

otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

This action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement explaining the factual basis for this determination was published in the Federal Register of May 4, 1981 (46 FR 24950).

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

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

Dated: June 10, 1996.

Stephen L. Johnson,  
Director, Registration Division, Office of  
Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

#### PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. In § 180.441, by revising paragraph (c) to read as follows:

#### § 180.441 Quizalofop ethyl; tolerances for residues.

\* \* \* \*

(c) Tolerances are established for the combined residues of the herbicide quizalofop-p ethyl ester [ethyl (R)-(2-[4-(6-chloroquinoxalin-2-yl)oxy]phenoxy)]

propionate], its acid metabolite quizalofop-p [R-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy]) propanoic acid], and the S enantiomers of both the ester and the acid, all expressed as quizalofop-p-ethyl ester, in or on the following raw agricultural commodities:

Commodity	Parts per million
Cottonseed .....	0.05
Peppermint, tops .....	2
Spearmint, tops .....	2

[FR Doc. 96-15595 Filed 6-18-96; 8:45 am]

BILLING CODE 6560-50-F

#### 40 CFR Parts 180 and 185

[OPP-300431; FRL-5379-7]

RIN 2070-AC18

#### Triadimefon; Revocation of Pesticide Tolerances and a Food Additive Regulation

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to revoke the pesticide tolerances for triadimefon on barley grain, green forage and straw and the food additive regulation for triadimefon on milled fractions of barley (except flour) because there are no longer registered uses of triadimefon on barley. EPA is proposing that the revocation of the tolerance become effective as of May 23, 1997.

**DATES:** Written comments, identified by the docket number OPP-300431, must be received on or before July 19, 1996. This revocation is proposed to become effective on May 23, 1997.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) 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 to the submitter. Information on the proposed action and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-300431]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

**FOR FURTHER INFORMATION CONTACT:** By mail, Lisa Nisenson, Special Review Branch (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 3rd floor, Crystal Station, 2800 Crystal Drive, Arlington, VA 22202, (703) 308-8031; e-mail: nisenson.lisa@epamail.epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

##### A. Statutory Background

The Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., authorizes the establishment by regulation of maximum permissible levels of pesticides in foods. Such regulations are commonly referred to as "tolerances." Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is "adulterated" under section 402 of the FFDCA and may not be legally moved in interstate commerce. 21 U.S.C. 331, 342.

The FFDCA has separate provisions for tolerances for pesticide residues on raw agricultural commodities (RACs) and tolerances on processed food. For pesticide residues in or on RACs, EPA establishes tolerances, or exemptions from tolerances when appropriate, under section 408. 21 U.S.C. 346a. EPA regulates pesticide residues in processed foods under section 409, which pertains to "food additives." 21 U.S.C. 348. Maximum residue

regulations established under section 409 are commonly referred to as food additive regulations (hereafter referred to as "FARs").

If a food additive regulation must be established, section 409 of the FFDCA requires that the use of the pesticide will be "safe" (21 U.S.C. 348(c)(3)). Relevant factors in this safety determination include (1) the probable consumption of the pesticide or its metabolites; (2) the cumulative effect of the pesticide in the diet of man or animals, taking into account any related substances in the diet; and (3) appropriate safety factors to relate the animal data to the human risk evaluation. Section 409 also contains the Delaney clause, which specifically provides that "no additive shall be deemed safe if it has been found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer when ingested by man or animal."

#### B. Regulatory Background

Following a series of petitions related to EPA's interpretation of the Delaney clause, the U.S. Court of Appeals, Ninth Circuit on July 8, 1992, ruled that the Delaney clause barred the establishment of a FAR for pesticides which "induce cancer" even though the associated cancer risk may be small (*Les v. Reilly*, 968 F.2d 985 (9th Cir.), cert. denied, 113 S.Ct. 1361 (1993)). Shortly thereafter, the sole registrant of triadimefon, Miles Inc., requested voluntary cancellation of the triadimefon use on barley, which EPA granted on August 25, 1993 (58 FR 44823). The effective date of the cancellation of the use of triadimefon on barley was November 23, 1993 and the registrant was allowed to sell stocks labeled with the barley use up to 18 months after the effective date.

On January 18, 1995 (59 FR 3602)(FRL-4910-8), EPA proposed to revoke, among other things, the FAR for triadimefon on milled fractions of barley (except flour) based on the Agency's determination that triadimefon induces cancer in man or animals and that the FAR at issue violates the Delaney clause. This notice supplements the proposed revocation published in the January 18, 1995 proposal with respect to triadimefon, and announces an alternative proposal to revoke the triadimefon FAR and associated tolerances on the basis that the tolerance is not needed because the use was cancelled in 1993. EPA may finalize the revocation on either of the grounds proposed. Readers are therefore encouraged to consult OPP Docket 300360 to obtain copies of the

comments received in EPA's earlier proposal.

#### II. Proposed Revocation

EPA is proposing to revoke the food additive regulation for triadimefon (1-(4-chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone) and its metabolite beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol set to cover residues in or on milled fractions of barley (except flour). This FAR, which is codified at 40 CFR 185.800 is set at 4 ppm. EPA is also proposing to revoke the tolerances for 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone and its metabolite containing chlorophenoxy and triazole moieties (expressed as the fungicide) in or on barley grain, green forage and straw. These tolerances are codified at 40 CFR 180.410 at 1 ppm.

