

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).

#### X. 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: December 12, 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 180.1287 is added to subpart D to read as follows:

**§ 180.1287 Extract of *Chenopodium ambrosioides* near *ambrosioides*; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for the residues of Extract of *Chenopodium ambrosioides* near *ambrosioides* when used as an insecticide/acaricide on all food commodities.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2008-0823; FRL-8392-3]

#### Multiple Chemicals; Extension of Tolerances for Emergency Exemptions

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

**ACTION:** Final rule.

**SUMMARY:** This regulation extends time-limited tolerances for the pesticides listed in Unit II. of the **SUPPLEMENTARY INFORMATION**. These actions are in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) 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.

**DATES:** This regulation is effective January 7, 2009. Objections and requests for hearings must be received on or before March 9, 2009, 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-2008-0823. 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 [www.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 [www.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 either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S.

Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are 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:** See the table in this unit for the name of a specific contact person. The following information applies to all contact persons: Emergency Response Team, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460-0001.

Pesticide/CFR Citation	Contact Person
Formetanate hydrochloride 180.276	Andrew Ertman <a href="mailto:ertman.andrew@epa.gov">ertman.andrew@epa.gov</a> 703-308-9367
Maneb 180.110	Libby Pemberton <a href="mailto:pemberton.libby@epa.gov">pemberton.libby@epa.gov</a> 703-308-9364
Myclobutanil 180.443	Stacey Groce <a href="mailto:groce.stacey@epa.gov">groce.stacey@epa.gov</a> 703-30-2505
Thiophanate methyl 180.371	Andrea Conrath <a href="mailto:conrath.andrea@epa.gov">conrath.andrea@epa.gov</a> 703-308-9356

#### 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:

- 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 provides 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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions discussed above. 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 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at <http://www.gpoaccess.gov/ecfr>.

*C. Can I File an Objection or Hearing Request?*

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2008-0823 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 9, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA-HQ-OPP-2008-0823, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday,

excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

## II. Background and Statutory Findings

EPA published final rules in the **Federal Register** for each pesticide listed. The initial issuance of these final rules announced that EPA, on its own initiative, under section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104-170), was establishing time-limited tolerances.

EPA established the tolerances because section 408(l)(6) of FFDCA 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 FIFRA section 18. Such tolerances can be established without providing notice or time for public comment.

EPA received requests to extend the use of these chemicals for this year's growing season. After having reviewed these submissions, EPA concurs that emergency conditions exist. EPA assessed the potential risks presented by residues for each chemical. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and decided that the necessary tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18.

The data and other relevant material have been evaluated and discussed in the final rule originally published to support these uses. Based on that data and information considered, the Agency reaffirms that extension of these time-limited tolerances will continue to meet the requirements of section 408(l)(6) of FFDCA. Therefore, the time-limited tolerances are extended until the date listed. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on the date listed, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on the commodity after that date will not be unlawful, provided the residue is present as a result of an application or use of a pesticide at a time and in a manner that was lawful under FIFRA, the tolerance was in place at the time of the application, and the residue does not exceed the level that was authorized by the tolerance. 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.

Tolerances for the use of the following pesticide chemicals on specific commodities are being extended:

1. *Formetanate hydrochloride*. EPA has authorized under FIFRA section 18 the use of formetanate hydrochloride on bulb onions for control of thrips in Colorado, Idaho, Michigan, New York, Ohio, Oregon, Washington, and Wisconsin. This regulation extends a time-limited tolerance for residues of the insecticide formetanate hydrochloride, (m-[[[(dimethylamino)methylene]amino]phenyl methylcarbamate hydrochloride, in or on onion, dry bulb at 0.02 parts per million (ppm) for an additional 1-year period. This tolerance will expire and is revoked on December 31, 2009. A time-limited tolerance was originally published in the **Federal Register** of February 20, 2008 (73 FR 9226) (FRL-8343-6).

