

instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: February 25, 2004.

**Gerald M. Swanson,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.*

[FR Doc. 04-5349 Filed 3-9-04; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-2004-0028; FRL-7345-3]

#### Pyriproxyfen; Pesticide Tolerance for Emergency Exemption

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for residues of pyriproxyfen in or on celery. 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 celery. This regulation establishes a maximum permissible level for residues of pyriproxyfen in this food commodity. The tolerance will expire and is revoked on June 30, 2007.

**DATES:** This regulation is effective March 10, 2004. Objections and requests for hearings, identified by docket ID number OPP-2004-0028, must be received on or before May 10, 2004.

**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:** Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9364; e-mail address: [sec-18-mailbox@epamail.epa.gov](mailto:sec-18-mailbox@epamail.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 identification (ID) number OPP-2004-0028. 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](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 residues of the insecticide pyriproxyfen, 2-[1-methyl-2(4-phenoxyphenoxy)ethoxy]pyridine, in or on celery at 2.5 parts per million (ppm). This tolerance will expire and is revoked on June 30, 2007. 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 Pyriproxyfen on Celery and FFDCA Tolerances

None of the currently registered alternatives were effective in controlling the severe greenhouse whitefly (*Trialeurodes vaporariorum*) and silverleaf whitefly (*Bemisia argentifolii*) infestations that occurred on California celery 2001–02 where some fields experienced a 100% loss. The state estimates that California celery growers, without pyriproxyfen, would lose \$1,493 per acre for the coming season. For the affected 11,000 acres this would represent a loss of \$16,423,000. EPA has authorized under FIFRA section 18 the use of pyriproxyfen on celery for control of greenhouse whitefly (*Trialeurodes vaporariorum*) and silverleaf whitefly (*Bemisia argentifolii*) in California. 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 pyriproxyfen in or on celery. 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 June 30, 2007, 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 celery 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 pyriproxyfen meets EPA's registration requirements for use on celery 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 pyriproxyfen 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 California 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 pyriproxyfen, 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 pyriproxyfen and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for residues of pyriproxyfen in or on celery at 2.5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

#### 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 no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed as well as the nature of the toxic effects caused by pyriproxyfen are discussed in Unit III.A. of the **Federal Registers** of June 5, 2001 (66 FR 30065) (FRL-6782-5), August 28, 2002 (67 FR 55150) (FRL-7195-7), and March 7, 2003 (68 FR 10972) (FRL-7289-6).

Refer to the March 7, 2003, **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 celery.

#### B. Exposure Assessment

EPA assessed risk scenarios for pyriproxyfen under chronic and intermediate and short-term (residential) scenarios. Because there were no acute endpoints identified, an acute risk assessment was not conducted. Nor was a cancer aggregate risk assessment conducted, because pyriproxyfen is classified as "not likely" to be a human carcinogen.

The Dietary Exposure Evaluation Model (DEEM<sup>TM</sup>) analysis evaluated the individual food consumption as reported by respondents in the Department of Agricultural (USDA) 1994–1996 and 1998 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 chronic exposure assessments: Published and proposed tolerance level residues and 100% crop treated were assumed for all commodities, and the default processing factors were applied.

Using these exposure assumptions, EPA concluded that pyriproxyfen chronic exposures from food consumption are below levels of concern (< 100% of the chronic Population Adjusted Dose (cPAD)) for the general U.S. population and all population subgroups. The cPAD utilized for the most highly exposed subgroup (children 1–2 years old) is 4%. Chronic risk from dietary exposure for infants (< 1 year old) and children (6–12 years old) each utilize 2.0% of the cPAD. Chronic dietary risk for the general U.S. population is 1.0% of the cPAD. In addition, despite the potential for chronic dietary exposure to

pyriproxyfen in drinking water, after calculating drinking water levels of concern (DWLOCs) and comparing them to conservative model estimated

environmental concerns (EEC) of pyriproxyfen in surface and ground waters, EPA does not expect the aggregate exposure to exceed 100% of

the cPAD, as shown in the following table:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO PYRIPROXYFEN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
General U. S. Population .....	8,816	100	0.4	0.006	12,000
All infants <1 year .....	1,029	100	0.4	0.006	3,400
Children 1–2 years .....	853	100	0.4	0.006	3,400
Children 3–5 years .....	936	100	0.4	0.006	3,400
Females 13–49 years old .....	12,390	100	0.4	0.006	10,000

Short-term and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, flea and tick control on pets).

