requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by March 10, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is 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 in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (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.

VIII. Public Docket

EPA has established a record for this rulemaking under docket number [OPP–300447] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

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

Dated: January 2, 1997.

Daniel M. Barolo,

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. 346a and 371.

2. In § 180.443, by adding a new paragraph (d) to read as follows:

§ 180.443 Myclobutanil; tolerances for residues.

* * * * *

(d) A time-limited tolerance is established for residues of the fungicide myclobutanil, in connection with use of the pesticide under section 18 emergency exemption granted by EPA. The tolerance is specified in the following table. This tolerance expires and is automatically revoked on the date specified in the table without further action by EPA.

Commodity	Parts per million	Expiration/revocation date
Cucurbit vegetables.	0.3	Nov. 30, 1997.

[FR Doc. 97–514 Filed 1–8–97; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300448; FRL–5581–9]

RIN 2070–AB78

Zinc Phosphide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of phosphine resulting from the use of the rodenticide zinc phosphide in or on the

raw agricultural commodities sugarbeets and potatoes in connection with crisis exemptions declared by the state of Idaho under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of zinc phosphide on sugarbeets and potatoes. This regulation establishes maximum permissible levels for residues of phosphine in these foods pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and be revoked automatically without further action by EPA on October 15, 1997.

DATES: This regulation becomes effective January 9, 1997. This regulation expires and is revoked automatically without further action by EPA on October 15, 1997. Objections and requests for hearings must be received by EPA on or before March 10, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket number, [OPP–300448], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the document control number, [OPP–300448], must also be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300448]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202. (703) 308–8326, e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the phosphine resulting from the use of the rodenticide zinc phosphide in or on potatoes and sugar beet roots at 0.05 part per million (ppm) and in or on sugar beet tops at 0.1 ppm. These tolerances will expire and be revoked automatically without further action by EPA on October 15, 1997.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 CFR 58135, 11/13/96).

New section 408(b)(2)(A)(i) 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) 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, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

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

Section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Section 408(l)(6) also requires EPA to promulgate regulations by August 3, 1997, governing the establishment of tolerances and exemptions under section 408(l)(6) and requires that the regulations be consistent with section 408(b)(2) and (c)(2) and FIFRA section 18.

Section 408(l)(6) allows EPA to establish tolerances or exemptions from the requirement for a tolerance, in connection with EPA's granting of FIFRA section 18 emergency exemptions, without providing notice or a period for public comment. Thus, consistent with the need to act expeditiously on requests for emergency exemptions under FIFRA, EPA can establish such tolerances or exemptions under the authority of section 408(e) and (l)(6) without notice and comment rulemaking.

In establishing section 18-related tolerances and exemptions during this interim period before EPA issues the section 408(l)(6) procedural regulation and before EPA makes its broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on section 18-related tolerances and exemptions that clearly qualify under the new law.

II. Emergency Exemptions for Zinc Phosphide on Potatoes and Sugar beets and FFDCA Tolerances

On August 5, 1996, the Idaho Department of Agriculture availed itself of the authority to declare the existence

of a crisis situation within the state, thereby authorizing use under FIFRA section 18 of zinc phosphide on potatoes and sugar beets for control of meadow voles and field mice. Potato and sugarbeet growers in Idaho have experienced substantial losses in recent years due to vole and mouse damage. The only registered option available to sugarbeet and potato growers in Idaho is to use zinc phosphide on non-crop land surrounding their fields. Where fields are surrounded by other crops or bare ground, there are no registered controls or other effective non-chemical methods.

