

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.

#### XI. 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: April 14, 2006.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

#### PART 174—[AMENDED]

■ 1. The authority citation for part 174 continues to read as follows:

**Authority:** 7 U.S.C. 136–136y; 21 U.S.C. 346a and 371.

■ 2. Section 174.452 is added to subpart W to read as follows:

**§ 174.452 *Bacillus thuringiensis* VIP3A protein and the genetic material necessary for its production; temporary exemption from the requirement of a tolerance.**

*Bacillus thuringiensis* VIP3A protein and the genetic material necessary for its production is temporarily exempt from the requirement of a tolerance when used as a vegetative-insecticidal protein in cotton seed, cotton oil, cotton meal, cotton hay, cotton hulls, cotton forage, and cotton gin byproducts. Genetic material necessary for its production means the genetic material which comprise genetic encoding the VIP3A protein and its regulatory regions. Regulatory regions are the genetic material, such as promoters, terminators, and enhancers, that control expression of the genetic material encoding the VIP3A protein. This temporary exemption from the requirement of a tolerance expires May 1, 2007.

#### 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.

**§ 180.1247 [Removed].**

■ 2. Section 180.1247 is Removed.  
[FR Doc. 06–3852 Filed 4–25–06; 8:45 am]

**BILLING CODE 6560–50–S**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 180

[EPA–HQ–OPP–2005–0322; FRL–8065–1]

**Benzaldehyde, Captafol, Hexaconazole, Paraformaldehyde, Sodium dimethyldithiocarbamate, and Tetradifon; Tolerance Actions**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is revoking specific tolerances and tolerance exemptions for residues of the insecticides paraformaldehyde and tetradifon; fungicides captafol, hexaconazole, and sodium dimethyldithiocarbamate; and bee repellent benzaldehyde. EPA canceled food use registrations or deleted food uses from registrations following requests for voluntary cancellation or use deletion by the registrants, or non-payment of registration maintenance fees. Also, stakeholders have withdrawn their support for import tolerances for captafol and hexaconazole. The regulatory actions in this document contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. The regulatory actions in this document pertain to the revocation of 39 tolerances and tolerance exemptions of which 38 count as tolerance reassessments toward the August, 2006 review deadline.

**DATES:** This regulation is effective April 26, 2006. Objections and requests for hearings must be received on or before June 26, 2006.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit IV. of the **SUPPLEMENTARY**

**INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2005–0322. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at <http://www.regulations.gov/>. Follow the online instructions.) 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.

• **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

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

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

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

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

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

- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

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

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

##### II. Background

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

In the **Federal Register** of December 23, 2005 (70 FR 76224) (FRL-7751-3), EPA issued a proposed rule to revoke certain tolerances and tolerance exemptions for residues of the insecticides paraformaldehyde and tetradifon; fungicides captafol, hexaconazole, and sodium dimethyldithiocarbamate; and bee repellent benzaldehyde. Also, the proposal of December 23, 2005 provided a 60-day comment period which invited public comment for consideration and for support of tolerance retention under the FFDCA standards.

In this final rule, EPA is revoking these tolerances and tolerance exemptions because they pertain to uses no longer current or registered under FIFRA in the United States and do not pertain to commodities currently imported into the United States. The tolerances and tolerance exemptions revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to revoke those tolerances and tolerance exemptions for residues of

pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or domestic commodities legally treated.

EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

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

1. Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance is no longer needed.

3. The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

Today's final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. In response to the proposal published in the **Federal Register** of December 23, 2005 (70 FR 76224), EPA received one comment during the 60-day public comment period, as follows:

*Benzaldehyde—comment by WSDA.* EPA received a comment from the Washington State Department of Agriculture (WSDA), which requested that the Agency determine whether revocation of the tolerance exemption in 40 CFR 180.1229 for benzaldehyde, when used as a bee repellent, would render honey extracted from hives treated with benzaldehyde to be considered adulterated. WSDA stated that benzaldehyde is still being distributed for use by beekeepers and requested retention of the tolerance exemption if its revocation would cause extracted honey from treated hives to be adulterated. In an earlier communication, just prior to the comment submission, WSDA stated that benzaldehyde use as a bee repellent was not a pesticide use under 40 CFR 152.8.

*Agency response.* A tolerance or an exemption from the requirement of a tolerance is a requirement under FFDCA section 408 for pesticide residue in or on food. There have been no active pesticide registrations in the United States for benzaldehyde since 1991, and therefore the tolerance exemption in 40 CFR 180.1229 is no longer needed. EPA agrees with WSDA that use of a product intended to force bees from hives for the collection of honey crops is not considered to be a pesticidal use under 40 CFR 152.8 because it is not intended for use against "pests" as defined in 40 CFR 152.5. Such a non-pesticidal use does not require a tolerance or tolerance exemption. EPA expects that revocation of the tolerance exemption in 40 CFR 180.1229 would mean that such use of benzaldehyde, in a product which contains no pesticide active ingredients, intended as a bee repellent in the collection of honey crops, would not render them adulterated under FFDCA section 408. Therefore, the Agency believes that such benzaldehyde treatment of honeycombs even after the revocation of the tolerance exemption in 40 CFR 180.1229 would not prevent sale of honey commodities. Consequently, EPA is revoking the tolerance exemption in 40 CFR 180.1229 for residues of benzaldehyde when used as a bee repellent in the harvesting of honey. Persons interested in the regulation of benzaldehyde as a food additive under FFDCA section 409 should consult the Food and Drug Administration.