EPA is proposing to revoke the above-stated tolerance and FAR since the use of triadimefon on barley is no longer registered. As a matter of policy, where a use is no longer registered, EPA revokes the tolerance(s) and/or FAR's for any residues related to the deleted use(s). Although EPA had proposed revocation of the FAR for triadimefon on barley in a previous notice based on Delaney clause grounds, EPA has noted that where there are grounds for revocation of a FAR unconnected to safety, EPA generally would, as a policy matter, rely on those grounds to revoke the FAR prior to revoking finally under the Delaney clause (61 FR 11994, March 22, 1996) (FRL-5357-7). However, EPA has also noted that the Agency is under no legal obligation to subordinate the Delaney clause to other grounds in a revocation proceeding (61 FR 2377, January 25, 1996)(FRL-4991-9).

In the case of triadimefon on barley, the registrant requested, and EPA granted, voluntary cancellation. In the August 25, 1993 notice, the registrant was given 18 months, or until May 23, 1995, to sell existing stocks labelled with the use on barley. With voluntary cancellations, EPA generally allows 2 years for legally-treated commodities to clear channels of trade, thus EPA is proposing that the tolerance and FAR on barley be revoked as of May 23, 1997.

#### III. Consideration of Comments

Any interested person may submit comments on this proposed action on or before July 19, 1996 at the address given in the section above entitled "ADDRESSES." Before issuing a final revocation, EPA will consider all relevant comments, including those on the proposed effective date. Comments should be limited only to the tolerances

and food additive regulation subject to this proposed notice. After consideration of comments, EPA will issue a final order determining whether revocation of the tolerances and food additive regulation is appropriate. Such order will be subject to objections pursuant to section 409(f)(21 U.S.C. 348(f)). Failure to file an objection within the appointed period will constitute waiver of the right to raise issues presented in the order in future proceedings.

A record has been established for this rulemaking under docket number [OPP-300431] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:  
opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

#### IV. Regulatory Requirements

##### A. Executive Order 12866

EPA submitted this action to the Office of Management and Budget (OMB) for review and any changes made during that review have been documented in the public record. EPA does not expect any adverse economic impacts from this proposed action since the use on barley was cancelled in 1993 at the request of the registrant.

**B. Regulatory Flexibility Act**

EPA has reviewed this proposed rule under the Regulatory Flexibility Act of 1980 [Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.], and has determined that it will not have a significant economic impact on any small businesses, governments or organizations.

Accordingly, I certify that this proposed rule does not require a separate Regulatory Flexibility Analysis under the Regulatory Flexibility Act.

**C. Paperwork Reduction Act**

This order does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

**D. Unfunded Mandates Reform Act and Executive Order 12875**

This action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

**40 CFR Part 185**

Food additives, Pesticides and pests

Dated: June 11, 1996.

Lois Rossi,

*Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

Therefore, 40 CFR parts 180 and 185 are proposed to be amended as follows:

**1. In part 180:****PART 180—[AMENDED]**

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

Authority: 21 U.S.C. 346a and 371.

**§ 180.410 [Amended]**

b. By removing from the table in § 180.410 the entries for "Barley; grain," "Barley, green forage," and "Barley, straw."

**2. In part 185:****PART 185—[AMENDED]**

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

**§ 185.800 [Amended]**

b. By removing from the table in § 185.800; the entry for "Barley, milled fractions of barley (except flour)."

[FR Doc. 96-15479 Filed 6-18-96; 8:45 am]

BILLING CODE 6560-50-F

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[MM Docket No. 96-129; RM-8814]

**Radio Broadcasting Services; Tehachapi, CA**

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed on behalf of Tehachapi Broadcasting requesting the allotment of Channel 261A to Tehachapi, California, as that community's second local FM service. Coordinates used for Channel 261A at Tehachapi are 35-13-04 and 118-20-37. Tehachapi is located within 320 kilometers (199 miles) of the Mexico border, and therefore, the Commission must obtain concurrence of the Mexican government to this proposal.

**DATES:** Comments must be filed on or before August 5, 1996, and reply comments on or before August 20, 1996.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Dan J. Alpert, Esq., Law Office of Dan J. Alpert, 2120 N. 21st Rd., Suite 400, Arlington, VA 22201.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96-129, adopted June 7, 1996, and released June 14, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M

Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 96-15472 Filed 6-18-96; 8:45 am]

BILLING CODE 6712-01-F

**47 CFR Part 73**

[MM Docket No. 96-127; RM-8805]

**Radio Broadcasting Services; Kula, HI**

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by Sonia A. Humphrey seeking the allotment of FM Channel 244A to Kula, Hawaii, as that locality's first local aural transmission service. Petitioner is requested to provide additional information to establish Kula's status as a community for allotment purposes. Coordinates for this proposal are 20-46-00 and 156-20-00.

**DATES:** Comments must be filed on or before July 29, 1996, and reply comments on or before August 13, 1996.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Sonia A. Humphrey, c/o Magic City Media, Inc., 1912 Capitol Avenue, Suite 300, Cheyenne, WY 82001.