

Each year while the issue is outstanding, 40 percent by volume and 45 percent by weight of the solid material that Company K processes in the conversion process is coal. The remainder of the solid material is either used material or residual material within the meaning of paragraph (c)(1)(i) of this section. Sixty percent of the costs of the property used to perform the energy conversion process are allocable to a solid waste disposal function.

*Example 12. Mixed-function facility.*

Company L owns and operates a facility financed by an issue and uses the facility exclusively to sort damaged bottles from undamaged bottles that may be re-used. The damaged bottles are directly introduced into a process that melts them for use in the fabrication of an end product. The damaged bottles are solid waste within the meaning of paragraph (b)(1) of this section, and the melting process is a qualified solid waste disposal process as a recycling process within the meaning of paragraph (c)(3) of this section. Refilling the bottles is not a qualified solid waste disposal process. Each year while the issue is outstanding, more than 50 percent, by weight or volume, of all of the bottles that pass out of the sorting process are damaged bottles that are processed in a recycling process. The sorting facility performs a preliminary function, but it also performs another function. The costs of the sorting facility allocable to the preliminary function are determined using any reasonable method, based on all the facts and circumstances.

(i) *Effective Dates—(1) In general.* This section applies to bonds to which section 142 applies that are sold on or after the date that is 60 days after publication of final regulations in the **Federal Register**.

(2) *Elective retroactive application.* Issuers may apply this section to bonds sold before the date that is 60 days after publication of final regulations in the **Federal Register**.

## PART 17—TEMPORARY INCOME TAX REGULATIONS UNDER 26 U.S.C. 103C

**Par. 4.** The authority citation for part 17 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

### § 17.1 [Removed]

**Par. 5.** Section 17.1 is removed.

**Linda M. Kroening,**

(Acting) Deputy Commissioner for Services And Enforcement.

[FR Doc. E9–22258 Filed 9–15–09; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA–HQ–OPP–2009–0431; FRL–8431–4]

### Mancozeb, Maneb, Metiram, and Thiram; Proposed Tolerance Actions

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to revoke certain tolerances for the fungicides mancozeb and maneb. Also, EPA is proposing to modify certain tolerances for the fungicides mancozeb, maneb, metiram, and thiram. In addition, EPA is proposing to establish new tolerances for the fungicides mancozeb, maneb, and metiram. 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 November 16, 2009.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0431, 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–2009–0431. 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 [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.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 [www.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:** Joseph Nevola, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address: [nevola.joseph@epa.gov](mailto:nevola.joseph@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially

affected entities may include, but are not limited to:

- Crop production (NAICS 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 [regulations.gov](http://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.

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

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60-day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f), if needed. The order would specify data needed and the timeframes 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 proposed rule, 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, modify, and establish specific tolerances for residues of the fungicides mancozeb, maneb, metiram, and thiram 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 in public dockets; REDs for mancozeb (EPA-HQ-OPP-2005-0176), maneb (EPA-HQ-OPP-2005-0178), metiram (EPA-HQ-OPP-2005-0177), and thiram (EPA-HQ-OPP-2004-0183), at <http://www.regulations.gov> and also at <http://www.epa.gov/pesticides/reregistration/status.htm>.

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 and exemptions and/or establishments of tolerances and exemptions for mancozeb, maneb, metiram, and thiram 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 electronic copies for mancozeb, maneb, and metiram can be found under their respective public docket ID numbers, identified in Unit II.A. Electronic copies of support documents for thiram are available in public docket EPA-HQ-OPP-2004-0183. An electronic copy of the Residue Chemistry Chapter for thiram is available in the public docket for this proposed rule. Electronic copies are available through EPA's electronic public docket and comment system, [www.regulations.gov](http://www.regulations.gov) at <http://www.regulations.gov>. You may search for this proposed rule under docket ID number EPA-HQ-OPP-2009-0431, 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 addition, EPA is proposing to revoke certain specific tolerances because either they are no longer needed or are associated with food uses that are no longer registered under FIFRA. Those instances where registrations were canceled were because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily requested cancellation of one or more registered uses of the pesticide. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance to cover residues in or on imported commodities or legally treated domestic commodities.

1. *Mancozeb*. Currently, tolerances for mancozeb are established in 40 CFR 180.176(a) for residues of the fungicide mancozeb, a coordination product of zinc ion and maneb (manganese ethylenebisdithiocarbamate) and calculated as zinc ethylenebisdithiocarbamate (zineb). Mancozeb is a member of the class of dithiocarbamates, whose decomposition releases carbon disulfide (CS<sub>2</sub>). In order to allow harmonization of U.S. tolerances with Codex Maximum Residue Limits (MRLs), the Agency determined that for the purpose of tolerance enforcement, residues of mancozeb should be calculated as carbon disulfide. Therefore, EPA is proposing to revise the introductory text containing the tolerance expression in 40 CFR 180.176(a) to read as follows:

Tolerances are established for residues of mancozeb (a coordination product of zinc ion and maneb (manganese ethylenebisdithiocarbamate)), including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only those mancozeb residues convertible to and expressed in terms of the degradate carbon disulfide.

Also, the Agency determined that the change in tolerance expression should also apply to the other dithiocarbamates that are determined by the carbon disulfide common moiety and have current tolerances. (That document is available in the docket for this proposed rule). Currently, according to 40 CFR 180.3(d)(5), total dithiocarbamate residue on the same raw agricultural commodity shall not exceed that permitted by the highest tolerance for any one member of the class, calculated as zinc ethylenebisdithiocarbamate (zineb). Therefore, in the interim, until

all tolerance expressions can be changed for dithiocarbamates with the carbon disulfide moiety and current tolerances, EPA is proposing to revise the text in 40 CFR 180.3(d)(5) by adding carbon disulfide as part of the calculated residues, to read as follows:

Where tolerances are established for more than one member of the class of dithiocarbamates listed in paragraph (e)(3) of this section on the same raw agricultural commodity, the total residue of such pesticides shall not exceed that permitted by the highest tolerance established for any one member of the class, calculated as zinc ethylenebisdithiocarbamate and carbon disulfide.

