

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

RIN 0563-AB80

#### Common Crop Insurance Regulations; Nursery Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) is extending the comment period for the proposed rule to amend the Nursery Crop Insurance Provisions. The proposed rule was published in the **Federal Register** on August 9, 2004, (69 FR 48166) and the comment period was scheduled to end on October 8, 2004. The comment period will be extended 45 days and will now end on November 22, 2004.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business November 22, 2004, and will be considered when the rule is to be made final.

**ADDRESSES:** Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133. Comments titled Nursery Crop Insurance Provisions may be sent via the Internet to [DirectorPDD@rm.fcic.usda.gov](mailto:DirectorPDD@rm.fcic.usda.gov), or the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments. A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CST, Monday through Friday, except holidays, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Stephen Hoy, Risk Management Specialist, Research and Development, Product Development Division, Federal

Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926-7730.

**SUPPLEMENTARY INFORMATION:** On August 9, 2004, FCIC published in the **Federal Register** (69 FR 48166) a proposed rule to amend the Nursery Crop Insurance Provisions and Nursery Peak Inventory Endorsement to improve coverage of nursery plants. FCIC also proposed to add a Rehabilitation Endorsement for Field grown plants that will recover from an insured cause of loss. FCIC provided a 60-day comment period that is scheduled to end October 8, 2004. Due to the hurricanes and subsequent inclement weather in the southeast and eastern United States, FCIC is extending the comment period an additional 45 days to ensure the public has an adequate opportunity to review and comment on the proposed rule. The comment period for the proposed rule is extended to November 22, 2004.

Signed in Washington, DC, on October 5, 2004.

**Ross J. Davidson, Jr.,**  
Manager, Federal Crop Insurance Corporation.

[FR Doc. 04-22740 Filed 10-7-04; 8:45 am]

**BILLING CODE 3410-08-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 9, 23, 163, 177, 178, 179, and 180

[OPP-2003-0176; FRL-7308-2]

#### Updating Generic Pesticide Chemical Tolerance Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to update the generic provisions in 40 CFR parts 9, 23, 163, 177-180 pertaining to pesticide chemical tolerances and exemptions from the requirement of a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act. This update is necessary due to various changes made in the underlying statute by the Food Quality Protection Act of 1996. The proposed amendments are primarily procedural in nature.

**DATES:** Comments must be received on or before December 7, 2004.

**ADDRESSES:** Submit your comments, identified by docket ID number OPP-2003-0176, by one of the following methods:

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

- **Agency Website:** <http://www.epa.gov/edocket/>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- **E-mail:** Comments may be sent by e-mail to [opp-docket@epa.gov](mailto:opp-docket@epa.gov), Attention: Docket ID Number OPP-2003-0176.

- **Mail:** Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2003-0176.

- **Hand Delivery:** Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP-2003-0176. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to docket ID number OPP-2003-0176. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket/>, 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 EDOCKET, [www.epa.gov/edocket.gov](http://www.epa.gov/edocket/), or e-mail. The EPA EDOCKET and the [regulations.gov](http://www.regulations.gov) websites are "anonymous access" systems, 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 EDOCKET or [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 public 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. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL-7181-7).

**Docket:** All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Fleuchaus, Office of General Counsel, Mail code 2333A, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-5628; fax number: (202) 564-5644; e-mail address: [fleuchaus.jonathan@epa.gov](mailto:fleuchaus.jonathan@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)
- Animal production (NAICS 112)
- Food manufacturer (NAICS 311)
- Pesticide manufacturer (NAICS 28522)

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 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

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

1. **Submitting CBI.** Do not submit this information to EPA through EDOCKET, [regulations.gov](http://www.epa.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:

- i. Identify the rulemaking by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).
- ii. 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.
- iii. Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at

your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

#### **II. Background**

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

EPA is proposing to amend various sections of 40 CFR parts 9, 23, 163, and 177-180 to make them consistent with the changes to section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, contained in the Food Quality Protection Act of 1996 (FQPA).

EPA is proposing to revoke 40 CFR part 163 in its entirety. Part 163 addresses "certifications of usefulness" for pesticide chemicals. In amending section 408, the FQPA dropped all requirements pertaining to certifications of usefulness. EPA is proposing several general changes throughout parts 177-180. These changes are:

1. **Remove most references to FFDCA section 409.** The FQPA consolidated FFDCA regulation of pesticides, for the most part, under FFDCA section 408. See 21 U.S.C. 346a(a)(1). Previously, pesticide residues in processed food were regulated, in part, under FFDCA section 409. Most references in 40 CFR parts 177-180 to section 409 thus have become obsolete and are proposed to be removed. This includes 40 CFR part 177 in its entirety because it is devoted to providing procedures for establishing regulations under section 409.

2. **Remove most references to "food additives."** Because "food additives" are addressed by section 409 and not section 408, for similar reasons, most references to "food additives" are proposed to be removed. See 21 U.S.C. 348.

3. **Revise statutory cross-references where appropriate.** In some instances, the FQPA moved various provisions in section 408 to different subsections. For example, the procedures pertaining to filing objections are now located in section 408(g) not section 408(d) as they were previously. These cross-references are proposed to be corrected.

