

Commodity	Parts per million
* * *	* *
Tomatoes <sup>1</sup> .....	1.0

<sup>1</sup>There is no U.S. registration as of September 1, 2005.

\* \* \* \* \*

[FR Doc. 05-18828 Filed 9-20-05; 8:45 am]

BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-2004-0246; FRL-7734-3]

#### Lindane; Tolerance Actions

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

**ACTION:** Final rule.

**SUMMARY:** EPA is revoking specific existing tolerances for the insecticide lindane because, following receipt of registrant requests, the Agency canceled their associated Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) registrations in the United States.

**DATES:** This regulation is effective September 21, 2005. However, certain regulatory actions will not occur until the date specified in the regulatory text. Objections and requests for hearings must be received on or before November 21, 2005.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP-2004-0246. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Joseph Nevola, Special Review and

Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8037; e-mail address: [nevola.joseph@epa.gov](mailto:nevola.joseph@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

##### II. Background

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

In the **Federal Register** of April 15, 2005 (70 FR 20035) (FRL-7702-2), EPA proposed to revoke certain tolerances

for residues of the insecticide lindane. Also, the proposal of April 15, 2005, provided a 60-day comment period which invited public comment for consideration and for support of tolerance retention under the Federal Food, Drug, and Cosmetic Act (FFDCA) standards.

The tolerances revoked in this final rule are no longer necessary to cover residues of the relevant pesticide in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to revoke those tolerances and tolerance exemptions for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or domestic commodities legally treated.

EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of the following conditions applies:

1. Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance is no longer needed.

3. The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

Today's final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. In response to the proposal published in the **Federal Register** of April 15, 2005 (70 FR 20035), EPA received comments during the 60-day public comment period, as follows:

*Comments by private citizens.* One private citizen stated that all lindane tolerances should be revoked. Another private citizen expressed a general

concern about the use of lindane as a pharmaceutical product.

*Comment by the Washington Toxics Coalition (WTC).* The WTC supports EPA's action to revoke remaining crop tolerances for lindane. The WTC stated that it had earlier submitted, along with the Pesticide Action Network North America (PANNA) and Alaska Community Action on Toxics (ACAT), a petition dated March 31, 2005, to EPA which requested the revocation of all tolerances for lindane. The WTC stated its opposition to the continued use of lindane as a pharmaceutical product and registration of lindane for seed treatment. The WTC expressed a concern for lindane pesticide risks to farmworkers, children, mothers, indigenous people, and animals.

*Comment by Technology Sciences Group Incorporated (TSG).* On behalf of its client, Crompton Corporation (currently known as Chemtura) who is a registrant of lindane seed treatment products, TSG agreed with revocation of lindane tolerances associated with canceled lindane uses and retention of livestock fat tolerances to accommodate lindane seed treatment uses. TSG disagreed with the petition by PANNA, *et. al.*, and stated that revocation of the livestock fat tolerances would be counterproductive because of the existing seed treatment uses.

*Agency response.* None of the commenters took issue with the Agency's proposal to revoke certain lindane tolerances which were no longer needed or whose associated food uses were no longer current or registered in the United States. To the extent that commenters raise issues relevant to the establishment of tolerances for the seed treatment uses, EPA will consider those comments during assessment of seed treatment tolerances, which will be completed by August 2006.

It is EPA's general practice to revoke tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person, in comments submitted on the proposal, indicates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

There are lindane end-use active registrations for seed treatments on cereal grains which are eligible for reregistration, provided that mitigation measures specified in the July 31, 2002, Lindane Registration Eligibility Decision (RED) are implemented and the Agency can establish tolerances for the seed treatment uses of lindane. These mitigation measures include the

following actions: prohibition of dust formulations on certain crops, reduction of maximum application rates, addition of personal protective equipment requirements, and the establishment of a 24-hour restricted re-entry interval. The establishment of seed treatment tolerances is conditioned on EPA's ability to make a determination that establishing the new tolerances meets the safety standard in FFDCA. Currently, it is possible that livestock feed may be derived from grain grown from lindane-treated seed and residues of lindane in livestock would be expected. Consequently, the Agency believes that the existing livestock fat tolerances for lindane per se must be maintained until and unless the grain seed treatment uses are no longer registered. If the Agency is unable to make a safety finding that would support the establishment of tolerances on wheat, barley, oats, rye, corn, and sorghum for lindane residues resulting from seed treatment only, it will take steps to cancel the grain seed treatment registrations and propose revocation of the livestock fat tolerances. The Agency intends to complete its assessment of the seed treatment uses on or prior to August 3, 2006.

