

3. Add new temporary § 165.T11-066 to read as follows:

§ 165.T11-066 Security Zones; Liquefied Hazardous Gas Tank Vessels, San Pedro Bay, California.

(a) *Definition.* “Liquefied Hazardous Gas (LHG)” as used in this section, is a liquid containing one or more of the products listed in Table 127.005 of 33 CFR 127.005 that is carried in bulk on board a tank vessel as liquefied petroleum gas, liquefied natural gas, or similar liquefied gas products.

(b) *Location.* The following areas are security zones:

(1) All waters of San Pedro Bay, from surface to bottom, within a 500 yard radius around a LHG tank vessel, while the vessel is anchored at a designated anchorage area either inside the Federal breakwaters bounding San Pedro Bay, or is anchored outside the breakwaters at designated anchorages within three nautical miles of the breakwaters;

(2) All waters of San Pedro Bay, from surface to bottom, within 500 yards of a LHG tank vessel, while the vessel is moored at any berth within the Los Angeles or Long Beach, California, port area, inside the Federal breakwaters bounding San Pedro Bay; and

(3) All waters of San Pedro Bay, from surface to bottom, within 1,000 yards ahead of and within 500 yards of all other sides of a LHG tank vessel, while the vessel is underway on the waters inside the Federal breakwaters, or on the waters extending three nautical miles outward from the Federal breakwaters.

(c) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Los Angeles-Long Beach, or his or her designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number (800) 221-8724 or on VHF-FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zones by the Los Angeles Port Police and the Long Beach Police Department.

(f) *Effective period.* This section is effective from 11:59 p.m. PDT on June 15, 2002 through 11:59 p.m. PST on December 21, 2002.

Dated: June 11, 2002.

J.M. Holmes,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2002-0057; FRL-7167-7]

Objections to Tolerances Established for Certain Pesticide Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of final rule objections; request for comments.

SUMMARY: On February 25, 2002, March 19, 2002, and May 7, 2002, the Natural Resources Defense Council (NRDC) filed objections with EPA regarding final rules establishing tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for the following pesticides on the crops noted: 2,4-D (soybeans), halosulfuron methyl (melons, asparagus), pymetrozine (cotton, undelinted seed; cotton gin byproducts; fruiting vegetables; head and stem *Brassica* vegetables; cucurbit vegetables; leafy vegetables; leafy *Brassica* and turnip greens; hops, dried; and pecans), imidacloprid (blueberries), mepiquat (cottonseed; cotton, gin byproducts; meat byproducts of cattle, goats, hogs, horses, and sheep), bifenazate (apple, wet pomace; cotton, undelinted seed; cotton, gin byproducts, pome fruit

group; grapes; grapes, raisins; hops, dried cones; nectarines; peaches; plums; strawberries; and milk, fat, meat, and meat byproducts of cattle, goats, horses, hogs, and sheep), zeta-cypermethrin (succulent, shelled peas and beans; dried, shelled peas and beans, except soybeans; soybean, seed; fruiting vegetables, except cucurbits; sorghum, grain, forage, stover; wheat, grain, forage, hay, straw; aspirated grain fractions; meat of cattle, goats, hogs, horses, sheep), diflubenzuron (pears). NRDC's objections concern a number of issues under section 408 of the FFDCA including the additional 10X safety factor for the protection of infants and children and aggregate exposure to pesticide chemical residues. This document seeks comment on the NRDC objections.

DATES: Comments, identified by docket ID number OPP-2002-0057, must be received on or before August 19, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP-2002-0057 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Peter Caulkins, Registration Division (MC7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305-6550; fax number: (703) 305-6920; e-mail address: caulkins.peter@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Do These Objections Affect Me?

This action is directed to the public in general. This action may, however, be of interest to agricultural producers, food manufacturers, or pesticide manufacturers. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities who may

be affected by these objections. Other types of entities not listed in the table could also be affected. The North

American Industrial Classification System (NAICS) codes have been provided to assist you and others in

determining whether or not these objections might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the **Federal Register**—Environmental Documents. You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP-2002-0057. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP-2002-0057 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs

(OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP-2002-0057. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

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

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

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

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

II. Background

A. What Action is the Agency Taking?

EPA is publishing for comment objections received from NRDC concerning final rules establishing tolerances under FFDCA, 21 U.S.C. 346a, for five pesticide chemicals: Imidacloprid (blueberries), 67 FR 2580 (January 18, 2002) (FRL-6817-6); mepiquat (cottonseed; cotton, gin byproducts; meat byproducts of cattle, goats, hogs, horses, and sheep), 67 FR 3113 (January 23, 2002) (FRL-6818-7); bifentazate (apple, wet pomace; cotton, undelinted seed; cotton, gin byproducts, pome fruit group; grapes; grapes, raisins; hops, dried cones; nectarines; peaches; plums; strawberries; and milk, fat, meat, and meat byproducts of cattle, goats, horses, hogs, and sheep), 67 FR 4913 (February 1, 2002) (FRL-6818-3); zeta-cypermethrin (succulent, shelled peas and beans; dried, shelled peas and beans, except soybeans; soybean, seed; fruiting vegetables, except cucurbits; sorghum, grain, forage, stover; wheat, grain, forage, hay, straw; aspirated grain fractions; meat of cattle, goats, hogs, horses, sheep), 67 FR 6422 (February 12, 2002) (FRL-6818-8); diflubenzuron (pears), 67 FR 7085 (February 15, 2002) (FRL-6821-7). These objections were filed with the Agency on March 19, 2002. On February 25, 2002, NRDC had filed similar objections with EPA concerning final rules establishing tolerances for two pesticide chemicals: Halosulfuron methyl (melons, asparagus), 66 FR 66333 (December 26, 2001) (FRL-6816-8); 66 FR 66778 (December 27, 2001) (FRL-6816-1); and pymetrozine (cotton, undelinted seed; cotton gin byproducts; fruiting vegetables; head and stem Brassica vegetables; cucurbit vegetables; leafy vegetables; leafy Brassica and turnip greens; hops, dried; and pecans), 66 FR 66786 (December 27, 2001) (FRL-6804-

1). On May 7, 2002, NRDC filed objections with EPA concerning final rules establishing tolerances for the pesticide 2,4-D (soybeans), 67 FR 10622 (March 8, 2002) (FRL-6827-1). EPA is also requesting comment on these objections. The text of all sets of objections will be available on EPA's website at <http://www.epa.gov/pesticides/tolerance/>.