As part of its assessment of this crisis exemption, EPA assessed the potential risks presented by residues of phosphine on potatoes and sugar beets. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would clearly be consistent with the new safety standard and with FIFRA section 18. These tolerances for residues of phosphine will permit the marketing of potatoes and sugar beets treated in accordance with the provisions of the section 18 emergency exemptions. Consistent with the need to move quickly on the emergency exemptions and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e) as provided in section 408(l)(6). Although these tolerances will expire and be revoked automatically without further action by EPA on October 15, 1997, under FFDCA section 408(l)(5), residues of phosphine not in excess of the amount specified in these tolerances remaining in or on potatoes and sugar beet roots and tops after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemptions. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether zinc phosphide meets the requirements for registration under FIFRA section 3 for use on potatoes or sugar beets or whether permanent tolerances for zinc phosphide for potatoes, or sugar beet roots or tops would be appropriate. This action by EPA does not serve as a basis for registration of zinc phosphide by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any States other than Idaho to use this product on these crops under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for zinc phosphide, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or Margin of Exposure (MOE) calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Zinc phosphide is already registered by EPA for outdoor residential lawn, nursery, right-of-way, recreational area and other non-food uses, as well as several food use registrations. EPA has also assessed the toxicology data base for zinc phosphide in its evaluation of an application for a regional registration on sugarbeets. Phosphine is a highly reactive gas that reacts with raw agricultural commodities to form bound phosphate residues. The Agency stated in a Registration Standard for Zinc

Phosphide (June 23, 1982) that a tolerance of 0.1 ppm for phosphine resulting from the use of zinc phosphide would be allowable for raw agricultural commodities, provided the bound phosphate residues can be fully characterized. At the time the registration standard was issued, the Agency identified 70 percent of the bound phosphate residues in treated commodities as consisting of oxy-acids of phosphorus, which are considered toxicologically insignificant at the levels found in treated commodities. Data have since been submitted which demonstrate that the remaining 30 percent of residues consists of oxidation products of phosphine (oxyphosphorus acids and/or their salts), which are also considered toxicologically insignificant at the levels found in treated commodities. EPA believes it has sufficient data to assess the hazards of zinc phosphide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the time-limited tolerances for residues of phosphine resulting from the use of zinc phosphide in or on potatoes and sugar beet roots at 0.05 ppm and in or on sugar beet tops at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

1. *Chronic toxicity.* Based on the available chronic toxicity data, the Office of Pesticide Programs (OPP) has established the RfD for zinc phosphide at 0.0003 milligrams(mg)/kilogram(kg)/day. The RfD was established based on an lowest effect level (LEL) of 3.48 mg/kg/day from an open literature 90–day rat feeding study. Effects observed at the LEL were decreased food consumption and body weight. An uncertainty factor of 10,000 was used due to data gaps and the absence of a NOEL in the study.

2. *Acute toxicity.* No toxicology studies were identified by OPP which demonstrated the need for an acute dietary risk assessment.

3. *Short-term non-dietary inhalation and dermal toxicity.* Since 10 percent zinc phosphide tracking powder has been classified in Toxicity Category IV (LC50 >19.6 mg/L), inhalation exposure resulting from this section 18 action is not considered toxicologically significant. For short-term and intermediate dermal MOE calculations, the Health Effects Division (HED), of OPP recommended use of the adjusted acute dermal LD_{50} NOEL of 1,000 mg/kg from the acute dermal toxicity study in rabbits. In the absence of other dermal toxicity data, the acute NOEL dose of 1,000 mg/kg was divided by a 100–fold uncertainty factor to approximate a 3–month dermal NOEL for worker dermal exposure. The 3 month dermal NOEL is 10 mg/kg/day. At the LEL of 2,000 mg/kg in the rabbit dermal LD_{50} study, the animals lost weight, but no mortalities were observed up to 5,000 mg/kg highest dose tested (HDT). Actual risk from dermal exposure is likely to be significantly less, since zinc phosphide reacts with water and stomach acid to produce the toxic gas phosphine from oral, but not dermal, exposure.

4. *Carcinogenicity.* Zinc phosphide has not been reviewed for carcinogenicity, as there are no adequate carcinogenicity studies in rodents available in the toxicology data base. OPP has waived carcinogenicity data requirements for zinc phosphide on the basis that exposures to zinc phosphide are controlled to prevent exposures to humans. Applications to crop areas are such that the zinc phosphide will dissipate.

B. Aggregate Exposure

Tolerances are established for residues of the phosphine resulting from the use of zinc phosphide on several raw agricultural commodities (40 CFR 180.284(a) and (b)). There is no reasonable expectation of secondary residues in meat, milk, poultry, or eggs (paragraph (a)(3) of 40 CFR 180.6). Any residues of zinc phosphide ingested by livestock would be metabolized to naturally occurring phosphorous compounds.

