) General. (1) \* \* \*

Commodity	Parts per million
Almond, hulls	0.30
Animal feed, nongrass, group 18	1.0
Cattle, fat	0.02
Cattle, kidney	0.20
Cattle, liver	0.05
Cattle, meat	0.02
Cattle, meat byproducts, except kidney and liver	0.04
Corn, field, forage	6.0
Corn, field, grain	0.10
Corn, field, stover	6.0
Corn, sweet, forage	6.0
Corn, sweet, kernel plus cob with husks removed	0.10
Corn, sweet, stover	6.0
Cotton, gin byproducts	4.0
Cotton, undelinted seed	0.10
Dill	0.50
Egg	0.02
Goat, fat	0.02
Goat, kidney	0.20
Goat, liver	0.05
Goat, meat	0.02
Goat, meat byproducts, except kidney and liver	0.04
Grass, forage	10
Grass, hay	0.20
Horse, fat	0.02
Horse, kidney	0.20
Horse, liver	0.05
Horse, meat	0.02
Horse, meat byproducts, except kidney and liver	0.04
Milk	0.02
Nut, tree, group 14	0.10
Okra	0.50
Peanut	0.20
Peanut, hay	20
Peanut, meal	0.40
Potato	0.20

Commodity	Parts per million	Commodity	Parts per million
Poultry, fat	0.02	Peanut, meal	0.40
Poultry, meat	0.02	Poultry, fat	0.02
Poultry, meat byproducts	0.05	Poultry, meat	0.02
Safflower, seed	0.10	Poultry, meat byproducts	0.05
Sheep, fat	0.02	Pumpkin	0.10
Sheep, kidney	0.20	Safflower, seed	0.10
Sheep, liver	0.05	Shallot, bulb	0.10
Sheep, meat	0.02	Sheep, fat	0.02
Sheep, meat byproducts, except kidney and liver	0.04	Sheep, kidney	0.20
Sorghum, grain, forage	1.0	Sheep, liver	0.05
Sorghum, grain, grain	0.30	Sheep, meat	0.02
Sorghum, grain, stover	4.0	Sheep, meat byproducts, except kidney and liver	0.04
Soybean, forage	5.0	Sorghum, grain, forage	1.0
Soybean, hay	8.0	Sorghum, grain, grain	0.3
Soybean, seed	0.20	Sorghum, grain, stover	4.0
Tomato	0.10	Soybean, forage	5.0
Vegetable, foliage of legume, subgroup 7A, except soybean	15.0	Soybean, hay	8.0
Vegetable, legume, succulent or dried, group 6	0.30	Soybean, seed	0.20
		Spinach	0.50
		Squash, winter	0.10
		Sunflower, seed	0.50
		Sunflower, meal	1.0
		Tomato, paste	0.30
		Vegetable, foliage of legume, except soybean, subgroup 7A	15.0
		Vegetable, fruiting, except tabasco pepper, group 8	0.10
		Vegetable, leaf petioles, subgroup 4B	0.10
		Vegetable, legume, succulent or dried, group 6	0.30
		Vegetable, root, except sugar beet, subgroup 1B	0.30
		Vegetable, tuberous and corm, subgroup 1C	0.20

(2) \* \* \*

Commodity	Parts per million
Asparagus	0.10
Beet, sugar, molasses	2.0
Beet, sugar, roots	0.5
Beet, sugar, tops	15.0
Brassica, head and stem, subgroup 5A	0.60
Cattle, fat	0.02
Cattle, kidney	0.20
Cattle, liver	0.05
Cattle, meat	0.02
Cattle, meat byproducts, except kidney and liver	0.04
Corn, field, grain	0.10
Corn, field, forage	6.0
Corn, field, stover	6.0
Corn, pop, grain	0.10
Corn, pop, stover	6.0
Corn, sweet, forage	6.0
Corn, sweet, kernel plus cob with husks removed	0.10
Corn, sweet, stover	6.0
Cotton, gin byproducts	4.0
Cotton, undelinted seed	0.10
Egg	0.02
Garlic, bulb	0.10
Grain, aspirated fractions	0.70
Goat, fat	0.02
Goat, kidney	0.20
Goat, liver	0.05
Goat, meat	0.02
Goat, meat byproducts, except kidney and liver	0.04
Grass, forage	10.0
Grass, hay	0.20
Horse, fat	0.02
Horse, kidney	0.20
Horse, liver	0.05
Horse, meat	0.02
Horse, meat byproducts, except kidney and liver	0.04
Milk	0.02
Onion, bulb	0.10
Onion, green	2.0
Peanut	0.20
Peanut, hay	20.0

\* \* \* \* \*

(d) Indirect or inadvertent residues.