B. What Issues Are Raised by the Objections?

NRDC's objections raise a host of issues under FFDCA section 408, including:

1. Whether EPA correctly applied the provision addressing an additional 10X safety factor for the protection of children;
2. Whether farm children are a major identifiable population subgroup;
3. Whether EPA should consider occupational exposure in evaluating the safety of tolerances;
4. Whether EPA has included all residential exposures in calculating aggregate exposure to pesticide chemical residues;
5. Whether safety findings under section 408 can be made on the basis of a lowest-observed-adverse-effect-level (LOAEL) rather than a no-observed-adverse-affect-level (NOAEL);
6. Whether safety findings under section 408 can be made when risk is assessed using exposure estimates based on population percentiles lower than 99.9%; and
7. Whether EPA has adequately considered exposure levels in foods purchased at farm stands. The objections also raise various pesticide-specific issues as to some of the tolerances.

C. Why is EPA Seeking Public Comment on These Objections?

Because several of the issues raised by NRDC concern matters of great interest not just to NRDC but to growers, food distributors and processors, and pesticide manufacturers as well as members of the public, EPA believes it decision-making will be enhanced by obtaining the views of all affected parties. For that reason, EPA has established a 60-day comment period.

D. Why is EPA Only Publishing One Set of NRDC's Objections?

Although NRDC has filed three separate sets of objections, EPA is only publishing the second set of those objections in the **Federal Register**. EPA, however, is seeking comment on all three sets of objections. The first and third sets of objections are not being published in the **Federal Register**

simply because much of them duplicate arguments made more fully in the second set of objections. All three sets of objections are available on EPA's website at <http://www.epa.gov/pesticides/tolerance/>. Additional tolerance objections received will also be posted.

E. What Process Will EPA Follow in Ruling on the Objections?

Under section 408(g)(2)(A) of the FFDCA, any person may file objections with EPA within 60 days of issuance of a final tolerance regulation. 21 U.S.C. 346a(g)(2). Such person may also request a public evidentiary hearing on the objections; however, NRDC has not requested such a hearing. Under EPA regulations, EPA must publish an order setting forth its determination on each of NRDC's objections. 40 CFR 178.37(a). Such order must contain EPA's reasons for its determination. 40 CFR 178.37(b). If based on the objections EPA determines that the tolerance regulation should be modified or revoked, EPA will publish by order any revisions to the regulation. 21 U.S.C. 346a(g)(2)(C); 40 CFR 178.35.

III. Objections to the Establishment of Tolerances for Pesticide Chemical Residues

The text of this objection is published with minor editorial changes.

OPP-301204 (Imidacloprid)

OPP-301209 (Mepiquat)

OPP-301206 (Bifenazate)

OPP-301207 (Zeta-cypermethrin)

OPP-301213 (Diflubenzuron)

Pursuant to 21 U.S.C. 346a(g) and 40 CFR part 180, NRDC makes the following objections:

1. NRDC objects to the regulation issued under 21 U.S.C. 346a(l)(6), establishing a time-limited tolerance for pesticide chemical residues of imidacloprid until December 31, 2003. **Federal Register** (67 FR 2580, January 18, 2002) (FRL-6817-6).

2. NRDC objects to the regulation issued under 21 U.S.C. 346a(d)(4), establishing a tolerance for pesticide chemical residues of mepiquat. **Federal Register** (67 FR 3113, January 23, 2002) (FRL-6818-7).

3. NRDC objects to the regulation issued under 21 U.S.C. 346a(d)(4), establishing a tolerance for pesticide chemical residues of bifenazate. **Federal Register** (67 FR 4913, February 1, 2002) (FRL-6818-3).

4. NRDC objects to the regulation issued under 21 U.S.C. 346a(d)(4), establishing a tolerance for pesticide chemical residues of zeta-cypermethrin. **Federal Register** (67 FR 6422, February 12, 2002) (FRL-6818-8).

5. NRDC objects to the regulation issued under 21 U.S.C. 346a(d)(4), establishing a tolerance for pesticide chemical residues of diflubenzuron. **Federal Register** (67 FR 7085, February 15, 2002) (FRL-6821-7).

As discussed below in section III, of these objections, NRDC requests a waiver of the tolerance objection fees pursuant to 40 CFR 180.33(m).

I. Introduction

Under FFDCA, as amended by the Food Quality Protection Act (FQPA), EPA may only establish a tolerance for pesticide chemical residues in or on a food if EPA determines that the tolerance "is safe." 21 U.S.C. 346a(b)(2)(A)(i). A tolerance will meet this requirement only if "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." *Id.* Section 346a(b)(2)(A)(ii). The health-protective standard of the FQPA requires EPA to give special consideration to the health of infants and children, and EPA must "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue." *Id.* Section 346a(b)(2)(C)(ii)(i).