Oat bran is no longer considered to be a significant food/feed item by the Agency, and therefore is no longer regulated as a commodity in accordance with "Table 1. Raw Agricultural and Processed Commodities and Feedstuffs Derived from Crops," which is found in Residue Chemistry Test Guidelines OPPTS 860.1000 dated August 1996, available at <http://www.epa.gov/opptsfrs/home/guidelin.htm>; consequently, the Agency has determined that the tolerance for mancozeb on oat, bran at 20 ppm is no longer needed. Therefore, EPA is proposing to revoke the tolerance in 40 CFR 180.176(a) on oat, bran.

Based on available field trial data that showed mancozeb residues on apples as high as 0.55 parts per million (ppm) and on pears as high as 0.13 ppm (for a pre-bloom treatment schedule), and 0.65 ppm (for an extended treatment schedule), EPA determined that the tolerances should be decreased from 7.0 ppm and 10.0 ppm, respectively, to 1 ppm, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X (based on relative molecular weights) is calculated as 0.6 ppm. The Agency determined that data for apple should be translated to crabapple because the registered use patterns (application method, maximal single application rate, maximal seasonal rate, and preharvest interval) associated with given formulations for mancozeb are identical for crabapple and apple, and data for pear should be translated to quince because the registered use patterns associated with given formulations for mancozeb are identical for quince and pear, and therefore the tolerances on crabapple and quince should each be decreased from 10.0 ppm to 0.6 ppm. Consequently, EPA is proposing to decrease the tolerances in 40 CFR 180.176(a) on apple, crabapple, pear, and quince, each to 0.6 ppm.

Based on available field trial data that showed mancozeb residues as high as

1.0 ppm in or on bananas harvested 0 days following the last foliar application at 1.3X the maximum single application rate and for bagged and unbagged bananas as high as 0.13 ppm and 1.18 ppm, respectively, on whole banana fruit including peel harvested 0 days following the last foliar application at 1X the maximum single application rate, and to harmonize with a Codex MRL of 2 expressed as milligrams (mg) carbon disulfide/kilogram (kg) for dithiocarbamates, EPA determined that the tolerance should be decreased from 4.0 ppm to 2 ppm. Therefore, EPA is proposing to decrease the tolerance in 40 CFR 180.176(a) on banana to 2 ppm. In addition, because banana pulp is covered by the tolerance for banana at the proposed level, a separate tolerance for the obsolete commodity term banana, pulp is no longer needed and should be revoked. Consequently, EPA is proposing to revoke the tolerance in 40 CFR 180.176(a) on banana, pulp.

Based on available field trial data that showed mancozeb residues as high as 1.5 ppm and 99.5 ppm for sugar beet roots and tops, respectively, EPA determined that tolerances should be set at 2 ppm and 100 ppm, respectively, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X are calculated as 1.2 ppm and 60 ppm, respectively. Also, based on available processing data that showed mancozeb residues concentrated 3X in sugar beet dried pulp and a highest average field trial (HAFT) of <1.529 ppm, the Agency expected residues as high as 4.59 ppm, the Agency determined that a tolerance should be established at 5.0 ppm, which when converted to carbon disulfide is calculated at 3.0 ppm. Therefore, EPA is proposing to decrease the tolerances in 40 CFR 180.176(a) on beet, sugar, roots to 1.2 ppm and beet, sugar, tops to 60 ppm, and establish a tolerance on beet, sugar, dried pulp at 3.0 ppm.

Based on available field trial data that showed mancozeb residues as high as 6.72 ppm on cranberry, the Agency determined that the tolerance should be set at 7 ppm, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X, and to harmonize with a Codex MRL of 5 expressed as mg carbon disulfide/kg for dithiocarbamates, is calculated as 5 ppm. Therefore, EPA is proposing to decrease the tolerance in 40 CFR 180.176(a) on cranberry to 5 ppm.

Based on available field trial data that showed mancozeb residues as high as 2.1 ppm on cucumber, 4.7 ppm on melons treated at 1.3X (expect 3.6 ppm at 1X), and 1.75 ppm on summer squash, the Agency determined that

individual tolerances should be set at 3.0 ppm, 4.0 ppm, and 2 ppm, respectively, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X is calculated as 1.8 ppm, 2.2 ppm and 1.2 ppm, respectively. Because the representatives for crop group 9 include cucumber, muskmelon, and summer squash, EPA believes that these tolerances should be combined into a single crop group tolerance and decreased from their current individual tolerance levels of 4 ppm to 2 ppm. Consequently, EPA is proposing to decrease the tolerances in 40 CFR 180.176(a) on cucumber, melon, and squash, summer to 2 ppm and combine them into the group tolerance termed vegetable, cucurbit, group 9.

Based on available field trial data that showed mancozeb residues as high as 57.4 ppm for field corn forage, 15.2 ppm for field corn stover, 87.5 ppm for sweet corn forage, 59.3 ppm for sweet corn stover, and translation of sweet corn stover data to pop corn stover, EPA determined that tolerances should be increased from 5 ppm each to 65 ppm, 20 ppm, 120 ppm, 70 ppm, and 70 ppm, respectively, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X is calculated as 40 ppm, 15 ppm, 70 ppm, 40 ppm, and 40 ppm, respectively. (The Agency also determined that mancozeb registrations for corn use should remove existing feeding/grazing restrictions for all types of corn). Therefore, EPA is proposing to revise the terminology of tolerances in 40 CFR 180.176(a) for corn, forage to corn, field, forage and corn, sweet, forage; and corn, stover to corn, field, stover; corn, pop, stover; and corn, sweet, stover; and to increase corn, field, forage to 40 ppm, corn, field, stover to 15 ppm, corn, sweet, forage to 70 ppm; corn, pop, stover to 40 ppm; and corn, sweet, stover to 40 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.

