

distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

#### VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate,

the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

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

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

Dated: July 2, 2002.

**Debra Edwards,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

#### PART 180—[AMENDED]

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

**Authority:** 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.458 is amended by removing the entries for "Alfalfa, forage"; "Alfalfa, hay"; "Dry beans"; "Peanuts"; "Peanut, hay"; and "Peanut, meal" from the table in paragraph (a)(2) and alphabetically adding the following commodities to the table in paragraph (a)(3) to read as follows:

#### § 180.458 Clethodim, tolerances for residues.

(a) \* \* \*

(3) \* \* \*

| Commodity                              | Parts per million |
|----------------------------------------|-------------------|
| Alfalfa, forage .....                  | 6.0               |
| Alfalfa, hay .....                     | 10                |
| Bean, dry .....                        | 2.5               |
| * * * * *                              |                   |
| Brassica, leafy greens, subgroup ..... | 3.0               |
| * * * * *                              |                   |
| Peanut .....                           | 3.0               |
| Peanut, hay .....                      | 3.0               |
| Peanut, meal .....                     | 5.0               |
| Peppermint, tops .....                 | 5.0               |
| * * * * *                              |                   |
| Spearmint, tops .....                  | 5.0               |
| Spinach .....                          | 2.0               |
| * * * * *                              |                   |
| Turnip, greens .....                   | 3.0               |
| * * * * *                              |                   |

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 180

[OPP-2002-0068; FRL-7177-7]

#### Benomyl; Tolerance Revocations

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

**ACTION:** Final rule.

**SUMMARY:** This document revokes all tolerances for residues of the fungicide benomyl because this pesticide active ingredient is no longer registered for food uses in the United States. The regulatory actions in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality

Protection Act (FQPA) of 1996. By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions in this document pertain to the revocation of 100 tolerances which are counted among tolerance/exemption reassessments made toward the August, 2002 review deadline.

**DATES:** This regulation is effective October 15, 2002; however, certain regulatory actions will not occur until the date specified in the regulatory text. Objections and requests for hearings, identified by docket control number OPP-2002-0068, must be received by EPA on or before September 16, 2002.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP-2002-0068

in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-8037; e-mail address: nevola.joseph@epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

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

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Cat-egories | NAICS codes       | Examples of Poten-tially Affected Entities                 |
|-------------|-------------------|------------------------------------------------------------|
| Industry    | 111<br>112<br>311 | Crop production<br>Animal production<br>Food manufacturing |

| Cat-egories | NAICS codes | Examples of Potentially Affected Entities |
|-------------|-------------|-------------------------------------------|
|             | 32532       | Pesticide manufacturing                   |

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 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 this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **SUPPLEMENTARY INFORMATION**.

#### *B. How can I Get Additional Information, Including Copies of this Document?*

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/fedrgrstr/>. A frequently updated electronic version of 40 CFR part 180 is available at [http://www.access.gpo.gov/nara/cfr/cfrhtml\\_00/Title\\_40/40cfr180\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html), a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-2002-0068. The official record consists of the documents specifically referenced in this action, 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, 121 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.

## **II. Background**

### *A. What Action is the Agency Taking?*

This final rule revokes the FFDCA tolerances for residues of the fungicide benomyl in or on specified commodities listed in the regulatory text because benomyl is no longer registered under FIFRA for use on those commodities. The tolerances revoked by this final rule are no longer necessary to cover residues of benomyl in or on domestically treated commodities or commodities treated outside but imported into the United States. Benomyl is no longer used on those specified commodities within the United States, and no comments were received indicating that there was a need for EPA to retain any of the tolerances to cover benomyl residues in or on imported foods. EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

In the **Federal Register** of January 15, 2002 (67 FR 1917) (FRL-6816-6), EPA issued a proposed rule to revoke the tolerances listed in this final rule. Also, the January 15, 2002 proposal provided a 60-day comment period which invited public comment for consideration and for support of tolerance retention under FFDCA standards. If, during the 60-day public comment period, EPA receives comments indicating a need for the tolerance to be retained, EPA will not proceed with the revocation unless: (1) Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained, (2) EPA independently verifies that the tolerance is no longer needed, or (3) the tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

In response to the document published in the **Federal Register** of January 15, 2002, EPA received comment from a private citizen that

stated agreement with the revocation of benomyl tolerances and also received comments as follows:

1. *Michigan Blueberry Growers Association (MBG).* A comment letter was received from MBG Marketing—Michigan Blueberry Growers Association (MBG). MBG stated that 70% of the Michigan blueberry crop is frozen after harvest and may be stored for several years before it is sold, further processed or consumed. MBG requested that the tolerance for use of benomyl on blueberry be retained until January 1, 2008, to allow time for existing stocks of benomyl to be used and benomyl-treated blueberries to clear channels of trade.