EPA has violated the requirements of the FQPA in establishing new tolerances for imidacloprid, mepiquat, bifenazate, zeta-cypermethrin, and diflubenzuron—published at 67 FR 2580 (Jan. 18, 2002) (imidacloprid), 67 FR 3113 (Jan. 23, 2002) (mepiquat), 67 FR 4913 (Feb. 1, 2002) (bifenazate), 67 FR 6422 (Feb. 12, 2002) (zeta-cypermethrin), and 67 FR 7085 (Feb. 15, 2002) (diflubenzuron). With respect to all five pesticides, EPA failed to apply the children's 10X safety factor, acknowledge and consider farm children as a major identifiable subgroup, take into consideration reliable data concerning occupational exposure, or fully assess aggregate exposures. For imidacloprid, mepiquat, and zeta-cypermethrin, EPA failed to regulate on the basis of a no-observed-effect-level (NOEL). With respect to imidacloprid and mepiquat, EPA additionally failed to protect all infants and children and not just those within a certain percentile, and as a result left potentially more than a million children unprotected. With respect to diflubenzuron, EPA failed to guarantee that legal food will be safe food based on exposure to pesticide chemical residues at the tolerance level. Finally, for imidacloprid, EPA also violated the FQPA by improperly relying on percent of crop treated in assessing dietary exposure.

II. Grounds for the Objections

A. In Establishing These Tolerances, EPA Improperly Failed to Apply the Children's 10X Safety Factor

In establishing tolerances for imidacloprid, mepiquat, bifenazate, zeta-cypermethrin, and diflubenzuron, EPA failed to include an additional 10X safety factor for infants and children as required by the FQPA. Under the FQPA's precautionary approach to protecting children, EPA must maintain an additional 10-fold margin of safety in its risk assessments for individual pesticides to "take into account potential pre-natal and post-natal developmental toxicity and completeness of the data with respect to exposure and toxicity to infants and

children.” 21 U.S.C. 346a(b)(2)(C). EPA can use a different margin of safety “only if, on the basis of reliable data, such margin will be safe for infants and children.” *Id.* Yet there are significant toxicity and exposure data gaps for each of these new tolerances established by EPA. In addition, EPA has acknowledged that it lacks necessary and required data to assess toxicity to the developing brain and nervous system for imidacloprid, mepiquat, and zeta-cypermethrin in particular, and therefore lacks the “reliable data” necessary under the FQPA to authorize a different margin of safety.

The regulations establishing new tolerances for imidacloprid, mepiquat, bifentazate, zeta-cypermethrin, and diflufenuron reveal toxicity and exposure data gaps for each pesticide:

1. *Imidacloprid*. EPA is establishing time-limited tolerances for imidacloprid residues on blueberries in two States—New Jersey and Michigan. (67 FR 2581, January 18, 2002) (FRL-6817-6). But in measuring dietary exposure to imidacloprid as a result of these tolerances, EPA relied on estimated *national* consumption data and not regional or State-specific data. **Federal Register** 64 FR 39045 (July 21, 1999) (FRL-6485-4). EPA acknowledged that it “does not have available information on the regional consumption of food to which imidacloprid may be applied in a particular area.” *Id.* This data gap is of particular importance because of the nature of the food at issue—fresh blueberries are likely to be most heavily consumed locally, near where they are picked. In other words, consumers in New Jersey and Michigan are most likely to eat blueberries grown in New Jersey and Michigan (and therefore treated with imidacloprid). Many “U-Pick” farms are located in New Jersey and Michigan, leading to likely elevated exposures due to immediate consumption and due to the presence of consumers in the fields. Use of national data to assess the dietary exposure of consumers in particular regions is especially inappropriate where the tolerance is approved only for specific regions. By using national data, EPA will underestimate the dietary exposure of consumers in New Jersey and Michigan, who are the most exposed to imidacloprid residues on blueberries.

This is the case because consumers in New Jersey and Michigan are likely to eat more blueberries than the national average because of their ready availability, cost, proximity to market, and freshness, and they are more likely to eat locally grown blueberries containing imidacloprid residues than the average U.S. consumer. A child eating blueberries in one of these two high-imidacloprid-use States will certainly stand a greater chance of consuming a greater amount of imidacloprid—when local blueberries are ripe and plentiful—than national consumption data (which is not seasonal, but is averaged throughout the year) would suggest. Additional outstanding data requirements include prospective groundwater monitoring studies, a residential short-term risk assessment, and a developmental neurotoxicity study that is 2

1/2 years overdue (discussed further below). (64 FR 39045, 39046).

2. *Mepiquat*. There are several outstanding data requirements for mepiquat, including side-by-side residue field trials and a developmental neurotoxicity study that is over 2 years overdue. (67 FR 3116, January 23, 2002) (FRL-6818-7); (65 FR 1790, 1794, Jan. 12, 2000).

3. *Bifenazate*. Data gaps for bifenazate include a developmental toxicity assessment, short-, medium-, and long-term inhalation exposure studies, and an assessment of drinking water exposure to bifenazate degradates. (67 FR 4915, 4917, 4918, Feb. 1, 2002).

4. *Zeta-cypermethrin*. The toxicity and exposure assessments of zeta-cypermethrin are incomplete because EPA explicitly failed to address drinking water exposure to zeta-cypermethrin degradates, and a required developmental neurotoxicity study has not been completed. 67 FR 6425, 6426 (Feb. 12, 2002).

5. *Diflufenuron*. Data gaps include missing residue chemistry and toxicology data for two diflufenuron metabolites, deemed necessary by EPA to justify an unconditional registration. 67 FR 7090 (Feb. 15, 2002).

