

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 12, 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. In section 180.133, paragraph (a) is revised to read as follows:

**§ 180.133 Lindane; tolerances for residues.**

(a) *General.* Tolerances are established for residues of the insecticide lindane (gamma isomer of 1,2,3,4,5,6-hexachlorocyclohexane) in or on raw agricultural commodities as follows:

Commodity	Parts per million	Expiration/Revocation Date
Broccoli .....	1.0	4/26/07
Brussels sprouts .....	1.0	4/26/07
Cabbage .....	1.0	4/26/07
Cattle, fat .....	7.0	None
Cauliflower .....	1.0	4/26/07
Goat, fat .....	7.0	None
Hog, fat .....	4.0	None
Horse, fat .....	7.0	None
Sheep, fat .....	7.0	None

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 [FR Doc. 05-18829 Filed 9-20-05; 8:45 am]  
**BILLING CODE 6560-50-S**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP-2005-0259; FRL-7737-9]

**Boscalid; Pesticide Tolerances for Emergency Exemptions**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for residues of boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl) in or on tangerines. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on mandarin oranges and mandarin hybrids. "Tangerines" is the accepted regulatory term used for these crops and a tolerance on tangerines covers both mandarin oranges and mandarin hybrids. This regulation establishes a maximum permissible level for residues of boscalid in this food commodity. The tolerance will expire and is revoked on December 31, 2008.

**DATES:** This regulation is effective September 21, 2005. 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 VII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP-2005-0259. 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:** Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9367; e-mail address: *Sec-18-Mailbox@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

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

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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/fedrgrstr/>. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

**II. Background and Statutory Findings**

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the fungicide boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl) in or on tangerines at 2.0 parts per million (ppm). This tolerance will expire and is revoked on December 31, 2008. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such

exemption." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

**III. Emergency Exemption for Boscalid on Mandarin Oranges and Mandarin Hybrids and FFDCA Tolerances**

The state of California requested the use of boscalid (pre-mixed with the chemical pyraclostrobin as the product Pristine) on mandarin oranges and mandarine hybrids (termed "tangerines" for regulatory purposes) to control *Alternaria alternata*. The applicant reported that only two fungicides are registered for use to control this pathogen and that neither provide commercially acceptable disease control. It was also stated that crop yields have been declining since 1999 because of *Alternaria alternata*. EPA has authorized under FIFRA section 18 the use of boscalid (pre-mixed with pyraclostrobin as the product Pristine) on mandarins and mandarin hybrids for control of *Alternaria alternata* in California. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of boscalid in or on tangerines. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance will expire and is revoked on December 31, 2008, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on tangerines after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether boscalid meets EPA's registration requirements for use on tangerines or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of boscalid by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than California to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for boscalid, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT.**

**IV. Aggregate Risk Assessment and Determination of Safety**

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see <http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm>.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of boscalid and to make a determination on aggregate exposure,

consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for residues of the fungicide boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl) in or on tangerines at 2.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

**A. Toxicological Endpoints**

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or

cPAD) is a modification of the RfD to accommodate this type of FQPA Safety factor (SF).

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q\*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q\* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q\* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x 10<sup>-6</sup> or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE<sub>cancer</sub> = point of departure/exposures) is calculated. A summary of the toxicological endpoints for boscalid used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR BOSCALID FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary	No appropriate endpoint identified	N/A	N/A
Chronic Dietary (All populations)	NOAEL= 21.8 UF = 100 Chronic RfD = 0.218 mg/kg/day ..	FQPA SF = 1 cPAD = chronic RfD/FQPA SF = 0.218 mg/kg/day.	Chronic rat, carcinogenicity rat and 1-year dog studies LOAEL = 57–58 mg/kg/day based on liver and thyroid effects
Incidental Oral (Short and intermediate term residential only)	NOAEL= 21.8 mg/kg/day	Residential LOC for MOE = 100	Chronic rat, carcinogenicity rat and 1-year dog studies LOAEL = 57–58 mg/kg/day based on liver and thyroid effects
Dermal (All Durations)	Oral study NOAEL=21.8 mg/kg/day (dermal absorption rate = 15%)	Residential LOC for MOE = 100≤	Chronic rat, carcinogenicity rat and 1-year dog studies LOAEL = 57–58 mg/kg/day based on liver and thyroid effects