The proposal of April 15, 2005, did not address the pharmaceutical use of lindane. Lindane is an ectoparasiticide and ovicide. The U.S. Food and Drug Administration (FDA) has the primary responsibility for regulating human ectoparasite pharmaceutical treatments. Information regarding such use is available through the FDA's Center for Drug's Division of Drug Information at <http://www.fda.gov/cder/Offices/DDI/default.htm>.

Therefore, EPA is implementing tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of the reregistration and tolerance reassessment processes, EPA is required to determine whether each of the amended tolerances meets the safety standards under the Food Quality Protection Act (FQPA). The safety finding determination of "reasonable certainty of no harm" is found in detail in each RED and Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision (TRED) for the active ingredient. REDs and TREDs propose certain tolerance actions to be implemented to reflect current use patterns, to meet safety findings and change commodity names and groupings in accordance with new EPA policy. Printed copies of the REDs and TREDs may be obtained from EPA's

National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242-2419, telephone 1-800-490-9198; fax 1-513-489-8695; internet at <http://www.epa.gov/ncepihom/> and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 1-800-553-6847 or (703) 605-6000; internet at <http://www.ntis.gov/>. Electronic copies of REDs and TREDs are available on the internet at <http://www.epa.gov/pesticides/reregistration/status.htm>.

Additional information can be found in the Lindane RED and the Residue Chemistry Chapter document which supports the RED. A copy of the Lindane RED and Residue Chemistry Chapter are found in the Administrative Record and hard copies are available in the public docket OPP-2002-0202, while an electronic copy is available through EPA's electronic public docket and comment system, EPA Dockets at <http://www.epa.gov/edocket/>. You may search for docket ID number OPP-2002-0202, then click on that docket ID number to view the Lindane RED support documents.

EPA is revoking certain specific existing tolerances for lindane because there are no longer any active registrations under FIFRA for uses on their associated commodities. Except for some seed treatment registrations, all other food use registrations for the insecticide lindane were canceled because EPA accepted the registrants' requests for voluntary cancellation.

EPA made amendments to delete mushroom and nectarine uses from lindane registrations effective on March 29, 1999, and registrant sale and distribution of existing stocks was permitted for a period of 18 months; i.e., until September 29, 2000. EPA believes that end users have had sufficient time, more than 4 years, to exhaust those existing stocks and for treated commodities to have cleared the channels of trade. Therefore, the Agency is revoking the tolerances in 40 CFR 180.133 for residues of the insecticide lindane in or on mushroom and nectarine.

EPA made amendments to delete apricot, asparagus, avocado, eggplant, grape, guava, mango, pear, pecans, pepper, pineapple, quince, strawberry, and tomato uses from lindane registrations effective on July 26, 1999, and registrant sale and distribution of existing stocks was permitted for a period of 18 months; i.e., until January 26, 2001. EPA believes that end users have had sufficient time, more than 4 years, to exhaust those existing stocks

and for treated commodities to have cleared the channels of trade. Therefore, the Agency is revoking the tolerances in 40 CFR 180.133 for residues of the insecticide lindane in or on apricot, asparagus, avocado, eggplant, grape, guava, mango, pear, pecans, pepper, pineapple, quince, strawberry, and tomato.

EPA made registration cancellations, which included plums among their affected commodity uses, effective on March 22, 2000, and registrant sale and distribution of existing stocks was permitted for 1-year after the cancellation requests were received by the Agency; i.e., until June 9, 2000. EPA believes that end users have had sufficient time, more than 5 years, to exhaust those existing stocks and for treated commodities to have cleared the channels of trade. Therefore, the Agency is revoking the tolerances in 40 CFR 180.133 for residues of the insecticide lindane in or on plum and plum, prune, fresh.

EPA made registration cancellations, which included apples, cherries, and peaches among their affected commodity uses, effective on May 9, 2000, and registrant sale and distribution of existing stocks was permitted for 1-year after the cancellation requests were received by the Agency; i.e., until August 18, 2000. EPA believes that end users have had sufficient time, more than 5 years, to exhaust those existing stocks and for treated commodities to have cleared the channels of trade. Therefore, the Agency is revoking the tolerances in 40 CFR 180.133 for residues of the insecticide lindane in or on apple, cherry, and peach.

EPA made amendments to delete spinach, celery, collards, kale, kohlrabi, lettuce, mustard greens, and Swiss chard uses from a lindane registration effective on December 10, 2002, and registrant sale and distribution of existing stocks was permitted for a period of 18 months; i.e., until June 10, 2004. EPA believes that end users have had sufficient time to exhaust existing stocks and for treated commodities to have cleared the channels of trade. Because the proposed expiration/revocation dates of June 10, 2005, are now past, EPA is revoking the tolerances in 40 CFR 180.133 for residues of the insecticide lindane in or on celery, collards, kale, kohlrabi, lettuce, mustard greens, spinach, and Swiss chard, all effective on the date of publication of this final rule in the **Federal Register**.

