the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq*., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: September 9, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.417 is amended by alphabetically adding the commodities ''Fish''and ''Shellfish'' to the table in paragraph (a)(1) to read as follows:

§ 180.417 Triclopyr; tolerances for residues.

(a) General. (1) * * *

Commodity	Parts per million
* * *	* *
Fish	3.0
* * *	* *
Shellfish	3.5

* * * * *

[FR Doc. 02–23746 Filed 9–17–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0256; FRL–7274–9]

Indoxacarb; Pesticide Tolerance for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of indoxacarb in or on cranberry. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on cranberry. This regulation establishes a maximum permissible level for residues of indoxacarb in this food commodity. The tolerance will expire and is revoked on December 31, 2004.

DATES: This regulation is effective September 18, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0256, must be received on or before November 18, 2002.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Andrea Conrath, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9356; e-mail address: conrath.andrea@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 producers (NAICS 111)
- Animal producers (NAICS 112)
- Food Manufacturing (NAICS 311)
- Pesticide Manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also

be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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 Get Copies of This Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2002–0256. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., 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.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for combined residues of the insecticide indoxacarb, [(S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate] and its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate], in or on cranberry at 0.5 parts per million (ppm). This tolerance will expire and is revoked on December 31, 2004. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Indoxacarb on Cranberry and FFDCA Tolerances

The Massachusetts Department of Food and Agriculture have indicated that populations of the cranberry weevil in the state have developed resistance to the registered alternative, chlorpyrifos. Without adequate control, this pest was expected to result in significant crop damage and yield losses for cranberry growers, leading to significant economic losses. The state requested indoxacarb for this use, since field trials have shown it to be effective at controlling this pest. EPA has authorized under FIFRA section 18 the use of indoxacarb on cranberry for control of the cranberry weevil in Massachusetts. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of indoxacarb in or on cranberry. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance will expire and is revoked on December 31, 2004, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cranberry after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether indoxacarb meets EPA's registration requirements for use on cranberry or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of indoxacarb by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Massachusetts to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for indoxacarb, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D) of the FFDCA , EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of indoxacarb and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for combined residues of indoxacarb in or on cranberry at 0.5 ppm.

A. Toxicological Endpoints

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by indoxacarb, a summary of the toxicological dose and endpoints for indoxacarb for use in this human risk assessment, and the most recent estimated aggregate risks resulting from registered uses are discussed in the **Federal Register** for July 18, 2002 (67 FR 47299) (FRL–7186–2) final rule establishing tolerances for residues of indoxacarb in/on alfalfa forage, alfalfa hay, peanut, peanut hay, potato, soybean seed, soybean aspirated grain fractions, and soybean hulls.

Refer to the July 18, 2002 **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon that risk assessment and the findings made in the **Federal Register** document in support of this action. Below is a brief summary of the aggregate risk assessment, including this use on cranberry.

B. Exposure Assessment

EPA assessed risk scenarios for indoxacarb under acute and chronic scenarios. Because there are no residential uses or exposure scenarios, short- and intermediate-term aggregate risk assessments were not conducted. Nor was a cancer aggregate risk assessment conducted, because indoxacarb is classified as ''not likely'' to be a human carcinogen.

The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity.

The following assumptions were made for the acute exposure assessments: An acute Tier 2 (partially refined) dietary assessment was performed with use of anticipated residues (ARs) from field trial data, processing factors (where applicable), and assumed 100 percent of crop treated (%CT). ARs for meat, milk, poultry, and eggs were also calculated.

Using these exposure assumptions, EPA concluded that indoxacarb acute exposures from food consumption are below levels of concern (<100% of the acute Population Adjusted Dose (aPAD)) for the general US population and all population subgroups. The amount of the aPAD utilized for the most highly exposed subgroup, Females (13–50 yrs old) is 41%. Acute risk from dietary exposure for the most highly exposed infant/children subpopulation, Children (1–6 yrs old) is at 12% of the aPAD. For the general US Population and all other population subgroups, acute risk from dietary exposure is estimated at 6% of the aPAD. In addition, despite the potential for acute dietary exposure to indoxacarb in drinking water, after calculating drinking water levels of concern (DWLOCs) and comparing them to conservative model estimated environmental concentrations (EECs) of indoxacarb in surface and ground waters, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 1.

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO INDOXACARB

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
General US Population	0.12	6	13.7	0.02	3900
Females (13–50 yrs old)	0.12	41	13.7	0.02	350
Children (1–6 yrs old)	0.12	12	13.7	0.02	1100

The following assumptions were made for the chronic exposure assessments: The chronic dietary assessment assumed tolerance level residues, default processing factors and 100% CT. Refinements using ARs, actual processing factors, and %CT data would result in lower chronic dietary exposure estimates.