*Agency response.* The time frame which MBG has requested regarding the benomyl tolerance for blueberry is in agreement with what was proposed by the Agency on January 15, 2002. Therefore, EPA is revoking the tolerance in 40 CFR 180.294 for blueberry with an expiration/revocation date of January 1, 2008.

2. *Gowan Company.* A comment letter was received from the Gowan Company. Gowan stated that it had applied in June 2001 for registration of products containing the active ingredient benomyl and amended the application twice in January 2002. Gowan requested that, except for the "bean vine forage" tolerance, all tolerances for benomyl not be revoked. Also, Gowan stated its belief that no satisfactory substitutes for benomyl are available at the present time. In addition, Gowan agreed that the terminology for a large number of commodities requires updating.

*Agency response.* On June 12, 2001, EPA received applications from Gowan Company to register four products containing the active ingredient benomyl. Gowan applied for registration under the "me-too" provisions in FIFRA. On September 21, 2001, the Agency identified several deficiencies in Gowan's applications. Although Gowan submitted a response to these deficiencies in January 2002, their response is incomplete. Furthermore, because benomyl is no longer registered, for purposes of registration under FIFRA, benomyl is a "new chemical" and the "me-too" provisions outlined in section 3 of FIFRA are no longer applicable to an application for registration of benomyl. And so long as there are no registered uses, and no indication that commodities containing residues of the pesticide are being imported, there is no need for the tolerances to be maintained.

In this regard, Gowan's claim that there are no satisfactory substitutes for benomyl is irrelevant. Moreover, if the

commenter is correct that there are no satisfactory alternatives, the continued existence of the tolerance would merely encourage the use of an unregistered pesticide. At any rate, the Agency disagrees with this claim and believes that, for the most part, acceptable alternatives exist. In fact, to facilitate the registration of benomyl alternatives, EPA has expedited the registration review for several new uses of the fungicide thiophanate-methyl, including grapes, pistachios, potatoes (foliar application), pears, canola, and celery. The Agency hopes to make a decision on these pending uses in the very near future. The Agency will continue to work with affected parties, including growers, the U.S. Department of Agriculture, and other registrants, to identify emerging alternatives to benomyl. Where emergency conditions, as defined under section 18 of FIFRA, exist, the Agency will work with States, growers, and registrants to try to make benomyl alternatives available prior to registration.

No comment was received which expressed a need for the retention of specific tolerances for import purposes. On August 8, 2001 (66 FR 41589) (FRL-6794-9), EPA published in the **Federal Register** a cancellation order for all benomyl product registrations effective August 8, 2001. The Agency allowed the registrant to sell and distribute benomyl stocks until June 30, 2001 and is allowing those other than the registrant to sell and distribute benomyl stocks until December 31, 2002. The Agency expects existing stocks to be exhausted by December 31, 2003. However, because no active registrations exist and because no commenters expressed a need to retain these tolerances for import purposes, EPA is revoking 100 benomyl tolerances.

Because bean vine forage is no longer a significant livestock feed item and the tolerance is no longer needed, EPA is revoking the tolerance for bean vine forage to become effective 90 days following publication of this final rule to ensure that all affected parties receive notice of EPA's actions. Also, to

conform to current Agency practice, EPA is revising the commodity terminology for peanut forage (at 15.0 ppm) to peanut, hay. However, because a tolerance currently exists for peanut hay (at 15.0 ppm), the peanut forage tolerance is no longer needed. Therefore, EPA is also revoking the tolerance for peanut forage to become effective 90 days following publication of this final rule.