4. **Remove provisions addressing advisory committees.** Previously, section 408 had a provision permitting affected parties to request the formation of science advisory panels regarding tolerance actions. Because this provision was dropped by the FQPA, EPA is proposing to remove the implementing regulations.

5. *Remove provisions addressing the time requirements for acting on petitions.* Previously, section 408 required action on petitions in certain timeframes. Because this provision was dropped by the FQPA, EPA is proposing to remove implementing regulations concerning these timeframes.

6. *Revise changed statutory time periods.* In a few instances, the FQPA revised statutory time periods pertaining to actions concerning tolerances. For example, the period in which objections to final tolerance rules can be made was extended from 30 to 60 days. See 21 U.S.C. 346a(g)(2). EPA is proposing to change its regulations to be consistent with the statute.

7. *Remove obsolete references to the "Registration Division."* 40 CFR part 180 contains several references to the Registration Division of the Office of Pesticide Programs. Because tolerance activities are now divided among several divisions in the Office of Pesticide Programs, the references to the Registration Division may be confusing, and EPA is proposing to either replace these references with a reference to "the Agency" or simply delete them, as appropriate. Although this change is not directly responsive to the FQPA changes, the potential confusion that might be caused by the obsolete references was deemed important to correct at this time.

8. *Correct Agency addresses.* 40 CFR 178.25(a)(5) and 180.33(m) currently list obsolete addresses for mailings to the Agency. These addresses are proposed to be corrected.

Other changes involving individual sections include:

1. *40 CFR 178.35.* This provision addresses modification or revocation of a tolerance regulation on the basis of objections filed with the Agency. EPA is proposing to change the language in this section to track the language in new section 408(g)(2)(C). See 21 U.S.C. 346a(g)(2).

2. *40 CFR 180.1(f).* The FQPA amended the provision addressing the manner in which pesticide chemical tolerances written for raw agricultural commodities apply to processed foods manufactured from those commodities. This provision is commonly referred to as the "flow-through" provision because it generally legalizes residues in processed food that are not higher than the residue levels permitted in the raw agricultural commodity. See 21 U.S.C. 346a(a)(2). EPA is proposing to amend 40 CFR 180.1(f) to track the language in new section 408(a)(2).

EPA calls attention to the fact that one of the changes in the flow-through provision, and thus in the revised 40

CFR 180.1(f), is that it no longer focuses on whether processed food is "ready to eat." For many years prior to the passage of the FQPA, EPA determined the need for processed food tolerances without regard to whether the processed food was "ready to eat" or not, despite statutory language specifying that the flow-through provision applied to "ready to eat" processed food. This led to the establishment of several processed food tolerances that were unnecessary because the tolerances were established on not "ready to eat" commodities and when these commodities underwent further processing to reach the "ready to eat" stage, residues declined below the raw agricultural commodity tolerance. Shortly before passage of the FQPA, EPA revoked several tolerances on not "ready to eat" processed foods on the ground they were not necessary given the existing raw agricultural commodity tolerance level and the level of residues present in the "ready to eat" processed food. As part of the tolerance reassessment process required by the FQPA, EPA will determine if such tolerances need to be reestablished and, if so, take steps to reinstate such tolerances. In the meantime, because section 408(j)(3) preserves the effectiveness of raw agricultural commodity tolerances in existence at the time of passage of the FQPA, EPA believes that the raw agricultural commodity tolerances corresponding to the revoked not "ready to eat" processed food tolerances should be enforced under the pre-FQPA "flow-through" provision thus not subjecting not "ready to eat" processed food to a changed regulatory environment. Otherwise, the effect of these raw agricultural commodity tolerances will not be maintained as specified by section 408(j)(3).

3. *40 CFR 180.2.* New section 408(k) mandates that pesticide chemicals regarded by the Administrator as generally recognized as safe (GRAS) shall be regarded as exempt from the requirement for a tolerance. This section further directs EPA to indicate, by regulation, which substances have been converted from GRAS to being covered by a tolerance exemption. 40 CFR 180.2 now contains a listing of GRAS substances. Pursuant to section 408(k), EPA is proposing in this action to create tolerance exemptions in separate sections of 40 CFR part 180 for all but three of these substances (citric acid, fumaric acid, and sodium chloride). The remainder of 40 CFR 180.2, which contains procedures for obtaining GRAS status is proposed to be deleted. Citric

acid, fumaric acid, and sodium chloride are the subject of a separate rulemaking intended to create tolerance exemptions for these substances in 40 CFR 180.950.

4. *40 CFR 180.7.* Three important, specific changes are proposed for 40 CFR 180.7. First, it is proposed that this section be expanded from addressing tolerances just for raw agricultural commodities to tolerances for raw agricultural commodities and processed foods. This is consistent with the changes in the FQPA which expanded section 408 to include pesticide chemical tolerances for processed foods. See 21 U.S.C. 346a(a)(1). Second, EPA is proposing to expand the requirements pertaining to petition contents consistent with the expanded statutory language in the FQPA, including the requirement that the petition contain a summary. See 21 U.S.C. 346a(d)(2).

