

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.

## VI. 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).

### List of Subjects in 40 CFR Part 180

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

Dated: January 25, 2007.

**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 180.1274 is added to subpart D to read as follows:

#### § 180.1274 Tris (2-ethylhexyl) phosphate; exemption from the requirement of a tolerance.

Tris (2-ethylhexyl) phosphate (TEHP, CAS Reg. No. 78–42–2) is exempt from the requirement of a tolerance for residues in wheat and barley when used under the following conditions:

(a) The use is in accordance with good agricultural practices;

(b) Tris (2-ethylhexyl) phosphate is used as an inert ingredient in pesticide formulations with the active ingredients pinoxaden, clodinafop-propargyl, and tralkoxydium;

(c) Tris (2-ethylhexyl) phosphate is applied no more than twice per season; and

(d) The applications occur no later than the pre-boot stage (prior to formation of edible grain).

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2006-0918; FRL–8110–8]

### Avermectin; Pesticide Tolerances for Emergency Exemptions

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for combined residues of the insecticide avermectin B<sub>1</sub> and its delta-8,9-isomer in or on bulb onions. This action is in response to EPA’s granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of this pesticide on bulb onions. This regulation establishes a maximum permissible level for residues of avermectin in this food commodity. The tolerance expires and is revoked on December 31, 2009.

**DATES:** This regulation is effective February 7, 2007. Objections and requests for hearings must be received on or before April 9, 2007, 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-2006-0918. All documents in the docket are listed on the regulations.gov website. 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 Building), 2777 S. Crystal Drive 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 telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9367; e-mail address: [ertman.andrew@epa.gov](mailto:ertman.andrew@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:

- 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. 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 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. 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-2006-0918 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 April 9, 2007.

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-2006-0918, 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 Building), 2777 S. Crystal Drive, 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 telephone number is (703) 305-5805.

## **II. Background and Statutory Findings**

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a time-limited tolerance for combined residues of the insecticide avermectin B<sub>1</sub> and its delta-8,9-isomer in or on bulb onions at 0.005 parts per million (ppm). This tolerance expires and is revoked on December 31, 2009. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR).

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 section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA

determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

## **III. Emergency Exemption for Avermectin on Bulb Onions and FFDCA Tolerances**

EPA has authorized under FIFRA section 18 the use of avermectin on bulb onions for control of thrips in Colorado. Avermectin also goes by the name abamectin, but the two names describe the same chemical. The CAS number is the same for both (71751-41-2). After having reviewed the materials submitted in support of the emergency exemption request, EPA concurred with the applicant that emergency conditions existed for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of avermectin in or on bulb onions. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary time-limited tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance expires and is revoked on December 31, 2009,

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 bulb onions after that date will be lawful, provided the pesticide is applied at a time and in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this time-limited tolerance at the time of that application. EPA will take action to revoke this time-limited tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this time-limited tolerance is being approved under emergency conditions, EPA has not made any decisions about whether avermectin meets EPA's registration requirements for use on bulb onions or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this time-limited tolerance serves as a basis for registration of avermectin by a State for special local needs under FIFRA section 24(c). Nor does this time-limited tolerance serve as the basis for any State other than Colorado to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for avermectin, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT.**

#### IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see <http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm>.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of avermectin and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for combined residues of avermectin B<sub>1</sub> and its delta-8,9-isomer in or on bulb onions at 0.005 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

#### A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q\*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q\* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q\* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x 10<sup>6</sup> or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of

departure to exposure (MOE<sub>cancer</sub> = point of departure/exposures) is calculated. A summary of the toxicological endpoints for avermectin used for human risk assessment can be found in a tolerance document published on February 16, 2005, titled "Avermectin B<sub>1</sub> and its delta-8,9-isomer; Pesticide Tolerance" (70 FR7876; FRL-7695-7).

#### B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* EPA previously established tolerances (40 CFR 180.449) for the combined residues of avermectin B<sub>1</sub> and its delta-8,9-isomer, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from avermectin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM<sup>TM</sup>) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994-1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: A Tier 3, acute probabilistic dietary exposure assessment was conducted for all supported food uses and drinking water. Acute anticipated residues for many foods were derived using market basket survey, new field trial studies and food handling establishment request. Estimated concentrations of avermectin in drinking water were incorporated directly into the acute assessment.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the DEEM/FCID which incorporates food consumption data as reported by respondents in the USDA 1994-1996 and 1998 Nationwide CSFII, and accumulated exposure to the chemical for each commodity. Percent crop treated and anticipated residues refinements were used.