EPA is revoking all other benomyl tolerances in 40 CFR 180.294 with expiration/revocation dates from 3 to 6 years beyond the last date which EPA allowed those other than the registrant to sell and distribute existing stocks of benomyl product in order to allow sufficient time for the passage of benomyl-treated food in channels of trade. (The dates are 2 to 5 years beyond the time when EPA expects benomyl stocks to be exhausted). These dates were determined using available Agency data, U.S. Food and Drug Administration (FDA) data, and food industry data as follows:

| Commodity Crop Group                                        | Tolerances                                                                                                                                                                                                                                                                                                                                    | Maximum Years in Trade Channels | Expiration/revocation date |
|-------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|----------------------------|
| Bulb Vegetables                                             | Garlic                                                                                                                                                                                                                                                                                                                                        | 2                               | 1/1/06                     |
| Brassica (Cole) Leafy Vegetables                            | Broccoli; Brussels sprouts; Cabbage; Cabbage, chinese, bok choy; Cabbage, chinese, napa; Cauliflower; Collards; Kale; Kohlrabi; Mustard greens                                                                                                                                                                                                | 2                               | 1/1/06                     |
| Root and Tuber Vegetables                                   | Beet, sugar, roots; Beet, sugar, tops; Carrot, roots; Rutabaga; Sweet potato, roots; Turnip, roots; Turnip, greens                                                                                                                                                                                                                            | 3                               | 1/1/07                     |
| Leafy Vegetables (exc. Brassica)                            | Celery; Spinach; Dandelion, leaves; Watercress                                                                                                                                                                                                                                                                                                | 3                               | 1/1/07                     |
| Legume Vegetables                                           | Bean; Soybean                                                                                                                                                                                                                                                                                                                                 | 3                               | 1/1/07                     |
| Cucurbit Vegetables                                         | Cucumber; Melon; Pumpkin; Squash, summer; Squash, winter                                                                                                                                                                                                                                                                                      | 3                               | 1/1/07                     |
| Tree Nuts                                                   | Almond, hulls; Nut; Pistachio <sup>a</sup>                                                                                                                                                                                                                                                                                                    | 3                               | 1/1/07                     |
| Citrus Fruits                                               | Citrus, dried pulp; Fruit, citrus, postharvest                                                                                                                                                                                                                                                                                                | 4                               | 1/1/08                     |
| Pome Fruits                                                 | Apple, postharvest; Pear, postharvest                                                                                                                                                                                                                                                                                                         | 4                               | 1/1/08                     |
| Stone Fruits                                                | Apricot, postharvest; Cherry, postharvest; Nectarine, postharvest; Peach, postharvest; Plum, postharvest; Plum, prune, fresh, postharvest                                                                                                                                                                                                     | 4                               | 1/1/08                     |
| Berries                                                     | Blackberry; Blueberry; Boysenberry; Currant; Dewberry; Loganberry; Raspberry                                                                                                                                                                                                                                                                  | 4                               | 1/1/08                     |
| Cereal Grains and Forage, Fodder and Straw of Cereal Grains | Barley, grain; Barley, straw; Corn, sweet, kernel plus cob with husks removed; Corn, sweet, forage; Corn, sweet, stover; Oat, grain; Oat, straw; Rice; Rice, hulls; Rice, straw; Rye, grain; Rye, straw; Wheat, grain; Wheat, straw                                                                                                           | 4                               | 1/1/08                     |
| No group association- Plant commodities                     | Avocado; Banana, postharvest, not more than 0.2 ppm shall be present in the pulp after peel is removed and discarded; Grape; Grape, raisin; Mango; Mushroom, postharvest; Papaya; Peanut; Peanut, hay; Pineapple, postharvest; Strawberry                                                                                                     | 4                               | 1/1/08                     |
| No group association- Animal commodities                    | Cattle, fat; Cattle, meat; Cattle, meat byproducts; Egg; Goat, fat; Goat, meat; Goat, meat byproducts; Hog, fat; Hog, meat; Hog, meat byproducts; Horse, fat; Horse, meat; Horse, meat byproducts; Milk; Poultry, fat; Poultry, liver; Poultry, meat; Poultry, meat byproducts, except liver; Sheep, fat; Sheep, meat; Sheep, meat byproducts | 4                               | 1/1/08                     |
| Fruiting Vegetables                                         | Eggplant; Pepper; Tomato; Tomato, concentrated products                                                                                                                                                                                                                                                                                       | 5                               | 1/1/09                     |

<sup>a</sup>Please note that for FQPA reassessment purposes, while there are tolerances for pistachio in 40 CFR 180.294(a) and (c), EPA is counting the pistachio tolerance once; therefore, a total of 100 tolerances will be counted as reassessed.

