* * * * *

[FR Doc. E8–22434 Filed 9–23–08; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0337; FRL–8382–5]

Cyfluthrin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes, revises, or deletes tolerances for residues of cyfluthrin in or on numerous raw agricultural commodities. It also establishes tolerances for residues of beta-cyfluthrin in or on all commodities for which cyfluthrin tolerances exist. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 24, 2008. Objections and requests for hearings must be received on or before November 24, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0337. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@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 those engaged in the following activities:

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

This listing is not intended to be exhaustive, but rather to provide 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?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0337 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 as required by 40 CFR part 178 on or before November 24, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0337, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of July 30, 2008 (73 FR 44264) (FRL–8375–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F7200) by Bayer CropScience, 2 T.W. Alexander Dr., P.O. Box 12014, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.436 be amended by:

- Establishing tolerances for residues of the insecticide, cyfluthrin, cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate, in or on food commodities barley, grain; buckwheat, grain; millet, grain; oat, grain; rye, grain; triticale, grain; and wheat, grain at 0.15 part per million (ppm); corn, field, grain; corn, pop, grain; and teosinte, grain at 0.05 ppm; sorghum, grain at 3.5 ppm; grain, cereal, forage, fodder and hay, group 16, forage, except rice at 25 ppm; grain, cereal, forage, fodder and hay, group 16, hay, except rice at 6.0 ppm; grain, cereal, forage, fodder and hay, group 16, stover, except rice at 30 ppm; and grain, cereal, forage, fodder and hay, group 16, straw, except rice at 7.0 ppm.

• Amending the tolerances in 40 CFR 180.436 for residues of the insecticide cyfluthrin, cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate, in or on the food commodities barley, bran from 5.0 ppm to 0.5 ppm; cattle, fat from 10.0 ppm to 2.0 ppm; cattle, meat from 0.40 ppm to 0.10 ppm; cattle, meat byproducts from 0.40 ppm to 0.10 ppm; goat, fat from 10.0 ppm to 2.0 ppm; goat, meat from 0.40 ppm to 0.05 ppm; goat, meat byproducts from 0.40 ppm to 0.05 ppm; grain, aspirated fractions from 600 ppm to 150 ppm; hog, fat from 10.0 ppm to 0.5 ppm; hog, meat from 0.40 ppm to 0.01 ppm; hog, meat byproducts from 0.40 ppm to 0.01 ppm; horse, fat from 10.0 ppm to 2.0 ppm; horse, meat from 0.40 ppm to 0.05 ppm; horse, meat byproducts from 0.40 ppm to 0.05 ppm; milk from 1.0 ppm to 0.2 ppm; milk, fat from 30.0 ppm to 5.0 ppm; oat, bran from 5.0 ppm to 0.5 ppm; rye, bran from 5.0 ppm to 0.5 ppm; sheep, fat from 10.0 ppm to 2.0 ppm; sheep, meat from 0.40 ppm to 0.05 ppm; sheep, meat byproducts from 0.40 ppm to 0.05 ppm; wheat, bran from 6.5 ppm to 0.5 ppm; and wheat, shorts from 11.0 ppm to 0.5 ppm.

• Deleting the tolerances in 40 CFR 180.436 for residues of the insecticide, cyfluthrin, cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate, in or on the food commodities corn, field, forage at 3.0 ppm; corn, field, milled byproducts at 7.0 ppm; corn, field, refined oil at 30.0; corn, field, stover at 6.0 ppm; corn, pop, stover at 6.0 ppm; corn, sweet, forage at 15.0 ppm; corn, sweet, stover at 30.00 ppm; grain, cereal, group 15 at 4.0 ppm; rice, bran at 6.0 ppm; rice, hulls at 18.0 ppm; sorghum, grain, forage at 2.0 ppm; sorghum, grain, stover at 5.0 ppm; wheat, forage at 5.0 ppm; wheat, hay at 6.0 ppm; and wheat, straw at 6.0 ppm.