A Tier 2 chronic dietary exposure assessment was conducted for the general U.S. population and various population subgroups. The assumptions of the assessment were anticipated residue estimates, percent of crop treated (PCT) estimates for most of the commodities, and default DEEM processing factors when necessary. Estimated concentrations of avermectin in drinking water were incorporated directly into the chronic assessment.

iii. *Cancer*. EPA did not perform a cancer aggregate exposure assessment because avermectin B<sub>1</sub> is classified as a Group E chemical and is “not likely to be carcinogenic to humans.”

iv. *Anticipated residue and PCT information*. Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such Data Call-Ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such data call-ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: Almonds 21%; avocado 20%; balsam pear 1%; cantaloupe 7%; casabas 1%; chayote fruit 1%; Chinese waxgourd 1%; cotton 3%; cress (garden, upland) 1%; cucumber 1%; grape 6%; hops 82%; honeydew melon 1%; plum 1%; pumpkin 1%; squash 1%; strawberry 44%; walnut 2%; watermelon 7%.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT

estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which avermectin may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for avermectin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of avermectin. Further information regarding EPA drinking water models used in pesticide exposure assessment

can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

Tier II screening models PRZM (Pesticide Root Zone Model) and EXAMS (Exposure Analysis Modeling System) were used to determine estimated surface water concentrations of avermectin based on the modeled scenario of one seed treatment to cucumbers followed by 3 aerial applications at a 7-day interval in Florida. This use of abamectin represents the worst case potential contribution of abamectin to drinking water when considering currently registered uses, including this one.

The full PRZM/EXAMS distribution was used for the acute dietary assessment, and the 1-in-10 year annual mean concentration of 0.244 ppm was used for chronic dietary estimates. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

3. *From non-dietary exposure*. The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Avermectin is currently registered for use on the following residential non-dietary sites: Residential lawn application for fire ant control and residential indoor crack and crevice application for cockroaches and ants. These registered residential uses may result in short-term to intermediate-term exposures; however, based on current use patterns, long-term exposure (6 or more months of continuous exposure) to avermectin is not expected. Adults may be exposed through handling the pesticide and both adults and children may be exposed through contact with treated areas following application. Accordingly, handler and post-application exposures were assessed for two major categories of residential avermectin use which are considered to represent the reasonable high-end residential exposure potential: Granular baits used to treat lawns, and indoor crack and crevice dust products.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider “available information” concerning the cumulative effects of a particular pesticide's residues and “other substances that have a common mechanism of toxicity.”

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of

toxicity, EPA has not made a common mechanism of toxicity finding as to avermectin and any other substances and avermectin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that avermectin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at <http://www.epa.gov/pesticides/cumulative/>.

### C. Safety Factor for Infants and Children

*In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

For avermectin B<sub>1</sub> EPA retained the default 10X factor based on the following combination of factors:

- There is residual uncertainty due to a data gap for a developmental neurotoxicity study (DNT), as well as data gaps for acute and subchronic neurotoxicity studies. These studies are required because avermectin B<sub>1</sub> has been shown to be neurotoxic, with multiple neurotoxic clinical signs (including head and body tremors and limb splay) seen in multiple studies with multiple species.

- For several species, the dose-response curve appears to be steep.

- Severe effects were seen at the LOAELs in several studies (death, neurotoxicity, and developmental toxicity). Although increased susceptibility of the young was observed in several studies, the degree of concern with that susceptibility was judged to be low. Increased susceptibility (qualitative and/or quantitative) was seen in prenatal developmental toxicity studies in CD-1 mice and rabbits following *in utero* exposure to avermectin B<sub>1</sub>. There was also an increase in quantitative and

qualitative susceptibility in the rat reproductive toxicity study. The concern for susceptibility seen in the developmental study with rabbits and in the reproductive toxicity study in the rat is low because the lowest NOAEL obtained (0.12 milligrams/kilogram/day (mg/kg/day)) was used as the basis for the cRfD and other non-dietary risk assessment scenarios, which is protective of all of the developmental/offspring effects seen in those studies. Similarly, the concern for susceptibility seen at the LOAEL in the CD-1 mouse developmental toxicity study is low, since the NOAEL in the rat reproductive toxicity study is lower than the dose at which effects were seen in the CD-1 mouse.

### D. Aggregate Risks and Determination of Safety.

The Agency currently has two ways to estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses. First, a screening assessment can be used, in which the Agency calculates drinking water levels of comparison (DWLOCs) which are used as a point of comparison against estimated drinking water concentrations (EDWCs). The DWLOC values are not regulatory standards for drinking water, but are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. More information on the use of DWLOCs in dietary aggregate risk assessments can be found at <http://www.epa.gov/oppfead1/trac/science/screeningsop.pdf>.

