

ENVIRONMENTAL PROTECTION AGENCY

[OPP-300503; FRL-5722-3]

40 CFR Parts 180 and 186

2070-AC18

Revocation of Tolerances for Commodities No Longer Regulated for Pesticide Residues

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This notice proposes to revoke tolerances for pesticide residues in or on livestock feed commodities that have been removed from the list of significant livestock feed commodities in Table I of Pesticide Assessment Guideline 860.1000. In implementing the Federal Food, Drug, and Cosmetic Act (FFDCA), EPA does not require data on or set individual tolerance levels for minor, non-significant livestock animal commodities. As explained in this document, EPA considers residues in minor, non-significant livestock feed commodities to be covered by the tolerances for the pesticide on the principal commodities of a crop.

DATES: Written comments must be submitted to EPA by September 2, 1997.

ADDRESSES: By mail, submit comments to the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, deliver comments to room 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under Unit V. No Confidential Business Information (CBI) should be submitted through e-mail.

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. **FOR FURTHER INFORMATION CONTACT:** By mail: Jeff Morris, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and

e-mail address: Crystal Station #1, 3rd floor, 2800 Crystal Drive, Arlington, VA (703) 308-8029; e-mail: morris.jeffrey@epamail.epa.gov. **SUPPLEMENTARY INFORMATION:**

I. Legal Authority

The Federal Food, Drug, and Cosmetic Act (FFDCA, 21 U.S.C. 301 et seq., as amended by the Food Quality Protection Act of 1996, Pub. L. 104-170) authorizes the establishment of tolerances (maximum residue levels), exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods pursuant to section 408 of the FFDCA (21 U.S.C. 346(a), as amended). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA, and hence may not legally be moved in interstate commerce (21 U.S.C. 342). For a pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances or exemptions under the FFDCA, but also must be registered under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136a(3)(a)).

II. Regulatory Background

Most agricultural crops and their corresponding raw agricultural and processed commodities can be, and are, fed to livestock. EPA, however, only requires pesticide residue data on, and sets individual tolerances for, significant livestock feed commodities. EPA considers a livestock feed commodity to be significant if it has the potential to contribute to the human diet (through the consumption of livestock commodities) more than a negligible quantity of pesticide residue. EPA's listing of significant food and feed commodities (raw and processed) can be found in Table I of Pesticide Assessment Guideline 860.1000. Because of minor nomenclature variations, the tolerances as written in title 40 of the Code of Federal Regulations may not coincide precisely with the commodity names as listed in Table I of Pesticide Assessment Guideline 860.1000.

EPA revised Table I (formerly Table II) in June of 1994 because of the significant changes in agricultural, processing, and feeding practices that had occurred over the past decade. The June 1994 update was further revised in September of 1995 in order to reflect the most recent data and to address comments received in response to the

June 1994 update. This September 1995 revision of Table I resulted in the removal of numerous commodities from the table. Data used to update Table I came from such sources as Office of Pesticide Programs (OPP) files, the U.S. Department of Agriculture (USDA), academia, industry, and trade associations throughout the United States. In the June 1994 revisions, EPA used the following criteria to decide what feedstuffs are considered "significant": (1) The annual U.S. production of a particular raw agricultural commodity (RAC) (e.g., wheat grain, or wheat straw) is greater than or equal to 250,000 tons and the maximum amount in the livestock diet is greater than or equal to 10 percent, or (2) the commodity is grown mainly as a feedstuff. Processed commodities with less than 250,000 tons annual U.S. production were considered significant feeds in the 1994 revisions if the RAC from which they were derived exceeded 250,000 tons. For the September 1995 revisions to Table I, EPA in response to comments and in consultation with USDA and industry representatives amended the criteria as follows: The amount of a commodity (raw agricultural or processed) produced or diverted for use as a feedstuff is at least 0.04 percent of the total annual tonnage of all feedstuffs available for livestock utilization in the United States. For feedstuffs less than 0.04 percent of the total estimated annual tonnage of all feedstuffs available, the 1995 revisions stated that those feedstuffs are to be included in Table I and therefore considered to be significant if: (a) the feedstuff is listed and routinely traded on the commodities exchange markets; (b) there is regional production, seasonal considerations, or an incident history for use of the feedstuff; or the feedstuff is grown exclusively for livestock feeding in quantities greater than 10,000 tons (0.0015 percent of the total estimated annual tonnage of all feedstuffs available in the United States). EPA determined that any livestock feed commodities that met these criteria for exclusion from the list of significant feed commodities were likely to contribute no greater than a negligible amount of pesticide residue to the human diet. Moreover, EPA believes that the residue contribution from livestock feed commodities judged to be insignificant will contribute a negligible amount of pesticide residue to the human diet relative to the residues contributed by other portions of the same crop.