For the purpose of assessing chronic dietary exposure from zinc phosphide, EPA assumed tolerance level residues and 100 percent of crop treated for the proposed and existing food uses of zinc phosphide. These conservative assumptions result in overestimation of human dietary exposures.

Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. There is no information on zinc phosphide (phosphine) residues in ground water and runoff in the EFED One-Liner Data Base. There is no established Maximum Concentration Level (M.C.L.) for residues of zinc phosphide (phosphine) in drinking water. No drinking water health advisory levels have been established for zinc phosphide (phosphine). There is no entry for zinc phosphide (phosphine) in the ''Pesticides in Groundwater Database'' (EPA 734–12–92–001, September 1992). Based on the available studies used in EPA's assessment of environmental risk, EPA does not anticipate exposure to residues of zinc phosphide (phosphine) in drinking water.

There are residential uses of zinc phosphide and EPA acknowledges that there may be short-, intermediate-, and long-term non-occupational, non-dietary exposure scenarios. OPP has identified a toxicity endpoint for an intermediate-term residential risk assessment. However, no acceptable reliable dermal exposure data to assess these potential risks are available at this time. Given the time-limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to aggregate non-occupational exposure with dietary exposure, the Agency will make its safety determination for these tolerances based on those factors which it can reasonably integrate into a risk assessment.

At this time, the Agency has not made a determination that zinc phosphide and other substances that may have a common mode of toxicity would have cumulative effects. Given the time limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to define common mode of toxicity, the Agency will make its safety determination for these tolerances based on those factors which can reasonably integrate into a risk assessment. For purposes of these tolerances only, the Agency is considering only the potential risks of zinc phosphide in its aggregate exposure.

C. Safety Determinations For U.S. Population

Taking into account the completeness and reliability of the toxicity data, EPA has concluded that dietary exposure to zinc phosphide will utilize 27.5 percent of the RfD for the U.S. population. EPA does not anticipate chronic exposure to residues of zinc phosphide (phosphine) in drinking water. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to zinc phosphide residues.

D. Determination of Safety for Infants and Children

There were no developmental findings in rats up to a maternally toxic dose of 4.0 mg/kg/day zinc phosphide nor in mice at 4.0 mg/kg/day (HDT). A comparison of the NOEL of 0.1 mg/kg/day in the recent 90–day rat gavage study and the NOELs for developmental toxicity in rats and mice (4.0 mg/kg/day) provides a 40–fold difference, which demonstrates that there are no special pre-natal sensitivities for infants and children. Since there are no

reproduction studies with zinc phosphide, the post-natal potential for effects from zinc phosphide in infants and children cannot be fully evaluated. However, the above information, together with the uncertainty factor of 10,000 utilized to calculate the RfD for zinc phosphide, is considered adequate protection for infants and children with respect to prenatal and postnatal development against dietary exposure to zinc phosphide residues.

EPA has concluded that the percent of the RfD that will be utilized by chronic dietary exposure to residues of zinc phosphide ranges from 6.8 percent for nursing infants (<1 year old) up to 59.9 percent for children 1 to 6 years old. However, this calculation assumes tolerance level residues for all commodities and is therefore an over-estimate of dietary risk. Refinement of the dietary risk assessment by using anticipated residue data would reduce dietary exposure. As mentioned before, EPA does not expect chronic exposure from drinking water. EPA therefore concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to zinc phosphide.

V. Other Considerations

The metabolism of zinc phosphide in plants and animals is adequately understood for the purposes of these tolerances. The residue of concern is unreacted zinc phosphide, measured as phosphine, that may be present. Adequate methods for purposes of data collection and enforcement of tolerances for zinc phosphide residues as phosphine gas are available. Methods for determining zinc phosphide residues of phoshine gas are described in PAM, Vol. II, as Method A.

VI. Conclusion

Therefore, tolerances in connection with the FIFRA section 18 emergency exemptions are established for residues of phosphine resulting from the use of zinc phosphide in potatoes and sugar beet roots at 0.05 ppm and sugar beet tops at 0.1 ppm. These tolerances will expire and be automatically revoked without further action by EPA on October 15, 1997.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by March 10, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is 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 in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (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.