In addition to the above data gaps, for all five pesticides EPA has failed to collect pesticide-specific data on water-based exposure, rendering it impossible to find that “reliable data” exist to reduce the tenfold safety factor. 64 FR 39045 (July 21, 2002) (imidacloprid); 67 FR 3115 (Jan. 23, 2002) (mepiquat); 67 FR 4918 (Feb. 1, 2002) (bifenazate); 67 FR 6425 (Feb. 12, 2002) (zeta-cypermethrin); 67 FR 7088 (Feb. 15, 2002) (diflufenuron). The use of predictive models to estimate drinking water exposure to these pesticides serves as a stop-gap measure, but cannot take the place of actual “reliable data” that justify removing the statutory tenfold safety factor. Because EPA has used modeling scenarios to approximate drinking water exposure to these pesticides, it has not relied on any data at all—only predictions that are, in NRDC’s view, not conservative. Relying only on modeling results, in the absence of any reliable and confirmatory monitoring data, results in an additional data gap that prevents EPA from overturning the presumptive 10X safety factor. In addition, for all five pesticides EPA failed adequately to consider important exposure routes for millions of infants and children, including exposure to children living on farms and who accompany their parents into farm fields (see discussion of farm children below), and exposure from spray drift. All of these deficiencies in toxicity and exposure data preclude EPA’s removal of the presumptive 10X safety factor. 21 U.S.C. 346a(b)(2)(C). Furthermore, the absence of required developmental neurotoxicity (DNT) tests for imidacloprid, mepiquat, and zeta-cypermethrin is a crucial data gap that by itself should prohibit EPA from overturning the default 10X safety factor. In its 1993 report, *Pesticides in the Diets of Infants and Children*, the National Academy of Sciences/National Research Council cited strong evidence that pesticide exposures may disrupt the normal

development of a child’s brain and nervous system. More conclusive evidence has since been published supporting this finding¹. Studies by EPA staff scientist Dr. Makris show that DNT testing is more sensitive than other studies in measuring the effects of exposure on proper development of the brain and nervous system, and therefore DNT testing is more appropriate for protecting children’s health. DNT testing is essential for pesticides, not only as a measure of toxicity to the developing brain and nervous system, but also as an often more sensitive measure of developmental and reproductive effects generally⁸. EPA’s 10X Task Force has recommended that developmental neurotoxicity testing be included as part of the minimum core toxicology data set for all chemical food-use pesticides for which a tolerance would be set. See 10X Task Force, EPA, *Toxicology Data Requirements for Assessing Risks of Pesticide Exposure to Children’s Health* (draft), Nov. 30, 1998, at 11. Although DNT testing has not yet been incorporated in the minimum core toxicology data set for all pesticides, EPA has required DNT studies on a case-by-case basis for particular pesticides, including imidacloprid, mepiquat, and zeta-cypermethrin. 64 FR 39046 (imidacloprid); 67 FR 3116 (Jan. 23, 2002) (mepiquat); 67 FR 6426 (Feb. 12, 2002) (zeta-cypermethrin). In spite of this, in establishing new tolerances, the Agency failed to retain the presumptive FQPA 10X safety factor for any of these pesticides. EPA has expressly acknowledged that DNT testing is necessary and required to assess the risks of imidacloprid, mepiquat, and zeta-cypermethrin, and these studies are still missing. 64 FR 39046; 67 FR 3116 (Jan. 23, 2002); 67 FR 6426 (Feb. 12, 2002). These critical data gaps make it impossible to assess the neurotoxic effects of these pesticides to fetuses, infants, and children. The FQPA neither requires nor justifies regulatory delay in order to collect this additional data. The potential future submission of DNT studies for these pesticides does not justify removing 10X in anticipation of those studies; EPA must use the 10-fold safety factor to protect children’s health while the data is missing. 21 U.S.C. 346a(b)(2)(C). Even though these conditions have been unfulfilled, and DNT results are required and overdue, EPA has established new tolerances for imidacloprid, mepiquat, and zeta-cypermethrin. In doing so, EPA failed to apply the required 10X safety factor for children that is intended to compensate for just such data gaps. *Id.* (Interestingly, EPA justified removing 10X for diflufenuron because a DNT test was *not* required for that pesticide, 67 FR 7089, yet EPA did not deem the *requirement* of DNT tests for the other pesticides sufficient justification to maintain 10X.)

EPA’s recently released 10X policy paper attempts to justify the Agency’s decision to ignore 10X even in the absence of required DNT studies. See OPP, EPA, *Determination of the Appropriate FQPA Safety Factor(s) in Tolerance Assessment*, Feb. 28, 2002, at 23–25. EPA states: [S]imply because OPP has required a DNT for a particular pesticide does not necessarily mean that a database uncertainty factor is needed. However, if the available information indicates that a DNT

study is likely to identify a new hazard or effects at lower dose levels of the pesticide that could significantly change the outcome of its overall risk assessment, the database uncertainty factor should be considered. *Id.* at 24. This position is untenable. The FQPA requires that an additional 10X safety factor must be applied; this burden can be overcome "only if, on the basis of reliable data, such margin will be safe for infants and children." 21 U.S.C. 346a(b)(2)(C). EPA's approach to required DNT studies completely reverses this presumption and declares that, *even in the absence of required data on neurotoxicity for developing fetuses, infants, and children*, the default 10X safety factor can be removed if the missing data is not "expected" to "significantly change the outcome" of the overall risk assessment. Under this approach, the removal of the safety factor is based not upon the statutorily demanded "reliable data," but upon the risk assessor's expectation—his or her intuition or professional judgment. The FQPA cannot accommodate this counterintuitive and underprotective approach. EPA has required DNT tests for imidacloprid, mepiquat, and zeta-cypermethrin, and these studies have not been conducted. EPA therefore cannot argue that "reliable data" justifies removing the statutory presumptive 10X FQPA safety factor.

Had EPA not removed 10X, many of these pesticide tolerances would have been acknowledged to be unsafe. Even ignoring all of the other flaws in EPA's tolerance regulations for these pesticides (addressed below), *this single decision to overturn 10X resulted in unsafe tolerances improperly being declared "safe."*

For imidacloprid, EPA calculated that the margin of exposure (MOE) for chronic dietary and residential exposure for children aged one to six was 302. 64 FR 39047. Relying on an FQPA safety factor of 3X instead of 10X, EPA established a "safe" MOE of 300, and therefore the actual MOE was just barely outside the Agency's level of concern for chronic exposure. *Id.* But if EPA had applied 10X, as it was obligated to do under the FQPA, the safe MOE would have been 1000 and the tolerance as proposed would have been found unsafe. (As it is, the actual MOE of 302 for children aged one to six is shockingly close to the EPA-declared "safe" MOE of 300.)