EPA expects that Table I, after being revised based on the above criteria, now

accounts for greater than 99 percent of the available tonnage (on a dry-matter basis) of feedstuffs used in the domestic production of greater than 95 percent of beef and dairy cattle, poultry, swine, milk, and eggs.

III. Proposed Actions

In this document EPA proposes to revoke the tolerances for specific livestock feed items dropped from Table I due to a determination that they were not significant livestock feed commodities.

It is not EPA's intention that this proposed revocation should have the effect of rendering the affected commodities adulterated due to the absence of a tolerance. Rather, EPA interprets its tolerance regulation for the principal RAC of a crop as covering any insignificant livestock feed commodities (i.e. those not on Table I) of that crop as provided below. Pesticide residues in an insignificant livestock feed commodity would be in compliance with the tolerance for the RAC of the same crop if the residues in the RAC from which the feedstuff is derived or with which it is associated (e.g., straw harvested at the same crop stage as grain, the RAC) are at or below the appropriate tolerance level. If no information is available regarding the residue level in the RAC from which the feedstuff is derived or with which it is associated, then pesticide residues in an insignificant livestock feed commodity would be considered in compliance with the RAC tolerance of that crop if the residue level in the insignificant livestock feed commodity is consistent with the RAC from which the feedstuff is derived or with which it is associated containing residues at or below the appropriate tolerance. This interpretation applies only to insignificant livestock feed commodities.

IV. Effective Dates

These proposed revocations will become effective upon the date of publication in the **Federal Register** of a final rule revoking the tolerances.

V. Public Comment Procedures

EPA invites interested persons to submit written comments, information, or data in response to this proposed rule. EPA will consider all relevant comments. After consideration of comments, EPA will issue a final order. Such order will be subject to objections. Failure to file an objection within the appointed period will constitute waiver of the right to raise in future proceedings issues resolved in the final order.

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket number "[OPP-300503]" (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 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in "ADDRESSES" at the beginning of this document.

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. Comment 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 (insert docket number). Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

VI. Regulatory Assessment Requirements

This action proposes the revocation of specific tolerance requirements under section 408 of the FFDCA and therefore does not impose any other regulatory requirements. As such, the Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). Since this proposed rule does not impose any requirements, it does not contain any information collections subject to approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or require any other action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or 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 require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency hereby certifies that this proposed rule will not have a significant adverse economic impact on a substantial number of small entities. This determination is based on the fact that this action does not impose any requirements and therefore does not have any adverse economic impacts. In accordance with Small Business Administration (SBA) policy, this determination will be provided to the Chief Counsel for Advocacy of the SBA upon request.

List of Subjects

40 CFR Part 180

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

40 CFR Part 186

Animal feeds, Pesticide and pest.

Dated: June 18, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR parts 180 and 186 be amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.
 - b. Part 180 is amended as follows:
 - i. By removing the phrase "alfalfa, chafe, or seed," wherever it appears in part 180.
 - ii. By removing the phrase "barley, fodder, green," wherever it appears in part 180.
 - iii. By removing the phrase "barley, forage," wherever it appears in part 180.
 - iv. By removing the phrases "barley, forage, green," and the phrase "barley green forage," wherever they appear in part 180.
 - v. By removing the phrases "buckwheat, fodder," and "buckwheat, forage," wherever they appear in part 180.
 - vi. By removing the phrases "lentils, forage," or "lentil, forage," wherever they appear in part 180.
 - vii. By removing the phrases "lupine, hay (PRE-H)," and "lupine, straw (pre-H)," wherever they appear in part 180.
 - viii. By removing the phrases "peanuts, hulls," "peanut, vine hulls," "peanut hulls" or "peanuts (hulls) pre-H," wherever they appear in part 180.

ix. By removing the phrase "peppermint, hay," wherever it appears in part 180.

x. By removing the phrases "safflower, fodder (fodder, forage, and grain)," and "safflower, forage," wherever they appear in part 180.

xi. By removing the phrase "spearmint, hay," wherever it appears in part 180.

xii. By removing the phrase "sunflower, forage," wherever it appears in part 180.

§ 180.106 [Amended]

xiii. In § 180.106, in the entry for "2 parts per million..." revise the phrase "forage, and straw of barley" to read "straw of barley."

