

(A) Letter of April 22, 2004 from the Pennsylvania Department of Environmental Protection transmitting a revision to Pennsylvania's 1-hour ozone maintenance plan for the Pittsburgh-Beaver Valley area.

(B) Document entitled, "Revision to the State Implementation Plan for the Pittsburgh-Beaver Valley Area—Revised Highway Vehicle Emissions Budgets" dated April, 2004. The document revises the Pittsburgh-Beaver Valley 1-hour ozone maintenance plan, establishing revised motor vehicle emission budgets of 74.03 tons/day of volatile organic compounds (VOC) and 140.63 tons/day of nitrogen oxides (NO<sub>x</sub>) for 2004, 60.42 tons/day of VOC and 110.37 tons/day of NO<sub>x</sub> for 2007, and 45.68 tons/day of VOC and 77.09 tons/day of NO<sub>x</sub> for 2011.

(ii) Additional Material. Remainder of the Commonwealth's April 22, 2004 submittal pertaining to the revision listed in paragraph (c)(226)(i) of this section.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP-2004-0392; FRL-7688-6]

**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 December 10, 2004. Objections and requests for hearings must be received on or before February 8, 2005.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY**

**INFORMATION.** EPA has established a docket for this action under Docket ID number OPP-2004-0392. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., 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 electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket 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 (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

Pesticide/CFR cite	Contact person
Azoxystrobin; 40 CFR 180.507;	Libby Pemberton Sec-18-Mailbox @epamail.epa.gov (703) 308-9364
Cypermethrin; 40 CFR 180.418; Desmedipham; 180.353; Diuron; 40 CFR 180.106; Propiconazole; 40 CFR 180.434; Sodium chlorate 40 CFR 180.1020	
Myclobutanil; 180.443	Barbara Madden Sec-18-Mailbox @epamail.epa.gov (703) 305-6463
Sulfentrazone; 180.498	Andrew Ertman Sec-18-Mailbox @epamail.epa.gov (703) 308-9367

**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 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 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. 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 and Other Related Information?*

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

**II. Background and Statutory Findings**

EPA published final rules in the **Federal Register** for each chemical/commodity listed. The initial issuance of these final rules announced that EPA, on its own initiative, under section 408 of the 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 the 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/commodity. In doing so, EPA considered the safety standard in section 408(b)(2) of the

FFDCA, and decided that the necessary tolerance under section 408(l)(6) of the 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 the 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 the 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:

**Azoxystrobin.** EPA has authorized under FIFRA section 18 the use of azoxystrobin on safflower for control of alternaria leaf spots caused by *Alternaria carthami* and *A. alternata* in Montana and North Dakota. This regulation extends a time-limited tolerance for combined residues of the fungicide azoxystrobin and the Z isomer of azoxystrobin in or on safflower at 1.0 ppm for an additional 3-year period. This tolerance will expire and is revoked on June 30, 2008. A time-limited tolerance was originally published in the **Federal Register** of August 28, 2002 (67 FR 55132) (FRL-7195-9).

**Cypermethrin and an Isomer Zeta-cypermethrin.** EPA has authorized under FIFRA section 18 the use of zeta-cypermethrin on flax for control of grasshoppers in North Dakota. This regulation extends a time-limited tolerance for combined residues of the insecticide zeta-cypermethrin and its inactive R-isomers in or on flax (seed and meal) at 0.2 ppm for an additional 3-year period. This tolerance will

expire and is revoked on June 30, 2008. A time-limited tolerance was originally published in the **Federal Register** of September 4, 2002 (67 FR 56490) (FRL-7197-7).

**Desmedipham.** EPA has authorized under FIFRA section 18 the use of desmedipham on garden beets for control of various weed pests in New York. This regulation extends a time-limited tolerance for residues of the herbicide desmedipham in or on red beet roots at 0.2 ppm and red beet tops at 15 ppm for an additional 3-year period. These tolerances will expire and are revoked on June 30, 2008. Time-limited tolerances were originally published in the **Federal Register** of August 29, 1997 (62 FR 45741) (FRL-5738-5).

**Diuron.** EPA has authorized under FIFRA section 18 the use of diuron in catfish ponds for control of blue green algae in Alabama, Arkansas, Mississippi and Texas. This regulation extends a time-limited tolerance for combined residues of the herbicide, diuron (3-(3,4-dichlorophenyl)-1,1-dimethylurea) and its metabolites convertible to 3,4-dichloroaniline in or on catfish fillets at 2.0 ppm for an additional 3-year period. This tolerance will expire and is revoked on June 30, 2008. A time-limited tolerance was originally published in the **Federal Register** of July 30, 1999 (64 FR 41297) (FRL-6087-2).

**Myclobutanil.** EPA has authorized under FIFRA section 18 the use of myclobutanil on sugar beets for control of powdery mildew in Idaho and Oregon. This regulation extends a time-limited tolerance 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 sugar beet tops at 1.0 ppm for an additional 3-year period. This tolerance will expire and is revoked on December 31, 2007. A time-limited tolerance was originally published in the **Federal Register** of January 2, 2001 (66 FR 298) (FRL-6757-9).

**Propiconazole.** EPA has authorized under FIFRA section 18 the use of propiconazole on grain sorghum for control of sorghum ergot in Kansas, New Mexico and Texas. This regulation extends a time-limited tolerance for combined residues of the fungicide propiconazole, 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl] methyl]-1H-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as

parent compound in or on grain sorghum, grain at 0.2 ppm; grain sorghum, stover at 1.5 ppm; and sorghum aspirated grain fractions at 20 ppm for an additional 3-year period. These tolerances will expire and are revoked on June 30, 2008. Time-limited tolerances were originally published in the **Federal Register** of August 13, 1997 (62 FR 43284) (FRL-5735-2).