Third, EPA is specifying that the full text of the petitioner's summary of its petition will be added to EPA's Electronic Public Docket (<http://www.epa.gov/edocket>) and requiring that a specific reference to the internet address for the summary be included in the Notice of Filing. To date, EPA has published the full text of the petitioner's summary in the **Federal Register** notice announcing the Notice of Filing. EPA is proposing to include the petitioner's summary in the Notice of Filing **Federal Register** notice through a reference and to publish the summary on its internet website because petition "summaries" have expanded, in many instances, well beyond the concept of a petition summary and could be better described as the petition itself. Rather than continue to add these lengthy documents to the **Federal Register** or attempt to influence how petitioners prepare such summaries, EPA believes that publication in the Electronic Public Docket on its internet website, with a reference to that internet site address in the **Federal Register**, conforms to the statute and provides the public with the greatest amount of information in a manner that is readily accessible.

Other changes to 40 CFR 180.7 include: (1) Amending paragraph (b) to be in the form of a list of requirements for a petition rather than a model letter to the Registration Division; (2) amending paragraph (d) to drop now meaningless provisions pertaining to the date a petition is deemed to be filed; and (3) amending paragraph (e) to update the language regarding publication of a petitioner-provided summary of the petition.

5. *40 CFR 180.29.* Previously, FFDCA section 408 contained different procedures for pesticide registrants and other parties. 40 CFR 180.29, in part,

implemented the procedures for establishing tolerances pertaining to non-registrants. The new FFDCA section 408(d) requires all parties to follow the same petition process. See 21 U.S.C. 346a(d). EPA is proposing to remove the old procedures in 40 CFR 180.29 that have been dropped from the statute. Similar changes are proposed for 40 CFR 180.32 addressing modification and revocation of tolerances.

6. *40 CFR 180.30*. The FQPA expanded and clarified the exclusive judicial review procedures under section 408. See 21 U.S.C. 346a(h). EPA is proposing to revise 40 CFR 180.30 to track the statutory changes regarding this topic.

7. *40 CFR 180.31*. The FQPA changed the procedures for establishing temporary tolerances for experimental use of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.* See 21 U.S.C. 346a(r). EPA is proposing to modify 40 CFR 180.31 to reflect these statutory changes. In brief, the FQPA requires that temporary tolerances be established under the same procedures pertaining to all except emergency tolerances.

8. *40 CFR 180.32*. The language in 40 CFR 180.32 of the regulations is proposed to be modified to make it consistent with the FQPA. Existing 40 CFR 180.32 speaks in terms of “amendment” and “repeal” of tolerances, whereas the FQPA describes such actions as “modifications” and “revocations.”

9. *40 CFR 23.10*. The language in this section is proposed to be modified to conform the statutory citations to the new subsection in section 408 governing judicial review and to conform the language pertaining to reviewable actions to the language of section 408’s revised judicial review provision.

10. *40 CFR 9.1*. Now obsolete 40 CFR parts 163 and 177 are proposed to be removed from the table in 40 CFR part 9.

The Agency is also considering minor adjustments to 40 CFR part 180 to accommodate recent legislation concerning pesticide registration and tolerance fees. See Pesticide Registration Improvement Act of 2003, Public Law 108–199 (HR 2673).

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

These changes are being proposed under EPA’s authority in FFDCA section 408(e)(1)(C) to establish general procedures and requirements to implement section 408.

### **III. Regulatory Assessment Requirements**

This proposed rule makes several changes in the EPA regulations governing pesticide tolerances and exemptions from tolerance. The amendments are procedural in nature and, for the most part, correct the CFR so that it is consistent with FFDCA section 408, as amended by the FQPA, and EPA’s ongoing implementation of FFDCA. Other than making EPA regulations more accurate, these amendments are not expected to have any impact on regulated parties or the public. Accordingly, these amendments are not subject to review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), as a significant regulatory action. 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) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Since, as detailed above, these amendments will have no detrimental impact on regulated parties or the public, EPA certifies under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) that the amendments will not have a significant impact on a substantial number of small entities. 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 is directed at pesticide manufacturers and others who seek to establish, modify, or revoke pesticide tolerances and exemptions, 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 Parts 9, 163, 177, 178, 179, 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: September 20, 2004.

**Susan B. Hazen,**

*Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

Therefore, 40 CFR chapter I is amended as follows:

#### **PART 9—[AMENDED]**

1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

#### **§ 9.1 [Amended]**

2. Section 9.1 is amended by removing the entries and center headings for parts 163 and 177 in the table.

#### **PART 23—[AMENDED]**

3. The authority citation for part 23 continues to read as follows:

**Authority:** Clean Water Act, 33 U.S.C. 1361(a), 1369(b); Clean Air Act, 42 U.S.C. 7601(a)(1), 7607(b); Resource, Conservation and Recovery Act, 42 U.S.C. 6912(a), 6976; Toxic Substances Control Act, 15 U.S.C. 2618; Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136n(b), 136w(a); Safe Drinking Water Act, 42 U.S.C. 300j–7(a)(2), 300j–9(a); Atomic Energy Act, 42 U.S.C. 2201, 2239; Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 371(a), 346a, 348; 28 U.S.C. 2112(a), 2343, 2344.