More recently the Agency has used another approach to estimate aggregate exposure through food, residential and drinking water pathways. In this approach, modeled surface and ground water EDWCs are directly incorporated into the dietary exposure analysis, along with food. This provides a more realistic estimate of exposure because actual body weights and water consumption from the CSFII are used. The combined food and water exposures are then added to estimated exposure from residential sources to calculate aggregate risks. The resulting exposure and risk estimates are still considered to be high end, due to the assumptions used in developing drinking water modeling inputs. The risk assessment for avermectin used in this tolerance document uses this approach of incorporating water exposure directly into the dietary exposure analysis.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to

avermectin will occupy 42% of the aPAD for the U.S. population, 7% of the aPAD for females 13 years and older, 89% of the aPAD for all infants less than 1-year old and 71% of the aPAD for children 1-2 years old.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to avermectin from food will utilize 9% of the cPAD for the U.S. population, 21% of the cPAD for all infants less than 1 year old and 21% of the cPAD for children 1-2 years old. Based on the use pattern, chronic residential exposure to residues of avermectin is not expected.

3. *Short-term and intermediate-term risk.* Short-term and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Avermectin is currently registered for use(s) that could result in short-term and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term and intermediate-term exposures for avermectin.

Using the exposure assumptions described in this unit for short-term and intermediate-term exposures, EPA has concluded that food, water and residential exposures aggregated result in the following aggregate MOEs: 2,900 for the U.S. population, and 1,700 for children 1-2 years old. These aggregate MOEs do not exceed the Agency's level of concern of 1,000 for aggregate exposure to food, water and residential uses.

4. *Aggregate cancer risk for U.S. population.* EPA has not performed a cancer aggregate risk assessment because avermectin has been classified as a Group E chemical by the Agency and is "not likely to be carcinogenic to humans."

5. *Determination of safety.* Based on these risk assessments which indicate that all avermectin risks are below the Agency's levels of concern, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to avermectin residues.

## V. Other Considerations

### A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft.

Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

#### B. International Residue Limits

There are no CODEX residue limits for residues of avermectin on onions, therefore, harmonization is not an issue.

#### VI. Conclusion

Therefore, the time-limited tolerance is established for combined residues of the insecticide avermectin B<sub>1</sub> (a mixture of avermectins containing greater than or equal to 80% avermectin B<sub>1a</sub> (5-O-demethyl avermectin A<sub>1</sub>) and less than or equal to 20% avermectin B<sub>1b</sub> (5-O-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A<sub>1</sub>)) and its delta-8,9-isomer, in or on bulb onions at 0.005 ppm. The time-limited tolerance expires and is revoked on December 31, 2009.

#### VII. Statutory and Executive Order Reviews

This final rule establishes a time-limited tolerance 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 on the basis of a FIFRA section 18 exemption under section 408 of the 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. 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.

#### VIII. 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).

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

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

Dated: January 24, 2007.

**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 180.449 is amended by adding text after the heading in paragraph (b) to read as follows:

#### § 180.449 Avermectin B<sub>1</sub> and its delta-8,9-isomer; tolerances for residues.

\* \* \* \* \*

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the residues of avermectin B<sub>1</sub> and its delta-8,9-isomer, in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table. The tolerances will expire on the dates specified in the table.

Commodity	Parts per million	Expiration/revocation date
Onion, bulb	0.005	12/31/09

\* \* \* \* \*

[FR Doc. E7-2003 Filed 2-6-07; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 64

[Docket No. FEMA-7961]

#### Suspension of Community Eligibility

**AGENCY:** Mitigation Division, Federal Emergency Management Agency, DHS.  
**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

**EFFECTIVE DATES:** The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

**ADDRESSES:** If you want to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office.

**FOR FURTHER INFORMATION CONTACT:** David Stearrett, Mitigation Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2953.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood

Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are

met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

**National Environmental Policy Act.** This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act.** The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

**Regulatory Classification.** This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 13132, Federalism.** This rule involves no policies that have federalism implications under Executive Order 13132.

**Executive Order 12988, Civil Justice Reform.** This rule meets the applicable standards of Executive Order 12988.

**Paperwork Reduction Act.** This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

#### List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

#### PART 64—[AMENDED]

■ 1. The authority citation for part 64 is revised to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

#### § 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows: