

Dated: February 12, 2009.

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 180.493 is amended as follows:

i. In paragraph (a), by revising the introductory text; in the table by removing the entry “Grape,” by revising the entry “Potato, wet peel” and Footnote 1, and by alphabetically adding the following commodities to the table to read as follows:

ii. By revising paragraph (c) to read as follows:

§ 180.493 Dimethomorph; tolerances for residues.

(a) *General.* Tolerances are established for the residues of the fungicide dimethomorph, (E,Z) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine, in or on the following commodities:

Commodity	Parts per million
* * * *	*
Ginseng	0.90
Grape, raisin ¹	6.0
* * * *	*
Potato	0.05
Potato, wet peel	0.20
* * * *	*
Turnip, greens	20.0
* * * *	*

¹ There are no U.S. registrations as of March 4, 2009, for the use of dimethomorph on grapes grown for raisin production.

* * * *

(c) *Tolerances with regional registrations.* Tolerances with regional registrations are established for residues of the fungicide dimethomorph, (E,Z) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine, in or on the following commodities:

Commodity	Parts per million
Bean, lima, succulent	0.60
Grape	3.5

* * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2005-0097; FRL-8399-3]

Tebuconazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation revises the existing tolerance for residues of tebuconazole in or on cherry, pre- and post-harvest. Interregional Research Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 4, 2009. Objections and requests for hearings must be received on or before May 4, 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-2005-0097. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7390; e-mail address: nollen.laura@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural

producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of EPA’s tolerance regulations at 40 CFR part 180 through the Government Printing Office’s e-CFR cite at <http://www.gpoaccess.gov/ecfr>.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. 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-2005-0097 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 as required by 40 CFR part 178 on or before May 4, 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 this copy, identified by docket ID number EPA-HQ-OPP-2005-0097, 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 Facility'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. Petition for Tolerance

In the **Federal Register** of December 3, 2008 (73 FR 73640) (FRL-8390-4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E7428) by Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.474 be amended by raising the existing tolerance for residues of the fungicide tebuconazole, alpha-[2-(4-Chlorophenyl)ethyl]-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol, in or on the raw agricultural commodity cherry from 4.0 parts per million (ppm) to 5.0 ppm. That notice referenced a summary of the petition prepared on behalf of IR-4 by Bayer CropScience LP, the registrant, which is available to the public in the docket, <http://www.regulations.gov>.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of 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 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 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...."

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of 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 and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of tebuconazole in or on the raw agricultural commodity cherry, sweet, pre- and post-harvest, and cherry, tart, pre- and post-harvest, at 5.0 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

In the **Federal Register** of August 13, 2008 (73 FR 47065) (FRL-8376-2), the Agency published a Final Rule establishing tolerances for residues of the fungicide tebuconazole in or on apple, wet pomace at 0.1 ppm; asparagus at 0.05 ppm; bean, succulent at 0.1 ppm; bean, dry seed at 0.1 ppm; beet, garden, tops at 7.0 ppm; beet, garden, roots at 0.70 ppm; *Brassica*, leafy greens, subgroup 5B at 2.5 ppm; coffee, green bean at 0.15 ppm; coffee, roasted bean at 0.3 ppm; corn, field, grain at 0.05 ppm; corn, field, forage at 4.0 ppm; corn, field, stover at 3.5 ppm; corn, pop, grain at 0.05 ppm; corn, pop, stover at 3.5 ppm; corn, sweet, kernel plus cob with husks removed at 0.5 ppm; corn, sweet, forage at 7.0 ppm; corn, sweet, stover at 6.0 ppm; cotton, undelinted seed at 2.0 ppm; cotton, gin byproducts at 25.0 ppm; Fruit, pome, group 11 at 0.05 ppm; fruit, stone, group 12, except cherry at 1.0 ppm; grain, aspirated fractions at 16.0 ppm; hop, dried cones at 35.0 ppm; lychee at 1.6 ppm; mango, postharvest at 0.15 ppm; okra at 1.2 ppm; onion, bulb, subgroup 3-07A at 0.2 ppm; onion, green, subgroup 3-07B at 1.3 ppm; plum, pre- and post-harvest at 1.0 ppm; soybean, forage at 25 ppm; soybean, hay at 50 ppm; soybean, seed at 0.08 ppm; sunflower, seed at 0.05 ppm; sunflower, meal at 0.2 ppm; sunflower, refined oil at 0.2 ppm; vegetable, cucurbit, group 9 at 0.09 ppm; turnip, roots at 0.5 ppm; and turnip, tops at 7.0 ppm. When the Agency conducted the risk assessment in support of the August, 2008 tolerance action, it considered the proposed use of tebuconazole on cherry, pre- and post-harvest. Since EPA considered the

cherry use in its most recent risk assessments, establishing the tolerance on cherry, pre- and post-harvest will not change the estimated aggregate risks resulting from use of tebuconazole, as discussed in the August 13, 2008 **Federal Register**. Refer to this **Federal Register** document, available at <http://www.regulations.gov>, for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action.

Based on the risk assessments discussed in the final rule published in the **Federal Register** of August 13, 2008, 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 tebuconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography/nitrogen phosphorus detection and liquid chromatography/mass spectrometry/mass spectrometry (GC/NPD and LC/MS/MS)) is available for enforcing tolerances for tebuconazole and its metabolites in plant commodities, livestock matrices and processing studies. The methods have been adequately validated by an independent laboratory in conjunction with a previous petition. 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.

B. International Residue Limits

Codex maximum residue limits (MRLs) have been established for residues of tebuconazole in or on cherry at 5.0 ppm. Establishing a permanent U.S. tolerance for tebuconazole in or on cherry, pre- and post-harvest at 5.0 ppm results in MRL harmonization between Codex and the United States.

V. Conclusion

Therefore, a tolerance is established for residues of tebuconazole, alpha-[2-(4-Chlorophenyl)ethyl]-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol, in or on cherry, sweet, pre- and post-harvest, cherry, tart, pre- and post-harvest at 5.0 ppm.

VI. 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 final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary

consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: February 12, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.474 is amended by revising the entry for the commodity “Cherry” in the table in paragraph (a)(1) to read as follows:

§ 180.474 Tebuconazole; tolerances for residues.

- (a) *General.* * * *
- (1) * * *

Commodity	Parts per million
* * *	* *
Cherry, sweet, pre- and post-harvest	5.0
Cherry, tart, pre- and post-harvest	5.0
* * *	* *

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2007-1192; FRL-8400-9]

Famoxadone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of famoxadone in or on caneberry subgroup 13-07A; cilantro, leaves; onion, bulb, subgroup 3-07A; onion, green, subgroup 3-07B; spinach; and vegetable, leafy, except *Brassica*, group 4, except spinach. It also removes existing tolerances on lettuce, head; and caneberry, subgroup 13A that are superseded by the new tolerances on vegetable, leafy, except *Brassica*, group 4, except spinach; and caneberry subgroup 13-07A. Interregional Research Project Number 4 (IR-4) requested these amendments under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 4, 2009. Objections and requests for hearings must be received on or before May 4, 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-2007-1192. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200