In the interim, before the tolerance expires and to conform to current Agency practice, EPA is revising tolerance commodity terminology names where necessary in § 180.294(a) and (c) as follows:

| Old terminology                                                                                          | New terminology                                                                                             |
|----------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| almond hulls                                                                                             | almond, hulls                                                                                               |
| apples (PRE- and POST-H)                                                                                 | apple, postharvest                                                                                          |
| apricots (PRE- and POST-H)                                                                               | apricot, postharvest                                                                                        |
| bananas (PRE- and POST-H) (NMT 0.2 ppm shall be present in the pulp after peel is removed and discarded) | banana, postharvest, not more than 0.2 ppm shall be present in the pulp after peel is removed and discarded |
| beans                                                                                                    | bean                                                                                                        |
| beets, sugar, roots                                                                                      | beet, sugar, roots                                                                                          |
| beets, sugar, tops                                                                                       | beet, sugar, tops                                                                                           |
| blackberries                                                                                             | blackberry                                                                                                  |
| blueberries                                                                                              | blueberry                                                                                                   |
| boysenberries                                                                                            | boysenberry                                                                                                 |
| carrots                                                                                                  | carrot, roots                                                                                               |
| cattle, mbyp                                                                                             | cattle, meat byproducts                                                                                     |
| cherries (PRE- and POST-H)                                                                               | cherry, postharvest                                                                                         |
| Chinese cabbage                                                                                          | cabbage, chinese, napa and cabbage, chinese, bok choy                                                       |
| citrus fruit (PRE- and POST-H)                                                                           | fruit, citrus, postharvest                                                                                  |
| corn, fresh (inc. sweet K +CWHR)                                                                         | corn, sweet, kernel plus cob with husks removed                                                             |
| corn, sweet, fodder and forage                                                                           | corn, sweet, forage and corn, sweet, stover                                                                 |
| cucumbers                                                                                                | cucumber                                                                                                    |
| currants                                                                                                 | currant                                                                                                     |
| dewberries                                                                                               | dewberry                                                                                                    |
| eggplants                                                                                                | eggplant                                                                                                    |
| eggs                                                                                                     | egg                                                                                                         |
| goats, fat                                                                                               | goat, fat                                                                                                   |
| goats, meat                                                                                              | goat, meat                                                                                                  |
| goats, mbyp                                                                                              | goat, meat byproducts                                                                                       |
| grapes                                                                                                   | grape                                                                                                       |
| hogs, fat                                                                                                | hog, fat                                                                                                    |
| hogs, meat                                                                                               | hog, meat                                                                                                   |
| hogs, mbyp                                                                                               | hog, meat byproducts                                                                                        |

| Old terminology                                 | New terminology                                       |
|-------------------------------------------------|-------------------------------------------------------|
| horses, fat                                     | horse, fat                                            |
| horses, meat                                    | horse, meat                                           |
| horses, mbyp                                    | horse, meat byproducts                                |
| loganberries                                    | loganberry                                            |
| mangoes                                         | mango                                                 |
| melons                                          | melon                                                 |
| mushrooms (PRE- and POST-H)                     | mushroom, postharvest                                 |
| nectarines (PRE- and POST-H)                    | nectarine, postharvest                                |
| nuts                                            | nut                                                   |
| oats, grain                                     | oat, grain                                            |
| oats, straw                                     | oat, straw                                            |
| peaches (PRE- and POST-H)                       | peach, postharvest                                    |
| peanuts                                         | peanut                                                |
| peanut hay                                      | peanut, hay                                           |
| pears (PRE- and POST-H)                         | pear, postharvest                                     |
| peppers                                         | pepper                                                |
| pineapples (POST-H)                             | pineapple, postharvest                                |
| pistachios                                      | pistachio                                             |
| plums (including fresh prunes)(PRE- and POST-H) | plum, postharvest and plum, prune, fresh, postharvest |
| poultry, mbyp                                   | poultry, meat byproducts, except liver                |
| pumpkins                                        | pumpkin                                               |
| raisins                                         | grape, raisin                                         |
| raspberries                                     | raspberry                                             |
| rice straw                                      | rice, straw                                           |
| rutabagas                                       | rutabaga                                              |
| sheep, mbyp                                     | sheep, meat byproducts                                |
| soybeans                                        | soybean                                               |
| strawberries                                    | strawberry                                            |
| sweet potatoes                                  | sweet potato, roots                                   |
| tomatoes                                        | tomato                                                |
| tomato products, concentrated                   | tomato, concentrated products                         |
| turnips, roots                                  | turnip, roots                                         |
| avocados                                        | avocado                                               |
| dandelions                                      | dandelion, leaves                                     |
| papayas                                         | papaya                                                |
| pistachios                                      | pistachio                                             |
| turnip greens                                   | turnip, greens                                        |