(1) \* \* \*

Commodity	Parts per million
Animal feed, nongrass, group 18	1.0
Barley, grain	0.10
Barley, hay	0.80
Barley, straw	0.80
Buckwheat, grain	0.10
Millet, forage	0.50
Millet, grain	0.10
Millet, hay	0.80
Millet, straw	0.80
Oat, forage	0.50
Oat, grain	0.10
Oat, hay	0.80
Oat, straw	0.80
Rice, grain	0.10
Rye, forage	0.50
Rye, grain	0.10
Rye, straw	0.80
Wheat, forage	0.50
Wheat, grain	0.10
Wheat, hay	0.80
Wheat, straw	0.80

(2) \* \* \*

Commodity	Parts per million
Animal feed, nongrass, group 18 .....	1.0
Barley, grain .....	0.10
Barley, hay .....	0.50
Barley, straw .....	0.50
Buckwheat, grain .....	0.10
Millet, forage .....	0.50
Millet, grain .....	0.10
Millet, hay .....	0.50
Millet, straw .....	0.50
Oat, forage .....	0.50
Oat, grain .....	0.10
Oat, hay .....	0.50
Oat, straw .....	0.50
Rice, grain .....	0.10
Rye, forage .....	0.50
Rye, grain .....	0.10
Rye, straw .....	0.50
Wheat, forage .....	0.50
Wheat, grain .....	0.10
Wheat, hay .....	0.50
Wheat, straw .....	0.50

\* \* \* \* \*

4. Section 180.511 is amended by removing the entry for “Guave” and adding the following commodity to the table in paragraph (a) to read as follows:

**§ 180.511 Buprofezin; tolerances for residues.**

(a) General. \* \* \*

Commodity	Parts per million
Guava .....	0.3

\* \* \* \* \*

5. Section 180.572 is amended by removing the entry for “Guave” and adding the following commodity to the table in paragraph (a) to read as follows:

**§ 180.572 Bifenazate; tolerances for residues.**

(a) General. \* \* \*

Commodity	Parts per million
Guava .....	0.9

\* \* \* \* \*

[FR Doc. E9-15139 Filed 6-25-09; 8:45 am]

BILLING CODE 6560-50-S

**GENERAL SERVICES ADMINISTRATION**

**41 CFR Part 102-39**

[FMR Case 2009-102-3; Docket No. 2009-0002, Sequence 3]

RIN 3090-AI92

**Federal Management Regulation; Replacement of Personal Property Pursuant to the Exchange/Sale Authority**

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Proposed rule.

**SUMMARY:** The General Services Administration (GSA) is proposing to amend the Federal Management Regulation (FMR) by making changes to its policy on the replacement of personal property pursuant to the exchange/sale authority.

**DATES:** Interested parties should submit comments in writing on or before July 27, 2009 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FMR case 2009-102-3 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FMR Case 2009-102-3” under the heading “Search Documents”. Select the link “Send a Comment or Submission” that corresponds with FMR Case 2009-102-3. Follow the instructions provided to complete the “Public Comment and Submission Form”. Please include your name, company name (if any), and “FMR Case 2009-102-3” on your attached document.

- *Fax:* 202-501-4067.
- *Mail:* General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FMR Case 2009-102-3 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Holcombe, Office of Governmentwide Policy, Office of Travel, Transportation, and Asset Management (MT), (202) 501-3838 or e-mail at [robert.holcombe@gsa.gov](mailto:robert.holcombe@gsa.gov). For information pertaining to status or publication schedules contact the

Regulatory Secretariat, 1800 F Street, NW., Room 4041, Washington, DC 20405, (202) 501-4755. Please cite FMR Case 2009-102-3.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This proposed rule would remove the exchange/sale prohibition on aircraft and airframe structural components, subject to certain conditions. These commodities have been included on the list of properties normally ineligible for exchange/sale so that the acquisition and disposal of these commodities could be managed more closely. To conduct an exchange/sale of such commodities (which is encouraged to reduce the agency costs of managing their aircraft fleets), agencies have been required to submit deviation requests for approval by GSA. Adequate tools are now available for managing these assets without going through the time-consuming and onerous deviation process. Further, removing these commodities from the “prohibited list” should not have a detrimental impact on the donation of such property. Finally, although agencies would no longer need to request deviations from GSA, a provision would be added to alert agencies that they must comply with the restrictions and limitations on the disposal of aircraft and aircraft parts contained in 41 CFR part 102-33.

This proposed rule would also remove the prohibition on using scrap in an exchange/sale transaction when the property has utility and value at the time an exchange/sale determination is made. This clarification would address situations where the dismantling or removal of property may render the property as “scrap”, but where replacement of similar property is still required.

Finally, this proposed rule would make a clerical correction to § 102-39.80 to clarify that the time limit restriction on use of exchange/sale exchange allowances is the same as the restriction for use of exchange/sale sales proceeds.

**B. Executive Order 12866**

This proposed rule is excepted from the definition of “regulation” or “rule” under Section 3(d)(3) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and, therefore, was not subject to review under Section 6(b) of that executive order.

**C. Regulatory Flexibility Act**

This proposed rule is not required to be published in the **Federal Register** for comment. Therefore, the Regulatory