

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180**

[OPP-2005-0209; FRL-7732-5]

**Aminopyridine, Ammonia, Chloropicrin, Diazinon, Dihydro-5-heptyl-2(3H)-furanone, Dihydro-5-pentyl-2(3H)-furanone, and Vinclozolin; Tolerance Actions****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is revoking specific tolerances and tolerance exemptions for residues of the bird repellent 4-aminopyridine, fungicides ammonia and vinclozolin, and insecticides chloropicrin, diazinon, dihydro-5-heptyl-2(3H)-furanone, and dihydro-5-pentyl-2(3H)-furanone. EPA canceled food use registrations or deleted food uses from registrations following requests for voluntary cancellation or use deletion by the registrants, or non-payment of registration maintenance fees. The regulatory actions in this document contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. The regulatory actions in this document pertain to the revocation of 39 tolerances and tolerance exemptions of which 33 count as tolerance reassessments toward the August, 2006 review deadline.

**DATES:** This regulation is effective September 21, 2005. However, certain regulatory actions will not occur until the date specified in the regulatory text. Objections and requests for hearings must be received on or before November 21, 2005.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP-2005-0209. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy

form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8037; e-mail address: [nevola.joseph@epa.gov](mailto:nevola.joseph@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this Action Apply to Me?*

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

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document

electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

**II. Background***A. What Action is the Agency Taking?*

In the **Federal Register** of May 18, 2005 (70 FR 28497) (FRL-7713-8), EPA issued a proposed rule to revoke certain tolerances for residues of the bird repellent 4-aminopyridine, fungicides ammonia and vinclozolin, and insecticides chloropicrin, diazinon, dihydro-5-heptyl-2(3H)-furanone, and dihydro-5-pentyl-2(3H)-furanone. Also, the proposal of May 18, 2005 provided a 60-day comment period which invited public comment for consideration and for support of tolerance retention under the FFDCA standards.

In this final rule, EPA is revoking these tolerances and tolerance exemptions because they pertain to uses which are either no longer current or registered under FIFRA in the United States. The tolerances and tolerance exemptions revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to revoke those tolerances and tolerance exemptions for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or domestic commodities legally treated.

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. 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.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of the following conditions applies:

- 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.

- EPA independently verifies that the tolerance is no longer needed.
- The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

In response to the proposal published in the **Federal Register** of May 18, 2005 (70 FR 28497), EPA received two comments during the 60-day public comment period, as follows:

1. *Aminopyridine—comment by private citizen.* A private citizen stated opposition to any existing tolerances or tolerance exemptions for aminopyridine. The commenter stated that aminopyridine was dangerous, its products (avitrol) should not be on the market, and opposed its use as a bird repellent.

*Agency response.* On December 17, 2003 the registrant requested voluntary cancellation of the food uses of 4-aminopyridine. In the **Federal Register** notice of October 27, 2004 (69 FR 62666) (FRL-7683-7), EPA announced registration cancellations, including certain 4-aminopyridine (avitrol) registrations, for non-payment of year 2004 registration maintenance fees, and stated that cancellation orders permitted registrants to sell and distribute existing stocks of the canceled products until January 15, 2005.

The private citizen's comment did not take issue with the Agency's conclusion that tolerances for 4-aminopyridine should be revoked. It is EPA's general practice to revoke tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. However, cancellation orders will generally permit a registrant to sell or distribute existing pesticide stocks for 1-year after the date on which the fee was due, as described in the **Federal Register** Notice of October 27, 2004 (69 FR 62666).

No comments were received by the Agency concerning the following actions regarding 4-aminopyridine that were proposed on May 18, 2005 (70 FR 28497).

The Agency believes that end users will have sufficient time to exhaust existing stocks and for treated commodities to have cleared the channels of trade by January 15, 2006. Therefore, EPA is revoking the tolerances in 40 CFR 180.312 for residues of the bird repellent 4-aminopyridine in or on corn, forage; corn, field, grain; corn, pop, grain; corn, stover; corn, sweet, kernels plus cob with husks removed; and sunflower,

seed; each with an expiration/revocation date of January 15, 2006.

Also, EPA is revising the commodity terminology in 40 CFR 180.312 to conform to current Agency practice as follows: "corn, forage" to "corn, field, forage" and "corn, sweet, forage;" "corn, stover" to "corn, field, stover;" "corn, pop, stover;" and "corn, sweet, stover;" and "corn, sweet, kernels plus cob with husks removed" to "corn, sweet, kernel plus cob with husks removed." In addition, in 40 CFR 180.312, EPA is removing the "(N)" designation from all entries to conform to current Agency administrative practice ("(N)" designation means negligible residues).

