

"INT Oklahoma City 113" and McAlester, OK, 286" radials; McAlester, to Fort Smith, AR."

V-354 [Amended]

By removing the words "via INT Oklahoma City 045" and Pioneer, OK, 186" radials;" and substituting the words "via INT Oklahoma City 030" and Pioneer, OK, 179" radials;"

V-358 [Amended]

By removing the words "INT Ardmore 327" and Oklahoma City, OK, 180" radials;" and substituting the words "INT Ardmore 327" and Oklahoma City, OK, 195" radials;"

V-436 [Revised]

From Hobart, OK, via INT Hobart 085" and Oklahoma City, OK, 216" radials; Oklahoma City; INT Oklahoma City 068" and Tulsa, OK, 230" radials; to Tulsa.

V-440 [Amended]

By removing the words "INT Sayre 101" and Oklahoma City, OK, 242" radials;" and substituting the words "INT Sayre 104" and Oklahoma City, OK, 248" radials;"

V-507 [Amended]

By removing the words "INT Oklahoma City 282" and Gage, OK, 152" radials;" and substituting the words "INT Oklahoma City 284" and Gage, OK, 152" radials;"

PART 75—[AMENDED]

3. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

4. Section 75.100 is amended as follows:

J-20 [Amended]

By removing the words "INT Liberal 137" and Oklahoma City, OK, 282" radials;" and substituting the words "INT Liberal 137" and Oklahoma City, OK, 284" radials;"

J-21 [Amended]

By removing the words "INT Dallas-Fort Worth 355" and Oklahoma City, OK, 158" radials; Oklahoma City; Wichita, KS;" and substituting the words "INT Dallas-Fort Worth 355" and Oklahoma City, OK, 162" radials; Oklahoma City; Pioneer, OK; Wichita, KS;"

Issued in Washington, D.C., on September 11, 1985.

Daniel Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-22282 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

[T.D. 85-158]

Country of Origin Marking of Pistachio Nuts

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Recission of rulings.

SUMMARY: Customs previously ruled that imported pistachio nuts which are processed by roasting, need not subsequently be marked as products of the foreign country where grown, but become a product of the country where the roasting is performed.

Customs has received a request to rescind these rulings because the roasting process does not substantially transform pistachio nuts which have otherwise attained the character in which they will be sold to consumers prior to importation. Specifically, it has been called to Customs attention that pistachio nuts which are grown in Iran are then roasted elsewhere than in Iran. These roasted pistachio nuts are then sold without any indication that the nuts are products of Iran, and under brand names which imply that they are products of California. Customs has decided that the roasting, roasting and salting; or roasting, salting, and coloring; of pistachio nuts, without more, does not result in a substantial transformation. Accordingly, the previous rulings are being rescinded and the containers of such products must be marked to indicate the country of origin of the raw products.

EFFECTIVE DATE: October 18, 1985.

FOR FURTHER INFORMATION CONTACT: Lorrie R. Rodbart, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that all articles of foreign origin, or their containers, imported into the U.S. shall be marked in a conspicuous place with the English name of their country of origin to indicate to an ultimate purchaser in the U.S., the country of origin of the article. This statute was enacted to make consumers aware of the country of origin of articles so that they can choose between buying domestic or foreign articles. Part 134, Customs Regulations (19 CFR Part 134), sets forth the country of origin marking

requirements of 19 U.S.C. 1304. Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines "country of origin" as "the country of manufacture, production, or growth of any article of foreign origin entering the United States." An article which is grown or manufactured in a particular country and processed prior to its sale to a retail purchaser is considered to be the product of the country in which it was grown or manufactured unless the processing substantially transforms the article. A substantial transformation has traditionally been defined as a change which results in a new and different article of commerce with a new name, character, or use. Although trade usage and opinion are important in making this determination, it is Customs' position that a substantial transformation will not occur, with a resultant change in country of origin, if the process is merely a minor one which leaves the identity of the article intact. To hold otherwise would thwart the purposes for which country of origin determinations must be made, and would be inconsistent with recent court decisions and the purposes for which Congress enacted the marking statute.