• Creating paragraph (a)(4) in 40 CFR 180.436 and establishing tolerances for residues of the insecticide, beta-cyfluthrin, cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate [mixture comprising the enantiomeric pair (*R*)-α-cyano-4-fluoro-3-phenoxybenzyl (1*S*,3*S*)-3-(2,2-dichlorovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-α-cyano-4-fluoro-3-phenoxybenzyl (1*R*,3*R*)-3-(2,2-dichlorovinyl)-2,2-dimethylcyclopropanecarboxylate with the enantiomeric pair (*R*)-α-cyano-4-fluoro-3-phenoxybenzyl (1*S*,3*R*)-3-(2,2-dichlorovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-α-cyano-4-fluoro-3-phenoxybenzyl (1*R*,3*S*)-3-(2,2-dichlorovinyl)-2,2-dimethylcyclopropanecarboxylate], in or on food commodities alfalfa at 5.0 ppm; alfalfa, forage at 5.0 ppm; alfalfa, hay at 13 ppm; almond, hulls at 0.5 ppm; barley, bran at 0.5 ppm; barley, grain at 0.15 ppm; beet, sugar, dried pulp at 1.0 ppm; beet, sugar, roots at 0.10 ppm; Brassica, head and stem, subgroup 5A at 2.5 ppm; Brassica, leafy greens, subgroup 5B at 7.0 ppm; buckwheat, grain at 0.15 ppm; carrot, roots at 0.20 ppm; cattle, fat at 2.0 ppm; cattle, meat at 0.10 ppm; cattle, meat byproducts at 0.10 ppm; citrus, dried pulp at 0.3 ppm; citrus, oil at 0.3 ppm; corn, field, grain at 0.05 ppm; corn, pop, grain at 0.05 ppm; corn, sweet, kernel plus cob with husks removed at 0.05 ppm; cotton, hulls at 2.0 ppm; cotton, refined oil at 2.0 ppm; cotton, undelinted seed at 1.0 ppm; egg at 0.01 ppm; fruit, citrus, group 10 at 0.2 ppm; fruit, pome, group 11 at 0.5 ppm; fruit, stone, group 12 at 0.3 ppm; goat, fat at 2.0 ppm; goat, meat at 0.05 ppm; goat, meat byproducts at 0.05 ppm; grain, aspirated fractions at 150 ppm; grain, cereal, forage, fodder and hay, group 16, forage, except rice at 25 ppm; grain, cereal, forage, fodder and hay, group 16, hay, except rice at 6.0 ppm; grain, cereal, forage, fodder and hay, group 16, stover, except rice at 30 ppm; grain, cereal, forage, fodder and hay, group 16, straw, except rice at 7.0 ppm; grape at 1.0 ppm; grape, raisin at 3.5 ppm; grass, forage, fodder and hay, group 17, forage at 12 ppm; grass, forage, fodder and hay, group 17, hay at 50 ppm; hog, fat at 0.5 ppm; hog, meat at 0.01 ppm; hog, meat byproducts at 0.01 ppm; hop, dried cones at 20.0 ppm; hop, vines at 4.0 ppm; horse, fat at 2.0 ppm; horse, meat at 0.05 ppm; horse, meat byproducts at 0.05 ppm; lettuce, head at 2.0 ppm; lettuce, leaf at 3.0 ppm; milk at 0.2 ppm; milk, fat at 5.0 ppm; millet, grain at 0.15 ppm; mustard greens at 7.0 ppm; nut, tree, group 14 at 0.01 ppm; oat, bran at 0.5 ppm; oat, grain at 0.15 ppm; pea and bean, dried shelled, except soybean, subgroup 6C at 0.15 ppm; pea, dry, seed at 0.15 ppm; pea, southern, succulent at 0.25 ppm; peanut at 0.01 ppm; peanut, hay at 6.0 ppm; pepper at 0.50 ppm; pistachio at 0.01ppm; poultry, fat at 0.01 ppm; poultry, meat at 0.01 ppm; poultry, meat byproducts at 0.01 ppm; radish, roots at 1 ppm; rye, bran at 0.5 ppm; rye, grain at 0.15 ppm; sheep, fat at 2.0 ppm; sheep, meat at 0.05 ppm; sheep, meat byproducts at 0.05 ppm; sorghum, grain, grain at 3.5 ppm; soybean, forage at 8.0 ppm; soybean, hay at 4.0 ppm; soybean, seed at 0.03 ppm; sugarcane, cane at 0.05 ppm; sugarcane, molasses at 0.20 ppm; sunflower, forage at 5.0 ppm; sunflower, seed at 0.02 ppm; teosinte, grain at 0.05 ppm; tomato at 0.20 ppm; tomato, paste at 0.5 ppm; tomato, pomace at 5.0 ppm; triticale, grain at 0.15 ppm; turnip, greens at 7.0 ppm; vegetable, cucurbit, group 9 at 0.1 ppm; vegetable, fruiting, group 8 at 0.5 ppm; vegetable, leafy greens, except Brassica, group 4 at 6.0 ppm; vegetable, tuberous and corm, subgroup 1C at 0.01 ppm; wheat, bran at 0.5 ppm; wheat, grain at 0.15 ppm; and wheat, shorts at 0.5 ppm.