4. Section 23.10 is revised to read as follows:

#### **§ 23.10 Timing of Administrator's action under the Federal Food, Drug, and Cosmetic Act.**

Unless the Administrator otherwise explicitly provides in a particular order, the time and date of the entry of a regulation issued under section 21 U.S.C. 346a(e)(1)(C), or any order issued under 21 U.S.C. 346a(f)(1)(C) or 21 U.S.C. 346a(g)(2)(C), or any regulation that is the subject of such an order, shall, for purposes of 21 U.S.C. 346a(h), be at 1 p.m. eastern time (standard or daylight, as appropriate) on the date that is for a **Federal Register** document, 2 weeks after the date when the document is published in the **Federal Register**, or for any other document, 2 weeks after it is signed.

#### **PART 163—[REMOVED]**

5. Part 163 is removed.

#### **PART 177—[REMOVED]**

6. Part 177 is removed.

#### **PART 178—[AMENDED]**

7. The authority citation for part 178 continues to read as follows:

**Authority:** 21 U.S.C. 346a, 348, 371(a); Reorg. Plan No. 3 of 1970.

8. Section 178.20 is amended by revising paragraph (a) to read as follows:

#### **§ 178.20 Right to submit objections and requests for a hearing.**

(a) On or before the 60th day after the date of publication in the **Federal Register** of an order under part 180 of this chapter establishing, modifying, or revoking a regulation, or denying all or any portion of a petition, a person adversely affected by such order or petition denial may submit, in accordance with § 178.25, one or more written objections to the order (or to the action that is the subject of the order).

9. Section 178.25 is amended by revising paragraphs (a)(7) and (b)(2) to read as follows:

#### **§ 178.25 Form and manner of submission of objections.**

(a) \* \* \*

(7) Be received by the Hearing Clerk not later than the close of business of the 60th day following the date of the publication in the **Federal Register** of the order to which the objection is taken (or, if such 60th day is a Saturday, Sunday, or Federal holiday, not later than the close of business of the next government business day after such 60th day).

(b) \* \* \*

(2) For personal delivery, the Office of the Hearing Clerk is located at: Room 104, Crystal Mall #2, 1801 S. Bell St., Arlington, VA.

10. Section 178.35 is amended as follows:

- By revising paragraph (a).
- By revising “rule” to read “order” in paragraph (b).
- By revising the section heading.

#### **§ 178.35 Modification or revocation of regulation or prior order.**

(a) If the Administrator determines upon review of an objection or request for hearing that the regulation or prior order in question should be modified or revoked, the Administrator will publish an order setting forth any revision to the regulation or prior order that the

Administrator has found to be warranted.

\* \* \* \* \*

11. Section 178.37 is amended by revising the introductory text of paragraph (a) and paragraph (c) to read as follows:

#### **§ 178.37 Order responding to objections on which a hearing was not requested or was denied.**

(a) The Administrator will publish in the **Federal Register** an order under FFDCA section 408(g)(2)(B) or section 408(g)(2)(C) setting forth the Administrator's determination on each denial of a request for a hearing, and on each objection submitted under § 178.20 on which:

\* \* \* \* \*

(c) Each order published under paragraph (a) of this section must state its effective date.

12. Section 178.65 is revised to read as follows:

#### **§ 178.65 Judicial review.**

An order issued under § 178.37 is final agency action reviewable in the courts as provided by FFDCA sections 408(h), as of the date of entry of the order, which shall be determined in accordance with §§ 23.10 and 23.11 of this chapter. The failure to file a petition for judicial review within the period ending on the 60th day after the date of the entry of the order constitutes a waiver under FFDCA section 408(h) of the right to judicial review of the order and of any regulation promulgated by the order.

#### **§ 178.70 [Amended]**

13. Section 178.70 is amended by removing paragraphs (a)(2) and (a)(3) and redesignating existing paragraphs (a)(4) through (a)(8) as paragraphs (a)(2) through (a)(6), respectively.

#### **PART 179—[AMENDED]**

14. The authority citation for part 179 continues to read as follows:

**Authority:** 21 U.S.C. 346a, 348, 371(a); Reorg. Plan No. 3 of 1970.

#### **§ 179.20 [Amended]**

15. Section 179.20(a)(3) is amended by removing the phrase “§ 177.81 or”.

#### **§ 179.24 [Amended]**

16. Section 179.24 is amended by removing “177,” and removing the comma after “1978” in paragraph (a).

**§ 179.83 [Amended]**

17. Section 179.83 is amended by revising “parts 177, or 180” to read “part 180” in paragraph (a)(1).

18. Section 179.91 is amended by revising paragraph (b) to read as follows:

**§ 179.91 Burden of going forward; burden of persuasion.**

\* \* \* \* \*

(b) The party or parties who contend that a regulation satisfies the criteria of section 408 of the FFDCA has the burden of persuasion in the hearing on that issue, whether the proceeding concerns the establishment, modification, or revocation of a tolerance or exemption from the requirement for a tolerance.