For zeta-cypermethrin, EPA calculated the following actual MOEs: MOE for combined aggregate exposure for children is 830; MOE for short-term aggregate exposure for children is 600; MOE for short-term aggregate exposure for infants is 1000; MOE for intermediate-term aggregate exposure for adult males is 640; MOE for intermediate-term aggregate exposure for adult females is 740; MOE for intermediate-term aggregate exposure for children is 300; and the MOE for intermediate-term aggregate exposure for infants is 530. 67 FR 6428 (Feb. 12, 2002). At the same time, EPA relied on an FQPA safety factor of only 1X (in other words, no FQPA safety factor at all), to establish a "safe" MOE of 100, and thus declared that all of these actual MOEs were safe. *Id.* Yet if EPA has properly applied the presumptive 10X FQPA safety factor, the safe MOE would have been

set at 1000 instead of 100, *all of the above actual MOEs would have been acknowledged as unsafe*, and the new tolerances for zeta-cypermethrin could not have been established.

In light of the incomplete data and potential pre-natal and post-natal developmental toxicity for imidacloprid, mepiquat, bifentazate, zeta-cypermethrin, and diflubenzuron, EPA's failure to apply the 10X children's safety factor violates the FQPA and EPA's own stated policy on proper application of the 10X safety factor. See OPP, EPA, *Determination of the Appropriate FQPA Safety Factor(s) in Tolerance Assessment*, Feb. 28, 2002, at 11 ("Risk assessors . . . should presume that the default 10X safety factor applies and should only recommend a different factor, based on an individualized assessment, when reliable data show that such a different factor is safe for infants and children."). The absence of required DNT studies for imidacloprid, mepiquat, and zeta-cypermethrin make EPA's failure to apply 10X for these pesticides especially egregious. EPA lacks reliable data to overturn the presumption of a 10X FQPA safety factor for any of the five pesticides addressed in these objections: Imidacloprid, mepiquat, bifentazate, zeta-cypermethrin, and diflubenzuron. Where there are no data or where there are gaps in data—either for particular toxic effects, for specific patterns of food consumption, or for particular routes of exposure—there cannot be the "reliable data" required by the FQPA to remove 10X.

B. Farm Children Are Especially Vulnerable To Pesticide Exposure, And Are Not Adequately Considered In These Tolerances

Farm children should be deemed to comprise an especially vulnerable population, and their exposure to imidacloprid, mepiquat, bifentazate, zeta-cypermethrin, and diflubenzuron must be considered in establishing tolerances where data is available. The FQPA requires that EPA consider exposure not just to consumers as a whole, but also to major identifiable subgroups of consumers. 21 U.S.C. 346a(b)(2)(D). In establishing tolerances, EPA must consider, among other relevant factors, available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers); . . . available information concerning the aggregate exposure levels of consumers (and major identifiable subgroups of consumers); and available information concerning the variability of the sensitivities of major identifiable subgroups of consumers. 21 U.S.C. 346a(b)(2)(D)(iv); (vi); (vii). Farm children are a major identifiable subgroup under these statutory provisions, and their unique dietary consumption patterns, aggregate exposure levels, and sensitivities to exposure should have been assessed by EPA in establishing new tolerances for imidacloprid, mepiquat, bifentazate, zeta-cypermethrin, and diflubenzuron.

More than 320,000 children under the age of six live on farms in the United States. In addition, many hundreds of thousands of children play or attend schools on or near agricultural land, and others have family members who work on farms or handle pesticides as part of their jobs. The nation's

2.5 million farm workers have approximately one million children living in the United States. See NRDC et al., *Petition for a Directive that the Agency Designate Farm Children As a Major Identifiable Subgroup and Population at Special Risk to be Protected under the Food Quality Protection Act*, Oct. 22, 1998, at 1 (hereafter NRDC, *Farm Kids Petition*).

Children living in agricultural communities are heavily exposed to pesticides, whether or not they work in the fields 9–11. Farm children come in contact with pesticides through residues from their parents' clothing, dust tracked into their homes, contaminated soil in areas where they play, food eaten directly from the fields, drift from aerial spraying, contaminated well water, and breastmilk. Furthermore, farm children often accompany their parents to work in the fields, raising their pesticide exposures even higher. See NRDC, *Farm Kids Petition*, at 2–3. Citing data from the Department of Labor, the U.S. General Accounting Office has reported that seven percent of farmworkers with children 5 years old or younger took their children with them when they worked in the fields. See U.S. General Accounting Office, *Pesticides: Improvements Needed to Ensure the Safety of Farmworkers and Their Children*, (RCED-00-40), March 14, 2000, at 6 (hereafter "GAO, *Safety of Farmworkers and Their Children*"). Children age nine or older may and do work on large farms. Farm children are likely to have the highest exposure to pesticides of any group of people in the country. Many of the children with the greatest pesticide exposures are from migrant farmworker families, who are poor and usually people of color or recent immigrants. See NRDC, *Farm Kids Petition*, at 2–3.

Children have unique exposure patterns and sensitivities to pesticides. Per pound of body weight, children eat, drink, and breathe more than adults. Children also engage in more frequent hand-to-mouth contact, and therefore have higher rates of oral exposure from objects, dust, or soil. See NRDC, *Farm Kids Petition*, at 3; GAO, *Safety of Farmworkers and Their Children*, at 17. The GAO found that crawling, sitting, and lying on contaminated surfaces may also increase exposure rates of farm children to pesticides. See GAO, *Safety of Farmworkers and Their Children*, at 17. Furthermore, as the GAO concluded, "[b]ecause young children's internal organs and bodily processes are still developing and maturing, their enzymatic, metabolic, and immune systems may provide less natural protection than those of an adult." *Id.*

EPA's regulations establishing tolerances for imidacloprid, mepiquat, bifentazate, zeta-cypermethrin, and diflubenzuron fail to consider information concerning the sensitivities and exposures of farm children as a major identifiable subgroup. 64 FR 39041 (imidacloprid); 67 FR 3113 (Jan. 23, 2002) (mepiquat); 67 FR 4913 (Feb. 1, 2002) (bifentazate); 67 FR 6422 (Feb. 12, 2002) (zeta-cypermethrin); 67 FR 7085 (Feb. 15, 2002) (diflubenzuron). Under 21 U.S.C. 346a(b)(2)(D), EPA must consider data regarding farm children's dietary consumption patterns, aggregate exposure

levels, and sensitivities to exposure. If reliable data are lacking, EPA must require the pesticide chemical registrants to secure the necessary data and should not issue new tolerances until such data are available.

