

### C. Revisions to Petitioned-For Tolerance

The petitioner proposed a tolerance for residues of uniconazole-*P* *per se* in or on vegetable, fruiting, group 8. However, based on the results of plant metabolism studies, EPA has determined that the residues of concern to be included in the tolerance expression for fruiting vegetables are uniconazole-*P*, its *R*-enantiomer and its *Z*-isomer. Therefore, EPA has modified the tolerance expression to include all three compounds.

### V. Conclusion

Therefore, the tolerance is established for combined residues of uniconazole-*P*, (E)-(S)-1-(4-chlorophenyl)-4,4-dimethyl-2-(1*H*-1,2,4-triazol-1-yl)pent-1-en-3-ol, its *R*-enantiomer and its *Z*-isomer in or on vegetable, fruiting, group 8 at 0.01 ppm.

### VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDC 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, *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 on the basis of a petition under section 408(d) of FFDC, such as the tolerance 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 FFDC. 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: August 26, 2008.

**Debra Edwards,**

*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. 321(q), 346a and 371.

■ 2. Section 180.643 is added to read as follows:

#### § 180.643 Uniconazole; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide/plant growth regulator uniconazole-*P*, (E)-(S)-1-(4-chlorophenyl)-4,4-dimethyl-2-(1*H*-1,2,4-triazol-1-yl)pent-1-en-3-ol, its *R*-enantiomer and its *Z*-isomer in or on the following raw agricultural commodities:

Commodity	Parts per million
Vegetable, fruiting, group 8	0.01

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2005-0097; FRL-8376-7]

#### Tebuconazole; Pesticide Tolerances

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

**ACTION:** Final rule; final order.

**SUMMARY:** This order amends the pesticide tolerance regulation for tebuconazole by establishing a tolerance for pistachios. Pesticide tolerances are established under the Federal Food, Drug, and Cosmetic Act (FFDCA). This order resolves an objection filed by Bayer CropScience in response to a final rule on tebuconazole tolerances published on May 14, 2008.

**DATES:** This regulation is effective September 5, 2008.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2005-0097. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in [regulations.gov](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:** Tracy Keigwin, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6605; e-mail address: [keigwin.tracy@epa.gov](mailto:keigwin.tracy@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 an electronic copy of this **Federal Register** document through the electronic docket 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>.

##### **II. Prior Tebuconazole Tolerance Rulemaking**

In the **Federal Register** of May 14, 2008, (73 FR 27748) (FRL-8364-6), EPA established tolerances for the residues of tebuconazole, alpha-[2-(4-Chlorophenyl)ethyl]-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol, in or on the food commodities nut, tree, group 14 at 0.05 ppm; almond, hulls at 6.0 ppm; barley, grain at 0.15 ppm; barley, hay at 7.0 ppm; barley, straw at 3.5 ppm; wheat, forage at 3.0 ppm; wheat, grain at 0.05 ppm; wheat, hay at 7.0 ppm; and wheat, straw at 1.5 ppm. These tolerances were established in response to a petition from Bayer CropScience. In addition to the tolerances granted in that rule, Bayer CropScience had also petitioned for a tebuconazole tolerance on pistachios. EPA declined to establish that tolerance concluding that pistachios were covered by the crop group tolerance for tree nuts.

##### **III. Bayer CropScience Objection**

On July 1, 2008, Bayer CropScience filed an objection to the tolerance rulemaking pursuant to 21 U.S.C. 346a(g)(2)(A). Bayer CropScience argued that EPA had erred in not establishing a separate tolerance for pistachios. Bayer CropScience noted that pistachios are not listed as a member of tree nut crop group in 40 CFR 180.41(c)(14).

##### **IV. Order on Objections**

Bayer CropScience's objection is well-taken. Although EPA is planning to amend the tree nut crop group to include pistachios, such amendment has not yet been accomplished. Therefore, EPA erred in concluding that a pistachio tolerance was made unnecessary by establishment of a tree nut crop group tolerance for tebuconazole. Accordingly, EPA, by this order and pursuant to FFDCA section 408(g)(2)(C), is amending the tebuconazole tolerance at 40 CFR 180.474 to establish a tolerance for pistachios at 0.05 ppm. Because EPA assumed that pistachios were covered by the tree nut crop group tolerance in its prior action, creating a separate pistachio tolerance will in no way affect the safety finding made in that action.

##### **V. Conclusion**

Therefore, pursuant to FFDCA section 408(g)(2)(C), a tolerance is established for the residues of tebuconazole, alpha-[2-(4-Chlorophenyl)ethyl]-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol, in or on the food commodity pistachios at 0.05 ppm.

##### **VI. Statutory and Executive Order Reviews**

This final rule establishes a tolerance under section 408(g)(2)(C) of FFDCA in response to a petition submitted to the Agency under FFDCA section 408(d). 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, *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 on the basis of a petition under section 408(d) of FFDCA, such as the tolerance 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: August 25, 2008.

**Lois Rossi,**

*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 180.474 is amended in paragraph (a)(1) by alphabetically adding the commodity pistachio to the table to read as follows:

**§180.474 Tebuconazole; tolerances for residues.**

(a) *General.* (1) \* \* \*

Commodity					Parts per million
*	*	*	*	*	*
Pistachio	.....				0.05
*	*	*	*	*	*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2007-0366; FRL-8377-6]

**Pyraflufen-ethyl; Time-Limited Pesticide Tolerances**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes permanent tolerances for residues of pyraflufen-ethyl in or on grass, forage, group 17; and grass, hay, group 17; establishes time-limited tolerances for milk; cattle, meat byproducts; goat, meat byproducts; horse, meat byproducts and sheep, meat byproducts, and revises the existing tolerances for soybean, forage; soybean, hay; wheat, forage and wheat, hay. Nichino America, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). The time-limited tolerances expire on October 15, 2012.

**DATES:** This regulation is effective September 5, 2008. Objections and requests for hearings must be received on or before November 4, 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-2007-0366. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in 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 either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP 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:** Joanne I. Miller, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703-305-6224; e-mail address: [miller.joanne@epa.gov](mailto:miller.joanne@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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