EPA made amendments to delete seed treatment uses for broccoli, Brussels sprouts, cabbage, and cauliflower from a

lindane registration effective on February 25, 2005. However, registrant sale and distribution of existing stocks was permitted for a period of 18 months after the October 26, 2004, approval of the revision; i.e., until April 26, 2006. The Agency believes that end users will have sufficient time to exhaust existing stocks and for treated commodities to have cleared the channels of trade by April 26, 2007. Therefore, EPA is revoking the tolerances in 40 CFR 180.133 for residues of the insecticide lindane in or on broccoli, Brussels sprouts, cabbage, and cauliflower with expiration/revocation dates of April 26, 2007.

EPA made amendments to delete cucumber, cantaloupe, watermelon, okra, onions, pumpkin, and squash uses from lindane registrations effective on August 17, 2002, and registrant sale and distribution of existing stocks was permitted for a period of 18 months; i.e., until February 17, 2004. EPA believes that end users have had sufficient time to exhaust existing stocks and for treated commodities to have cleared the channels of trade. Because the proposed expiration/revocation dates of June 10, 2005, are now past, EPA is revoking the tolerances in 40 CFR 180.133 for residues of the insecticide lindane in or on cucumber, melon, okra, onion (dry bulb), pumpkin, squash, and squash, summer, all effective on the date of publication of this final rule in the **Federal Register**.

Because some tolerances will remain codified in 40 CFR 180.133 with expiration/revocation dates, a revision of the residue definition for lindane is needed in order to harmonize with the International Union of Pure and Applied Chemistry (IUPAC) nomenclature. Therefore, EPA is amending the tolerance expression in 40 CFR 180.133 from residues of lindane (gamma isomer of benzene hexachloride) to lindane (gamma isomer of 1,2,3,4,5,6-hexachlorocyclohexane).

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

EPA's general practice is to revoke tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA

refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

#### *C. When Do These Actions Become Effective?*

With the exception of certain lindane tolerances which EPA is revoking with specific expiration/revocation dates, the actions in this final rule become effective on the date of publication of this final rule in the **Federal Register** because the specific lindane tolerances revoked herein are no longer needed or are associated with food uses that have been canceled for several years. The Agency believes that treated commodities have had sufficient time for passage through the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDC section 408(1)(5), as established by the FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

#### **III. Are There Any International Trade Issues Raised by this Final Action?**

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may

establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL-6559-3). This guidance will be made available to interested persons. Electronic copies are available on the internet at <http://www.epa.gov/>. On the Home Page select "Laws and Regulations," then select "Regulations and Proposed Rules" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

#### IV. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by 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 FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of 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 FFDCA, as was provided in the old sections 408 and 409 of 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-2004-0246 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 21, 2005.

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 (1900L), 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 Suite 350, 1099 14<sup>th</sup> St., NW., Washington, DC 20005. 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 (202) 564-6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP-2004-0246, 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 **ADDRESSES**. 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).

#### V. Statutory and Executive Order Reviews

In this final rule EPA is revoking specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) 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 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 OMB review or any other 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 104-13, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis

was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. 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 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.

**VI. 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: September 12, 2005  
**James Jones,**  
*Director, 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), 346a and 371.

■ 2. In section 180.133, paragraph (a) is revised to read as follows:

**§ 180.133 Lindane; tolerances for residues.**

(a) *General.* Tolerances are established for residues of the insecticide lindane (gamma isomer of 1,2,3,4,5,6-hexachlorocyclohexane) in or on raw agricultural commodities as follows:

Commodity	Parts per million	Expiration/Revocation Date
Broccoli .....	1.0	4/26/07
Brussels sprouts .....	1.0	4/26/07
Cabbage .....	1.0	4/26/07
Cattle, fat .....	7.0	None
Cauliflower .....	1.0	4/26/07
Goat, fat .....	7.0	None
Hog, fat .....	4.0	None
Horse, fat .....	7.0	None
Sheep, fat .....	7.0	None

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 [FR Doc. 05-18829 Filed 9-20-05; 8:45 am]  
**BILLING CODE 6560-50-S**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP-2005-0259; FRL-7737-9]

**Boscalid; Pesticide Tolerances for Emergency Exemptions**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for residues of boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl) in or on tangerines. 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 mandarin oranges and mandarin hybrids. "Tangerines" is the accepted regulatory term used for these crops and a tolerance on tangerines covers both mandarin oranges and mandarin hybrids. This regulation establishes a maximum permissible level for residues of boscalid in this food commodity. The tolerance will expire and is revoked on December 31, 2008.

**DATES:** This regulation is effective September 21, 2005. Objections and requests for hearings must be received on or before November 21, 2005.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP-2005-0259. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other