C. EPA Failed To Consider Worker Risk In Establishing These Tolerances

The FQPA requires consideration of worker risk in establishing final tolerances. A tolerance is not considered safe under the statute unless there is a reasonable certainty that no harm will result "from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." 21 U.S.C. 346a(b)(2)(A)(ii) (emphasis added). Worker exposure is clearly included in this catch-all category of "all other exposures" to be considered in setting a tolerance. In establishing tolerances for imidacloprid, mepiquat, bifentazate, zeta-cypermethrin, and diflubenzuron, EPA cites no provision of the statute or any other authority to support its repeated incantation that aggregate exposure does not include occupational exposure. 64 FR 39042 (imidacloprid); 67 FR 3114 (Jan. 23, 2002) (mepiquat); 67 FR 4914 (Feb. 1, 2002) (bifentazate); 67 FR 6423 (Feb. 12, 2002) (zeta-cypermethrin); 67 FR 7086 (Feb. 15, 2002) (diflubenzuron). The statute's provision stating that EPA "shall consider, among other relevant factors... available information concerning the aggregate exposure from other non-occupational sources" does not justify ignoring farmworkers' exposure in setting tolerances. 21 U.S.C. 408(b)(2)(D) (emphasis added). This provision explicitly requires EPA to consider "relevant factors" other than those enumerated, and is plainly illustrative rather than exhaustive. Moreover, much of farmworkers' elevated exposure comes not only from their occupational activities, but also because of the high exposures in the homes in which they live, the air they breathe, the water they drink. Clearly farmworkers are a high risk population deserving of careful consideration and protection 12–23. EPA's failure to consider worker risks in establishing these tolerances violates the FQPA's mandate that aggregate exposure assessments include *all* exposures for which there is reliable information. 21 U.S.C. 346a(b)(2)(A)(ii).

D. The Aggregate Risk Assessment Is Inadequate

The FQPA, 21 U.S.C. 346a(b)(2)(A)(ii) requires that, to establish a pesticide tolerance, there must be a reasonable certainty that no harm will result from aggregate exposure to pesticide chemical residue, including all anticipated dietary exposures and other exposures for which there are reliable information. Aggregate exposure is the total exposure to a single chemical or its residues that may occur from dietary (*i.e.*, food and drinking water), residential, and all known or plausible exposure routes (including oral, dermal and inhalation). *See id.* Therefore, in addition to food and water exposures, the aggregate assessment must take into account exposures due to air drift and migration of contaminated soil, residential exposures from registered uses, and residential "take-home"

exposures to families of those directly exposed to the pesticides through its agricultural uses. Furthermore, the aggregate assessment must consider exposures from uses that do not conform with the label, if there is an indication that such uses occur.

EPA failed to conduct an adequate aggregate assessment in establishing tolerances for imidacloprid, mepiquat, bifentazate, zeta-cypermethrin, and diflubenzuron. First, all of the exposure data gaps outlined in Unit V.A. constitute missing information that properly should have been incorporated into EPA's aggregate exposure assessment. Also, none of the regulations establishing tolerances for these five pesticides consider exposure through air drift, migration of contaminated soil, or residential take-home exposures. The bifentazate aggregate assessment suffers from an additional defect: EPA relied on unsupported and apparently arbitrary processing factors to reduce estimates of dietary exposure to bifentazate on apples and grapes. 67 FR 4917 (Feb. 1, 2002).

For all five pesticides, EPA incorrectly concluded that the new tolerances would not result in any increased residential exposure because the tolerances themselves were not for residential uses. 64 FR 39044 (imidacloprid); 67 FR 3116 (Jan. 23, 2002) (mepiquat); 67 FR 4918 (Feb. 1, 2002) (bifentazate); 67 FR 6425 (Feb. 12, 2002) (zeta-cypermethrin); 67 FR 7087 (Feb. 15, 2002) (diflubenzuron). This ignores reliable data concerning take-home exposure resulting from agricultural uses 9, 24. NRDC's 1998 report, *Trouble on the Farm*, documents the scientific evidence supporting the potential for take-home exposures from pesticides, even when not registered for residential use. *See* NRDC, *Trouble on the Farm: Growing up with Pesticides in Agricultural Communities*, 1998. As many as a dozen different pesticide residues have been found in household dust in some homes, including agricultural insecticides and herbicides not registered for use in the home. *See* NRDC, *Farm Kids* Petition at 3.

In addition, EPA deliberately ignores known residential uses in establishing new tolerances for these pesticides. The Agency completely fails to assess and incorporate those residential uses as a source of aggregate exposure, in violation of the FQPA.

Imidacloprid has significant residential uses, including uses on flowering plants, ground covers, turf, lawns, golf courses, walkways, recreation areas, household dwellings, and cats and dogs. 64 FR 39045 (July 21, 1999). However, based on predictions of low toxicity, EPA concludes that a number of missing residential exposure assessments are not required, including both acute and chronic short-term dermal, intermediate-term dermal, long-term dermal, and inhalation. *Id.* The one residential exposure assessment that EPA does require—short-term risk assessment of oral exposure—has not yet been completed, but EPA wrongly proceeded with an aggregate risk assessment of exposure to imidacloprid anyway. *Id.*

Bifentazate is registered for use on landscape ornamentals at residential and recreational sites. 67 FR 4918 (Feb. 1, 2002). Nevertheless, EPA makes the unsupported

conclusion that no residential post-application assessment is warranted, and therefore this potential source of exposure is disregarded. 67 FR 4918 (Feb. 1, 2002).

