

this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: November 13, 2003.

**James B. Gulliford,**

*Regional Administrator, Region 7.*

[FR Doc. 03-29426 Filed 11-25-03; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-2003-0209; FRL-7332-4]

### Proposed Revocation of Tolerance Exemptions for Certain Biopesticides

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to revoke exemptions from the requirement of a tolerance, as expressed in 40 CFR part 180, on residues of the following pesticide active ingredients because there are no active Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) product registrations applicable to these exemptions: Dihydroazadirachtin; Kontrol HV; *Metarhizium anisopliae* strain ESF1 in attractant stations; polyhedral occlusion bodies of *Autographa californica* NPV; *Pseudomonas fluorescens* EG-1053; *Pseudomonas fluorescens* NCIB 12089; and *Puccinia canaliculata* ATCC (40199). In addition, this document proposes to revoke the tolerance exemption for *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production in corn because that tolerance exemption has been replaced by a tolerance exemption that applies to all plants. The regulatory actions proposed in this document contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess tolerances in existence on August 2, 1996. For counting purposes, the proposed revocations would count as nine FQPA tolerance/exemption reassessments made toward the August 2006 review deadline.

**DATES:** Comments, identified by docket (ID) number OPP-2003-0209, must be received on or before January 26, 2004.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the

**SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP-2003-0209 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Barbara Mandula, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-7378; e-mail address: mandula.barbara@epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

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

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

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have 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 Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental

Documents." You can also go directly to 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.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP-2003-0209. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

###### C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP-2003-0209 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: [opp-docket@epa.gov](mailto:opp-docket@epa.gov), or you can submit a computer disk as described in

this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP-2003-0209. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI 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. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

*F. What Can I Do if I Wish the Agency to Maintain a Tolerance Exemption that the Agency Proposes to Revoke?*

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance exemption proposed for revocation. If EPA receives a comment within the 60-day period to that effect, EPA will not proceed to revoke the tolerance exemption immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA. EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

## II. Background

*A. What Action is the Agency Taking?*

EPA is proposing to revoke various exemptions from the requirement of a tolerance, as expressed in specific sections of 40 CFR part 180, for residues of the following active ingredients because of non-payment of maintenance fees and because there are no currently registered products to which the subject tolerance exemptions apply: Polyhedral occlusion bodies of *Autographa californica* NPV in 40 CFR 180.1125; Dihydroazadirachtin in 40 CFR 180.1169; Kontrol HV in 40 CFR 180.1063; *Metarhizium anisopliae* strain ESF1 in attractant stations in 40 CFR 180.1116; *Pseudomonas fluorescens* EG-1053 in 40 CFR 180.1088; *Pseudomonas fluorescens* NCIB 12089 in 40 CFR 180.1129; and *Puccinia canaliculata* ATCC 40199 in 40 CFR 180.1123.

It is EPA's general practice to propose revocation of those tolerance exemptions for residues of pesticide active ingredients on food for which there are no active registered uses under FIFRA, or for which there are no registered products to which the tolerance exemption applies, or for

tolerance exemptions that have been superseded, unless any person commenting on the proposal indicates a need for the tolerance exemption to cover residues in or on imported commodities or domestic commodities legally treated.

Following are the details of the final product cancellations for the above active ingredients and the number of tolerances that will be counted as reassessed once a final rule is issued.

1. *Dihydroazadirachtin*. Product 70051-29 canceled on August 25, 2000 for non-payment of maintenance fees. Announced on September 6, 2000 (67 FR 54114) (FRL-6737-7). According to Agency records, this product was the last FIFRA registered product containing the active ingredient Dihydroazadirachtin, which is exempt from the requirement of a tolerance in or on all raw agricultural commodities when applied as specified under 40 CFR 180.1169. The Agency believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade. Revocation of this tolerance exemption in a final rule will count as one tolerance reassessment.

2. *Kontrol HV*. Product 17217-2 canceled on July 21, 1998 for non-payment of 1998 maintenance fees. Announced on July 31 1998 (63 FR 41145) (FRL-6015-8). According to Agency records, this product was the last FIFRA registered product containing the active ingredient Kontrol HV, which is exempt from the requirement of a tolerance when used on cotton to control the tobacco budworm under 40 CFR 180.1063. The Agency believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade. Revocation of this tolerance exemption in a final rule will count as one tolerance reassessment.