The proposed establishments, deletions, and revisions to the existing tolerances for cyfluthrin on raw agricultural commodities were requested to support changes in the directions for use on cereal grains. The existing tolerances were established to support the use of cyfluthrin on stored grains, a use that was canceled in 2005. The revised tolerances will cover residues of cyfluthrin resulting from foliar applications on cereal grains (except rice).

Beta-cyfluthrin is an enriched isomer of cyfluthrin. Currently, residues of beta-cyfluthrin are covered by the tolerances for cyfluthrin. In accordance with Agency preferences regarding tolerances for synthetic pyrethroids and their isomers, Bayer CropScience has proposed establishment of separate tolerances for beta-cyfluthrin. The proposed beta-cyfluthrin tolerances are at the same levels as those for cyfluthrin.

The notice of filing of PP 7E7200 referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of 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 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 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. . . .''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of 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 and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of cyfluthrin and beta-cyfluthrin as proposed by the registrant and specified in Unit II. EPA's assessment of exposures and risks associated with establishing these tolerances follows.

On February 27, 2008 the Agency published a final rule (73 FR 10390) (FRL–8350–3) establishing tolerances for residues of cyfluthrin in or on grass, forage, fodder and hay group 17, forage at 12 ppm; grass, forage, fodder and hay, group 17, hay at 50 ppm; beet, sugar, roots at 0.10 ppm; and beet, sugar, dried pulp at 1.0 ppm. When the Agency conducted the risk assessments in support of the February 2008 tolerance action, it considered all of the changes to cyfluthrin/beta-cyfluthrin tolerances proposed by the registrant in this action, except a few of the proposed tolerance reductions and deletions. Consideration of the additional tolerance reductions and deletions would have resulted in lower aggregate risk estimates, as explained in the documents *Addendum to: D331951, Cyfluthrin/Beta-cyfluthrin – Human Health Risk Assessment For New Uses on Grasses, Alfalfa, and Sugar Beet Seed and Revised Tolerances on Cereal Grain Commodities; D339413, Cyfluthrin and beta-Cyfluthrin, Summary of Analytical Chemistry and Residue Data*; *Cyfluthrin and beta-Cyfluthrin: Second Addendum to D331951, Cyfluthrin/Beta-cyfluthrin – Human Health Risk Assessment For New Uses on Grasses, Alfalfa, and Sugar Beet Seed and Revised Tolerances on Cereal Grain Commodities;* and *D339413, Cyfluthrin and beta-Cyfluthrin, Summary of Analytical Chemistry and Residue Data.* These documents are available at *http://www.regulations.gov* in the docket established for this action (EPA–HQ–OPP–2007–0337).

Since EPA considered these new tolerances for cyfluthrin and beta-cyfluthrin in its most recent risk assessments, establishing these tolerances will not increase the estimated aggregate risks resulting from use of cyfluthrin/beta-cyfluthrin, as discussed in the February 27, 2008 FRL–8350–3) **Federal Register** document. Refer to this **Federal Register** document, available at *http://www.regulations.gov*, for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action.