No comments were received by the Agency concerning the following.

1. *Captafol.* The Republic of Indonesia's Indonesian Ministry of Agriculture had commented on a proposed rule to revoke tolerances for captafol and several other pesticides, published in the **Federal Register** of June 9, 1993 (58 FR 32320) (FRL-4183-6). The commenter had stated that the use of captafol was being re-evaluated in that country, might undergo a phase out, and requested that EPA not revoke the onion, potato, and tomato tolerances in 40 CFR 180.267. In the **Federal Register** of July 21, 1999 (64 FR 39049) (FRL-6092-7), EPA published a final rule in which it revoked specific captafol tolerances and responded to the 1993 comment received from the Republic of Indonesia by stating that the Agency would not take final action on the three tolerances in 40 CFR 180.267 for residues of captafol on onion, potato, and tomato at that time. In April 2005, EPA determined that captafol has not been registered in Indonesia since 1998. Also, the Indonesian Ministry of Agriculture verified that it no longer

had a continuing interest in the three captafol tolerances for importation purposes. Because the tolerances are no longer needed, EPA is revoking the tolerances in 40 CFR 180.267 for residues of the fungicide captafol in or on onion, potato, and tomato.

2. *Hexaconazole.* There have been no active U.S. registrations for hexaconazole on banana since 1992. Recently, Syngenta has informed EPA that it has voluntarily chosen to no longer support the hexaconazole tolerance on banana for the purpose of importation. Consequently, the tolerance is no longer needed. Therefore, EPA is revoking the tolerance in 40 CFR 180.488 for residues of the fungicide hexaconazole in or on banana.

3. *Paraformaldehyde.* The last active registration for paraformaldehyde use as an insecticide for the soil treatment of sugar beets was canceled in 1989 due to non-payment of the maintenance fee, and therefore the tolerance exemptions are no longer needed. EPA is revoking the tolerance exemptions in 40 CFR 180.1024 for residues of the insecticide paraformaldehyde in or on beet, sugar, roots and beet, sugar, tops, when applied to the soil not later than planting.

4. *Sodium dimethyldithiocarbamate.* The last active registration for use of sodium dimethyldithiocarbamate on melons was canceled in 1993 due to non-payment of the maintenance fee, and therefore the tolerance is no longer needed. EPA is revoking the tolerance in 40 CFR 180.152 for residues of the fungicide sodium dimethyldithiocarbamate, calculated as zinc ethylenebisdithiocarbamate, in or on melon.

5. *Tetradifon.* The last tetradifon registrations were canceled in 1990 due to non-payment of maintenance fees. Uniroyal Chemical Company (which later became part of Crompton Corporation) had commented to a proposed revocation of tetradifon tolerances published in the **Federal Register** of August 1, 2001 (66 FR 39705) (FRL-6786-4). Uniroyal noted that it had submitted certain studies to EPA in 1998 and 1996, and requested that EPA not revoke any of the tetradifon tolerances in 40 CFR 180.174. In the **Federal Register** of January 24, 2003 (68 FR 3425) (FRL-7187-3), EPA published a final rule and responded to Uniroyal's comment by stating that the Agency would not take final action on the tetradifon tolerances in 40 CFR 180.174 at that time. During follow-up communication, EPA received a letter from Crompton Corporation (now Chemtura Corporation) that it no longer supported retention of the tolerances for

tetradifon. Because the tolerances are no longer needed, EPA is revoking all the tolerances in 40 CFR 180.174 for residues of the insecticide tetradifon in or on apple; apricot; cherry; citron, citrus; crabapples; cucumber; fig; fig, dried fruit; grapefruit; grape; hop, dried; hop, vine; lemon; lime; meat; melon; milk; nectarine; orange, sweet; peach; pear; peppermint; plum, prune, fresh; pumpkin; quince; spearmint, tops; strawberry; tangerine; tea, dried; tomato; and winter squash.

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

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

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

These actions become effective on the date of publication of this final rule in the **Federal Register** because their associated uses have been canceled for several years. The Agency believes that treated commodities have had sufficient time for passage through the channels of trade.

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

level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

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

By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. As of April 18, 2006, EPA has reassessed over 8,070 tolerances. This document revokes a total of 39 tolerances and tolerance exemptions of which 38 are counted as tolerance reassessments toward the August, 2006 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

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

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

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

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2005-0322 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 June 26, 2006.

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

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 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 IV.A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA-HQ-OPP-2005-0322, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: [opp-docket@epa.gov](mailto:opp-docket@epa.gov). Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

### **V. Statutory and Executive Order Reviews**

In this final rule, EPA revokes specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply,*

*Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–13, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. 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 final rule). 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 FFDCFA. 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: April 11, 2006.

**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.

**§§ 180.152, 180.174, 180.267, 180.488, 180.1024 and 180.1229 [Removed]**

■ 2. Sections 180.152, 180.174, 180.267, 180.488, 180.1024 and 180.1229 are removed.

[FR Doc. 06–3853 Filed 4–25–06; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA–HQ–OPP–2006–0267; FRL–7772–6]

#### **Pantoea Agglomerans Strain C9–1; Exemption from the Requirement of a Tolerance**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of the *Pantoea agglomerans* strain C9–1 on pears and apples when applied or used as a microbial pesticide. Nufarm, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level