Pyriproxyfen is currently registered for various residential non-dietary sites, and is used for flea and tick control (home environment and pet treatments) as well as products for ant and roach control. Pet owners could potentially be exposed to pyriproxyfen during applications to pets; however, since no

short-term dermal or inhalation endpoints were identified, only a post-application residential assessment was conducted. Both adults and toddlers could potentially be exposed to pyriproxyfen residues on treated carpets, floors, upholstery, and pets, but it is anticipated that toddlers will have higher exposures than adults due to behavior patterns. Therefore, the residential risk assessment addressed post-application exposures of toddlers, which is considered to be a worst-case scenario. Short-term, intermediate-term, and long-term toddler hand-to-mouth exposures (consisting of petting treated animals and touching treated carpets/flooring) were assessed; long-term dermal exposures were also assessed for

products with anticipated efficacy of more than 6 months (carpet powders and pet collars). Toddler exposures to combined treatment scenarios, where a pet owner treats the home environment and the pet in the same period were also assessed.

The Agency has determined that it is appropriate to aggregate chronic food and water, and short-term or intermediate-term exposures for pyriproxyfen. Using the exposure assumptions described above for short-term and intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs as shown in the following tables:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO PYRIPROXYFEN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
All infants (<1 year) .....	2,900	100	0.4	0.006	9,400
Children 1–2 years .....	2,900	100	0.4	0.006	9,400
Children 3–5 years .....	600	100	0.4	0.006	9,400

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO PYRIPROXYFEN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Intermediate-Term DWLOC (ppb)
All infants (<1 year) .....	650	100	0.4	0.006	3,000
Children 1–2 years .....	576	100	0.4	0.006	2,900
Children 3–5 years .....	613	100	0.4	0.006	2,900

These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. For surface and ground water, the EECs for pyriproxyfen are significantly less than the DWLOCs as a contribution to intermediate-term and short-term aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of pyriproxyfen in drinking water do not contribute significantly to the intermediate-term or short-term aggregate human health risk at the present time.

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

Based upon 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 pyriproxyfen residues.

## V. Other Considerations

### A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas liquid chromatography with nitrogen-phosphorus (GLC/NP) detector) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

### B. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits for residues of pyriproxyfen in/on celery, so international harmonization is not an issue.

### C. Conditions

A maximum of three applications may be made, at a maximum rate of 0.067 lbs active ingredient (a.i.) per acre per season, using ground or air application equipment. Do not exceed 0.20 lbs a.i. per acre per year. A 14 day pre-harvest interval must be observed.

## VI. Conclusion

Therefore, the tolerance is established for residues of pyriproxyfen, 2-[1-methyl-2(4-phenoxyphenoxy) ethoxy]pyridine, in or on celery at 2.50 ppm.

## VII. Objections and Hearing Requests

Under section 408(g) of the FFDC, 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 FFDC 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 FFDC 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 FFDC, as was provided in the old sections 408 and 409 of the FFDC. 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-2004-0028 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 May 10, 2004.

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](mailto: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-2004-0028, 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](mailto:opp-docket@epa.gov). Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

**VIII. Statutory and Executive Order Reviews**

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. Congressional Review Act**

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

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

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

Dated: February 24, 2004.

**Lois Rossi,**

*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 180.510 is amended by alphabetically adding “celery” to the table in paragraph (b) to read as follows:

**§ 180.510 Pyriproxyfen; tolerances for residues.**

*	*	*	*	*
(b)	*	*	*	*

Commodity	Parts per million	Expiration/revocation date
* * *		*
Celery .....	2.50	6/30/07
* * *		*

\* \* \* \* \*

[FR Doc. 04-4985 Filed 3-9-04; 8:45 am]

BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL-7634-3]

#### Idaho: Final Authorization of State Hazardous Waste Management Program Revision

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

**ACTION:** Final rule.

**SUMMARY:** Idaho applied to the United States Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). On August 1, 2003, EPA published a proposed rule to authorize the changes and opened a public comment period. The comment period closed on September 15, 2003. Today, EPA has decided that these revisions to the Idaho hazardous waste management program satisfy all of the requirements necessary to qualify for final authorization and is authorizing these revisions to Idaho's authorized hazardous waste management program in today's final rule.

**EFFECTIVE DATE:** Final authorization for the revisions to the hazardous waste program in Idaho shall be effective at 1 p.m. e.s.t. on March 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hunt, WCM-122, U.S. EPA Region 10, Office of Waste and Chemicals Management, 1200 Sixth Avenue, Mail Stop WCM-122, Seattle, Washington, 98101, phone (206) 553-0256.