Based on the risk assessments discussed in the final rule published in the **Federal Register** of February 27, 2008, 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 cyfluthrin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography (GC)/electron-capture detection (ECD)) 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*.

B. International Residue Limits

CODEX Maximum Residue Levels (MRLs) have been established for residues of cyfluthrin on cattle milk at 0.01 ppm and on maize at 0.05 ppm. No CODEX MRLs have been established for the enriched isomer, beta-cyfluthrin. In this tolerance action EPA is establishing a tolerance on field corn grain at 0.05 ppm, equivalent to the CODEX MRL on maize. EPA is reducing the existing U.S. tolerances for milk and milk fat to 0.2 ppm and 5.0 ppm, respectively. The U.S. milk tolerances are necessarily higher than the CODEX MRL due to registrations in the United States on additional feed items, including grasses, the biggest contributor to dairy cattle dietary burdens of cyfluthrin.

C. Response to Comments

One comment was received from a private citizen in response to the notice of filing. The commenter requested that the petition for cyfluthrin be denied for the following reasons: ''It is a suspected endocrine disruptor. It is moderately toxic and has mortality for many species.'' The commenter presented no scientific data or other evidence to support the endocrine disruptor claim and there is no evidence in the toxicity database available to EPA, including the 2–generation reproduction study, that either cyfluthrin or beta-cyfluthrin induces any endocrine disruption. EPA considered all available scientific data for cyfluthrin and the estimated aggregate exposure to the pesticide, including anticipated dietary (food and drinking water) and residential exposures, and concluded that there is a reasonable certainty that no harm will result from aggregate exposure to cyfluthrin. The commenter has provided no information to alter this finding. EPA, therefore, disagrees with the commenter that the petition should be denied.

Comments were also received from a private citizen asking who had filed the petition and expressing general concern about pesticide residues in food. The petitioner was clearly identified in the notice of filing as Bayer CropScience. Regarding the commenter's concern about pesticide residues in food, EPA has received general comments such as this on numerous previous occasions. Refer to the following **Federal Register** issues for the Agency's previous responses to these kinds of objections: October 29, 2004 (69 FR 63096) (FRL–7681–9), January 7, 2005 (70 FR 1354) (FRL–7691–4), and June 30, 2005 (70 FR 37686) (FRL–7718–3).

V. Conclusion

Therefore, tolerances are established, revised, or deleted for residues of cyfluthrin and established for residues of beta-cyfluthrin as proposed by the registrant and specified in Unit II.

VI. Statutory and Executive Order Reviews

This final rule establishes, revises, or delete tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. 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 final rule has been exempted from review under Executive Order 12866, this final 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) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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.*, 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).

Since tolerances and exemptions that are established, revised, or deleted on the basis of a petition under section 408(d) of FFDCA, such as the tolerances 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.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not 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).

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).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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 9, 2008.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.436 is amended by revising the section heading and the table in paragraph (a)(1) and adding paragraph (a)(4) to read as follows:

§ 180.436 Cyfluthrin and the isomer beta-cyfluthrin; tolerances for residues.