2. *Vinclozolin—Comment by UNILET.*

A comment was received by EPA from the Union Nationale Interprofessionnelle des Legumes Transformes (UNILET), a trade organization in France concerned with the field of processed vegetables. UNILET stated that vinclozolin was more effective than other fungicides in the control of white mold, caused by *Sclerotinia sclerotiorum*, and described the disease as widespread over areas of green beans in France. UNILET also stated that white mold has a major effect on yield and effects quality to the extent that it is the main reason for green beans to be refused for processing in France.

*Agency response.* Under 40 CFR 180.380, the tolerance for vinclozolin residues of concern on succulent beans was set to expire on September 30, 2005. The proposal upon which UNILET commented was not to revoke the tolerance but to extend the revocation date from September 30 to November 30, 2005 in order to be consistent with a **Federal Register** Notice of August 22, 2001 (66 FR 44134) (FRL-6795-7). Thus, the comment is not relevant to this rulemaking. If the commenter desires a tolerance for use of vinclozolin on succulent beans, then the commenter should petition for a new tolerance per procedures in 40 CFR part 180, subpart B. In that regard, EPA notes the commenter's acknowledgement that other fungicides, such as thiophanate-methyl, iprodione, cyprodinil, and boscalid are available to control white mold on green beans. Considerations related to the beneficial impacts of a pesticide are cognizable under the FFDCA only in very narrow circumstances See 21 U.S.C. 346a(b)(2)(B).

In this final rule, EPA is extending the expiration/revocation date for the tolerance in 40 CFR 180.380(a) for vinclozolin residues of concern in or on bean, succulent from September 30 to November 30, 2005.

No comments were received by the Agency concerning the following actions regarding vinclozolin that were proposed on May 18, 2005 (70 FR 28497).

In the **Federal Register** notice of August 22, 2001 (66 FR 44134) (FRL-6795-7), EPA announced use cancellations for certain vinclozolin registrations, including uses of the fungicide vinclozolin on kiwi, chicory, lettuce, and succulent beans with a last date for legal use as January 30, 2004; January 30, 2004; November 30, 2005, and November 30, 2005, respectively. The Agency believes that end users have had sufficient time to exhaust existing stocks and for treated kiwi and chicory commodities to have cleared the channels of trade. Further, pursuant to FFDCA section 408(l)(5), treated lettuce and succulent bean commodities that have been legally treated on or before November 30, 2005 and whose residues are within the tolerance set to expire on that date, will not be considered adulterated, even if they have not yet cleared channels of trade. Therefore, EPA is revoking the tolerances in 40 CFR 180.380(a) for the combined residues of the fungicide vinclozolin and its metabolites containing the 3,5-dichloroaniline moiety in or on Belgian endive, tops and kiwifruit on the date of publication of the final rule; and also lettuce, head and lettuce, leaf; each with an expiration/revocation date of November 30, 2005.

Further, EPA is revising commodity terminology in 40 CFR 180.380 to conform to current Agency practice as follows: "grape, (wine)" to "grape, wine."

No comments were received by the Agency concerning the following.

3. *Ammonia.* Because there have been no active registered uses of ammonia on food since 1987, the associated tolerance exemptions are no longer needed. Therefore, EPA is revoking the tolerance exemptions in 40 CFR 180.1003 for residues of the fungicide ammonia when used after harvest on grapefruit, lemons, oranges, and corn grain for feed use only.

4. *Chloropicrin.* Because there have been no active registrations of chloropicrin concerning post-harvest uses on grain since 1991, the associated tolerance exemptions are no longer needed. Also, the Agency believes that chloropicrin is not found in the formulation of other fumigant pesticides with active registrations for post-harvest use on grains. In addition, the Agency believes that it is unlikely that detectable residues of chloropicrin will be found in or on any raw agricultural commodity in formulations where it is

used as a warning agent (2% or less) due to its volatility.

Therefore, EPA is revoking the tolerance exemptions in 40 CFR 180.1008 for residues of chloropicrin when used as a fumigant after harvest on barley, buckwheat, corn (including popcorn), oats, rice, rye, grain sorghum, and wheat.

5. *Diazinon*. In the **Federal Register** notice of May 30, 2001 (66 FR 29310) (FRL-6785-2), EPA announced the receipt of requests to voluntarily cancel and amend certain diazinon registrations. The Agency published the cancellation order in the **Federal Register** of July 19, 2001 (66 FR 37673) (FRL-6791-9) and made the registration cancellations and amendments effective on July 19, 2001, and registrant sale and distribution of existing stocks was permitted for 1 year; i.e., until July 19, 2002.