Customs' previous rulings on the significance of the roasting process have been questioned by domestic producers. In ruling #724350, dated June 4, 1984, and ruling #726412, dated September 25, 1984, the issue before Customs was whether the process of roasting imported raw pistachio nuts substantially transformed these goods into a new and different article of commerce. Customs held that the roasting was a substantial transformation.

Customs has been requested to rescind these rulings on the basis that the roasting of these products does not result in a substantial transformation, both because it does not result in a new and different article of commerce with a new name, character, or use; and because roasting is not a substantial manufacturing or processing operation. Customs determined that a review of the above rulings was warranted and published a notice in the *Federal Register* on February 11, 1985 (50 FR 5629), soliciting public comments before any change was made.

Discussion of Comments

Sixty-six comments were received in response to the notice. The issues raised by the commenters are analyzed under the following six topics:

The Statute

Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that, "every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked . . . in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article" (emphasis added).

According to *United States v. Friedlaender & Co., Inc.*, 27 CCPA 297, 302, C.A.D. 104 (1940), the purpose of the statute is to "mark the goods so that at the time of purchase the ultimate purchaser may, knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will", cited in *Globemaster, Inc. v. United States*, 68 Cust. Ct. 77, 80, C.D. 4340, 340 F. Supp. 974, 976 (1972) and *United States v. Ury*, 106 F. 2d 28, 29, (2d Cir. 1939). In addition, as to imported products from competing foreign sources, it was recognized that particular foreign origin is relevant. This is based upon the general reputation for quality; the political and social conditions in the country, and the national origin of the particular consumer. See, generally, *United States v. Friedlaender & Co., Inc.*, *supra*.

As stated in the notice of February 11, 1985 (50 FR 5629), the impetus for this solicitation of comments came from a group of domestic pistachio nut growers who are competing with foreign pistachios, primarily from Iran. The notice provided by a country of origin marking on a retail package is necessary to give a retail purchaser the information needed to make a choice between products of different countries.

The Need for Marking

The language of 19 U.S.C. 1304 makes it plain that imported merchandise must be marked, as much as the nature of the article permits, in a way which will reach the ultimate purchaser. If an imported product is substantially transformed, the person who transforms the article is the ultimate purchaser of the article. If the imported article is repacked after this substantial transformation, the container in which it is repacked and in which it is purchased by a retail purchaser does not have to bear a country of origin marking. The substantial transformation of an imported article ends its status as a product of that foreign country of origin for Customs purposes. This is permissible pursuant to 19 U.S.C. 1304 and judicial precedent such as *United States v. Gibson-Thomsen Co., Inc.*, 27

CCPA 267, C.A.D. 98 (1940) and *Midwood Industries, Inc. v. United States*, 64 Cust. Ct. 499, C.D. 4026, 315 F. Supp. 951 (1970), appeal dismissed, 57 CCPA 141 (1970).

A number of commenters have argued that Customs need not be concerned with country of origin marking on retail containers of imports for the following reasons:

1. Labeling is more appropriately dealt with by other governmental bodies such as the Food and Drug Administration (FDA) and the Federal Trade Commission (FTC) and by the use of other legal remedies such as private redress in section 43(a) of the Lanham Act (15 U.S.C. 1125(a)) and public remedies such as antidumping and countervailing duty provisions.

2. The cost and difficulty of keeping track of different imports from different countries which are combined before a retail product is made from these imports is substantial.

We do not agree that the legislative intent behind 19 U.S.C. 1304 is similar to that behind most of the other statutes cited. FTC requirements are directed toward providing information which the consumer should be aware of such as content and care labels. The antidumping provisions are directed toward preventing unfair economic competition in the international marketplace. None of these statutes is intended to give a purchaser notice of the country where a particular article was produced.

Thus, rather than reading these statutes as directed toward the same legislative concerns, Customs views each to be addressed to a separate and distinct legislative concern. However, FDA requirements are directed toward country of origin marking pursuant to 21 U.S.C. 16, 343. These requirements are in addition to those Customs enforces pursuant to 19 U.S.C. 1304.