**§ 179.125 [Amended]**

19. Section 179.125 is amended by revising “408(i) or 409(g)(1)” wherever it appears to read “408(h)” in paragraph (a).

**§ 179.130 [Amended]**

20. Section 179.130 is amended by removing paragraphs (a)(2) and (a)(3) and redesignating existing paragraphs (a)(4) through (a)(12) as paragraphs (a)(2) through (a)(10), respectively.

**PART 180—[AMENDED]**

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

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

22. Section 180.1 is amended by removing paragraph (d), redesignating existing paragraphs (e) through (p) as paragraphs (d) through (o), respectively, and revising newly designated paragraph (e) to read as follows:

**§ 180.1 Definitions and interpretations.**

\* \* \* \* \*

(e) Where a raw agricultural commodity bearing a pesticide chemical residue that has been exempted from the requirement of a tolerance, or which is within a tolerance permitted under section 408, is used in preparing a processed food, the processed food will not be considered unsafe within the meaning of sections 402 and 408(a), despite the lack of a tolerance or exemption for the pesticide chemical residue in the processed food, if:

(1) The pesticide chemical has been used in or on the raw agricultural commodity in conformity with a tolerance under this section;

(2) The pesticide chemical residue has been removed to the extent possible in good manufacturing practice; and

(3) The concentration of the pesticide chemical residue in the processed food

is not greater than the tolerance prescribed for the pesticide chemical residue on the raw agricultural commodity.

\* \* \* \* \*

**§ 180.2 [Removed]**

23. Section 180.2 is removed.

24. The undesignated center heading that precedes § 180.7 and § 180.7 are revised to read as follows:

**Procedure for Filing Petitions Seeking the Establishment, Modification, or Revocation of Tolerances or Exemptions****§ 180.7 Petitions proposing tolerances or exemptions for pesticide residues in or on raw agricultural commodities or processed foods.**

(a) Petitions to be filed with the Agency under the provisions of section 408(d) shall be submitted in duplicate. If any part of the material submitted is in a foreign language, it shall be accompanied by an accurate and complete English translation. The petition shall be accompanied by an advance deposit for fees described in § 180.33. The petition shall state the petitioner's mail address to which notice of objection under section 408(g)(2) may be sent. The petition must be signed by the petitioner or by his attorney or agent, or (if a corporation) by an authorized official.

(b) Petitions shall include the following information:

(1) An informative summary of the petition and of the data, information, and arguments submitted or cited in support of the petition. Both a paper and electronic copy of the summary should be submitted. The electronic copy should be formatted according to the Office of Pesticide Programs' current standard for electronic data submission as specified at <http://www.epa.gov/oppead1/eds/edsgoals.htm>.

(2) A statement that the petitioner agrees that such summary or any information it contains may be published as a part of the notice of filing of the petition to be published under section 408(d)(3) and as a part of a proposed or final regulation issued under section 408.

(3) The name, chemical identity, and composition of the pesticide chemical residue and of the pesticide chemical that produces the residue.

(4) Data showing the recommended amount, frequency, method, and time of application of the pesticide chemical.

(5) Full reports of tests and investigations made with respect to the safety of the pesticide chemical, including full information as to the

methods and controls used in conducting those tests and investigations.

(6) Full reports of tests and investigations made with respect to the nature and amount of the pesticide chemical residue that is likely to remain in or on the food, including a description of the analytical methods used. (See § 180.34 for further information about residue tests.)

(7) Proposed tolerances for the pesticide chemical residue if tolerances are proposed.

(8) Practicable methods for removing any amount of the residue that would exceed any proposed tolerance.

(9) A practical method for detecting and measuring the levels of the pesticide chemical residue in or on the food, or for exemptions, a statement why such a method is not needed.

(10) If the petition relates to a tolerance for a processed food, reports of investigations conducted using the processing method(s) used to produce that food.

(11) Such information as the Administrator may require to make the determination under section 408(b)(2)(C).

(12) Such information as the Administrator may require on whether the pesticide chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects.

(13) Information regarding exposure to the pesticide chemical residue due to any tolerance or exemption already granted for such residue.

(14) Information concerning any maximum residue level established by the Codex Alimentarius Commission for the pesticide chemical residue addressed in the petition. If a Codex maximum residue level has been established for the pesticide chemical residue and the petitioner does not propose that this level be adopted, a statement explaining the reasons for this departure from the Codex level.

(15) Such other data and information as the Administrator requires by regulation to support the petition.

(16) Reasonable grounds in support of the petition.

(c) The data specified under paragraphs (b)(1) through (b)(16) of this section should be on separate sheets or sets of sheets, suitably identified. If such data have already been submitted with an earlier application, the present petition may incorporate it by reference to the earlier one.

(d) Except as noted in paragraph (e) of this section, a petition shall not be

accepted for filing if any of the data prescribed by section 408(d) are lacking or are not set forth so as to be readily understood. The availability to the public of information provided to, or otherwise obtained by, the Agency under this part shall be governed by part 2 of this chapter. The Administrator shall make the full text of the summary referenced in paragraph (b)(1) of this section available to the public in the Environmental Protection Agency Electronic Docket at <http://www.epa.gov/edocket> no later than publication in the **Federal Register** of the notice of the petition filing.