Based on available field trial data that showed mancozeb residues at <0.05 ppm on sweet corn (kernel plus cob with husks removed), the Agency determined that the tolerance should be decreased from 0.5 ppm to 0.1 ppm in order to harmonize with a Codex MRL of 0.1 expressed as mg carbon disulfide/kg for dithiocarbamates. Also, the Agency determined that the data for sweet corn can be translated to popcorn grain, and therefore the tolerance for popcorn grain should be decreased from 0.5 ppm to 0.1 ppm, which after conversion is calculated as 0.06 ppm.

Therefore, EPA is proposing to decrease the tolerances in 40 CFR 180.176(a) on corn, pop, grain to 0.06 ppm and corn, sweet, kernel plus cob with husks removed to 0.1 ppm.

Based on available field trial data that showed mancozeb residues as high as 1.79 ppm for dry bulb onions, EPA determined that the tolerance should be increased from 0.5 ppm to 2.0 ppm, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X is calculated as 1.5 ppm. Therefore, EPA is proposing to increase the tolerance in 40 CFR 180.176(a) on onion, bulb to 1.5 ppm. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available field trial data for sorghum seed treatment at 1.1–1.2X the maximum rate that showed mancozeb residues as high as 0.32 ppm in or on grain and 0.12 ppm in or on straw, EPA determined that tolerances should be established at 0.4 ppm for grain, 0.2 ppm for stover, and because the data on straw could be translated to forage, 0.2 ppm for forage, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X are calculated as 0.25 ppm, 0.15 ppm, and 0.15 ppm, respectively. Therefore, EPA is proposing to establish tolerances in 40 CFR 180.176(a) on sorghum, grain, grain at 0.25 ppm, sorghum, grain, forage at 0.15 ppm, and sorghum, grain, stover at 0.15 ppm.

Based on available field trial data for flax seed treatment at 0.7–0.8X the maximum rate that showed mancozeb residues as high as 0.13 ppm in or on flax grain, EPA determined that a tolerance should be established at 0.2 ppm for flax seed, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X is calculated as 0.15 ppm. Therefore, EPA is proposing to establish a tolerance in 40 CFR 180.176(a) on flax, seed at 0.15 ppm.

Based on available field trial data for rice seed treatment at 1.2–1.3X the maximum rate that showed mancozeb residues as high as <0.05 ppm (non-detectable) in or on rice grain and 0.15 ppm in or on rice straw, EPA determined that tolerances should be established at 0.1 ppm for rice grain and 0.2 ppm for rice straw, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X are calculated as 0.06 ppm and 0.15 ppm, respectively. Therefore, EPA is proposing to establish tolerances in 40 CFR 180.176(a) on rice, grain at 0.06 ppm and rice, straw at 0.15 ppm.

Based on available field trial data at 1X the maximum rate that showed mancozeb residues as high as 0.017 ppm in or on peanut nutmeat and 1.5X the maximum rate that showed mancozeb residues as high as 5.1 ppm in or on tomatoes, EPA determined that the tolerance on peanut should be decreased from 0.5 ppm to 0.1 ppm and the tolerance on tomato should remain at 4 ppm, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X are calculated as 0.1 ppm (unchanged, but in harmony with Codex MRL of 0.1 expressed as mg carbon disulfide/kg for dithiocarbamates) and 2.5 ppm, respectively. Therefore, EPA is proposing to decrease the tolerances in 40 CFR 180.176(a) on peanut to 0.1 ppm and tomato to 2.5 ppm.

On March 2, 1992 (57 FR 7484) (FRL-4045-8), EPA published a Conclusion of the Special Review for Ethylene bisdithiocarbamates (EBDCs PD4), and among its actions, the Agency disallowed mancozeb use on carrots and celery. However, the Mancozeb Task Force requested the reinstatement of mancozeb use on carrots grown in FL, MI, and WI, and celery grown in FL. The available data showed mancozeb residues applied at 1X the maximum proposed single and seasonal rate were as high as 0.709 ppm on carrots. EPA determined that the data for carrots are sufficient to support a regional tolerance and the tolerance should be redesignated from 180.176(a) to 180.176(c), and after conversion to carbon disulfide equivalents, should be decreased from 2 ppm to 1 ppm. Also, the available data showed mancozeb residues applied at 2X the maximum proposed seasonal rate were as high as 2.19 ppm on celery. The Agency concluded that the submitted data are not fully adequate because the field trials were conducted at 2X the maximum proposed seasonal rate, and as a condition for full registration recommended the submission of additional field trials at 1X and 2X rates in each FL trial location. However, there have been no active registrations in the United States for mancozeb use on celery since 1992, and therefore, the celery tolerance is no longer needed and should be revoked. Consequently, EPA is proposing to revoke the mancozeb tolerance on celery in 40 CFR 180.176(a) and redesignate the tolerance on carrot, roots from 40 CFR 180.176(a) to (c), and decrease it to 1 ppm. In addition, because that section is currently reserved, EPA is proposing to add introductory text for the tolerance

expression in 40 CFR 180.176(c) to read as follows:

A tolerance with regional registrations is established for residues of the fungicide mancozeb, (a coordination product of zinc ion and maneb (manganese ethylenebisdithiocarbamate)), including its metabolites and degradates, in or on the commodity in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only those mancozeb residues convertible to and expressed in terms of the degradate carbon disulfide.

Because data for celery treated with 7 to 17 foliar applications of mancozeb at 1X the maximum single application rate harvested at 14 days following the last application are available, EPA determined that the data can be translated to fennel, and no additional residue data for fennel, a very minor crop use, are required. Based on the data translated from celery, the Agency determined that the tolerance for fennel should be decreased from 10 ppm to 4 ppm, which when converted to carbon disulfide equivalents, is calculated as 2.5 ppm. Therefore, EPA is proposing to decrease the tolerance in 40 CFR 180.176(a) on fennel to 2.5 ppm.

Based on available field trial data at 1X the maximum single and 0.8X the maximum seasonal application rate that showed mancozeb residues as high as 1.83 ppm in or on grapes, EPA determined that the tolerance on grape should be decreased from 7 ppm to 2 ppm, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X are calculated as 1.5 ppm. Therefore, EPA is proposing to decrease the tolerance in 40 CFR 180.176(a) on grape to 1.5 ppm.

Based on available field trial data that showed mancozeb residues as high as 0.2 ppm in or on potatoes, EPA determined that there are now sufficient data to reassign the tolerance on potato from interim to permanent and that it should be decreased from 1.0 ppm to 0.2 ppm when converted to carbon disulfide equivalents. Therefore, EPA is proposing to revoke the interim tolerance in 40 CFR 180.319 for residues of the coordination product of zinc ion and maneb (mancozeb) in or on potato at 1.0 ppm (calculated as zinc ethylenebisdithiocarbamate) and establish a tolerance in 40 CFR 180.176(a) for residues of mancozeb (calculated as carbon disulfide) on potato at 0.2 ppm.

In addition, EPA is proposing to revise commodity terminology to conform to current Agency practice in 40 CFR 180.176(a) as follows: "asparagus (negligible residue)" to

"asparagus"; "barley, milled feed fractions" to "barley, bran," "barley, flour," and "barley, pearled barley"; "kidney" to "cattle, kidney," "goat, kidney," "hog, kidney," "horse, kidney," "poultry, kidney," and "sheep, kidney"; "liver" to "cattle, liver," "goat, liver," "hog, liver," "horse, liver," "poultry, liver," and "sheep, liver"; "papaya (whole fruit with no residue present in the edible pulp after the peel is removed and discarded)" to "papaya"; "oat, milled feed fractions" to "oat, flour" and "oat, groats/rolled oats"; "wheat, milled byproducts" to "wheat, bran," "wheat, flour," "wheat, germ," "wheat, middlings," and "wheat, shorts."

In the mancozeb RED, certain plant commodity tolerances are recommended to be decreased concomitant with product label changes to their use patterns. No mitigation is required to address either acute or chronic dietary risks from food alone. Acute dietary exposure from food alone are below the Agency's level of concern at the 99.9th percentile of exposure; i.e., exposure is <1% of the Acute Population Adjusted Dose (aPAD) for females 13-49 years old, the most highly exposed population subgroup. Chronic dietary exposure from food alone are below the Agency's level of concern; i.e., exposure is <1% of the Chronic Population Adjusted Dose (cPAD) for the U.S. population and all population subgroups, including children 1-2 years old, the most highly exposed population subgroup. However, because the Agency is still in the process of obtaining the needed amended mancozeb product labels, their associated plant tolerances will not be proposed to be decreased at this time. The RED for mancozeb recommended a decrease in the tolerance for field corn grain (from 0.1 ppm to 0.06 ppm) contingent upon limiting use of mancozeb on hybrid seed corn type only. However, the Agency has not yet verified that all active mancozeb registrations for field corn grain are limited to hybrid seed corn type only. Therefore, EPA will not propose action on the tolerance in 40 CFR 180.176(a) for corn, field, grain at this time. In addition, except for the tolerance on oat bran which was recommended for revocation, the RED for mancozeb recommended tolerance reassessment actions for papaya and the grains, milled feed fractions, and straw of barley, oat, rye, and wheat that are contingent upon label revisions. However, the Agency has not yet verified that all mancozeb registrations for them have been revised. Therefore, EPA will not propose action on the

tolerances in 40 CFR 180.176(a) for barley, grain; barley, straw; oat, grain; oat, straw; rye, grain; rye, straw; and wheat, grain at this time. With the exception of proposing to revise the tolerance nomenclatures for papaya (whole fruit with no residue present in the edible pulp after the peel is removed and discarded) and the milling feed fractions of barley, oat, and wheat, as described herein, no other action will be taken on them in 40 CFR 180.176(a) at this time. Also, although the Agency determined that the available processing data for wheat bran and flour may be translated to barley bran and flour, bridging processing data on pearled barley are still required. When appropriate mancozeb product label changes for specific plant commodity uses are provided to and approved by the Agency, EPA expects to follow up and propose the recommended tolerance decreases in a future publication in the **Federal Register**. Also, the Mancozeb Task Force requested removal of the foliar use on cotton and EPA has determined that use of mancozeb as a seed treatment on cottonseed is a non-food use (document available in the docket for this proposed rule). However, the Agency has not yet verified that all active mancozeb registrations for cotton do not have a foliar use on cotton. Therefore, EPA will not propose action on the tolerance in 40 CFR 180.176(a) for cotton, undelinted seed at this time.

There are MRLs for dithiocarbamates which are determined as carbon disulfide mg/kg. The tolerance definition for mancozeb proposed herein would be harmonized with that for Codex MRLs with respect to residue determination as carbon disulfide. However, the Codex limits are listed for total dithiocarbamates, which also include dithiocarbamates other than mancozeb.