Moreover, we do not agree with the suggestion that Customs is free to ignore the clear requirements of a statute. The efficacy of a statute and the wisdom of its enactment are proper concerns of the legislature. Once a statute is enacted, agencies of the Executive Branch are not free to repeal it administratively by refusing to enforce it, or by enforcing it only in those circumstances in which the outcome is believed to be desirable. Although Customs retains some limited discretion to interpret the language of the statute, we cannot go beyond the language to a question of whether to enforce or not enforce it.

The cost of compliance is noted by commenters as the third reason for non-enforcement. The statutory language

allows limited exemptions from the marking requirement where the expense of marking is economically prohibitive. This subject is discussed below in more detail, in the section entitled "Problems of Compliance."

Scope of Proposal

The notice solicited comments concerning the processing of pistachio nuts.

One commenter contends that any marking of retail packages should await the receipt of enough information on the processing done to each product. We agree. The wording of the notice was designed to afford importers of a wide variety of agricultural goods an opportunity to provide information to enable us to decide whether various agricultural products are substantially transformed by the processes they undergo. The concept of substantial transformation is particularly fact oriented, and the facts in the record determine the ultimate decision.

Substantial Transformation

Judicial precedent, such as *United States v. Gibson-Thomsen Co., Inc.*, *supra*; *Midwood Industries, Inc. v. United States*, *supra*; are most recently, *Uniroyal Inc. v. United States*, 3 CIT 220, 452 F. Supp. 1026 (1982), concern the importation of articles which are then "processed" in the U.S. The question involved in each case was, even though the imported article was processed after importation, did the imported article need to be marked under the statute.

To arrive at this conclusion, the courts in each case had to determine if an article produced as a result of this processing was a new and different article of commerce with a new name, character, or use. In making this determination, it is necessary to examine the changes wrought by the U.S. processing to determine whether U.S. processing is substantial, and creates a new and different article of commerce, or alternatively, is insignificant, and leaves the identity of the imported articles intact.

This distinction between a minor change and a change in the basic character of an article, has been incorporated in Part 134, Customs Regulations. Section 134.1(d)(1) provides, "If an imported article will be used in manufacture, the manufacturer may be the 'ultimate purchaser' if he subjects the imported article to a process which results in a substantial transformation of the article, . . ." Section 134.1(d)(2) provides, "If the manufacturing process is merely a minor one which leaves the identity of the

imported articles intact, the consumer or user of the article, who obtains the article after the processing, will be regarded as the 'ultimate purchaser.' "

In determining whether an imported article has been subjected to substantial manufacturing or processing operations in the U.S. which transforms it into a new and different article of commerce, or only to insignificant processing which leaves the identity of the article intact, Customs will consider the following factors:

(1) The physical change in the article as a result of the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(2) The time involved in the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(3) The complexity of the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(4) The level or degree of skill and/or technology required in the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(5) The value added to the article in each foreign country or U.S. insular possession, compared to value added in the U.S.

These criteria are not exhaustive, and one or more criteria may be determinative.

Substantial Transformation Applied

We received several comments on pistachio nuts: some on behalf of domestic growers, others on behalf of importers. The comments on behalf of the domestic growers stress that the moisture in pistachio nuts is reduced from a range of 40 to 60 percent to a range of 4 to 6 percent before roasting. The "roasting" process dries the pistachio nuts further to a moisture content between 2 and 4 percent. This decrease in the moisture is accomplished by drying the pistachio nuts for 25 to 50 minutes in a belt dryer or rotary drum by a person who is unskilled or semiskilled, and this reduction in the moisture costs 2.5 to 3 cents per pound. The final, dried nuts are crisper and may be a different shade of green, but according to these comments, there is no substantial change in the taste or appearance of the nut. According to some producers, pistachio nuts are eaten by consumers both before and after the roasting. However, it should be noted that expert sources consulted by Customs indicated that there is no significant market for unroasted pistachio nuts, particularly for

"snack" consumption. See, Woodruff, J.G., *Tree Nuts*, Second Edition, AVI Publishing Co. (1979) at page 598.