Also, in the **Federal Register** notice of September 13, 2001 (66 FR 47658) (FRL-6800-6), EPA announced the receipt of requests to voluntarily cancel and amend certain diazinon registrations. The Agency published the cancellation order in the **Federal Register** of November 15, 2001 (66 FR 57440) (FRL-6809-5) and made the registration cancellations and amendments effective on November 15, 2001, and registrant sale and distribution of existing stocks was permitted for 1 year; i.e., until November 15, 2002.

EPA believes that end users have had sufficient time, more than 2 years, to exhaust those existing stocks and for treated commodities to have cleared the channels of trade. Therefore, the Agency is revoking the tolerances in 40 CFR 180.153 for residues of the insecticide diazinon in or on alfalfa, fresh; alfalfa, hay; guar, seed; clover, forage; clover, hay; cotton, undelinted seed; cowpea; cowpea, forage; lespedeza; sorghum, forage; and sorghum, grain; and all revocations are effective on the date of publication of this final rule in the **Federal Register**.

Further, EPA is revising commodity terminology in 40 CFR 180.153 to conform to current Agency practice as follows: "Banana (NMT 0.1 ppm shall be present in the pulp after peel is removed)" to "banana," "corn, forage" to "corn, field, forage" and "corn, sweet, forage;" "corn, kernel plus cob with husks removed" to "corn, sweet, kernel plus cob with husks removed;" "endive (escarole)" to "endive;" "ginseng, root" to "ginseng, roots;" "hop" to "hop, dried cones;" "onion" to "onion, dry bulb" and "onion, green;" "peavine hay" to "pea, field, hay;" "peavines" to "pea, field, vines;" "pea with pods

(determined on pea after removing any shell present when marketed)" to "pea, succulent;" and "rutabagas" to "rutabaga."

Additional information can be found in the 2002 Diazinon Interim Reregistration Eligibility Decision (IRED). A printed copy of the diazinon IRED may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242-2419, telephone 1-800-490-9198; fax 1-513-489-8695; internet at <http://www.epa.gov/ncepihom/> and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 1-800-553-6847 or 703-605-6000; internet at <http://www.ntis.gov/>. An electronic copy of the diazinon IRED is available on the internet at <http://www.epa.gov/pesticides/reregistration/status.htm>.

6. *Dihydro-5-heptyl-2(3H)-furanone*. In the **Federal Register** notice of October 27, 2004 (69 FR 62666), EPA announced registration cancellations, including a certain dihydro-5-heptyl-2(3H)-furanone registration, for non-payment of year 2004 registration maintenance fees. The cancellation orders permitted registrants to sell and distribute existing stocks of the canceled products until January 15, 2005, 1 year after the date on which the fee was due. The Agency believes that end users have had sufficient time to exhaust existing stocks and for treated commodities to have cleared the channels of trade. Therefore, EPA is revoking the tolerance exemptions in 40 CFR 180.528 for residues of the insecticide dihydro-5-heptyl-2(3H)-furanone in or on animal feed and processed food.

Also, EPA is amending paragraph (a)(1) in 40 CFR 180.539 and removing dihydro-5-heptyl-2(3H)-furanone from the tolerance exemption expression for d-Limonene.

7. *Dihydro-5-pentyl-2(3H)-furanone*. In the **Federal Register** notice of October 27, 2004 (69 FR 62666), EPA announced registration cancellations, including a certain dihydro-5-pentyl-2(3H)-furanone registration, for non-payment of year 2004 registration maintenance fees. The cancellation orders permitted registrants to sell and distribute existing stocks of the canceled products until January 15, 2005, 1 year after the date on which the fee was due. The Agency believes that end users have had sufficient time to exhaust existing stocks and for treated commodities to have cleared the channels of trade. Therefore, EPA is revoking the tolerance exemptions in 40 CFR 180.529 for residues of the insecticide dihydro-5-

pentyl-2(3H)-furanone in or on animal feed and processed food.

Also, EPA is amending paragraph (a)(1) in 40 CFR 180.539 and removing dihydro-5-pentyl-2(3H)-furanone from the tolerance exemption expression for d-Limonene.