2. *Maneb*. Currently, tolerances for maneb are established in 40 CFR 180.110(a) for residues of the fungicide maneb (manganese ethylenebisdithiocarbamate), calculated as zinc ethylenebisdithiocarbamate. Maneb is a member of the class of dithiocarbamates, whose decomposition releases a common moiety, carbon disulfide (CS<sub>2</sub>). In order to allow harmonization of U.S. tolerances with Codex MRLs, the Agency determined that for the purpose of tolerance enforcement, residues of maneb should be calculated as carbon disulfide. Therefore, EPA is proposing to revise the introductory text containing the tolerance expression in 40 CFR 180.110(a) to read as follows:

Tolerances are established for residues of maneb (manganese ethylenebisdithiocarbamate), including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only those maneb residues convertible to and expressed in terms of the degradate carbon disulfide.

Maneb use on certain crops were disallowed for reregistration by EPA, as announced in a notice published in the **Federal Register** of March 2, 1992 (57 FR 7484) (FRL-4045-8). In that notice, the Agency announced its conclusion of Special Review (PD4) regarding ethylene bisdithiocarbamates (EBDCs), including maneb, and its intent to cancel any EBDC product registrations bearing food uses that included, among others, apricots, succulent beans, carrots, celery, nectarines, and peaches. There have been no U.S. registrations for maneb use associated with apricots, succulent beans, nectarines, and peaches since 1992, and carrots and celery since 1994. Therefore, the maneb tolerances on these commodities are no longer needed and should be revoked. Consequently, EPA is proposing to revoke the tolerances in 40 CFR 180.110(a) for maneb residues of concern in or on apricot; bean, succulent; carrot, roots; celery; nectarine; and peach.

Based on available field trial data that showed maneb residues as high as <4.0 ppm for dry beans, 10.0 ppm for broccoli, <4.0 ppm for cucumber, <4.0 ppm for tomato, and calculation of 2.93 ppm for melon at 1X (based on maneb residues as high as of 4.39 ppm for melon treated at 1.5X), EPA determined that the tolerances should be decreased for dry beans from 7 ppm to 4 ppm, maintained for broccoli at 10 ppm, maintained for both cucumber and tomato at 4 ppm, and maintained for melon at 4 ppm, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X are calculated as 2.5 ppm, 6 ppm, 2 ppm, 2.5 ppm, and 3 ppm, respectively. In addition, the Agency determined that the broccoli data could be translated to Brussels sprouts, cauliflower, and kohlrabi, and that the tolerances on Brussels sprouts, cauliflower, and kohlrabi should, after conversion, be decreased from 10 ppm to 6 ppm. Also, the Agency determined that the melon data could be translated to pumpkin and winter squash, and that the tolerances on pumpkin and winter squash should, after conversion, be decreased from 7 ppm to 3 ppm and 4 ppm to 3 ppm, respectively. Moreover, the Agency determined that the cucumber data could be translated to summer squash,

and that the tolerance on summer squash, after conversion, be decreased from 4 to 2 ppm. Furthermore, the Agency determined that the tomato data could be translated to eggplant, and that the tolerance on eggplant, after conversion, be decreased from 7 ppm to 2.5 ppm. Therefore, EPA is proposing to decrease the tolerances in 40 CFR 180.110(a) on bean, dry, seed to 2.5 ppm, broccoli to 6 ppm, Brussels sprouts to 6 ppm, cauliflower to 6 ppm, cucumber to 2 ppm, eggplant to 2.5 ppm, kohlrabi to 6 ppm, melon to 3 ppm, pumpkin to 3 ppm, squash, summer to 2 ppm, squash, winter to 3 ppm, and tomato to 2.5 ppm.

Geographic representation of data for green onion was incomplete and not conducted according to the maximum registered use pattern. However, based on available field trial data for dry bulb onion that showed maneb residues of concern as high as 10.1 ppm (in or on one sample harvested 7 days following treatments at 0.5–0.8X the maximal seasonal rate), the Agency determined that the current tolerance for onion should be separated into onion, bulb and onion, green, and that the tolerance on onion, bulb should be increased from 7 ppm to approximately 10.1 ppm, but which after the 0.6X conversion to carbon disulfide, should be decreased to 6 ppm. Therefore, EPA is revising the tolerance in 40 CFR 180.110(a) on onion into onion, green and onion, bulb, and decreasing the tolerance on onion, bulb to 6 ppm, maintaining the tolerance on onion, green at 7 ppm at this time, while reiterating that additional data are required for green onions.

Based on available field trial data that showed maneb residues of concern as high as 36.8 ppm on untrimmed cabbage at 1.2X the seasonal rate allowed by PD4, the Agency determined that the tolerance for cabbage should be increased from the current level of 10 ppm, which after a 0.6X conversion to carbon disulfide is 21 ppm. Therefore, EPA is proposing to increase the tolerance in 40 CFR 180.110(a) for cabbage to 21 ppm. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available field trial data that showed maneb residues of concern as high as 154 ppm, the Agency determined that the tolerance for sugar beet tops should be increased from 45 to 200 ppm, which after a 0.6X conversion to carbon disulfide is 120 ppm. Also, based on available field trial data that showed maneb residues of concern as high as 1.72 ppm, the

Agency determined that a tolerance should be established on sugar beet roots at 2 ppm, which after a 0.6X conversion to carbon disulfide is 1.2 ppm. In addition, based on available processing data that showed a concentration factor of 2X for dried pulp, and a HAFT of 1.72 ppm for sugar beet roots, EPA determined that the expected maneb residues of concern in dried sugar beet pulp are 3.44 ppm, which is greater than the reassessed tolerance for sugar beet roots of 2.0 ppm, and therefore a tolerance should be established for dried sugar beet pulp at 4 ppm, which after a 0.6X conversion to carbon disulfide is 2.5 ppm. Consequently, EPA is proposing to establish tolerances in 40 CFR 180.110(a) for beet, sugar, roots at 1.2 ppm and beet, sugar, dried pulp at 2.5 ppm, and increase the tolerance in 40 CFR 180.110(a) for beet, sugar, tops to 120 ppm. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available poultry and ruminant metabolism data, the Agency determined that tolerances should be established on livestock commodities at the limit of quantitation of the analytical method. Therefore, EPA is proposing to establish tolerances in 40 CFR 180.110(a) on cattle, fat; cattle, meat; cattle, meat byproducts; goat, fat; goat, meat; goat, meat byproducts; hog, fat; hog, meat; hog, meat byproducts; horse, fat; horse, meat; horse, meat byproducts; poultry, fat; poultry, meat; poultry, meat byproducts; sheep, fat; sheep, meat; sheep, meat byproducts; egg; and milk; each at 0.02 ppm.