The comments for the importers stress that inshell (unshelled) raw pistachio nuts are shelled, screened and sorted, roasted, salted, and in most cases colored red with food color. The roasting of these nuts for 20 to 30 minutes brings the internal temperature of the nut to 280 degrees Fahrenheit, and substantially changes the chemical composition of the nut. It also destroys mold, spores, and bacteria. After roasting, the nuts are cooled and packaged. Once roasted, the nuts must be protected or else they will become rancid. The value added by roasting is over 100 percent.

The submissions on behalf of the domestic growers and importers do not present a substantially different description of the processing to which pistachio nuts are subjected. Rather, they conflict on the very basic issue of the significance of the changes to the physical and commercial character of the nuts which result from this processing. The domestic producers conclude that the pistachios are merely further dried, and the importers conclude that the heat applied to these nuts changes their fundamental character. Since the conclusions are contradictory, we believe it is appropriate to look to the sufficiency of the evidence presented.

The description of the roasting process by the importers concludes with the statement that this processing substantially changes the chemical composition of the nuts. This change is claimed to necessitate the protection of these nuts from the air. Two appendices were submitted, one for "dried" nuts, the other for "dry roasted" nuts, each of which contains lists of quantities for various components of the nuts. Some of the differences are striking; others do not appear to be of much consequence. For example, the changes in the amount of fiber, phosphorus, and sodium are minimal. The changes in the amount of water, protein, carbohydrates, iron, magnesium, ascorbic acid, and amino acids are substantial.

The submissions on behalf of the domestic growers characterize the application of heat to the pistachios as a drying rather than a substantial transformation. This characterization of the processing is based upon expert opinion by Professor Martin W. Miller of the University of California at Davis which includes a very complete description of the processing of the nuts and the results of such processing. This expert opinion provides the link between the recorded data and the

conclusions as to changes in the physical and commercial character of the nuts. According to this expert, the pistachio nut, after roasting, is merely crisper. The nuts' taste remains the same, and if the color of the nut is changed at all, the change is not noticeable.

After reading all the submissions on this point, it is Customs view that the physical and commercial changes which occur in the pistachio nuts as a result of roasting are not significant, and that the identity and use of the pistachio nut remains intact. Authoritative sources consulted by Customs indicated no commercial uses for green pistachio nuts, and if such uses exist, they are apparently negligible. Roasting appears to be, like picking, sorting, and bagging, simply one of several processing steps to which all pistachio nuts are subjected, no one of which alters or limits the intended or potential commercial use. In view of this, we conclude that there has been no change in the commercial designation or identity, in the fundamental character, or commercial use of the article. So characterized, we believe that the pistachio nuts are not changed into a new and different article by virtue of roasting or other similar incidental processing. Thus, they are not substantially transformed.

Problems of Compliance

Many of the comments focus on the problems created by a conclusion that no substantial transformation of these imported goods has taken place. This conclusion requires that each container of pistachio nuts which, for example, contains pistachio nuts from a number of different countries, be marked with the name of each country from which the pistachio nuts originate. The concern expressed is that such a container would have to contain the names of a large number of countries.

The commenters suggest some options: (1) Standardize labels to include the English name of every country of origin from which the pistachio nuts originate and (2) print a number of different labels and keep track of the countries from which pistachio nuts in a particular container are packaged. The first option is criticized by these commenters because the labels might not accurately reflect the country of origin of the pistachio nuts except coincidentally. They point out that any container which does not include pistachio nuts from each country specified on the container will be incorrectly labelled. According to the commenters, the adoption of the second

option will necessitate an elaborate system of tracking the pistachio nuts from each country to determine in which particular container they have been placed. This, according to the comments, is an extremely difficult and costly process. Because the pistachio nuts are fungible, it is difficult to determine if the countries from which the contents of a specific container originate match the marking of the containers in which the pistachio nuts are packaged.