#### *B. What is the Agency's Authority for Taking this Action?*

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. 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.

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

EPA is delaying the effective date of the revocations for bean vine forage and peanut forage for 90 days following publication of a final rule in the **Federal Register** to ensure that all affected parties receive notice of EPA's actions. Consequently, revocation of the tolerances for bean vine forage and peanut forage is effective October 15, 2002. EPA is revoking all other benomyl tolerances with expiration dates which range from January 1, 2006 to January 1, 2009 as previously detailed. EPA believes that by December 31, 2003 all existing stocks of pesticide products labeled for the uses associated with the tolerances revoked in this final rule will have been exhausted, giving ample time, from 2 to 5 years, for any treated fresh commodity and processed food to clear trade channels. Therefore, EPA believes the effective dates in this document are reasonable.

Any commodities listed in the regulatory text of this document that are treated with the pesticide subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by the FQPA. Under this section, any residue of this pesticide in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA 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 a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

#### *D. What is the Contribution to Tolerance Reassessment?*

By law, EPA is required by August 2002 to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996. EPA is also required to assess the remaining tolerances by August, 2006. As of July 5, 2002, EPA has reassessed over 5,450 tolerances. In this rule, EPA is revoking 100 tolerances which count as reassessments toward the August, 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

### **III. Are There Any International Trade Issues Raised by this Final Action?**

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL-6559-3). This guidance will be made available to interested persons. Electronic copies are available on the internet at <http://www.epa.gov/>. On the Home Page select "Laws and Regulations," then select "Regulations and Proposed Rules" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

### **IV. Objections and Hearing Requests**

#### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in

accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP-2002-0068 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 16, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260-4865.

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

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305-5697, by e-mail at [tompkins.jim@epa.gov](mailto:tompkins.jim@epa.gov), or by mailing a request for information to Mr. Tompkins

at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP-2002-0068, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: [opp-docket@epa.gov](mailto:opp-docket@epa.gov). Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

#### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

### **V. Regulatory Assessment Requirements**

This final rule will revoke tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a 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 final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticide listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with benomyl. Furthermore, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

#### VI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

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

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

Dated: June 28, 2002.

**Marcia E. Mulkey,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

#### PART 180—[AMENDED]

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

**Authority:** 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.294 is amended by revising the tables to paragraphs (a) and (c), to read as follows:

#### § 180.294 Benomyl; tolerances for residues.

(a) \* \* \*

| Commodity                                                                                                         | Parts per million | Expiration/Revocation Date |
|-------------------------------------------------------------------------------------------------------------------|-------------------|----------------------------|
| Almond, hulls .....                                                                                               | 1.0               | 1/1/07                     |
| Apple, postharvest .....                                                                                          | 7.0               | 1/1/08                     |
| Apricot, postharvest .....                                                                                        | 15.0              | 1/1/08                     |
| Banana, postharvest, not more than 0.2 ppm shall be present in the pulp after peel is removed and discarded ..... | 1.0               | 1/1/08                     |
| Barley, grain .....                                                                                               | 0.2               | 1/1/08                     |
| Barley, straw .....                                                                                               | 0.2               | 1/1/08                     |
| Bean .....                                                                                                        | 2.0               | 1/1/07                     |
| Beet, sugar, roots .....                                                                                          | 0.2               | 1/1/07                     |
| Beet, sugar, tops .....                                                                                           | 15.0              | 1/1/07                     |
| Blackberry .....                                                                                                  | 7.0               | 1/1/08                     |
| Blueberry .....                                                                                                   | 7.0               | 1/1/08                     |
| Boysenberry .....                                                                                                 | 7.0               | 1/1/08                     |
| Broccoli .....                                                                                                    | 0.2               | 1/1/06                     |
| Brussels sprouts .....                                                                                            | 15.0              | 1/1/06                     |
| Cabbage .....                                                                                                     | 0.2               | 1/1/06                     |
| Cabbage, chine, bok choy .....                                                                                    | 10.0              | 1/1/06                     |
| Cabbage, chine, napa .....                                                                                        | 10.0              | 1/1/06                     |