In establishing new tolerances for zeta-cypermethrin, EPA wrongly ignores indoor and outdoor residential uses of cypermethrin (which the agency states is toxicologically identical to zeta-cypermethrin for purposes of these tolerances). 67 FR 6427 (Feb. 12, 2002).

Diflubenzuron is registered for use on outdoor residential and recreational areas. 67 FR 7089 (Feb. 15, 2002). But EPA wrongly chose not to evaluate exposure through these uses because diflubenzuron "is only applied to the tree canopy." *Id.* The above deficiencies reveal that EPA improperly underestimated aggregate exposure to these pesticides and their residues that may occur from dietary, residential, and all other known or plausible exposure routes. The assumptions and missing data in EPA's analysis of aggregate exposure for these five pesticides systematically serve to underestimate exposure and therefore underestimate risk, contrary to the requirements of the FQPA.

E. EPA Improperly Failed To Rely On A NOEL For Dietary Risk Estimates

EPA cannot lawfully establish tolerances in the absence of a NOEL. The report of the House Committee on Commerce clearly states its intent for all safety factors to be applied to the NOEL. *See* H.R. Rep. No. 104–669, Part 2, at 43, presented to the House on July 23, 1996. By using a NOEL, the risk assessor is assured that regulatory decisions are based on a dose at which no effect is elicited. The use of a LOAEL carries no such assurances. "Adverse" effects are often crude toxicological endpoints, such as death, or dramatic loss of body or organ weight, and are not designed to coordinate to the vulnerable points in embryonic development. A LOAEL may represent a dose high enough to elicit significant unpleasant and harmful effects, and can not be considered as protective as a true NOEL.

For imidacloprid, mepiquat, and zeta-cypermethrin, EPA failed to regulate on the basis of a NOEL, and instead relied on a LOAEL in conducting particular assessments.

For imidacloprid, EPA relied only on a LOAEL for acute toxicity, and was unable to discern a NOAEL for the acute toxic effects of the pesticide. 64 FR 39044 (July 21, 1999). EPA also assessed only a LOAEL for chronic toxicity (a level that produced an increased number of thyroid lesions). *Id.*

To establish the new tolerances for mepiquat, EPA measured reproductive toxicity only on the basis of a LOAEL; the reproductive toxicity study did not establish a reproductive NOAEL. 65 FR 1792 (Jan. 12, 2000).

For zeta-cypermethrin, a developmental toxicity study yielded only a LOAEL. 67 FR 6426 (Feb. 12, 2002).

Lacking a NOEL for these endpoints, EPA has no scientific basis upon which to conclude that there is a fully safe level at which infants and children will not suffer developmental harm because of imidacloprid, mepiquat, or zeta-cypermethrin exposure. Therefore, EPA

cannot make a legal finding that any specific level of imidacloprid, mepiquat, or zeta-cypermethrin on food is "safe" for infants and children, or that there is a "reasonable certainty of no harm" to infants and children, at any specific level. 21 U.S.C. 346a(b)(2). As a matter of law, under 21 U.S.C. 346a(b)(2), EPA may not establish these new tolerances for imidacloprid, mepiquat, or zeta-cypermethrin.

F. EPA Failed To Ensure A Reasonable Certainty Of No Harm For All Infants And Children In Establishing These Tolerances

Under the FQPA, EPA must ensure that there is a reasonable certainty that no children will be harmed through exposure to pesticide chemical residues. 21 U.S.C. 346a(b)(2)(C). If the best evidence suggests that thousands of children will exceed the reference dose for a pesticide, EPA is barred by statute from finding a reasonable certainty of no harm to these particular infants and children, and the Agency may not issue a tolerance at that level. However, in establishing tolerances for imidacloprid and mepiquat, EPA regulates dietary residues at only the 95th percentile. 64 FR 39044 (acute dietary exposure to imidacloprid at the 95th percentile); 65 FR 1793 (acute dietary exposure to mepiquat at the 95th percentile). This runs contrary to EPA's previous policy of using the 99.9th percentile child (which itself is inadequate to fully protect children). Regulation at the 95th percentile means that five percent of all American children under age six (*around 1.2 million children in all*) could exceed the chronic reference dose every day, based on the best information available to the agency. Both imidacloprid and mepiquat are used on common children's foods—imidacloprid on blueberries, and mepiquat on grapes. No reading of the FQPA will support any approach that allows millions of children to exceed the reference dose. Regulating dietary residues of imidacloprid and mepiquat at the 95th percentile violates the FQPA's requirement that EPA "ensure that there is a reasonable certainty that *no harm* will result to infants and children from aggregate exposure to the pesticide chemical residue." 21 U.S.C. 346a(b)(2)(C)(ii)(I).

G. EPA Failed To Guarantee That Legal Food Will Be Safe Food Based On Exposure To Pesticide Chemical Residues Of Diflubenzuron At The Tolerance Level

To assess chronic dietary exposure, EPA relied on estimates of "anticipated residues" for diflubenzuron. 67 FR 7087–7088 (Feb. 15, 2002). In doing so, EPA failed to account for the dietary exposure of a significant number of consumers who purchase produce at farmers markets, farm stands, and "U-Pick" farming operations. Over 1.9 million people buy vegetables and fruits from nearly 13,000 farmers, at more than 2,000 community-based farmers markets and farm stands in the United States. See National Association of Farmers' Market Nutrition Programs (<http://www.nafmnp.org/>). These consumers include pregnant women, infants, and children, and must be protected. By ignoring this significant community of consumers, EPA vastly underestimates dietary exposure and cannot ensure that exposure to residues

of diflubenzuron at the tolerance level will be safe. Reliance on 21 U.S.C. 346a(b)(2)(E) to factor in anticipated residues of diflubenzuron does not justify ignoring the known dietary exposure of potentially millions of consumers to residues of these pesticides at the tolerance level. EPA must ensure that the legal level of pesticide chemical residue—the established tolerance levels—are themselves safe. 21 U.S.C. 346a(b)(2)(A).