3. *Metarhizium anisopliae* strain ESF1 in attractant stations. Product 64296-2 canceled on August 25, 2000 for non-payment of maintenance fees. Announced on September 6, 2000 (65 FR 54114) (FRL-6737-7). According to Agency records, this product was the last FIFRA registered product containing the active ingredient *metarhizium anisopliae* strain ESF1 for use in attractant stations. Currently, there are three tolerance exemptions in 40 CFR 180.1116 for *metarhizium anisopliae* ESF1 in or on all raw agricultural commodities, animal feed, and processed food when used in attractant stations. The Agency believes that sufficient time has passed for stocks to have been exhausted and for treated

commodities to have cleared channels of trade. Revocation of this tolerance exemption in a final rule will count as three tolerance reassessments.

4. *Polyhedral occlusion bodies of Autographa californica nuclear polyhedrosis virus (NPV)*. Product 70051-43 canceled on July 21, 1998 for non-payment of maintenance fees. Announced on July 31, 1998 (63 FR 41145) (FRL-6015-8). According to Agency records, this product was the last FIFRA registered product containing the active ingredient polyhedral occlusion bodies of *Autographa californica* NPV, which is exempt from the requirement of a tolerance in or on all raw agricultural commodities under 40 CFR 180.1125. The Agency believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade.

The tolerance exemption in 40 CFR 180.1125 for polyhedral occlusion bodies of *Autographa californica* nuclear polyhedrosis virus in or on all raw agricultural commodities was previously reassessed in 2002 and counted at that time. Therefore, revocation of this tolerance exemption in a final rule would not be counted toward the tolerance reassessment total.

5. *Pseudomonas fluorescens* EG-1053. Product 55638-5 canceled on July 9, 1997 for non-payment of maintenance fees. Announced on July 23, 1997 (62 FR 39517) (FRL-5729-8). According to Agency records, this product was the last FIFRA registered product containing the active ingredient *Pseudomonas fluorescens* EG-1053, which is exempt from the requirement of a tolerance when used in or on cottonseed and cotton forage under 40 CFR 180.1088. The Agency believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade. Revocation of this tolerance exemption in a final rule will count as two tolerance reassessments.

6. *Pseudomonas fluorescens* NCIB 12089. Product 67186-1 canceled June 27, 1997 for non-payment of fees for 1997. Announced on July 23, 1997 (62 FR 39517) (FRL-5729-8). According to Agency records, this product was the last FIFRA registered product containing the active ingredient *Pseudomonas fluorescens* NCIB 12089, which is exempt from the requirement of a tolerance when used in or on mushrooms under 40 CFR 180.1129. The Agency believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade. Revocation of this tolerance exemption

in a final rule will count as one tolerance reassessment.

7. *Puccinia canaliculata* ATCC 40199. Product 65263-1 canceled July 29, 1999 for non-payment of fees for 1999. Announced on August 11, 1999 (64 FR 43820) (FRL-6086-8). According to Agency records, this product was the last FIFRA registered product containing the active ingredient *Puccinia canaliculata* ATCC 40199, which is exempt from the requirement of a tolerance in or on all raw agricultural commodities when applied as specified under 40 CFR 180.1123. The Agency believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade. Revocation of this tolerance exemption in a final rule will count as one tolerance reassessment.

8. *Bacillus thuringiensis*. EPA is proposing to revoke the exemption from a requirement of a tolerance for residues of *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production in corn listed as (plasmid vector pCIB4431) in 40 CFR 180.1152. That tolerance exemption is no longer necessary, having since been subsumed by a tolerance exemption, 40 CFR 180.1173, announced on August 2, 1996 (61 FR 40343) (FRL-5391-3), that applies to all plants and all genetic material necessary to produce CryIA(b). The text of 40 CFR 180.1152 exempts this active ingredient from the requirement of a tolerance when used as a plant pesticide in or on the raw agricultural commodities field corn, sweet corn, and popcorn. Because this tolerance exemption was previously reassessed, as explained below, the number of tolerances that will be counted as reassessed by revocation of 40 CFR 180.1152 is zero.

EPA has found previously that the exemption in 40 CFR 180.1152, *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production (plasmid vector pCIB4431) in corn, is superseded by the exemption in 40 CFR 180.1173, covering all plant-incorporated protectants. In a registration decision document titled "Biopesticides Registration Action Document: *Bacillus thuringiensis* Plant-Incorporated Protectants," issued October 15, 2001, EPA states:

By this reassessment, EPA has completed its tolerance reassessment for Cry1A(b) (§180.1173) and for Cry3A (§180.1147) under 408(q) of the FFDCA. The following tolerance exemptions allow the use of the listed plant-incorporated protectants in food and/or feed.

c. *Bacillus thuringiensis* Cry1A(b) delta-endotoxin and the genetic material necessary for its production in all plants are exempt from the requirement of a tolerance when

used as plant-incorporated protectants in all plant raw agricultural commodities 40 CFR 180.1173, August 2, 1996 (61 FR 40343) (FRL-5391-3).