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

EPA's general practice is to revoke tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

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

With the exception of certain tolerances for 4-aminopyridine and vinclozolin, for which EPA is revoking certain tolerances with specific expiration/revocation dates, the Agency is revoking these tolerances and tolerance exemptions, revising commodity terminology, and removing dihydro-5-heptyl-2(3H)-furanone and dihydro-5-pentyl-2(3H)-furanone from the tolerance expression in 40 CFR 180.539 for d-limonene, effective on the date of publication of this final rule in the **Federal Register**. With the exception of 4-aminopyridine and vinclozolin, the Agency believes that existing stocks of pesticide products labeled for the uses associated with the revoked tolerances have been completely exhausted and that treated commodities have cleared the channels of trade. EPA is revoking certain tolerances with expiration/revocation dates of January 15, 2006 for specific 4-aminopyridine tolerances and November 30, 2005 for tolerances of vinclozolin residues of concern on bean, succulent; lettuce, head; and lettuce, leaf. The Agency believes that these revocation dates allow users to exhaust stocks and allow sufficient time for

passage of treated commodities through the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

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

By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. As of September 6, 2005, EPA has reassessed over 7,430 tolerances. This document revokes a total of 39 tolerances of which 33 are counted as tolerance reassessments toward the August 2006 review deadline of FFDCA section 408(g), as amended by FQPA in 1996. For the purpose of tolerance reassessment, the commodity entry "corn (including popcorn)" in 40 CFR 180.1008 for chloropicrin represents two tolerances; i.e., corn (postharvest) and corn, pop, grain (postharvest). Therefore, it is counted herein as two revocations, and therefore two tolerance reassessments. In addition, while the corn, field, grain and corn, pop, grain tolerances for 4-aminopyridine are counted as two revocations, EPA counts them as one tolerance reassessment because the Agency counted them as one tolerance at the beginning of FQPA when these were listed in 40 CFR 180.312 as one tolerance; i.e., corn, grain. Finally, the vinclozolin tolerances were previously reassessed.

#### **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**

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

##### *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 ID number OPP-2005-0209 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 November 21, 2005.

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 (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. 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) 564-6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV. A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP-2005-0209, 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 20460-0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. 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. Statutory and Executive Order Reviews

In this final rule EPA revokes specific 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 rule has been exempted from review under Executive Order 12866 due to its lack of significance, this 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 104-13, 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 pesticides listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticides named in this final rule, 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 section 408(n)(4) of FFDCA. 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. Congressional Review Act

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: September 9, 2005.

**James Jones,**

*Director, 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), 346a and 371.

■ 2. Section 180.153 is amended by revising the table in paragraph (a)(1) to read as follows:

### § 180.153 Diazinon; tolerances for residues.

(a) \* \* \* (1) \* \* \*

| Commodity                                       | Parts per million | Commodity          | Parts per million | Commodity                           | Parts per million |
|---|-------------------|--------------------|-------------------|-------------------------------------|-------------------|
| Almond  | 0.5               | Grape              | 0.75              | Sheep, meat (fat basis)             | 0.7               |
| Almond, hulls                                   | 3.0               | Hop, dried cones   | 0.75              | Sheep, meat byproducts (fat basis)  | 0.7               |
| Apple   | 0.5               | Kiwifruit          | 0.75              | Spinach                             | 0.7               |
| Apricot   | 0.5               | Lettuce            | 0.7               | Squash, summer                      | 0.5               |
| Banana  | 0.2               | Loganberry         | 0.75              | Squash, winter                      | 0.75              |
| Bean, lima                                      | 0.5               | Melon              | 0.75              | Strawberry                          | 0.5               |
| Bean, snap, succulent                           | 0.5               | Mushroom           | 0.75              | Swiss chard                         | 0.7               |
| Beet, garden, roots                             | 0.75              | Nectarine          | 0.5               | Tomato                              | 0.75              |
| Beet, garden, tops                              | 0.7               | Olive              | 1.0               | Turnip, greens                      | 0.75              |
| Beet, sugar, roots                              | 0.5               | Onion, dry bulb    | 0.75              | Turnip, roots                       | 0.5               |
| Beet, sugar, tops                               | 10.0              | Onion, green       | 0.75              | Vegetable, brassica, leafy, group 5 | 0.7               |
| Blackberry                                      | 0.5               | Parsley, leaves    | 0.75              | Walnut                              | 0.5               |
| Blueberry                                       | 0.5               | Parsnip            | 0.5               | Watercress                          | 0.7               |
| Carrot, roots                                   | 0.75              | Peach              | 0.7               |                                     |                   |
| Cattle, fat                                     | 0.7               | Pear               | 0.5               |                                     |                   |
| Celery  | 0.7               | Pea, field, hay    | 10.0              |                                     |                   |
| Cherry  | 0.75              | Pea, field, vines  | 25.0              |                                     |                   |
| Citrus  | 0.7               | Pea, succulent     | 0.5               |                                     |                   |
| Corn, field, forage                             | 40.0              | Pepper             | 0.5               |                                     |                   |
| Corn, sweet, forage                             | 40.0              | Pineapple          | 0.5               |                                     |                   |
| Corn, sweet, kernel plus cob with husks removed | 0.7               | Plum, prune, fresh | 0.5               |                                     |                   |
| Cranberry                                       | 0.5               | Potato             | 0.1               |                                     |                   |
| Cucumber  | 0.75              | Potato, sweet      | 0.1               |                                     |                   |
| Endive  | 0.7               | Radicchio          | 0.7               |                                     |                   |
| Fig   | 0.5               | Radish             | 0.5               |                                     |                   |
| Filbert   | 0.5               | Raspberry          | 0.5               |                                     |                   |
| Ginseng, roots                                  | 0.75              | Rutabaga           | 0.75              |                                     |                   |
|   |                   | Sheep, fat         | 0.7               |                                     |                   |

