

the shut down of one kiln (Kosmos) and the emission reductions previously required on certain other kilns, meets the requirements of the NO<sub>x</sub> SIP Call (see Technical Support Document for a detailed discussion and analysis of emission reductions from affected cement kilns in the Commonwealth). Subchapter C also includes applicability, new definitions, standard requirements for compliance monitoring, requirements for determining allowable and actual emissions, and includes requirements for surrender of NO<sub>x</sub> allowances to the State when a unit has excess emissions.

### III. Proposed Action

EPA is proposing to approve the SIP revisions submitted by the Commonwealth of Pennsylvania on March 29, 2005, and supplemented on February 6, 2006. EPA's review of the submittal indicates that the revisions to Chapter 121, addition of new Sections 129.201 through 129.205 (Additional NO<sub>x</sub> Requirements), revision of Section 145.42 (pertaining to accountability of NO<sub>x</sub> credit under Section 129.205), and addition of Subchapters B and C to Chapter 145 (pertaining to the State's remaining NO<sub>x</sub> SIP Call obligations for IC engines and cement kilns, respectively), are approvable. These revisions strengthen the Pennsylvania SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small

governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, 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 by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This proposed rule to approve Pennsylvania's additional NO<sub>x</sub> emission reductions for the Philadelphia Area and its remaining NO<sub>x</sub> SIP Call requirements does not impose an information collection burden under the

provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 6, 2006

**William T. Wisniewski,**

*Acting Regional Administrator, Region III.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-2006-0056; FRL-8075-4]

### Bentazon, Carboxin, Dipropyl Isocinchomeronate, and Oil of Lemongrass (Oil of Lemon) and Oil of Orange; Proposed Tolerance Actions

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to revoke certain tolerances for the fungicide carboxin, the insecticide dipropyl isocinchomeronate, and the fungicide/animal repellent oil of lemon (oil of lemongrass) and oil of orange. Also, EPA is proposing to modify certain tolerances for the herbicide bentazon and the fungicide carboxin. In addition, EPA is proposing to establish new tolerances for the herbicide bentazon. The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances that were in existence on August 2, 1996. No tolerance reassessments will be counted at the time of a final rule because tolerances in existence on August 2, 1996 that are associated with actions proposed herein were previously counted as reassessed at the time of the completed Reregistration Eligibility Decision (RED), Report of Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision (TRED), or **Federal Register**.

**DATES:** Comments must be received on or before September 12, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2006-0056, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building); 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The docket telephone number is (703) 305-5805.

*Instructions:* Direct your comments to docket ID number EPA-HQ-OPP-2006-0056. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The Federal [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation for this docket facility are 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:**

Monisha Dandridge, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460-0001; telephone number: (703) 308-0410; e-mail address:

[dandridge.monisha@epa.gov](mailto:dandridge.monisha@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

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

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

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

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

1. *Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly

mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

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

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60-day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not

submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

## II. Background

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

EPA is proposing to revoke, modify and establish specific tolerances for residues of the herbicide bentazon, the fungicide carboxin, the insecticide dipropyl isocinchomeronate, and the fungicide/animal repellent oil of lemon (oil of lemongrass) and oil of orange in or on commodities listed in the regulatory text.

EPA is proposing these tolerance actions to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of the FQPA. The safety finding determination of "reasonable certainty of no harm" is discussed in detail in each Reregistration Eligibility Decision (RED) and Report of the FQPA Tolerance Reassessment Progress and Risk Management Decision (TRED) for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed copies of many REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242-2419, telephone 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>. Electronic copies of REDs and TREDs are available on the internet for

bentazon, carboxin, dipropyl isocinchomeronate, and flower and vegetable oils (this refers to oil of lemongrass (oil of lemon) and oil of orange) at <http://www.epa.gov/pesticides/reregistration/status.htm>, and also for carboxin and dipropyl isocinchomeronate in public dockets EPA-HQ-OPP-2004-0233, EPA-HQ-OPP-2004-0124 and, EPA-HQ-OPP-2003-0123, respectively. Paper copies for bentazon and flower and vegetable oils, which includes oil of lemon (oil of lemongrass) and oil of orange, available in the public docket for this rule.