(e) The Administrator shall notify the petitioner within 15 days after its receipt of acceptance or nonacceptance of a petition, and if not accepted the reasons therefor. If petitioner desires, the petitioner may supplement a deficient petition after notification as to deficiencies. If the petitioner does not wish to supplement or explain the petition and requests in writing that it be filed as submitted, the petition shall be filed and the petitioner so notified.

(f) A notice of the filing of a petition for a pesticide chemical residue tolerance that the Administrator determines has met the requirements of paragraph (b) of this section shall be published in the **Federal Register** by the Administrator within 30 days after such determination. The notice shall state the name of the pesticide chemical residue and the commodities for which a tolerance is sought and announce the availability of a description of the analytical methods available to the Administrator for the detection and measurement of the pesticide chemical residue with respect to which the petition is filed or shall set forth the petitioner's statement of why such a method is not needed. The notice shall explicitly reference the specific address in the Agency's Electronic Docket (<http://www.epa.gov/edocket>) where the full text of the summary required in paragraph (b) of this section and refer interested parties to this document for further information on the petition. The full text of the summary may be omitted from the notice.

(g) The Administrator may request a sample of the pesticide chemical at any time while a petition is under consideration. The Administrator shall specify in its request for a sample of the pesticide chemical, a quantity which it deems adequate to permit tests of analytical methods used to determine residues of the pesticide chemical and of methods proposed by the petitioner for removing any residues of the chemical that exceed the tolerance proposed.

(h) The Administrator shall determine, in accordance with the Act, whether to issue an order that establishes, modifies, or revokes a tolerance regulation (whether or not in accord with the action proposed by the petitioner), or whether to publish a proposed tolerance regulation and request public comment thereon under § 180.29. The Administrator shall publish in the **Federal Register** such order or proposed regulation. After receiving comments on any proposed regulation, the Administrator may issue an order that establishes, modifies, or revokes a tolerance regulation. An order published under this section shall describe briefly how to submit objections and requests for a hearing under part 178 of this chapter. A regulation issued under this section shall be effective on the date of publication in the **Federal Register** unless otherwise provided in the regulation.

25. Section 180.8 is revised to read as follows:

**§ 180.8 Withdrawal of petitions without prejudice.**

In some cases the Administrator will notify the petitioner that the petition, while technically complete, is inadequate to justify the establishment of a tolerance or the tolerance requested by petitioner. This may be due to the fact that the data are not sufficiently clear or complete. In such cases, the petitioner may withdraw the petition pending its clarification or the obtaining of additional data. This withdrawal may be without prejudice to a future filing. A deposit for fees as specified in § 180.33 shall accompany the resubmission of the petition.

26. Section 180.9 is revised to read as follows:

**§ 180.9 Substantive amendments to petitions.**

After a petition has been filed, the petitioner may submit additional information or data in support thereof, but in such cases the petition will be given a new filing date.

**§§ 180.10, 180.11 and 180.12 [Removed]**

27. Sections 180.10, 180.11 and 180.12 are removed.

28. The undesignated center heading that precedes § 180.29, and § 180.29 are revised to read as follows:

**Establishment, Modification, and Revocation of Tolerance on Initiative of Administrator; Judicial Review; Temporary Tolerances; Modification and Revocation of Tolerances; Fees**

**§ 180.29 Establishment, modification, and revocation of tolerance on initiative of Administrator.**

(a) Upon the Administrator's own initiative, the Administrator may propose, under section 408(e) of the Federal Food, Drug, and Cosmetic Act, the issuance of a regulation establishing a tolerance for a pesticide chemical or exempting it from the necessity of a tolerance, or a regulation modifying or revoking an existing tolerance or exemption.

(b) The Administrator shall provide a period of not less than 60 days for persons to comment on the proposed regulation, except that a shorter period for comment may be provided if the Administrator for good cause finds that it would be in the public interest to do so and states the reasons for the finding in the notice of proposed rulemaking.

(c) After reviewing any timely comments received, the Administrator may by order establish, modify, or revoke a tolerance regulation, which order and regulation shall be published in the **Federal Register**. An order published under this section shall state that persons may submit objections and requests for a hearing in the manner described in part 178 of this chapter.

(d) Any final regulation issued under this section shall be effective on the date of publication in the **Federal Register** unless otherwise provided in the regulation.

29. Section 180.30 is revised to read as follows:

**§ 180.30 Judicial review.**

(a) Under section 408(h) of the FFDCA, judicial review is available in the United States Courts of Appeal as to the following actions:

(1) Regulations establishing general procedures and requirements under FFDCA section 408(e)(1)(C).

(2) Orders issued under FFDCA section 408(f)(1)(C) requiring the submission of data.

(3) Orders issued under FFDCA section 408(g)(2)(C) ruling on objections to establishment, modification, or revocation of a tolerance or exemption under FFDCA section 408(d)(4), or any regulation that is the subject of such an order. The underlying action here is Agency disposition of a petition seeking the establishment, modification, or revocation of a tolerance or exemption.