(a) * * * (1) * * *

Commodity	Parts per million
Alfalfa	5.0
Alfalfa, forage	5.0
Alfalfa, hay	13
Almond, hulls	0.5
Barley, bran	0.5
Barley, grain	0.15
Beet, sugar, dried pulp	1.0
Beet, sugar, roots	0.10
Brassica, head and stem, subgroup 5A	2.5
Brassica, leafy greens, subgroup 5B	7.0
Buckwheat, grain	0.15
Carrot, roots	0.20
Cattle, fat	2.0
Cattle, meat	0.10
Cattle, meat byproducts	0.10
Citrus, dried pulp	0.3
Citrus, oil	0.3
Corn, field, grain	0.05
Corn, pop, grain	0.05
Corn, sweet, kernel plus cob with husks removed	0.05
Cotton, hulls	2.0
Cotton, refined oil	2.0
Cotton, undelinted seed	1.0
Egg	0.01
Fruit, citrus, group 10	0.2
Fruit, pome, group 11	0.5
Fruit, stone, group 12	0.3
Goat, fat	2.0
Goat, meat	0.05
Goat, meat byproducts	0.05
Grain, aspirated fractions	150
Grain, cereal, forage, fodder and hay, group 16, forage, except rice	25
Grain, cereal, forage, fodder and hay, group 16, hay, except rice	6.0
Grain, cereal, forage, fodder and hay, group 16, stover, except rice	30
Grain, cereal, forage, fodder and hay, group 16, straw, except rice	7.0
Grape	1.0
Grape, raisin	3.5
Grass, forage, fodder and hay, group 17, forage	12
Grass, forage, fodder and hay, group 17, hay	50
Hog, fat	0.5
Hog, meat	0.01
Hog, meat byproducts	0.01
Hop, dried cones	20.0
Hop, vines	4.0
Horse, fat	2.0
Horse, meat	0.05
Horse, meat byproducts	0.05
Lettuce, head	2.0
Lettuce, leaf	3.0
Milk	0.2
Milk, fat	5.0
Millet, grain	0.15
Mustard greens	7.0
Nut, tree, group 14	0.01
Oat, bran	0.5
Oat, grain	0.15
Pea and bean, dried shelled, except soybean, subgroup 6C	0.15
Pea, dry, seed	0.15
Pea, southern, succulent	0.25
Peanut	0.01
Peanut, hay	6.0
Pepper	0.50
Pistachio	0.01
Poultry, fat	0.01
Poultry, meat	0.01
Poultry, meat byproducts	0.01
Radish, roots	1.0
Rye, bran	0.5
Rye, grain	0.15
Sheep, fat	2.0
Sheep, meat	0.05
Sheep, meat byproducts	0.05
Sorghum, grain, grain	3.5
Soybean, forage	8.0
Soybean, hay	4.0
Soybean, seed	0.03
Sugarcane, cane	0.05
Sugarcane, molasses	0.20
Sunflower, forage	5.0
Sunflower, seed	0.02
Teosinte, grain	0.05
Tomato	0.20
Tomato, paste	0.5
Tomato, pomace	5.0
Triticale, grain	0.15
Turnip, greens	7.0
Vegetable, cucurbit, group 9	0.1
Vegetable, fruiting, group 8	0.5
Vegetable, leafy greens, except Brassica, group 4	6.0
Vegetable, tuberous and corm, subgroup 1C	0.01
Wheat, bran	0.5
Wheat, grain	0.15
Wheat, shorts	0.5

* * * * *

(4) Tolerances are established for residues of the isomer, beta-cyfluthrin, cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate [mixture comprising the enantiomeric pair (*R*)-α-cyano-4-fluoro-3-phenoxybenzyl (1*S*,3*S*)-3-(2,2-dichlorovinyl)-2,2-dimethylcyclopropanecarboxylate and (S)-α-cyano-4-fluoro-3-phenoxybenzyl (1*R*,3*R*)-3-(2,2-dichlorovinyl)-2,2-dimethylcyclopropanecarboxylate with the enantiomeric pair (*R*)-α-cyano-4-fluoro-3-phenoxybenzyl (1*S*,3*R*)-3-(2,2-dichlorovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-α-cyano-4-fluoro-3-phenoxybenzyl (1*R*,3*S*)-3-(2,2-dichlorovinyl)-2,2-dimethylcyclopropanecarboxylate], in or on the following raw agricultural commodities:

Commodity	Parts per million
Alfalfa	5.0
Alfalfa, forage	5.0
Alfalfa, hay	13
Almond, hulls	0.5
Barley, bran	0.5
Barley, grain	0.15
Beet, sugar, dried pulp	1.0
Beet, sugar, roots	0.10
Brassica, head and stem, subgroup 5A	2.5
Brassica, leafy greens, subgroup 5B	7.0
Buckwheat, grain	0.15
Carrot, roots	0.20
Cattle, fat	2.0
Cattle, meat	0.10
Cattle, meat byproducts	0.10
Citrus, dried pulp	0.3
Citrus, oil	0.3
Corn, field, grain	0.05
Corn, pop, grain	0.05
Corn, sweet, kernel plus cob with husks removed	0.05
Cotton, hulls	2.0
Cotton, refined oil	2.0
Cotton, undelinted seed	1.0
Egg	0.01
Fruit, citrus, group 10	0.2
Fruit, pome, group 11	0.5
Fruit, stone, group 12	0.3
Goat, fat	2.0
Goat, meat	0.05
Goat, meat byproducts	0.05
Grain, aspirated fractions	150
Grain, cereal, forage, fodder and hay, group 16, forage, except rice	25
Grain, cereal, forage, fodder and hay, group 16, hay, except rice	6.0
Grain, cereal, forage, fodder and hay, group 16, stover, except rice	30
Grain, cereal, forage, fodder and hay, group 16, straw, except rice	7.0
Grape	1.0
Grape, raisin	3.5
Grass, forage, fodder and hay, group 17, forage	12
Grass, forage, fodder and hay, group 17, hay	50
Hog, fat	0.5
Hog, meat	0.01
Hog, meat byproducts	0.01
Hop, dried cones	20.0
Hop, vines	4.0
Horse, fat	2.0
Horse, meat	0.05
Horse, meat byproducts	0.05
Lettuce, head	2.0
Lettuce, leaf	3.0
Milk	0.2
Milk, fat	5.0
Millet, grain	0.15
Mustard greens	7.0
Nut, tree, group 14	0.01
Oat, bran	0.5
Oat, grain	0.15
Pea and bean, dried shelled, except soybean, subgroup 6C	0.15
Pea, dry, seed	0.15
Pea, southern, succulent	0.25
Peanut	0.01
Peanut, hay	6.0
Pepper	0.50
Pistachio	0.01
Poultry, fat	0.01
Poultry, meat	0.01
Poultry, meat byproducts	0.01
Radish, roots	1.0
Rye, bran	0.5
Rye, grain	0.15
Sheep, fat	2.0
Sheep, meat	0.05
Sheep, meat byproducts	0.05
Sorghum, grain, grain	3.5
Soybean, forage	8.0
Soybean, hay	4.0
Soybean, seed	0.03
Sugarcane, cane	0.05
Sugarcane, molasses	0.20
Sunflower, forage	5.0
Sunflower, seed	0.02
Teosinte, grain	0.05
Tomato	0.20
Tomato, paste	0.5
Tomato, pomace	5.0
Triticale, grain	0.15
Turnip, greens	7.0
Vegetable, cucurbit, group 9	0.1
Vegetable, fruiting, group 8	0.5
Vegetable, leafy greens, except Brassica, group 4	6.0
Vegetable, tuberous and corm, subgroup 1C	0.01
Wheat, bran	0.5
Wheat, grain	0.15
Wheat, shorts	0.5

* * * * *

[FR Doc. E8–22477 Filed 9–23–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006-0175; FRL–8382–3]

Pesticides; Food Packaging Treated with a Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule excepts food packaging materials (e.g. paper and paperboard, coatings, adhesives, and polymers) from the definitions of ''pesticide chemical'' and ''pesticide chemical residue'' under the Federal Food Drug and Cosmetic Act (FFDCA) section 201(q), when such food packaging materials have been treated with a pesticide regulated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). This final rule expands the scope of the current exception which applies only to food packaging impregnated with an insect repellent – one type of pesticide. This final rule, as with the rule it amends, only applies to the food packaging materials themselves; it does not otherwise limit EPA's FFDCA jurisdiction over the pesticidal substances in or on such products or limit FDA's jurisdiction over substances subject to FDA regulation as food additives. This rule eliminates duplicative FFDCA jurisdiction and economizes federal government resources while continuing to protect human health and the environment. It is important to note that under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA will continue to regulate the food packaging as an inert ingredient of the pesticide product and regulate the pesticide active ingredient in the treated food packaging under both FIFRA and the FFDCA (except as otherwise provided by statute). The text of this final rule is identical to a direct final rule EPA issued on December 6, 2006. EPA received several comments opposing that direct final rule and therefore withdrew the rule on February 2, 2007, consistent with EPA policy. EPA issued a subsequent proposed rule on April 6, 2007 for additional public comment.

DATES: This final rule is effective September 24, 2008.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0175. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*.