The selection of an individual tolerance level is based on crop field residue studies designed to produce the maximum residues under the existing or proposed product label. Generally, the level selected for a tolerance is a value slightly above the maximum residue found in such studies. The evaluation of whether a tolerance is safe is a separate inquiry. EPA recommends the raising of a tolerance when data show that (1) lawful use (sometimes through a label change) may result in a higher residue level on the commodity and (2) the tolerance remains safe, notwithstanding increased residue level allowed under the tolerance. In REDs, Chapter IV on "Risk Management, Reregistration, and Tolerance Reassessment" typically describes the regulatory position, FQPA assessment, cumulative safety determination, determination of safety for U.S. general population, and safety for infants and children. In particular, the human health risk assessment document which supports the RED describes risk exposure estimates and whether the Agency has concerns. In TREDs, the Agency discusses its evaluation of the dietary risk associated with the active ingredient and whether it can determine that there is a reasonable certainty (with appropriate mitigation) that no harm to any population subgroup will result from aggregate exposure.

Explanations for proposed modifications in tolerances can be found in the RED and TRED document and in more detail in the Residue Chemistry Chapter document which supports the RED and TRED. Copies of the Residue Chemistry Chapter documents are found in the Administrative Record and paper copies for carboxin can be found under its respective public docket number EPA-HQ-OPP-2004-0124, identified above. Paper copies for bentazon are available in the public docket for this rule. Because food use registrations have not existed for oil of lemon (oil of lemongrass), oil of orange, and dipropyl isocinchomeronate, the Agency residue

assessment was not needed. Electronic copies are available through EPA's electronic public docket and comment system, [www.regulations.gov](http://www.regulations.gov) at <http://www.regulations.gov>. You may search for this rule under docket number EPA-HQ-OPP-2006-0056, or for an individual chemical under its respective docket number, then click on that docket number to view its contents.

The aggregate exposures and risks are not of concern for the pesticide active ingredient bentazon, carboxin, dipropyl isocinchomeronate, and oil of lemon (oil of lemongrass) and oil of orange based upon the data identified in the RED or TRED, which lists the submitted studies that the Agency found acceptable.

EPA has found that the tolerances that are proposed in this document to be established or modified, are safe, i.e., that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residues, in accordance with section 408(b)(2)(C). (Note that changes to tolerance nomenclature do not constitute modifications of tolerances). These findings are discussed in detail in each RED or TRED. The references are available for inspection as described in this document under **SUPPLEMENTARY INFORMATION**.

In addition, EPA is proposing to revoke certain specific tolerances because either they are no longer needed or are associated with food uses that are no longer registered under FIFRA. Those instances where registrations were canceled were because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily canceled one or more registered uses of the pesticide. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

1. *Bentazon*. The available residue data for bentazon indicate that the established tolerances for cowpea, forage; pea, dry, seed; pea, field, hay; soybean, forage; and soybean, hay should be increased. Therefore, EPA is proposing to increase tolerances in 40 CFR 180.355(a)(1) for the residues of bentazon in or on cowpea, forage from 3.0 to 10.0 ppm; pea, dry, seed from 0.05 to 1.0 ppm; pea, field, hay from 3.0 to 8.0; soybean, forage from 3.0 to 8.0 ppm and soybean, hay from 3.0 to 8.0 ppm. The Agency has determined that

the increased tolerances are safe; i.e., there is no reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

The Agency determined that the tolerance on pepper, nonbell should be decreased to 0.05 ppm, which is the limit of detection for bentazon residues of concern. Therefore, the Agency is proposing to decrease the tolerances in 40 CFR 180.355(a)(1) for the combined residues of bentazon and its metabolites in or on pepper, nonbell to 0.05 ppm.

The processing data on rice indicate the residues concentrate in hulls. Therefore, EPA is proposing to establish a tolerance in 40 CFR 180.355(a)(1) for the combined residues of bentazon and its metabolites in or on rice, hulls at 0.25 ppm.

In order to conform to current Agency policy on commodity terminology, EPA is proposing to modify the tolerance in 40 CFR 180.355(a)(1), for residues of bentazon in or on mint to peppermint, tops and spearmint, tops and maintain the tolerance level at 1.0 ppm.