EPA has received objections to tolerances it established for propiconazole on different food commodities. The objections were filed by the Natural Resources Defense Council (NRDC) and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. Although these objections concern separate rulemaking proceedings under the FFDCA, EPA has considered whether it is appropriate to extend the emergency exemption tolerances for propiconazole while the objections are still pending.

Factors taken into account by EPA included how close the Agency is to concluding the proceedings on the objections, the nature of the current action, whether NRDC's objections raised frivolous issues, and extent to which the issues raised by NRDC had already been considered by EPA. Although NRDC's objections are not frivolous, the other factors all support extending these tolerances at this time. First, the objections proceeding is unlikely to conclude prior to when action is necessary on this petition. NRDC's objections raise complex legal, scientific, policy, and factual matters and EPA initiated a 60 day public comment period on them in the **Federal Register** on June 19, 2002 (67 FR 41628) (FRL-7167-7). That comment period was extended until October 16, 2002 [September 17, 2002 (67 FR 58536) (FRL-7275-3)], and EPA is now examining the extensive comments received. Second, the nature of the current actions are extremely time-sensitive as they address emergency situations. Third, the issues raised by NRDC are not new matters but questions that have been the subject of considerable study by EPA and comment by stakeholders. Accordingly, EPA is proceeding with extending the tolerances for propiconazole.

**Sodium chlorate.** The states of Arkansas and Missouri availed themselves of the authority to declare the existence of crisis situations, thereby authorizing use under FIFRA section 18 of sodium chlorate on wheat as a defoliant or desiccant to aid in the harvest of wheat. This regulation extends a time-limited exemption from

the requirement of a tolerance for residues of the defoliant/desiccant sodium chlorate in or on wheat for an additional 2-year period. This exemption from the requirement of a tolerance will expire and is revoked on December 31, 2006. A time-limited exemption from the requirement of a tolerance was originally published in the **Federal Register** of December 3, 1997 (62 FR 63858) (FRL-5754-1).

**Sulfentrazone.** EPA has authorized under FIFRA section 18 the use of sulfentrazone on lima beans and cowpeas for control of hophornbeam copperleaf in Tennessee. This regulation extends a time-limited tolerance for combined residues of the herbicide sulfentrazone and the metabolites 3-hydroxymethyl sulfentrazone and 3-desmethyl sulfentrazone in or on succulent bean seed without pod at 0.1 ppm for an additional 3-year period. This tolerance will expire and is revoked on December 31, 2007. A time-limited tolerance was originally published in the **Federal Register** of September 21, 1999 (64 FR 51060) (FRL-6097-8).

### III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the 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. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

#### A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP-2004-0392 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 January 10, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as 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.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14<sup>th</sup> St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564-6255.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305-5697, by e-mail at [tompkins.jim@epa.gov](mailto:tompkins.jim@epa.gov), or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources

and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP-2004-0392, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: [opp-docket@epa.gov](mailto:opp-docket@epa.gov). Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

#### B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a 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(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

### IV. Statutory and Executive Order Reviews

This final rule establishes time-limited tolerances under section 408 of the FFDCA. 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 due to its lack of significance, 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). 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.*, or 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). 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); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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). Since tolerances and exemptions that are established under section 408(l)(6) of the FFDCA in response to an exemption under FIFRA section 18, such as the tolerances 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. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of

power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

#### V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, 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).

Dated: November 30, 2004.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

#### List of Subjects in 40 CFR Part 180

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

■ 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.

#### § 180.106 [Amended]

■ 2. In § 180.106, in the table to paragraph (b), amend the entry for “catfish fillets” by revising the expiration date “6/30/05” to read “6/30/08.”

#### § 180.353 [Amended]

■ 3. In § 180.353, in the table to paragraph (b), amend the entry for “red beet roots” and “red beet tops” by revising the expiration “6/30/05” to read “6/30/08.”

#### § 180.418 [Amended]

■ 4. In § 180.418, in the table to paragraph (b), amend the entries for “flax, meal” and “flax, seed” by revising the expiration date “6/30/2005” to read “6/30/2008.”

#### § 180.434 [Amended]

■ 5. In § 180.434, in the table to paragraph (b), amend the entries for “grain, aspirated fractions;” “sorghum, grain, grain;” and “sorghum, grain, stover” by revising the expiration date “6/30/05”; to read “6/30/08.”

#### § 180.443 [Amended]

■ 6. In § 180.443, in the table to paragraph (b), amend the entry for “beet, sugar, tops” by revising the expiration date “12/31/04” to read “12/31/07”.

#### § 180.498 [Amended]

■ 7. In § 180.498, in the table to paragraph (b), amend the entry for “bean, succulent seed without pod (lima beans, cowpeas)” by revising the expiration date “12/31/04” to read “12/31/07.”

#### § 180.507 [Amended]

■ 8. In § 180.507, in the table to paragraph (b), amend the entry for “safflower, seed” by revising the expiration date “6/30/05” to read “6/30/08.”

#### § 180.1020 [Amended]

■ 9. In subpart D, in § 180.1020, in the table to paragraph (b), amend the entry for “wheat” by revising the expiration date “12/31/04” to read “12/31/06.”

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