(4) Orders issued under FFDCA section 408(g)(2)(C) ruling on objections



to the denial of a petition under FFDCA section 408(d)(4).

(5) Orders issued under FFDCA section 408(g)(2)(C) ruling on objections to the establishment, modification, suspension, or revocation of a tolerance or exemption under FFDCA section 408(e)(1)(A) or (e)(1)(B). The underlying action here is the establishment, modification, suspension, or revocation of a tolerance or exemption upon the initiative of EPA including EPA actions pursuant to FFDCA sections 408(b)(2)(B)(v), 408(b)(2)(E)(ii), 408(d)(4)(C)(ii), 408(l)(4), and 408(q)(1).

(6) Orders issued under FFDCA section 408(g)(2)(C) ruling on objections to the revocation or modification of a tolerance or exemption under FFDCA section 408(f)(2) for noncompliance with requirements for the submission of data.

(7) Orders issued under FFDCA section 408(g)(2)(C) ruling on objections to rules issued under FFDCA sections 408(n)(3) and 408(d) or (e) regarding determinations pertaining to State authority to establish regulatory limits on pesticide chemical residues.

(8) Orders issued under FFDCA section 408(g)(2)(C) ruling on objections to orders issued under FFDCA section 408(n)(5)(C) authorizing States to establish regulatory limits not identical to certain tolerances or exemptions.

(b) Any issue as to which review is or was obtainable under paragraph (a) of this section shall not be the subject of judicial review under any other provision of law. In part, this means that, for the Agency actions subject to the objection procedure in FFDCA section 408(g)(2), judicial review is not available unless an adversely affected party exhausts these objection procedures, and any petition procedures preliminary thereto.

30. Section 180.31 is revised to read as follows:

**§ 180.31 Temporary tolerances.**

(a) A temporary tolerance (or exemption from a tolerance) established under the authority of section 408(r) of the Act shall be deemed to be a tolerance (or exemption from the requirement of a tolerance) for the purposes of section 408(a)(1) or (a)(2) of the Act and for the purposes of § 180.30.

(b) A request for a temporary tolerance or a temporary exemption from a tolerance by a person who has obtained or is seeking an experimental permit for a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act shall be accompanied by such data as are available on subjects outlined in § 180.7(b) and an advance

deposit to cover fees as provided in § 180.33.

(c) To obtain a temporary tolerance, a requestor must comply with the petition procedures specified in FFDCA section 408(d) and § 180.7 except as provided in this section.

(d) A temporary tolerance or exemption from a tolerance may be issued for a period designed to allow the orderly marketing of the raw agricultural commodities produced while testing a pesticide chemical under an experimental permit issued under authority of the Federal Insecticide, Fungicide, and Rodenticide Act if the Administrator concludes that the safety standard in FFDCA section 408(b)(2) or (c), as applicable, is met. Subject to the requirements of section 408(e), a temporary tolerance or exemption from a tolerance may be revoked if the experimental permit is revoked, or may be revoked at any time if it develops that the application for a temporary tolerance contains a misstatement of a material fact or that new scientific data or experience with the pesticide chemical indicates that it does not meet the safety standard in FFDCA section 408(b)(2) or (c), as applicable.

(e) Conditions under which a temporary tolerance is established shall include:

(1) A limitation on the amount of the chemical to be used on the designated crops permitted under the experimental permit.

(2) A limitation for the use of the chemical on the designated crops to bona fide experimental use by qualified persons as indicated in the experimental permit.

(3) A requirement that the person or firm which obtains the experimental permit for which the temporary tolerance is established will immediately inform the Environmental Protection Agency of any reports on findings from the experimental use that have a bearing on safety.

(4) A requirement that the person or firm which obtained the experimental permit for which the temporary tolerance is established will keep records of production, distribution, and performance for a period of 2 years and, on request, at any reasonable time, make these records available to any authorized officer or employee of the Environmental Protection Agency.

31. Section 180.32 is revised to read as follows:

**§ 180.32 Procedure for modifying and revoking tolerances or exemptions from tolerances.**

(a) The Administrator on his/her own initiative may propose the issuance of a

regulation modifying or revoking a tolerance for a pesticide chemical residue on raw agricultural commodities or processed foods or modifying or revoking an exemption from tolerance for such residue.

(b) Any person may file with the Administrator a petition proposing the issuance of a regulation modifying or revoking a tolerance or exemption from a tolerance for a pesticide chemical residue. The petition shall furnish reasonable grounds for the action sought. Reasonable grounds shall include an explanation showing wherein the person has a substantial interest in such tolerance or exemption from tolerance and an assertion of facts (supported by data if available) showing that new uses for the pesticide chemical have been developed or old uses abandoned, that new data are available as to toxicity of the chemical, or that experience with the application of the tolerance or exemption from tolerance may justify its modification or revocation. Evidence that a person has registered or has submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act will be regarded as evidence that the person has a substantial interest in a tolerance or exemption from the requirement of a tolerance for a pesticide chemical that consists in whole or in part of the pesticide. New data should be furnished in the form specified in § 180.7(b) for submitting petitions, as applicable.