2. *Carboxin*. According to the TRED, the tolerance expression, which is currently expressed as “combined residues of the fungicide carboxin (5,6-dihydro-2-methyl-1,4-oxathiin-3-carboxanilide) and its metabolite 5,6-dihydro-3-carboxanilide-2-methyl-1,4-oxathiin-4-oxide (calculated as carboxin) (from treatment of seed prior to planting) in or on raw agricultural commodities as follows” in 40 CFR 180.301(a) should be modified. The residue chemistry data indicates that as crops mature, insoluble anilide complexes as well as polar metabolites increased. These complexes of carboxin or carboxin derivatives with macromolecules such as lignin are insoluble in water and organic solvents and liberate aniline upon hydrolysis. Further, analytical methods for detection of carboxin regulated residues produce aniline (convert carboxin and carboxin derived metabolite to aniline), which is determined either spectrophotometrically or by gas-liquid chromatography (GLC). Therefore, the residues of concern are carboxin, carboxin sulfoxide, and insoluble anilide complexes. Consequently, EPA is proposing that the tolerance expression in 40 CFR 180.301(a) read as follows: “(a) General. Tolerances are established for the combined residues of the fungicide carboxin (5,6-dihydro-2-methyl-1,4-oxathiin-3-carboxanilide) and its metabolites determined as aniline and expressed as parent compound, in or on food commodities as follows:”

Because bean forage, hay, and straw are no longer considered significant livestock feed stuffs and have been deleted from Table OPPTS 860.1000 (available at [http://www.epa.gov/opptsfrs/OPPTS\\_Harmonized/860\\_Residue\\_Chemistry\\_Test\\_Guidelines/Series](http://www.epa.gov/opptsfrs/OPPTS_Harmonized/860_Residue_Chemistry_Test_Guidelines/Series)); the tolerances are no longer needed. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.301(a) on bean, forage; bean, hay; and bean, straw.

Carboxin has had no active registrations for uses on sorghum over a period of many years. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.301(a) for residues of carboxin in or on sorghum are no longer needed, EPA is proposing to revoke the tolerances in 40 CFR 180.301(a) for sorghum, forage; sorghum, grain; and sorghum, grain, stover.

Based on the ruminant feeding study, the lack of residues detected on the poultry feedstuff produced from treated seeds and the use of carboxin only as a fungicide on seeds indicate there is no propensity for residues to accumulate in animal tissues, the tolerance should be established at the level of quantitation of the analytical method of 0.05 ppm rather than the current tolerance level of 0.01 ppm. Therefore, EPA is proposing to increase the tolerances in 40 CFR 180.301(a) for combined residues of carboxin and its metabolites in or on egg from 0.01 to 0.05 ppm. The Agency has determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on <sup>14</sup>C-radiolabeled dairy cattle feeding data at an exaggerated 1.15x feeding level, milk showed combined carboxin residues of concern. The <sup>14</sup>C-radiolabeled feeding study had a lower limit of quantitation (LOQ) than the enforcement method and therefore the tolerance should be established at the LOQ of the enforcement analytical method (0.05 ppm). Therefore, EPA is proposing to increase the tolerance in 40 CFR 180.301(a) for combined residues of carboxin and its metabolites in or on “milk” from 0.01 to 0.05 ppm. The Agency has determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

A dairy cattle feeding study conducted at an exaggerated (1.15x) feeding level, shows combined carboxin regulated residues were as low as 0.023 and 0.007 ppm in meat and fat. Therefore, EPA is proposing to decrease the tolerances in 40 CFR 180.301(a) for residues of carboxin in or on the meat

and fat of cattle, goats, hogs, horses, and sheep from 0.01 to 0.05 ppm, respectively.

In order to conform to current Agency practice, EPA is proposing to revise the commodity terminology in 40 CFR 180.301(a), for residues of carboxin in or on corn, stover to read corn, field, stover; corn, pop, stover and corn, sweet, stover; corn, forage to corn, field, forage; and, corn, sweet, forage; “corn, fresh, including sweet corn, kernel plus cob with husks removed to read corn, sweet, kernel plus cob with husks removed; corn, grain to corn, field, grain and corn, pop, grain; oat, seed to read oat, grain; rice to rice, grain; and soybean to read soybean, seed.

3. *Dipropyl isocinchomeronate (MGK 326)*. There have been no active registrations for uses associated with livestock or milk commodities since 1996, such that these tolerances are no longer needed, and therefore EPA is proposing to revoke the commodity tolerances in 40 CFR 180.143(a) for residues of dipropyl isocinchomeronate in or on cattle, fat; cattle, meat; cattle, meat byproducts; goat, fat; goat, meat; goat, meat byproducts; hog, fat; hog, meat; hog, meat byproducts; horse, fat; horse, meat; horse, meat byproducts; milk; sheep, fat; sheep, meat; and, sheep, meat byproducts.