| Commodity                                             | Parts per million | Expiration/Revocation Date |
|-------------------------------------------------------|-------------------|----------------------------|
| Carrot, roots .....                                   | 0.2               | 1/1/07                     |
| Cattle, fat .....                                     | 0.1               | 1/1/08                     |
| Cattle, meat .....                                    | 0.1               | 1/1/08                     |
| Cattle, meat by-products .....                        | 0.1               | 1/1/08                     |
| Cauliflower .....                                     | 0.2               | 1/1/06                     |
| Celery .....                                          | 3.0               | 1/1/07                     |
| Cherry, postharvest .....                             | 15.0              | 1/1/08                     |
| Citrus, dried pulp .....                              | 50.0              | 1/1/08                     |
| Collards .....                                        | 0.2               | 1/1/06                     |
| Corn, sweet, forage .....                             | 0.2               | 1/1/08                     |
| Corn, sweet, kernel plus cob with husks removed ..... | 0.2               | 1/1/08                     |
| Corn, sweet, stover .....                             | 0.2               | 1/1/08                     |
| Cucumber .....                                        | 1.0               | 1/1/07                     |
| Currant .....                                         | 7.0               | 1/1/08                     |
| Dewberry .....                                        | 7.0               | 1/1/08                     |
| Egg .....                                             | 0.1               | 1/1/08                     |
| Eggplant .....                                        | 0.2               | 1/1/09                     |
| Fruit, citrus, postharvest .....                      | 10.0              | 1/1/08                     |
| Garlic .....                                          | 0.2               | 1/1/06                     |
| Goat, fat .....                                       | 0.1               | 1/1/08                     |
| Goat, meat .....                                      | 0.1               | 1/1/08                     |
| Goat, meat by-products .....                          | 0.1               | 1/1/08                     |
| Grape .....                                           | 10.0              | 1/1/08                     |
| Grape, raisin .....                                   | 50.0              | 1/1/08                     |
| Hog, fat .....                                        | 0.1               | 1/1/08                     |
| Hog, meat .....                                       | 0.1               | 1/1/08                     |
| Hog, meat by-products .....                           | 0.1               | 1/1/08                     |
| Horse, fat .....                                      | 0.1               | 1/1/08                     |
| Horse, meat .....                                     | 0.1               | 1/1/08                     |
| Horse, meat by-products .....                         | 0.1               | 1/1/08                     |
| Kale .....                                            | 0.2               | 1/1/06                     |
| Kohlrabi .....                                        | 0.2               | 1/1/06                     |
| Loganberry .....                                      | 7.0               | 1/1/08                     |
| Mango .....                                           | 3.0               | 1/1/08                     |
| Melon .....                                           | 1.0               | 1/1/07                     |
| Milk .....                                            | 0.1               | 1/1/08                     |
| Mushroom, postharvest .....                           | 10.0              | 1/1/08                     |
| Mustard greens .....                                  | 0.2               | 1/1/06                     |
| Nectarine, postharvest .....                          | 15.0              | 1/1/08                     |
| Nut .....                                             | 0.2               | 1/1/07                     |
| Oat, grain .....                                      | 0.2               | 1/1/08                     |
| Oat, straw .....                                      | 0.2               | 1/1/08                     |
| Peach, postharvest .....                              | 15.0              | 1/1/08                     |
| Peanut .....                                          | 0.2               | 1/1/08                     |
| Peanut, hay .....                                     | 15.0              | 1/1/08                     |
| Pear, postharvest .....                               | 7.0               | 1/1/08                     |
| Pepper .....                                          | 0.2               | 1/1/09                     |
| Pineapple, postharvest .....                          | 35.0              | 1/1/08                     |
| Pistachio .....                                       | 0.2               | 1/1/07                     |
| Plum, postharvest .....                               | 15.0              | 1/1/08                     |
| Plum, prune, fresh, postharvest .....                 | 15.0              | 1/1/08                     |
| Poultry, fat .....                                    | 0.1               | 1/1/08                     |
| Poultry, liver .....                                  | 0.2               | 1/1/08                     |
| Poultry, meat .....                                   | 0.1               | 1/1/08                     |
| Poultry, meat by-products, except liver .....         | 0.1               | 1/1/08                     |
| Pumpkin .....                                         | 1.0               | 1/1/07                     |
| Raspberry .....                                       | 7.0               | 1/1/08                     |
| Rice .....                                            | 5.0               | 1/1/08                     |
| Rice, hulls .....                                     | 20.0              | 1/1/08                     |
| Rice, straw .....                                     | 15.0              | 1/1/08                     |
| Rutabaga .....                                        | 0.2               | 1/1/07                     |
| Rye, grain .....                                      | 0.2               | 1/1/08                     |
| Rye, straw .....                                      | 0.2               | 1/1/08                     |
| Sheep, fat .....                                      | 0.1               | 1/1/08                     |