#### SUPPLEMENTARY INFORMATION:

##### A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to and consistent with the Federal program. States are required to have enforcement authority which is adequate to enforce compliance with the requirements of the hazardous waste program. Under RCRA section 3009, States are not allowed to impose any requirements which are less stringent than the Federal program. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly,

States must change their programs because of changes to EPA's regulations in title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

Idaho's hazardous waste management program received final authorization effective on April 9, 1990 (55 FR 11015, March 29, 1990). EPA also granted authorization for revisions to Idaho's program effective on June 5, 1992 (57 FR 11580, April 6, 1992), on August 10, 1992 (57 FR 24757, June 11, 1992), on June 11, 1995 (60 FR 18549, April 12, 1995), on January 19, 1999 (63 FR 56086, October 21, 1998), and most recently on July 1, 2002 (67 FR 44069, July 1, 2002).

Today's final rule addresses a program revision application that Idaho submitted to EPA on June 6, 2003, in accordance with 40 CFR 271.21, seeking authorization of changes to the State program. On August 1, 2003, EPA published a proposed rule announcing its intent to grant Idaho final authorization for revisions to Idaho's hazardous waste program and provided a period of time for the receipt of public comments. The proposed rule can be found at 68 FR 45192.

##### B. What Were the Comments to EPA's Proposed Rule?

EPA received one adverse comment letter during the comment period on the proposed rule. The comment letter was submitted by the Environmental Defense Institute, Keep Yellowstone Nuclear Free and David B. McCoy, collectively the commentors. EPA has taken into consideration the comments relating to the authorization of revisions to the Idaho hazardous waste management program in taking today's action. The issues raised by the commentors for purposes of this revision authorization and EPA's responses follow below.

The commentors raised issues in the following areas: (1) The commentors asserted that EPA is obligated to delay issuing a final rule for authorization of these revisions to the Idaho hazardous waste management program until completion of an EPA Office of Inspector General (IG) investigation based on a petition submitted to the Office of Inspector General on August 8, 2000; (2) the commentors asserted that Idaho's intent to move forward with the closure plan for two high level radioactive waste (HLW) and mixed waste tanks at the Idaho National Engineering and Environmental Laboratory (INEEL) violates the recent U.S. District Court ruling in *Natural Resources Defense Council, et al. v. Spencer Abraham (NRDC v. Abraham)*,

Case No. 01-CV-413 (July 3, 2003) and requires EPA intervention to ensure enforcement of the applicable law, in particular with respect to RCRA "mixed waste;" (3) the commentors asserted that the Tank Farm Facility (TFF) "closure plan is in violation of RCRA since the DOE/ID has no INEEL RCRA Part B Permit;" and (4) the commentors asserted that the Waste Calcine Facility (WCF) at the INEEL was improperly closed under RCRA because the facility closed with RCRA mixed waste and HLW in place. While these comments focused on a single facility in Idaho and the decisions made by DEQ regarding that facility, the commentors, both in the comment letter and in the numerous attachments thereto, implied that DEQ's actions at this facility had program-wide implications.

In preparing its response to these comments, EPA reviewed, among other documents, the comments and their attachments, the available files on the particular permits and units, including the WCF and the TFF, and the recent ruling in *NRDC v. Abraham*, as well as the joint amicus brief submitted by the States of Idaho, Washington, Oregon and South Carolina, and the Memorandum of Points and Authorities filed on March 6, 2003 by the United States Department of Justice on behalf of the Department of Energy. The administrative record compiled for this final rule can be located by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule.

With respect to the first comment on the proposed rule, EPA does not agree that it is obligated to delay this action until completion of an IG investigation.<sup>1</sup> The revisions to authorized hazardous waste programs are addressed in the regulations at 40 CFR 271.21. Program revisions are approved or disapproved by the Administrator based on the requirements of 40 CFR part 271 and the Resource Conservation and Recovery Act, as amended, (Act). See 40 CFR 271.21(b)(2). The Administrator has the discretion, among other things, to decline to approve a program revision as well as to withdraw approval of an authorized state program for cause. For purposes of today's action, EPA has determined, based on the administrative

<sup>1</sup> Nor did the IG reach such a conclusion in the Final Evaluation Report "Review of EPA's Response to Petition Seeking Withdrawal of Authorization for Idaho's Hazardous Waste Program," Report No. 2004-P-00006, February 5, 2004. The IG did conclude that "Region 10 generally relied on appropriate regulatory requirements and standards in reaching its conclusion that evidence did not exist to commence proceedings to withdraw the State of Idaho's authority to run its RCRA Hazardous Waste program."