4. *Oil of lemongrass (oil of lemon) and oil of orange*. Oil of lemon is not a registered pesticide active ingredient nor has it ever been an active ingredient in any pesticide product. However, the Agency has determined that the exemptions from the requirement of a tolerance under 40 CFR 180.1238 apply to Oil of lemongrass, which is a registered active ingredient included in the 1993 RED entitled Flower and Vegetable Oils. There have been no active food-use registrations within the past 10 years which contain either oil of lemongrass or oil of orange as pesticide active ingredients. Therefore, EPA is proposing to revoke the tolerance exemptions on raw agricultural commodities in 40 CFR 180.1238 and 180.1239 for oil of lemon (oil of lemongrass) and oil of orange, respectively, when used as a postharvest fungicide.

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

A “tolerance” represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements,

modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore, "adulterated" under section 402(a) of the FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA is proposing these tolerance actions to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of the FQPA. The safety finding determination is discussed in detail in each post-FQPA RED and TRED for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed and electronic copies of the REDs and TREDs are available as provided in Unit II.A.

EPA has issued a post-FQPA RED for carboxin and dipropyl isocinchomeronate (MGK 326), and a pre-FQPA RED for bentazon, whose tolerances were reassessed post-FQPA as part of the Agency's determination on March 8, 2000 (65 FR 12122) (FRL-6492-7) to establish new bentazon uses and therefore a TRED to reassess its tolerances was not needed. Also, EPA has issued a TRED for oil of lemongrass (oil of lemon) and oil of orange, as these active ingredients were part of the Flower and Vegetable Oils pre FQPA RED. REDs and TREDs contain the Agency's evaluation of the data base for these pesticides, including requirements for additional data on the active ingredients to confirm the potential human health and environmental risk assessments associated with current product uses, and in REDs state conditions under which these uses and products will be eligible for reregistration. The REDs and TREDs

recommended the establishment, modification, and/or revocation of specific tolerances. RED and TRED recommendations such as establishing or modifying tolerances, and in some cases revoking tolerances, are the result of assessment under the FQPA standard of "reasonable certainty of no harm." However, tolerance revocations recommended in REDs and TREDs that are proposed in this document do not need such assessment when the tolerances are no longer necessary.

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

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops

uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

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

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, consideration must be given to the possible residues of those chemicals in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticide residues (40 CFR 180.6). When considering this possibility, EPA can conclude that:

1. Finite residues will exist in meat, milk, poultry, and/or eggs.

2. There is a reasonable expectation that finite residues will exist.

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

EPA has evaluated certain specific meat, milk, poultry, and egg tolerances proposed for revocation in this rule and has concluded that there is no reasonable expectation of finite pesticide residues of concern in or on those commodities.

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

EPA is proposing that revocations, modifications, and establishments of tolerances, and commodity terminology revisions become effective on the date of publication of the final rule in the **Federal Register**. For this rule, proposed revocations will affect tolerances for uses which have been canceled for many years or are no longer needed. The Agency believes that treated commodities have had sufficient time for passage through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that

information is verified, the Agency will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under

#### **SUPPLEMENTARY INFORMATION.**

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDC section 408(1)(5), as established by 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 when the pesticide was applied to such food.

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

By law, EPA is required by August 3, 2006 to reassess the tolerances in existence on August 2, 1996. As of May 30, 2006, EPA has reassessed over 8,140 tolerances. Regarding tolerances mentioned in this proposed rule, tolerances in existence as of August 2, 1996 were previously counted as reassessed at the time of the signature completion of a post-FQPA RED or TRED for each active ingredient. Therefore, no further tolerance reassessments would be counted toward the August 2006 review deadline.

#### **III. Are The Proposed Actions Consistent with International Obligations?**

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standard established by the FFDC. The same food safety standards apply to domestically produced and imported foods.