In addition, EPA is proposing to revise commodity terminology to conform to current Agency practice in 40 CFR 180.110(a) as follows: "banana (not more than 0.5 parts per million) shall be in the pulp after peel is removed and discarded (preharvest application only)" to "banana, preharvest"; and "cabbage, chinese" to "cabbage, chinese, bok choy" and "cabbage, chinese, napa."

Although the RED for maneb recommended tolerance revocation based on requests for voluntary cancellation of registrations associated with certain commodities, EPA is still in the process of verifying whether active registrations currently exist for them and therefore will not propose action on tolerances for apple; fig; grape; corn, sweet, kernel plus cob with husks removed; or turnip, roots at this time.

There are Codex MRLs for dithiocarbamates which are determined as carbon disulfide mg/kg. The tolerance

definition for maneb proposed herein would be harmonized with that for Codex MRLs with respect to residue determination as carbon disulfide. However, the Codex limits are listed for total dithiocarbamates, which also include dithiocarbamates other than maneb.

3. *Metiram*. Currently, tolerances for metiram are established in 40 CFR 180.217(a) for residues of the fungicide metiram, a mixture of 5.2 parts by weight of ammoniates of (ethylenebis (dithiocarbamate)) zinc with 1 part by weight ethylenebis (dithiocarbamic acid) bimolecular and trimolecular cyclic anhydrosulfides and disulfides, calculated as zinc ethylenebis(dithiocarbamate). Metiram is a member of the class of dithiocarbamates, whose decomposition releases a common moiety, carbon disulfide (CS<sub>2</sub>). In order to allow harmonization of U.S. tolerances with Codex MRLs, the Agency determined that for the purpose of tolerance enforcement, residues of metiram should be calculated as carbon disulfide. Therefore, EPA is proposing to revise the section heading from its chemical name to metiram and also revise the introductory text containing the tolerance expression in 40 CFR 180.217(a) to read as follows:

Tolerances are established for residues of metiram (a mixture of 5.2 parts by weight of ammoniates of (ethylenebis (dithiocarbamate)) zinc with 1 part by weight ethylenebis (dithiocarbamic acid) bimolecular and trimolecular cyclic anhydrosulfides and disulfides), including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only those metiram residues convertible to and expressed in terms of the degradate carbon disulfide.

Also, EPA is proposing in 40 CFR 180.217 to revise the section heading from the chemical name "ammoniates of [ethylenebis (dithiocarbamate)] zinc and ethylenebis [dithiocarbamic acid] bimolecular and trimolecular cyclic anhydrosulfides and disulfides" to "metiram."

Based on available field trial data that showed combined metiram residues of concern as high as <0.53 ppm in or on apples, and <0.03 ppm in or on potatoes, the Agency determined that tolerances should be decreased, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X, should be decreased from 2.0 ppm to 0.5 ppm for apple and from 0.5 ppm to 0.2 ppm for potato. Therefore, EPA is proposing to decrease tolerances in 40 CFR 180.217(a) on

apple to 0.5 ppm and on potato to 0.2 ppm.

Based on available processing data that showed metiram residues of concern concentrated 5X in wet apple pomace and a HAFT of 0.53 ppm, the Agency expected residues as high as 2.65 ppm, and the Agency determined that a tolerance should be established, which when converted to carbon disulfide is calculated at 2 ppm. Therefore, EPA is proposing to establish a tolerance in 40 CFR 180.217(a) on apple, wet pomace at 2 ppm.

There are Codex MRLs for dithiocarbamates which are determined as carbon disulfide mg/kg. The tolerance definition for metiram proposed herein would be harmonized with that for Codex MRLs with respect to residue determination as carbon disulfide. However, the Codex limits are listed for total dithiocarbamates, which also include dithiocarbamates other than metiram.

4. *Thiram*. Currently, tolerances for thiram are established in 40 CFR 180.132(a) for residues of the fungicide thiram (tetramethyl thiuram disulfide). Thiram is a member of the class of dithiocarbamates, whose decomposition releases a common moiety, carbon disulfide (CS<sub>2</sub>). In order to allow harmonization of U.S. tolerances with Codex MRLs, the Agency determined that for the purpose of tolerance enforcement, residues of thiram should be calculated as carbon disulfide. Therefore, EPA is proposing to revise the introductory text containing the tolerance expression in 40 CFR 180.132(a) to read as follows:

Tolerances are established for residues of thiram, tetramethyl thiuram disulfide, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only those thiram residues convertible to and expressed in terms of the degradate carbon disulfide.