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR BOSCALID FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Inhalation (All Durations)	Oral study NOAEL= 21.8 mg/kg/day (inhalation absorption rate = 100%)	Residential LOC for MOE = 100	Chronic rat, carcinogenicity rat and 1-year dog studies LOAEL = 57–58 mg/kg/day based on liver and thyroid effects
Cancer (oral, dermal, inhalation)	Classification: “Suggestive evidence of carcinogenicity, but not sufficient to assess human carcinogenic potential.”		

\* The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

### B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established for residues of boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl) in or on a wide variety of crops and animal commodities. Tolerances on primary crops range from 0.05 ppm on the Tuberous and Corm Vegetable Crop Subgroup (1C) to 30 ppm on peppermint and spearmint tops. Tolerances on rotational crops range from 0.05 ppm on several commodities to 8.0 ppm on grasses. Animal commodity tolerances range from 0.02 ppm for eggs to 0.35 ppm for the meat byproducts of cattle, goats, horses, and sheep. Boscalid is a member of the carboxamide (anilide) class of compounds. In target crops and rotational crops, parent boscalid is the only residue of concern for both tolerance expression and risk assessment. In animal commodities, parent boscalid, a hydroxy metabolite, and the glucuronide of the hydroxy metabolite are the residues of concern for tolerance expression and risk assessment. In drinking water, parent boscalid is the only residue of concern for risk assessment. Risk assessments were conducted by EPA to assess dietary exposures from boscalid in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. As there were no toxic effects attributable to a single dose, an endpoint of concern was not identified to quantitate acute-dietary risk to the general population or to the subpopulation females 13–50 years old. Therefore, there is no acute reference dose (aRfD) or acute population-adjusted dose (aPAD) for the general population or females 13–50 years old. An acute aggregate risk assessment is not needed.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA–1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The chronic dietary exposure analysis was based on tolerance level residues and 100% crop treated assumptions. DEEM (Version 7.81) default processing factors were used for some commodities.

iii. *Cancer.* The Agency classified boscalid as having “suggestive evidence of carcinogenicity, but not sufficient to assess human carcinogenic potential.” The quantification of human cancer risk was therefore not conducted.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for boscalid in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of boscalid.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to produce estimates of pesticide concentrations in an index reservoir. The screening concentration in groundwater (SCI-GROW) model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will generally use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index

reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a percent of reference dose (%RfD) or percent of population adjusted dose (%PAD). Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to boscalid they are further discussed in the aggregate risk sections below.

Based on the FIRST and SCI-GROW models the EECs of boscalid for chronic exposures are estimated to be 26 parts per billion (ppb) for surface water and 0.6 ppb for groundwater.

3. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Boscalid is currently registered for use on golf courses. The boscalid label specifies that this product is intended for golf course use only, and not for use on residential turfgrass or turfgrass being grown for sale or other commercial use such as sod production. Although the label does not indicate that the product is applied by licensed or commercial applicators, it is acknowledged that the homeowner will not be applying the product to golf courses. Therefore, a risk assessment for residential handler exposure is not required. Boscalid is not packaged or marketed for home orchard use and, therefore, that use is not assessed.

It has been determined that the potential exists for exposure to boscalid from entering areas previously treated with the fungicide. Based on the above discussion, there is only one potential non-occupational post-application scenario associated with boscalid for which risk needs to be assessed: adults and youths golfing. Duration of exposure is anticipated to be short-term.

**4. Cumulative effects from substances with a common mechanism of toxicity.** Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to boscalid and any other substances and boscalid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that boscalid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at <http://www.epa.gov/pesticides/cumulative/>.