2. *Maneb*. EPA has authorized under FIFRA section 18 the use of Maneb on walnuts for control of bacterial blight in California. This regulation extends a time-limited tolerance for combined residues of the fungicide maneb (manganous ethylenebisdithiocarbamate) calculated as zinc ethylenebisdithiocarbamate, and its metabolite ethylenethiourea in or on walnuts at 0.05 ppm for an additional 1-year period. This tolerance will expire and is revoked on December 31, 2009. A time-limited tolerance was originally published in the **Federal Register** of March 17, 1999 (64 FR 13097) (FRL-6067-9). The time-limited tolerance exemption was last extended on December 21, 2005 at 70 FR 75734.

3. *Myclobutanil*. EPA has authorized under FIFRA section 18 the use of myclobutanil on legume vegetables for control of soybean rust in various States. This regulation extends time-limited tolerances for combined residues of the fungicide, myclobutanil, alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile, and its alcohol metabolite, alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound), in or on vegetable, foliage of legume, group 07, and vegetable, legume, group 06 at 1.0 ppm for an additional 6-month period. These tolerances will expire and are revoked on December 31, 2009. Time-limited tolerances were originally published in the **Federal Register** of June 28, 2006 (71 FR 36687) (FRL-8068-2).

4. *Thiophanate methyl*. EPA has authorized under FIFRA section 18 the use of Thiophanate methyl on citrus for control of post-bloom fruit drop in Florida and Texas. This regulation extends a time-limited tolerance for combined residues of the fungicide thiophanate methyl and its metabolite, methyl 2-benzimidazolyl carbamate (MBC) in or on citrus at 0.5 ppm for an additional 6-month period. This tolerance will expire and is revoked on December 31, 2009. A time-limited tolerance was originally published in the **Federal Register** of September 12, 2002 (67 FR 57748) (FRL-7196-5). The time-limited tolerance exemption was last extended on December 21, 2005 at 70 FR 75734.

5. *Thiophanate methyl*. EPA has authorized under FIFRA section 18 the use of thiophanate methyl on fruiting vegetables, including tomato for control of white mold in Florida, Virginia, and New Jersey. This regulation extends a time-limited tolerance for combined residues of the fungicide thiophanate methyl and its metabolite, methyl 2-benzimidazolyl carbamate (MBC) in or on the fruiting vegetable crop group at 0.5 ppm for an additional 1-year period. This tolerance will expire and is revoked on December 31, 2009. A time-limited tolerance was originally published in the **Federal Register** of July 23, 2003 (68 FR 43465) (FRL-7317-5). The time-limited tolerance exemption was last extended on December 21, 2005 at 70 FR 75734.

6. *Thiophanate methyl*. EPA has authorized under FIFRA section 18 the use of thiophanate methyl on mushroom spawn and growing substrate for control of green mold in California, Delaware, Maryland, Oregon, and Pennsylvania. This regulation extends a time-limited tolerance for combined residues of the fungicide thiophanate methyl and its metabolite, methyl 2-benzimidazolyl carbamate (MBC) in or on mushroom at 0.01 ppm for an additional 1-year period. This tolerance will expire and is revoked on December 31, 2009. A time-limited tolerance was originally published in the **Federal Register** of February 5, 2003 (68 FR 5847) (FRL-7285-9). The time-limited tolerance exemption was last extended on December 21, 2005 at 70 FR 75734.

### III. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory*

*Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this 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 6, 2000) do not apply to this rule. In addition, This 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).

### IV. 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: December 23, 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.

#### § 180.110 [Amended]

■ 2. In § 180.110, in the table to paragraph (b), amend the entry for Walnut by revising the expiration date 12/31/08 to read 12/31/09.

#### § 180.276 [Amended]

■ 3. In § 180.276, in the table to paragraph (b), amend the entry for Onion, dry bulb by revising the expiration date 12/31/08 to read 12/31/09.

#### § 180.371 [Amended]

■ 4. In § 180.371, in the table to paragraph (b), amend the entry for Citrus by revising the expiration date 6/30/09 to read 12/31/09 and the entries for Mushroom; and Vegetable, fruiting, group 8 by revising the expiration dates 12/31/08 to read 12/31/09.

#### § 180.443 [Amended]

■ 5. In § 180.443, in the table to paragraph (b), amend the entries for Vegetable, foliage of legume, group 07 and Vegetable, legume, group 06 by revising the expiration dates 6/30/09 to read 12/31/09.

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