The October 15, 2001 Biopesticides Registration Action Document further states that the tolerance exemption in 40 CFR 180.1152 is also considered reassessed because it is included in the broader tolerance exemption described in (c) above. The report continues:

The Agency plans on revoking this more narrow tolerance exemption in the near future in order to reduce confusion.

Therefore, in this document EPA is proposing to revoke the exemption in 40 CFR 180.1152 because it is no longer needed. The final rule will not change availability or use of the pesticide mentioned. A hardcopy of the Executive Summary of the October 15, 2001 document is available in the public docket for this rule, 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-2003-0209, then click on that docket number to view its contents.

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

A "tolerance" represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods hereinafter collectively referred to as ("food"). Section 408 of FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the FQPA of 1996, Public Law 104-170, authorizes the establishment of tolerances exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on foods, 21 U.S.C. 346(a). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA. If food containing pesticide residues is considered to be "adulterated," you may not distribute the product in interstate commerce 21 U.S.C. 331a) and 342(a). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA 7 U.S.C. (*et seq.*). Food-use pesticides not registered in the United States have tolerances for residues of pesticides in or on commodities imported into the United States.

EPA's general practice is to propose revocation of 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 also revokes tolerances that have been superseded or replaced. 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.

Furthermore, and as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in an unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances and exemptions for residues on crop uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerance exemptions to identify themselves and those exemptions that are needed to cover imported commodities.

Parties interested in retention of the tolerance exemptions should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably

required to support the continuation of a tolerance or exemption, EPA may require that parties interested in maintaining the tolerances or exemptions provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance or exemption at issue.

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

EPA is proposing that revocation of these tolerance exemptions become effective on the day the final rule revoking these tolerance exemptions is published in the **Federal Register**. The Agency believes that the revocation date allows users to exhaust stocks and allows sufficient time for passage of treated commodities through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider leaving the existing tolerance exemption in place. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under Unit I.C. Similarly, if you have comments regarding these tolerance exemption revocations or the effective date of the revocations, please submit comments as described under Unit I.C.

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(i)(5), as established by 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 (FDA) 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.

#### *D. What Is the Contribution to Tolerance Reassessment?*

By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. For counting purposes, and based on this proposed action, nine exemptions

would be counted as reassessments toward the August 2006 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

### **III. Are the Proposed Actions Consistent With International Obligations?**

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

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. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support (June 1, 2000 65 FR 35069) (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. Regulatory Assessment Requirements**

In this proposed rule, EPA is proposing to revoke specific tolerance exemptions established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action, i.e., a tolerance exemption 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 proposed

rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) Public Law 104–4. Nor does it require any special considerations 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 104–113, 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 proposed rule, I certify that this action 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 proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposed revocations that would change EPA's previous analysis. Any comments about the Agency's determination should be submitted to EPA along with comments on the

proposal, and will be addressed prior to issuing a final rule.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This proposed rule 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 proposed rule does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

## List of Subjects in 40 CFR Part 180

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

Dated: November 7, 2003.

**James Jones,**

*Director, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 be 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.

**§§ 180.1063, 180.1088, 180.1116, 180.1123, 180.1125, 180.1129, 180.1152, and 180.1169 [Removed]**

2. Sections 180.1063, 180.1088, 180.1116, 180.1123, 180.1125, 180.1129, 180.1152, and 180.1169 are removed.

[FR Doc. 03–29322 Filed 11–25–03; 8:45 am]

BILLING CODE 6560–50–S

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 03–3644, MB Docket No. 03–234, RM–10698]

### Digital Television Broadcast Service; Fargo, ND

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by North Dakota Television License Sub, LLC, licensee of station KVLV-go, North Dakota, proposing the substitution of DTV channel 44 for DTV channel 58. DTV Channel 44 can be allotted to Fargo at reference coordinates 47–20–32 N. and 97–17–20 W. with a power of 414, a height above average terrain HAAT of 543 meters. Since the community of Fargo is within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment.

**DATES:** Comments must be filed on or before January 5, 2004, and reply comments on or before January 20, 2004.

**ADDRESSES:** The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). See