Customs is not convinced by the argument that country of origin marking on a container of pistachio nuts precludes the pistachio nut purchaser from purchasing from other countries. The economic and marketing factors that impel purchasers to buy from particular countries far outweigh any influence on these decisions that the cost of compliance with the marking law might have. Customs believes that in every instance the buyer must compare the economic advantages resulting from purchasing from a new source country, with the cost of compliance with the country of origin marking law.

Customs has not required that an importer track the origins of each pistachio nut in a particular container. A listing on the container of the countries which provides the constituents of the blend at the time of packing is sufficient. We believe that such a rule of reason eliminates the necessity for tracking each individual pistachio nut while permitting compliance with the marking requirement with a minimum of interference.

Given the flexibility which Customs has allowed by permitting "shotgun" marking, we do not believe that any of the commenters has shown that compliance with the marking law would be excessively costly.

Action

Accordingly, this document rescinds ruling #724350, dated June 4, 1984 and ruling #726412, dated September 25, 1984. We do not view this to be a change in an "established and uniform practice" which entails the protections of section 315(d), Tariff Act of 1930 (19 U.S.C. 1315(d)). The roasting, or roasting and salting of pistachio nuts, without more, is not a substantial transformation of the raw pistachios into new and different articles of commerce. Therefore, the containers of pistachio nuts, which have been roasted; salted; or blended; or any combination of the three processes; must be marked to indicate the country of origin of the raw products in accordance with Part 134, Customs Regulations.

Certification Requirements

In many instances, an importer of these articles does not sell them directly to the ultimate purchaser i.e. the articles are repacked after their release from Customs custody and sent forward for further distribution. In view of this, Customs believes that to further ensure that an ultimate purchaser in the U.S. is aware of the country of origin of these articles, importers must comply with the certification requirements of § 134.25, Customs Regulations (19 CFR 134.25), set forth in T.D. 83-155, published in the *Federal Register* on July 26, 1983 (48 FR 33860). Section 134.25 requires importers to certify to the district director having custody of the articles that: (a) If the importer does the repacking, the new container must be marked in accordance with applicable law and regulations; or (b) if the article is sold or transferred, the importer must notify the subsequent purchaser or repacker, in writing, at the time of sale or transfer, that any repacking of the article must conform to the marking requirements.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved September 4, 1985.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85-22406 Filed 9-17-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 84C-0098]

Poly(Hydroxyethyl Methacrylate)-Dye Copolymers; Listing of Color Additives for Coloring Contact Lenses

Correction

In FR Doc. 85-19672, beginning on page 33336, in the issue of Monday, August 19, 1985, make the following corrections:

1. On page 33337, second column, in the section headed "IV. Conclusion", thirteenth line, "this" should read "the".

§ 73.3121 [Corrected]

2. On page 33338, first column, § 73.3121(a)(6), third line "((4,6-dichloro)" should read "((4,6-dichloro".

BILLING CODE 1505-01-M

21 CFR Part 178

[Docket No. 83F-0097]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Surface Lubricants Used in the Manufacture of Metallic Articles

Correction

In FR Doc. 85-21113, beginning on page 36872, in the issue of Tuesday, September 10, 1985, make the following corrections:

- On page 36872:
 - In the second column, in the SUMMARY paragraph, twelfth line, "hydroxypoly" should read "hydroxypoly".
 - In the third column, first line, "C₂-C₁₅" should read "C₁₂-C₁₅".
- On page 36874, first column, second complete paragraph, insert the following between the twelfth and thirteenth lines: "public disclosure before making the documents available for".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 5H5457/R794; FRL-2697-1]

Pesticide Tolerance for [(1R,3S)3[(1'R,3'S, (1',2',2',2'-Tetrabromoethyl))-2,2-Dimethylcyclopropane Carboxylic Acid (S)Alpha-Cyano-3-Phenoxybenzyl Ester]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a food additive regulation to permit the combined residues of the insecticide [(1R,3S)3[(1'R,3'S, (1',2',2',2'-tetrabromoethyl))-2,2-dimethylcyclopropane-carboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester] and its metabolites calculated as parent in cottonseed oil. This regulation to establish the maximum permissible level for residues of the insecticide in cottonseed oil was requested by American Hoechst Corp. acting as the registered U.S. Agent for Roussel-Uclaf of Paris, France.