H. EPA Violated the FQPA by Relying on Percent of Crop Treated in Assessing Dietary Exposure to Imidacloprid

In establishing time-limited tolerances for imidacloprid on blueberries in New Jersey and Michigan, EPA relied on estimates of the percent of crop treated to measure chronic dietary risk. 64 FR 39044–39045 (July 21, 1999). The FQPA, however, authorizes EPA's use of data on the percent of crop treated to assess chronic dietary risk only if EPA can make certain findings. In particular, EPA must find that: 1. "The data are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide chemical residue; 2. the exposure estimate does not understate exposure for any significant subpopulation group; and 3. if data are available on pesticide use and consumption of food in a particular area, the population in such area is not dietarily exposed to residues above those estimated." 21 U.S.C. 346a(b)(2)(F)(i); (ii); (iii).

These statutory criteria are not satisfied in this instance. EPA's new time-limited tolerance for imidacloprid on blueberries is geographically restricted to two States, yet EPA relies on national percent crop treated data. 67 FR 2580 (Jan. 18, 2002); 64 FR 39044–39045 (July 21, 1999). National data cannot provide a valid basis for measuring the percent of the blueberry crop treated with imidacloprid in New Jersey and Michigan, given that the new tolerance restricts the use of imidacloprid to those two States. Furthermore, relying on national data will plainly understate exposure for significant subpopulation groups—blueberry consumers in New Jersey and Michigan, who will be exposed to higher levels of imidacloprid residues than consumers in the rest of the nation. EPA therefore failed to meet the requirements of the FQPA to justify using percent of crop treated data to assess chronic risk. 21 U.S.C. 408(b)(2)(F).

III. Relief Requested

In light of the above outlined statutory violations, NRDC respectfully requests that EPA refrain from establishing the new tolerances for imidacloprid, mepiquat, bifenazate, zeta-cypermethrin, and diflubenzuron until the pesticide tolerances have been assessed and determined to be safe consistent with the requirements of the FQPA.

IV. Supporting Material

NRDC incorporates by reference the following attachments in support of these objections:

Attachment A: NRDC, et al., Petition for a Directive that the Agency Consistently Fulfill Its Duty to Retain the Child-Protective

Tenfold Safety Factor Mandated by the Food Quality Protection Act, April 23, 1998.

Attachment B: NRDC, et al., Petition for a Directive that the Agency Designate Farm Children As a Major Identifiable Subgroup and Population at Special Risk to be Protected under the Food Quality Protection Act, Oct. 22, 1998.

Attachment C: NRDC, Putting Children First: Making Pesticide Levels in Food Safer for Infants and Children, April 1998.

Attachment D: NRDC, Trouble on the Farm: Growing up with Pesticides in Agricultural Communities, 1998.

Attachment E: U.S. General Accounting Office, Pesticides: Improvements Needed to Ensure the Safety of Farmworkers and Their Children, (RCED–00–40), March 14, 2000. NRDC reserves the right to submit additional supplemental information in further support of these objections.

V. Request for a Fee Waiver

Pursuant to 40 CFR 180.33(m), NRDC hereby requests a waiver of all tolerance objection fees imposed by 40 CFR 180.33(i). A waiver of fees will promote the public interest. NRDC is a national non-profit, tax-exempt public policy research and environmental organization. NRDC makes information available to thousands of citizens by means of its numerous and varied publications, educational programs, seminars, and public-interest litigation. These objections to the tolerances established for imidacloprid, mepiquat, bifenazate, zeta-cypermethrin, and diflubenzuron are intended to benefit primarily the public as opposed to NRDC. As outlined above, these objections challenge EPA regulations that fail to properly implement the FQPA and, as a result, pose threats to the public health, especially children's health. Furthermore, NRDC has no financial interest in the sale, manufacture, or use of imidacloprid, mepiquat, bifenazate, zeta-cypermethrin, or diflubenzuron. Requiring NRDC to pay the fees would work an unreasonable hardship.

Respectfully submitted,

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List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Tolerances.

Authority: 21 U.S.C. 346(a).

Dated: June 7, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

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DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR Parts 1540 and 1544

[Docket No. TSA–2002–12394; Amendment Nos. 1540–2, 1544–2]

RIN 2110–AA05

Private Charter Security Rules

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This rule amends the rules applying to private charter passenger aircraft to increase the level of security required in private charter operations. Aircraft operators using aircraft with a maximum certificated takeoff weight of 95,000 pounds or more, except a government charter, will now be required to ensure that individuals and their accessible property are screened before boarding. Given the current security risks, the potential for damage these larger aircraft can cause, and the need to protect areas that are designated as sterile, TSA believes it is now appropriate to require these operators to ensure that individuals and their accessible property are screened. Individuals are required to submit to screening prior to boarding a private charter aircraft under this rule.

DATES: This rule is effective August 19, 2002. Submit comments by July 19, 2002.

ADDRESSES: You may submit comments to this final rule to the DOT public docket through the Internet at <http://dms.dot.gov/>, docket number TSA–2002–12394. If you do not have access to the Internet, you may submit your comments by United States mail, to the Docket Management System, U.S. Department of Transportation, Room PL401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify your comments with Docket Number TSA–2002–12394, entitled “Amendment to Aircraft Operator Security Rules,” and provide three copies. You may also obtain a copy of the rule through the Internet, or request a copy through the mail at the addresses above.

You may also review the public docket in person in the Docket Office