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. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDC. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support of June 1, 2000, (65 FR 35069 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, Regulations, and Dockets," 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. Statutory and Executive Order Reviews**

In this proposed rule, EPA is proposing to establish tolerances under FFDC section 408(e), and also modify and revoke specific tolerances established under FFDC section 408. The Office of Management and Budget (OMB) has exempted these types of actions (i.e., establishment and modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. 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), Pub. Law 104-113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed action will not have a significant negative economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of this proposed rule). Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

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

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

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

Dated: July 5, 2006.  
**James Jones,**  
*Director, Office of Pesticide Programs.*  
 Therefore, it is proposed that 40 CFR chapter I be amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:  
**Authority:** 21 U.S.C. 321(q), 346a and 371.

**§ 180.143 [Removed]**

2. Section 180.143 is removed.  
 3. Section 180.301 is amended by revising paragraph (a) to read as follows:

**§180.301 Carboxin; tolerances for residues.**

(a) *General.* Tolerances are established for the combined residues of the fungicide carboxin (5,6-dihydro-2-methyl-1,4-oxathiin-3-carboxanilide) and its metabolites determined as aniline and expressed as parent compound, in or on food commodities as follows:

Commodity	Parts per million
Barley, grain .....	0.2
Barley, straw .....	0.2
Bean, dry, seed .....	0.2
Bean, succulent .....	0.2
Canola, seed .....	0.03
Cattle, fat .....	0.05
Cattle, meat .....	0.05
Cattle, meat byproducts .....	0.1
Corn, field, forage .....	0.2
Corn, field, grain .....	0.2
Corn, field, stover .....	0.2
Corn, pop, grain .....	0.2
Corn, pop, stover .....	0.2
Corn, sweet, forage .....	0.2
Corn, sweet, kernel plus cob with husks removed .....	0.2
Corn, sweet, stover .....	0.2
Cotton, undelinted seed .....	0.2
Egg .....	0.05
Goat, fat .....	0.05
Goat, meat .....	0.05
Goat, meat byproducts .....	0.1
Hog, fat .....	0.05
Hog, meat .....	0.05
Hog, meat byproducts .....	0.1
Horse, fat .....	0.05
Horse, meat .....	0.05
Horse, meat byproducts .....	0.1
Milk .....	0.05
Oat, forage .....	0.5
Oat, grain .....	0.2
Oat, straw .....	0.2
Onion, bulb .....	0.2
Peanut .....	0.2
Peanut, hay .....	0.2
Poultry, fat .....	0.1
Poultry, meat .....	0.1
Poultry, meat byproducts .....	0.1
Rice, grain .....	0.2
Rice, straw .....	0.2
Safflower, seed .....	0.2
Sheep, fat .....	0.05
Sheep, meat .....	0.05

Commodity	Parts per million
Sheep, meat byproducts .....	0.1
Soybean, seed .....	0.2
Wheat, forage .....	0.5
Wheat, grain .....	0.2
Wheat, straw .....	0.2

\* \* \* \* \*

4. Section 180.355 is amended by revising the table in paragraph (a) to read as follows:

**§180.355 Bentazon; tolerances for residues.**

(a) *General.* \* \* \*

Commodity	Parts per million
Bean, dry, seed .....	0.05
Bean, succulent .....	0.5
Corn, field, forage .....	3.0
Corn, field, grain .....	0.05
Corn, field, stover .....	3.0
Corn, pop, grain .....	0.05
Corn, sweet, kernel plus cob with husks removed .....	0.05
Cowpea, forage .....	10.0
Cowpea, hay .....	3.0
Flax, seed .....	1.0
Pea, dry, seed .....	1.0
Pea, field, hay .....	8.0
Pea, field, vines .....	3.0
Pea, succulent .....	3.0
Peanut .....	0.05
Peanut, hay .....	3.0
Pepper, nonbell .....	0.05
Peppermint, tops .....	1.0
Rice, grain .....	0.05
Rice, hulls .....	0.25
Rice, straw .....	3.0
Sorghum, forage .....	0.20
Sorghum, grain .....	0.05
Sorghum, grain, stover .....	0.05
Soybean, seed .....	0.05
Soybean, forage .....	8.0
Soybean, hay .....	8.0
Spearmint, tops .....	1.0

\* \* \* \* \*

**§§ 180.1238 and 180.1239 [Removed]**

5. Sections 180.1238 and 180.1239 are removed.

[FR Doc. E6–11016 Filed 7–13–06; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 571**

[Docket No. NHTSA 2006–24342]

**Federal Motor Vehicle Safety Standards**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.