(c) The procedures for completing action on an Administrator-initiated proposal or a petition shall be those specified in §§ 180.29 and 180.7, as applicable.

32. Section 180.33 is amended as follows:

a. In paragraphs (a), (b), (c), and (h) remove the phrase “or request”.

b. Remove paragraph (j) and redesignate existing paragraphs (k) through (p) as paragraphs (j) through (o), respectively.

c. In newly designated paragraph (j) revise “408(d)(5) or (e)” to read “408(h)”.

d. In newly designated paragraph (l) remove the phrase “Registration Division (7505C),”.

e. In newly designated paragraph (m) remove the phrase “Registration Division, (7505C),”.

f. Revise paragraph (f) and the third sentence of newly designated paragraph (l) to read as follows:

**§ 180.33 Fees.**

\* \* \* \* \*

(f) Each petition for revocation of a tolerance shall be accompanied by a fee



of \$10,125. Such fee is not required when, in connection with the change sought under this paragraph, a petition is filed for the establishment of new tolerances to take the place of those sought to be revoked and a fee is paid as required by paragraph (a) of this section.

\* \* \* \* \*

(l) \* \* \* A fee of \$2,025 shall accompany every request for a waiver or refund, as specified in paragraph (m) of this section, except that the fee under this paragraph shall not be imposed on any person who has no financial interest in any action requested by such person under paragraphs (a) through (j) of this section. \* \* \*

\* \* \* \* \*

33. Section 180.40 is amended by revising the last sentence in paragraph (f) to read as follows:

**§ 180.40 Tolerances for crop groups.**

\* \* \* \* \*

(f) \* \* \* Processing data will be required prior to establishment of a group tolerance, and tolerances will not be granted on a group basis as to processed foods prepared from crops covered by the group tolerance.

\* \* \* \* \*

34. Section 180.1229 is added to subpart D to read as follows:

**§ 180.1229 Benzaldehyde; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of benzaldehyde when used as a bee repellent in the harvesting of honey.

35. Section 180.1230 is added to subpart D to read as follows:

**§ 180.1230 Ferrous sulfate; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of ferrous sulfate.

36. Section 180.1231 is added to subpart D to read as follows:

**§ 180.1231 Lime; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of lime.

37. Section 180.1232 is added to subpart D to read as follows:

**§ 180.1232 Lime-sulfur; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of lime-sulfur.

38. Section 180.1233 is added to subpart D to read as follows:

**§ 180.1233 Potassium sorbate; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of potassium sorbate.

39. Section 180.1234 is added to subpart D to read as follows:

**§ 180.1234 Sodium carbonate; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of sodium carbonate.

40. Section 180.1235 is added to subpart D to read as follows:

**§ 180.1235 Sodium hypochlorite; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of sodium hypochlorite.

41. Section 180.1236 is added to subpart D to read as follows:

**§ 180.1236 Sulfur; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of sulfur.

42. Section 180.1237 is added to subpart D to read as follows:

**§ 180.1237 Sodium metasilicate; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of sodium metasilicate when used as plant desiccants, so long as the metasilicate does not exceed 4% by weight in aqueous solution.

43. Section 180.1238 is added to subpart D to read as follows:

**§ 180.1238 Oil of lemon; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of oil of lemon when used as a postharvest fungicide.

44. Section 180.1239 is added to subpart D to read as follows:

**§ 180.1239 Oil of orange; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of oil of orange when used as a postharvest fungicide.

[FR Doc. 04-22584 Filed 10-7-04; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[AZ104-0069; FRL-7823-6]

**Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Arizona**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the Maricopa Association of Governments (MAG) serious area carbon monoxide (CO) state implementation plan (SIP) for the Maricopa County CO nonattainment area (the metropolitan Phoenix area, Arizona) as meeting the Clean Air Act (CAA) requirements for serious CO nonattainment areas. We are also proposing to approve the MAG CO redesignation request and maintenance plan for the Maricopa County CO nonattainment area as meeting CAA requirements for redesignation requests and maintenance plans. In addition, we are proposing to make a boundary change under Section 107 of the CAA to take the Gila River Indian Community (GRIC) out of the Maricopa County maintenance area. The portion of the Gila River Indian Community which is currently in the Maricopa County CO nonattainment area will be "unclassifiable/attainment" for CO, and will not be subject to the MAG CO Redesignation Request and Maintenance Plan.

**DATES:** Written comments must be received at the address below on or before November 8, 2004.

**ADDRESSES:** Formal written comments should be mailed or emailed to Wienke Tax, Office of Air Planning (AIR-2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901, [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov). Comments may also be submitted through the **Federal Register** Web site at <http://www.regulations.gov>. We prefer electronic comments.

You can inspect copies of EPA's **Federal Register** document and technical support documents (TSD) at our Region 9 office during normal business hours (see address above). Due to increased security, we suggest that you call at least 24 hours prior to visiting the Regional Office so that we can make arrangements to have someone meet you. The **Federal Register** document and TSD are also available as electronic files on EPA's