

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