Using these exposure assumptions, EPA concluded that indoxacarb chronic exposures from food consumption are below levels of concern (<100% of the cPAD) for the general US population and all population subgroups. The cPAD utilized for the most highly exposed subgroup, Children (1–6 yrs old) is 90%. Chronic risk from dietary exposure for Infants (<1 year old) is 4% of the cPAD, and for Children (7–12 yrs old) it is 52% of the cPAD. Chronic dietary risk for the general US Population is 36% of the cPAD, and the estimated chronic risk for all other population subgroups is below this level. In addition, despite the potential for chronic dietary exposure to

indoxacarb in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of indoxacarb in surface and ground waters, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 2.

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC EXPOSURE TO INDOXACARB

Population Subgroup	cPAD (mg/kg)	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
General US Population	0.02	36	3.7	0.02	450
Children (1–6 yrs old)	0.02	90	3.7	0.02	21
Children (7–12 yrs old)	0.02	52	3.7	0.02	97
Infants (<1 yr old)	0.02	49	3.7	0.02	100

Short and intermediate term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Indoxacarb is not registered for use on any sites that would result in residential exposure, and thus short- and intermediate-term exposures are not expected, so these risk assessments were not conducted.

Indoxacarb is classified as ''not likely'' to be a human carcinogen, so the Agency did not conduct a cancer aggregate risk assessment.

Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to indoxacarb residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (HPLC/UV Method AMR 2712–93) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits established for indoxacarb residues in/on any crop commodities. Therefore, no compatibility problems exist for this tolerance.

C. Conditions

A maximum of four applications may be made. A maximum of 0.11 pound active ingredient (lb. a.i.) may be applied using ground, aerial, or chemigation equipment. No more than 0.44 lb. a.i. may be applied per acre per season.

VI. Conclusion

Therefore, the tolerance is established for combined residues of indoxacarb, [(S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate] and its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate], in or on cranberry at 0.50 ppm.

VII. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0256 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 18, 2002.

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

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or

refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by the docket ID number OPP–2002–0256, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VIII. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under section 408 of the FFDCA. 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). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations 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 tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final

rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: September 11, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.564 is amended by adding the following language and table to paragraph (b) to read as follows:

§ 180.564 Indoxacarb; tolerances for residues.

(a) * * *

(b) Time-limited tolerances are established for the residues of indoxacarb, [(S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno [1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate] and its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table, and will expire and are revoked on the dates specified.

Commodity	Parts per million	Expiration/revocation date
Cranberry	0.50	12/31/04

* * * * *

[FR Doc. 02–23745 Filed 9–17–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7377–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Tulalip Landfill Superfund Site from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency (EPA), Region 10, announces the deletion of the Tulalip Landfill which is located within the Tulalip Indian Reservation in Snohomish County, Washington, from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the Tulalip Tribes have determined that the Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

EFFECTIVE DATE: September 18, 2002.

FOR FURTHER INFORMATION CONTACT: Beverly Gaines, EPA Point of Contact, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Stop ECL–110, Seattle, WA 98101, (206) 553–1066.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Tulalip Landfill Site, Snohomish County, Washington.

A Notice of Intent to Delete for this site was published in the **Federal Register** on June 7, 2002 (67 FR 39326). The closing date for comments was July 8, 2002. EPA received two comment letters. One comment letter received by EPA was from the Department of Interior (the Department) requesting that the deletion be delayed because a study conducted last year identified that some of the osprey in the Everett Harbor vicinity were having problems with reproduction and deformities. EPA has determined that the selected remedy for Tulalip Landfill has been, and still is, protective of human health and the environment. Monitoring has demonstrated that the remediated landfill represents only a minor source of contamination to the highly industrialized Everett Harbor. The Department is in the process of conducting a new study in the Everett Harbor and is looking specifically at the osprey issue. EPA welcomes the opportunity to discuss the results of the new study and, as necessary, at ways to evaluate the problem on a larger harbor-wide basis which includes several other sources of contamination. The Tulalip Tribes (the lead Natural Resource Trustee for this site) and the National Oceanic and Atmospheric Administration remain supportive of the deletion.

The other commentor asked if EPA is changing the requirement in the Record of Decision (ROD) to maintain the selected remedy in perpetuity. EPA is not changing the requirement in the ROD to maintain the selected remedy in perpetuity. Consistent with the ROD, the Operation and Maintenance (O&M) Plan will be fully implemented at the site in perpetuity, or until EPA determines that implementation of the O&M Plan is no longer necessary. EPA has a legal commitment from Washington Waste Hauling and Recycling to conduct O&M activities for the first four years, and the Tulalip Tribes for the next 26 years. These agreements are contained in a consent decree with EPA. The need to continue O&M activities after the first 30 years will be revisited at that time. Institutional controls, including land use restrictions, groundwater use restrictions, environmental buffer zones and maintenance of an entrance sign, are in place and will continue to be implemented in perpetuity.

The same commentor also asked if EPA is confident that mechanisms for Tulalip Landfill are sufficient to ensure that perpetual care is maintained. EPA is confident that appropriate mechanisms are in place with the Tulalip Tribes to implement the ROD, including institutional controls.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not