VIII. Public Docket

EPA has established a record for this rulemaking under docket number [OPP–300448] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110

Stat. 847), EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

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

Dated: January 2, 1997.

Daniel M. Barolo,

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. 346a and 371.

2. In § 180.284, by adding a new paragraph (c) to read as follows:

§ 180.284 Zinc phosphide; tolerances for residues.

* * * * *

(c) Time-limited tolerances are established for residues of the phosphine resulting from the use of the rodenticide zinc phosphide in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table. The tolerances expire and are automatically revoked on the date specified in the table without further action by EPA.

Commodity	Parts per million	Expiration/ Revocation Date
Potatoes	0.05	October 15, 1997
Sugar beet (roots)	0.05	October 15, 1997
Sugar beet (tops) ..	0.1	October 15, 1997

[FR Doc. 97–512 Filed 1–8–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 382, 383, and 390

[FHWA Docket No. MC–93–17]

RIN 2125–AE13

Federal Motor Carrier Safety Regulations; Intermodal Transportation; Withdrawal of Final Rule

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; withdrawal.

SUMMARY: On December 29, 1994, the FHWA published a final rule [59 FR 67544] which implemented the Intermodal Safe Container Transportation Act of 1992 (the 1992 Act). On October 11, 1996, the President signed the Intermodal Safe Container Transportation Amendments Act of 1996 (the 1996 Act) which substantially amended the 1992 Act and removed the requirement that the Secretary of Transportation promulgate implementing regulations. The FHWA, therefore, is withdrawing its December 29 final rule. The FHWA has determined that regulations are not necessary to implement the 1992 Act as amended by the 1996 Act. The 1996 Act will become effective on April 9, 1997. The FHA is also amending the applicability provisions of the regulations on controlled substances and alcohol use and testing.

EFFECTIVE DATE: January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Peter C. Chandler, Office of Motor Carrier Research and Standards, (202) 366–5763; or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background and Summary of the 1992 Act

Almost every intermodal container and trailer travels over the highway at least once during shipment. Motor carriers are usually at the beginning or end of the intermodal transportation chain. It is difficult for motor carriers to comply with highway weight limitations without knowledge of the weight and transportation characteristics of the contents of a container or trailer. The purpose of highway weight laws is to minimize highway and bridge wear and protect the motoring public.

In the 1980s, motor carriers complained that they had little or no control over the loading of the containers or trailers, were forced to accept containers and trailers with an unknown cargo and weight by threat of economic retaliation, and yet were held responsible for compliance with weight laws. A motor carrier might suspect that a loaded container or trailer was too heavy for the equipment or illegal under State law, but would have no reasonable grounds for refusing to transport it without knowledge of the cargo weight.

On October 28, 1992, the President signed the Intermodal Safe Container Transportation Act of 1992 (the 1992 Act) [Pub. L. 102–548, 106 Stat. 3646, partly codified at 49 U.S.C. 5901–5907 (formerly 49 U.S.C. 501 and 508)]. The 1992 Act requires the person who loads an intermodal container or trailer to prepare a written certification that includes a reasonable description and the actual gross weight of the cargo, and to give the certification to the initial carrier. Each carrier is required to forward the certification to the next carrier transporting the container or trailer. The information will enable motor carriers, which are already familiar with the tare weights of containers, trailers, and chassis, to better estimate the axle weights and gross weight of a given combination. If the certified cargo weight is incorrect and the motor carrier is fined for operating an overweight vehicle as a result of that error, the motor carrier has a lien on the cargo until the shipper or owner of the cargo reimburses it for the fine and all costs associated with the incident. Coercing a person to transport a loaded container or trailer without a certification or with a weight that would make the vehicle combination illegally overweight under applicable State law was prohibited by the 1992 Act.

Summary of Events Between the Enactment of the 1992 Act and the 1996 Act

The FHWA published a notice of proposed rulemaking (NPRM) on July 14, 1993 (58 FR 37895). The NPRM proposed to amend part 390 of the Federal Motor Carrier Safety Regulations (FMCSRs) by adding a new Subpart C, Intermodal Transportation. Most of the proposed regulations simply codified the statutory requirements. The comment period for the NPRM originally closed on September 13, 1993. In response to several requests, the FHWA reopened the comment period and extended it until October 28, 1993.