### C. Safety Factor for Infants and Children

**1. In general.** Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of

threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

**2. Prenatal and postnatal sensitivity.** A complete discussion of the prenatal/postnatal sensitivity study was discussed in a final rule dated July 30, 2003 (68 FR 44640) (FRL-7319-6). No new information has been received to change this information.

At that time, the Agency concluded that there are no residual uncertainties for pre- and post-natal toxicity as the degree of concern is low for the susceptibility seen in the available studies, and the dose and endpoints selected for the overall risk assessments will address the concerns for the body weight effects seen in the offspring. Although the dose selected for overall risk assessments (21.8 mg/kg/day) is higher than the NOAELs in the 2-generation reproduction study (10.1 mg/kg/day) and the developmental neurotoxicity study (14 mg/kg/day), these differences are considered to be an artifact of the dose selection process in these studies. For example, there is a tenfold difference between the LOAEL (106.8 mg/kg/day) and the NOAEL (10.1 mg/kg/day) in the 2-generation reproduction study. A similar pattern was seen with regard to the developmental neurotoxicity study, where there is also a tenfold difference between the LOAEL (147 mg/kg/day) and the NOAEL (14 mg/kg/day). There is only a 2- to 3-fold difference between the LOAEL (57 mg/kg/day) and the NOAEL (21.8 mg/kg/day) in the critical study used for risk assessment. Because the gap between the NOAEL and LOAEL in the 2-generation reproduction and developmental neurotoxicity studies was large and the effects at the LOAELs were minimal, the true NOAEL was probably considerably higher. Therefore, the selection of the NOAEL of 21.8 mg/kg/day from the 1-year dog study is conservative and appropriate for the overall risk assessments. In addition, the endpoints for risk assessment are based on thyroid effects seen in multiple species (mice, rats and dogs) and after various exposure durations (subchronic and chronic exposures) which were not observed at the LOAELs in either the 2-generation reproduction or the developmental neurotoxicity studies. Based on these

data, the Agency concluded that there are no residual uncertainties for pre- and post-natal toxicity.

**3. Conclusion.** There is a complete toxicity database for boscalid and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. There is no evidence of susceptibility following *in utero* exposure to rats and there is low concern and no residual uncertainties in the developmental toxicity study in rabbits, in the 2-generation reproduction study or in the developmental neurotoxicity study after establishing toxicity endpoints and traditional uncertainty factors to be used in the risk assessment. Based on these data and conclusions, EPA reduced the FQPA safety factor to 1X.

### D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, the Office of Pesticide Programs (OPP) concludes with reasonable certainty that exposures to

boscalid in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of boscalid on drinking water as

a part of the aggregate risk assessment process.

1. *Acute risk.* As there were no toxic effects attributable to a single dose of boscalid, an endpoint of concern was not identified to quantitate acute dietary risk. As a result, an acute aggregate risk assessment is not needed.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to boscalid from food will utilize 7% of the cPAD for the U.S. population, 16% of the cPAD for all

infants (<1 year old) and 26% of the cPAD for children 1 to 2 years old. There are no residential uses for boscalid that result in chronic residential exposure to boscalid. In addition, despite the potential for chronic dietary exposure to boscalid in drinking water, after calculating DWLOCs and comparing them to conservative model of boscalid in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 2 of this unit:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO BOSCALID

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EDWC (ppb)	Ground Water EDWC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.218	7	26	0.63	7,100
All Infants (<1 year old)	0.218	16	26	0.63	1,800
Children 1–2 years	0.218	26	26	0.63	1,600
Females 13–49	0.218	5	26	0.63	6,200

3. *Short-term risk.* The short-term aggregate risk assessment takes into account average exposure estimates from dietary consumption of boscalid (food and drinking water) and non-occupational uses (golf courses). Postapplication exposures from the proposed use on golf courses is considered short-term, and applies to adults and youths. Therefore, a short-

term aggregate risk assessment was conducted. Since all endpoints are from the same study, exposures from different routes can be aggregated. Table 3 summarizes the results. The MOE from food and non-occupational uses is 1,400, and the calculated short-term DWLOC is 6,100 ppb. Compared to the surface and groundwater EDWCs, the DWLOCs are considerably greater.