| Commodity                           | Parts per million | Expiration/Revocation Date |
|-------------------------------------|-------------------|----------------------------|
| Sheep, meat .....                   | 0.1               | 1/1/08                     |
| Sheep, meat by-products .....       | 0.1               | 1/1/08                     |
| Soybean .....                       | 0.2               | 1/1/07                     |
| Spinach .....                       | 0.2               | 1/1/07                     |
| Squash, summer .....                | 1.0               | 1/1/07                     |
| Squash, winter ....                 | 1.0               | 1/1/07                     |
| Strawberry .....                    | 5.0               | 1/1/08                     |
| Sweet potato, roots .....           | 0.2               | 1/1/07                     |
| Tomato .....                        | 5.0               | 1/1/09                     |
| Tomato, concentrated products ..... | 50.0              | 1/1/09                     |
| Turnip, roots .....                 | 0.2               | 1/1/07                     |
| Wheat, grain .....                  | 0.2               | 1/1/08                     |
| Wheat, straw .....                  | 15.0              | 1/1/08                     |

\* \* \* \* \*

(c) \* \* \*

| Commodity               | Parts per million | Expiration/Revocation Date |
|-------------------------|-------------------|----------------------------|
| Avocado .....           | 3.0               | 1/1/08                     |
| Dandelion, leaves ..... | 10.0              | 1/1/07                     |
| Papaya .....            | 3.0               | 1/1/08                     |
| Pistachio .....         | 0.2               | 1/1/07                     |
| Turnip, greens ....     | 6.0               | 1/1/07                     |
| Watercress .....        | 10.0              | 1/1/07                     |

\* \* \* \* \*

[FR Doc. 02-17872 Filed 7-16-02; 8:45 am]

BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-2002-0118; FRL-7184-4]

RIN 2070-AB78

### Methoxychlor; Tolerance Revocations

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

**ACTION:** Final rule.

**SUMMARY:** This document revokes all tolerances for residues of methoxychlor because all registrations of pesticides containing methoxychlor are suspended or canceled, and there are insufficient data to find the pesticide safe in accordance with section 4(b)(2)(A) of the Federal Food, Drug, and Cosmetic Act (FFDCA). The primary registrant of methoxychlor (Kincaid Enterprises, Inc.) has failed to submit the necessary data required to support continued registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of pesticide products containing methoxychlor. As a result, all methoxychlor products are currently suspended. The regulatory actions specified in this document contribute toward the Agency's tolerance reassessment requirements of FFDCA section 408(q), as amended by the Food

Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2002, to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions in this document pertain to the revocation of 79 tolerances and exemptions which are counted among tolerance/exemption reassessments made toward the August 2002 review deadline.

**DATES:** This regulation is effective October 15, 2002. Objections and requests for hearings, identified by docket ID number OPP-2002-0118, must be received by EPA on or before September 16, 2002.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP-2002-0118 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Beth Edwards, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305-5400; e-mail address: edwards.beth@epa.gov.

### SUPPLEMENTARY INFORMATION:

#### I. General Information

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

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes                    | Examples of potentially affected entities                                             |
|------------|--------------------------------|---------------------------------------------------------------------------------------|
| Industry   | 111<br>112<br>311<br><br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

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 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 this action might apply to certain entities. If you have questions