In the **Federal Register** of September 12, 2008 (73 FR 53007) (FRL-8380-7), EPA issued a notice regarding EPA's announcement of the receipt of requests from registrants to voluntarily cancel certain pesticide registrations, including cancellation of the last apple use from thiram registrations. EPA approved the cancellation for the thiram registration with the last apple use and made it effective on March 11, 2009, and permitted the registrant to sell and distribute product under the previously approved labeling until September 11, 2009. The Agency believes that end users will have had sufficient time to exhaust existing stocks and for thiram-treated apple commodities to have

cleared the channels of trade by September 11, 2010. Also, based on available field trial data that showed thiram residues of concern as high as 8.65 ppm on apples, the Agency determined that the tolerance for apple should be 9 ppm, but which after a 0.6X conversion to carbon disulfide is determined by the Agency to be appropriate at 6.0 ppm. Therefore, during the interim period prior to its expiration, the tolerance should be decreased from 7.0 ppm to 6.0 ppm. Consequently, EPA is proposing to revoke the tolerance in 40 CFR 180.132(a) for apple with an expiration/revocation date of September 11, 2010, and decrease the tolerance level to 6.0 ppm.

Based on available field trial data that showed thiram residues of concern at <9 ppm on strawberries, the Agency determined that the tolerance for strawberry should be 9 ppm, but which after a 0.6X conversion to carbon disulfide is determined by the Agency to be appropriate at 6.0 ppm. Therefore, EPA is proposing to decrease the tolerance in 40 CFR 180.132(a) on strawberry to 6.0 ppm.

There are Codex MRLs for dithiocarbamates which are determined as carbon disulfide mg/kg. The tolerance definition for thiram proposed herein would be harmonized with that for Codex MRLs with respect to residue determination as carbon disulfide. However, the Codex limits are listed for total dithiocarbamates, which also include dithiocarbamates other than thiram.

#### *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.

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 FQPA. The safety finding determination is discussed in detail in each post-FQPA RED and TRED for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed and electronic copies of the REDs and TREDs are available as provided in Unit II.A.

EPA has issued REDs for mancozeb, maneb, metiram, and thiram. REDs and TREDs contain the Agency's evaluation of the database for these pesticides, including requirements for additional data on the active ingredients to confirm the potential human health and environmental risk assessments associated with current product uses, and in REDs state conditions under which these uses and products will be eligible for reregistration. The REDs and TREDs recommended the establishment, modification, and/or revocation of specific tolerances. RED and TRED recommendations such as establishing or modifying tolerances, and in some cases revoking tolerances, are the result of assessment under the FFDCA standard of "reasonable certainty of no harm." However, tolerance revocations recommended in REDs and TREDs that are proposed in this document do not need such assessment when the tolerances are no longer necessary.

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

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

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, consideration must be given to the possible residues of those chemicals in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural

products (for example, grain or hay) containing pesticide residues (40 CFR 180.6). When considering this possibility, EPA can conclude that:

1. Finite residues will exist in meat, milk, poultry, and/or eggs.
2. There is a reasonable expectation that finite residues will exist.
3. There is a reasonable expectation that finite residues will not exist. If there is no reasonable expectation of finite pesticide residues in or on meat, milk, poultry, or eggs, tolerances do not need to be established for these commodities (40 CFR 180.6(b) and (c)).

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

With the exception of the thiram tolerance for apple for which EPA is proposing a specific expiration/revocation date, the Agency is proposing that the actions herein become effective on the date of publication of the final rule in the **Federal Register**. With the exception of the proposed revocation of the thiram tolerance for apple, tolerances that are considered by EPA to no longer be significant food/feed items, and tolerances whose commodity use is covered by another tolerance, the Agency believes that existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation in this document have been completely exhausted and that treated commodities have cleared the channels of trade. EPA is proposing an expiration/revocation date of September 11, 2010, for the thiram tolerance for apple. The Agency believes that this revocation date allows users to exhaust stocks and allows 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.B.

Any commodities listed in this proposed rule 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 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 proposed rule 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 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: September 4, 2009.

**Debra Edwards,**  
*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 180.3 is amended by revising paragraph (d)(5), to read as follows:

**§180.3 Tolerances for related pesticide chemicals.**

(d)(5) Where tolerances are established for more than one member of the class of dithiocarbamates listed in paragraph (e)(3) of this section on the same raw agricultural commodity, the total residue of such pesticides shall not exceed that permitted by the highest tolerance established for any one member of the class, calculated as zinc ethylenebisdithiocarbamate and carbon disulfide.

3. Section 180.110 is amended by revising paragraph (a) to read as follows:

**§180.110 Maneb; tolerances for residues.**

(a) *General.* Tolerances are established for residues of maneb (manganese ethylenebisdithiocarbamate), including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only those maneb residues convertible to and expressed in terms of the degradate carbon disulfide.

Commodity	Parts per million
Almond .....	0.1
Apple .....	2
Banana, preharvest .....	4
Bean, dry, seed .....	2.5
Beet, sugar, dried pulp .....	2.5
Beet, sugar, roots .....	1.2
Beet, sugar, tops .....	120
Broccoli .....	6
Brussels sprouts .....	6
Cabbage .....	21
Cabbage, chinese, bok choy ....	10
Cabbage, chinese, napa .....	10
Cattle, fat .....	0.02
Cattle, meat .....	0.02
Cattle, meat byproducts .....	0.02
Cauliflower .....	6
Collards .....	10
Corn, sweet, kernel plus cob with husks removed .....	5
Cranberry .....	7
Cucumber .....	2
Egg .....	0.02
Eggplant .....	2.5
Endive .....	10
Fig .....	7
Goat, fat .....	0.02
Goat, meat .....	0.02
Goat, meat byproducts .....	0.02
Grape .....	7
Hog, fat .....	0.02
Hog, meat .....	0.02
Hog, meat byproducts .....	0.02
Horse, fat .....	0.02
Horse, meat .....	0.02
Horse, meat byproducts .....	0.02
Kale .....	10
Kohlrabi .....	6
Lettuce .....	10
Melon .....	3
Milk .....	0.02
Mustard greens .....	10
Onion, bulb .....	6
Onion, green .....	7
Papaya .....	10
Pepper .....	7
Potato .....	0.1
Poultry, fat .....	0.02
Poultry, meat .....	0.02
Poultry, meat byproducts .....	0.02
Pumpkin .....	3
Sheep, fat .....	0.02
Sheep, meat .....	0.02
Sheep, meat byproducts .....	0.02
Squash, summer .....	2
Squash, winter .....	3
Tomato .....	2.5
Turnip, greens .....	10
Turnip, roots .....	7