Therefore, short-term aggregate risk does not exceed EPA's level of concern. The MOE and DWLOC are considered to be representative for youth because youth and adults possess similar body surface area to weight ratios, and because the dietary exposure for youth (13–19 years old) is less than that of the general U.S. population.

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO BOSCALID

Population	Short-Term Scenario									
	NOAEL mg/kg/day	Target MOE	Max Exposure mg/kg/day	Average Food Exposure mg/kg/day	Residential Exposure mg/kg/day	Aggregate MOE (food and residential)	Max Water Exposure mg/kg/day	Ground Water EDWC (ppb)	Surface Water EDWC (ppb)	Short-Term DWLOC (ppb)
U.S.	21.8	100	0.218	0.014631	0.0008	1,400	0.2026	0.6	26	6,100

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). As no intermediate-term non-occupational exposures to boscalid are anticipated, an intermediate-term aggregate risk assessment is not needed.

5. *Aggregate cancer risk for U.S. population.* EPA's review of toxicity data has resulted in a classification of boscalid as having "suggestive evidence of carcinogenicity, but not sufficient to

assess human carcinogenic potential." Thus, a quantification of human cancer risk has not been performed.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to boscalid residues.

**V. Other Considerations**

*A. Analytical Enforcement Methodology*

Adequate enforcement methodology (example—gas chromatography) is

available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

*B. International Residue Limits*

There is neither a Codex proposal, nor a Canadian or Mexican maximum residue limit for residues of boscalid on tangerines. Therefore harmonization is not an issue.

## VI. Conclusion

Therefore, the tolerance is established for residues of the fungicide boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl) in or on tangerines at 2.0 ppm.

## VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the 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 the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the 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 the FFDCA, as was provided in the old sections 408 and 409 of the 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-2005-0259 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 issue(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 14<sup>th</sup> 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 VII.A., 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 the docket ID number OPP-2005-0259, to: Public Information and Records Integrity Branch, Information Technology and Resource Management 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 issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## VIII. Statutory and Executive Order Reviews

This final rule establishes a time-limited tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these

types of actions 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 under 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 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). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. 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 the 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.

**IX. 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 13, 2005  
**Meredith F. Laws**,  
*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), 346a and 371.

■ 2. Section 180.589 is amended by adding text to paragraph (b) after the paragraph heading to read as follows:

**§ 180.589 Boscalid; tolerances for residues.**

\* \* \* \* \*  
 (b) \* \* \* Time-limited tolerances are established for residues of the fungicide boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl) in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. These tolerances will expire and are revoked on the dates specified in the following table:

Commodity	Parts per million	Expiration/Revocation Date
Tangerine .....	2.0	12/31/08

\* \* \* \* \*  
 [FR Doc. 05-18830 Filed 9-20-05; 8:45 am]  
**BILLING CODE 6560-50-S**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP-2005-0069; FRL-7737-3]

**Inert Ingredients; Revocation of 34 Pesticide Tolerance Exemptions for 31 Chemicals**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is revoking 34 exemptions from the requirement of a tolerance that are associated with 31 inert ingredients because these substances are no longer contained in active Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticide product registrations. These ingredients are subject to reassessment by August 2006 under section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The 34

tolerance exemptions are considered "reassessed" for purposes of FFDCA's section 408(q).

**DATES:** This regulation is effective September 21, 2005. 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 XI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under docket identification (ID) number OPP-2005-0069. 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:** Karen Angulo, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 306-0404; e-mail address: [angulo.karen@epa.gov](mailto:angulo.karen@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

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

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System