§ 180.277 [Amended]

xiv. In § 180.277 revise the phrase "barley (grain, forage, and straw)" to read "barley (grain and straw)."

§ 180.288 [Amended]

xv. In § 180.288 by revising the phrase "barley (fodder, forage, grain and straw)" to read "barley (fodder, grain and straw)."

§ 180.230 [Amended]

xvi. In § 180.230 by removing the phrase "peanut hulls and."

§ 180.236 [Amended]

xvii. In § 180.236 by removing the phrase "0.4 parts per million in or on peanut hulls."

§ 180.361 [Amended]

xviii. In § 180.361 by removing paragraph (b).

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. Part 186 is amended as follows:

i. By removing the phrase "apple, pomace (dry)" wherever it appears in part 186.

ii. By removing the phrase "citrus, molasses," wherever it appears in part 186.

iii. By removing the phrase "corn soapstock" wherever it appears in part 186.

iv. By removing the phrases "grape pomace," "grapes, pomace, dried," "grapes, pomace, (wet and dry)," "grapes, pomace, (wet and dried)," "grape pomace (dry or wet)," "grape pomace (wet)," "grape pomace (dry)," and "grape pomace, wet and dry," wherever they appear in part 186.

v. By removing the phrases "raisin, waste," and "grape, raisin waste," wherever they appear in part 186.

vi. By removing the phrase "hops, spent," wherever it appears in part 186.

vii. By removing the phrase "peanuts, soapstock," wherever it appears in part 186.

viii. By removing the phrase "peanuts, soapstock, fatty acids," wherever it appears in part 186.

ix. By removing the phrase "soapstock" wherever it appears in part 186.

x. By removing the phrase "soybeans, soapstock," wherever it appears in part 186.

xi. By removing the phrase "soybeans, soapstock, fatty acids," wherever it appears in part 186.

xii. By removing the phrase "spent mint hay," wherever it appears in part 186.

xiii. By removing the phrase "sugarcane, bagasse," wherever it appears in part 186.

xiv. By removing the phrase "sunflower, seeds, hulls," wherever it appears in part 186.

xv. By removing the phrase "sunflower, seeds, soapstock," wherever it appears in part 186.

xvi. By removing the phrase "tomatoes, pomace, dried," wherever it appears in part 186.

xvii. By removing the phrase "tomatoes, pomace, wet," wherever it appears in part 186.

§ 186.450 [Amended]

xviii. In § 186.450 by removing the phrase "citrus molasses and."

§ 186.3450 [Removed]

xix. By removing § 186.3450.

§ 186.350 [Amended]

xx. In § 186.350 by removing the entry beginning with "125 parts per million...."

§ 186.1650 [Amended]

xxi. In § 186.1650 by removing the entry beginning with "20 parts per million...."

§ 186.4800 [Amended]

xxii. In § 186.4800 by removing the entry beginning with "45 parts per million...."

§ 186.1450 [Amended]

xxiii. In § 186.1450 the entry for "5 parts per million," is amended by removing the phrase "sugarcane bagasse and."

§ 186.2225 [Amended]

xxiv. In § 186.2225 by removing the entry "1.5 parts per million in sugarcane baggase."

§ 186.3350 [Removed]

xxv. By removing § 186.3350.

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BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AE00

Endangered and Threatened Wildlife and Plants: Proposed Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area of Idaho and Montana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to reintroduce the grizzly bear (*Ursus arctos horribilis*), a threatened species, into east-central Idaho and a portion of western Montana. These grizzlies will be classified as a nonessential experimental population pursuant to section 10(j) of the Endangered Species Act of 1973, as amended. Grizzly bear populations have been extirpated from most of the lower 48 United States. They presently occur in populations in the Cabinet/Yaak ecosystem in northwestern Montana and north Idaho, the Selkirk ecosystem in north Idaho and northeastern Washington, the North Cascades ecosystem in northwestern Washington, the Northern Continental Divide ecosystem in Montana, and the Yellowstone ecosystem in Montana, Wyoming, and Idaho. The purpose of this reintroduction is to reestablish a viable grizzly bear population in the Bitterroot ecosystem in east-central Idaho and adjacent areas of Montana, one of six grizzly recovery areas identified in the Grizzly Bear Recovery Plan. Potential effects of this proposed rule are evaluated in a draft Environmental Impact Statement released concurrently with the publication of this proposed rule. This grizzly bear reintroduction does not conflict with existing or anticipated Federal agency actions or traditional