EFFECTIVE DATE: Effective on September 18, 1985.

ADDRESS: Written objections, identified by the document control number [FAP 5H5457/R794], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Timothy A. Gardner, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-2690.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of April 1, 1985 (50 FR 12868) which announced that American Hoechst Corporation, Rte. 202-206 North, Somerville, NJ 08876 had submitted food additive petition (FAP) 5H5457 proposing that 21 CFR Part 193 be amended by establishing a regulation permitting the combined residues of the insecticide [(1R,3S)3[(1'RS)(1',2',2',2'-tetrabromoethyl))-2,2-dimethylcyclopropanecarboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester] and its metabolites (S)-alpha-cyano-3-phenoxybenzyl[(1R,3R)-cis,trans-2,2-dimethyl-3-(2,2-dibromovinyl)cyclopropanecarboxylate calculated as parent in the food commodity cottonseed oil at 0.16 part per million (ppm). The tolerance level was subsequently increased to 0.20 ppm.

There were no comments received in response to this petition.

The data submitted in the petition and other relevant material have been evaluated. The toxicity and other relevant data pertaining to this insecticide are discussed and included in a related final rule document, [PP 4F2993/R793], establishing a tolerance in or on the raw agricultural commodity cottonseed appearing elsewhere in this issue of the Federal Register.

The insecticide is considered useful for the purpose for which the food additive regulation is sought and it is concluded that the insecticide may be safely used in accordance with the prescribed manner when such use is in accordance with the label and labeling registered pursuant to FIFRA as amended, (86 Stat. 973, 89 Stat. 973, 89 Stat. 751, U.S.C. 135(a) *et seq.*) Therefore, the food additive regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this rule in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify

the provisions of the regulation deemed objectionable and grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this rule from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-602), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24945).

List of Subjects in 21 CFR Part 193

Food additives, Pesticides and pests.

Dated: September 6, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 21 CFR Part 193 is amended as follows:

PART 193—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

2. Section 193.418 is added to read as follows:

§ 193.418 [(1R,3S)3[(1'RS)(1',2',2',2'-tetrabromoethyl))-2,2-dimethylcyclopropanecarboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester].

A regulation is established to permit the combined residues of the insecticide [(1R,3S)3[(1'RS)(1',2',2',2'-tetrabromoethyl))-2,2-dimethylcyclopropanecarboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester] and its metabolites (S)-alpha-cyano-3-phenoxybenzyl[(1R,3R)-cis,trans-2,2-dimethyl-3-(2,2-dibromovinyl)cyclopropanecarboxylate calculated as parent in or on the following food commodities:

Commodities	Parts per million
Cottonseed oil	0.20

[FR Doc. 85-22092 Filed 9-17-85; 8:45 am]

BILLING CODE 6560-50-M

21 CFR Part 561

[FAP 5H5466/R760; FRL-2898-3]

Pesticide Tolerance for Carbaryl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide carbaryl in or on the animal feed commodity pineapple bran. This regulation to establish a maximum permissible level for residues of carbaryl in or on pineapple bran was requested in a petition by the Union Carbide Agricultural Products Co., Inc.

EFFECTIVE DATE: Effective on September 18, 1985.

ADDRESS: Written objections, identified by the document control number [FAP 5H5466/R780], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of August 7, 1985 (50 FR 31916), which announced that Union Carbide Agricultural Products Co., Inc., PO Box 12014, Research Triangle Park, NC 27709, had submitted feed additive petition 5H5466 to EPA proposing the establishment of a tolerance for residues of the insecticide carbaryl (1-naphthyl N-methyl carbamate) in or on the feed commodity pineapple bran at 20.0 parts per million (ppm).

There were no comments received in response to the notice of filing.

A tolerance of 2.0 was recently established for carbaryl in or on fresh pineapples in the Federal Register issue of May 8, 1985 (50 FR 19359). Since only residue data submitted to support this tolerance was from Mexico, the Agency stated that the tolerance would not support carbaryl's use on domestically