■ 3. Section 180.312 is amended by revising paragraph (a) to read as follows:

**§ 180.312 4-Aminopyridine; tolerances for residues.**

(a) *General.* Tolerances are established for residues of the bird repellent 4-aminopyridine in or on the following food commodities:

| Commodity                                       | Parts per million | Expiration/Revocation Date |
|---|-------------------|----------------------------|
| Corn, field, forage                             | 0.1               | 1/15/06                    |
| Corn, field, grain                              | 0.1               | 1/15/06                    |
| Corn, field, stover                             | 0.1               | 1/15/06                    |
| Corn, pop, grain                                | 0.1               | 1/15/06                    |
| Corn, pop, stover                               | 0.1               | 1/15/06                    |
| Corn, sweet, forage                             | 0.1               | 1/15/06                    |
| Corn, sweet, kernel plus cob with husks removed | 0.1               | 1/15/06                    |
| Corn, sweet, stover                             | 0.1               | 1/15/06                    |
| Sunflower, seed                                 | 0.1               | 1/15/06                    |

■ 4. Section 180.380 is amended by revising paragraph (a) to read as follows:

**§ 180.380 Vinclozolin; tolerances for residues.**

(a) *General.* Tolerances are established for the combined residues of the fungicide vinclozolin (3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolinedione) and its metabolites containing the 3,5-dichloroaniline moiety in or on the food commodities in the table below. There are no U.S. registrations for grape (wine) as of July 30, 1997.

| Commodity                | Parts per million | Expiration/Revocation Date |
|--------------------------|-------------------|----------------------------|
| Bean, succulent          | 2.0               | 11/30/05                   |
| Canola, seed             | 1.0               | 11/30/08                   |
| Cattle, fat              | 0.05              | 11/30/08                   |
| Cattle, meat             | 0.05              | 11/30/08                   |
| Cattle, meat by-products | 0.05              | 11/30/08                   |
| Egg                      | 0.05              | 11/30/08                   |

| Commodity                | Parts per million | Expiration/Revocation Date |
|--------------------------|-------------------|----------------------------|
| Goat, fat                | 0.05              | 11/30/08                   |
| Goat, meat               | 0.05              | 11/30/08                   |
| Goat, meat by-products   | 0.05              | 11/30/08                   |
| Grape, wine              | 6.0               | None                       |
| Hog, fat                 | 0.05              | 11/30/08                   |
| Hog, meat                | 0.05              | 11/30/08                   |
| Hog, meat by-products    | 0.05              | 11/30/08                   |
| Horse, fat               | 0.05              | 11/30/08                   |
| Horse, meat              | 0.05              | 11/30/08                   |
| Horse, meat by-products  | 0.05              | 11/30/08                   |
| Lettuce, head            | 10.0              | 11/30/05                   |
| Lettuce, leaf            | 10.0              | 11/30/05                   |
| Milk                     | 0.05              | 11/30/08                   |
| Poultry, fat             | 0.1               | 11/30/08                   |
| Poultry, meat            | 0.1               | 11/30/08                   |
| Poultry, meat byproducts | 0.1               | 11/30/08                   |
| Sheep, fat               | 0.05              | 11/30/08                   |
| Sheep, meat              | 0.05              | 11/30/08                   |
| Sheep, meat by-products  | 0.05              | 11/30/08                   |

■ 5. Sections 180.528 and 180.529 are removed.

■ 6. Section 180.539 is amended by revising paragraph (a)(1) to read as follows:

**§180.539 d-Limonene; tolerances for residues.**

(a) \* \* \* (1) The insecticide d-limonene may be safely used in insect-repellent tablecloths and in insect-repellent strips used in food- or feed-handling establishments.

■ 7. Sections 180.1003 and 180.1008 are removed.

[FR Doc. 05-18579 Filed 9-20-05; 8:45 am]

BILLING CODE 6560-50-S