\* \* \* \* \*

4. Section 180.132 is amended by revising paragraph (a) to read as follows:

**§180.132 Thiram; tolerances for residues.**

(a) *General.* Tolerances are established for residues of thiram, tetramethyl thiuram disulfide, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by

measuring only those thiram residues convertible to and expressed in terms of the degradate carbon disulfide.

Commodity	Parts per million	Expiration/Revocation Date
Apple .....	6.0	9/11/10
Peach .....	7.0	None
Strawberry .....	6.0	None

\* \* \* \* \*

5. Section 180.176 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

**§180.176 Mancozeb; tolerances for residues.**

(a) *General.* Tolerances are established for residues of mancozeb (a coordination product of zinc ion and maneb (manganese ethylenebisdithiocarbamate)), including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only those mancozeb residues convertible to and expressed in terms of the degradate carbon disulfide.

Commodity	Parts per million
Apple .....	0.6
Asparagus .....	0.1
Banana .....	2
Barley, bran .....	20
Barley, flour .....	20
Barley, grain .....	5
Barley, pearled barley .....	20
Barley, straw .....	25
Beet, sugar, dried pulp .....	3.0
Beet, sugar, roots .....	1.2
Beet, sugar, tops .....	60
Cattle, kidney .....	0.5
Cattle, liver .....	0.5
Corn, field, forage .....	40
Corn, field, grain .....	0.1
Corn, field, stover .....	15
Corn, pop, grain .....	0.06
Corn, pop, stover .....	40
Corn, sweet, forage .....	70
Corn, sweet, kernel plus cob with husks removed .....	0.1
Corn, sweet, stover .....	40
Cotton, undelinted seed .....	0.5
Crabapple .....	0.6
Cranberry .....	5
Fennel .....	2.5
Flax, seed .....	0.15
Goat, kidney .....	0.5
Goat, liver .....	0.5
Grape .....	1.5
Hog, kidney .....	0.5
Hog, liver .....	0.5
Horse, kidney .....	0.5
Horse, liver .....	0.5
Oat, flour .....	20
Oat, grain .....	5
Oat, groats/rolled oats .....	20
Oat, straw .....	25

Commodity	Parts per million
Onion, bulb .....	1.5
Papaya .....	10
Peanut .....	0.1
Peanut, hay .....	65
Pear .....	0.6
Potato .....	0.2
Poultry, kidney .....	0.5
Poultry, liver .....	0.5
Quince .....	0.6
Rice, grain .....	0.06
Rice, straw .....	0.15
Rye, bran .....	20
Rye, grain .....	5
Rye, straw .....	25
Sheep, kidney .....	0.5
Sheep, liver .....	0.5
Sorghum, grain, forage .....	0.15
Sorghum, grain, grain .....	0.25
Sorghum, grain, stover .....	0.15
Tomato .....	2.5
Vegetable, cucurbit, group 9 .....	2
Wheat, bran .....	20
Wheat, flour .....	20
Wheat, germ .....	20
Wheat, grain .....	5
Wheat, middlings .....	20
Wheat, shorts .....	20
Wheat, straw .....	25

\* \* \* \* \*

(c) *Tolerances with regional registrations.* A tolerance with regional registrations is established for residues of the fungicide mancozeb, (a coordination product of zinc ion and maneb (manganese ethylenebisdithiocarbamate)), including its metabolites and degradates, in or on the commodity in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only those mancozeb residues convertible to and expressed in terms of the degradate carbon disulfide.

Commodity	Parts per million
Carrot, roots .....	1

\* \* \* \* \*

6. Section 180.217 is amended by revising the section heading and paragraph (a) to read as follows:

**§180.217 Metiram; tolerances for residues.**

(a) *General.* Tolerances are established for residues of metiram (a mixture of 5.2 parts by weight of ammoniates of (ethylenebis (dithiocarbamate)) zinc with 1 part by weight ethylenebis (dithiocarbamic acid) bimolecular and trimolecular cyclic anhydrosulfides and disulfides), including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in

this paragraph is to be determined by measuring only those metiram residues convertible to and expressed in terms of the degradate carbon disulfide.

Commodity	Parts per million
Apple .....	0.5
Apple, wet pomace .....	2
Potato .....	0.2

\* \* \* \* \*

**§ 180.319 [Amended]**

7. Section 180.319 is amended by removing the entry for the substance “Coordination product of zinc ion and maneb” from the table.

[FR Doc. E9–22302 Filed 9–15–09; 8:45 am]

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Part 457**

[CMS–2291–P]

RIN 0938–AP53

**Children’s Health Insurance Program (CHIP); Allotment Methodology and States’ Fiscal Year 2009 CHIP Allotments**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule describes the implementation of certain funding provisions under title XXI of the Social Security Act (the Act), the Children’s Health Insurance Program (CHIP), as amended by the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA), by the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA), and by other related CHIP legislation. Specifically, this proposed rule addresses methodologies and procedures for determining States’ FY 2009 through FY 2013 allotments and payments in accordance with sections 2104 and 2105 of the Act, as amended by CHIPRA.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. eastern standard time (e.s.t.) on November 16, 2009.

**ADDRESSES:** In commenting, please refer to file code CMS–2291–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.