substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (59 FR 22951, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by Reference, Intergovernmental relations, Ozone.

Dated: May 14, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. A new § 52.282 is added to read as follows:

§ 52.282 Control strategy and regulations: Ozone.

(a) *Attainment determination.* EPA has determined that the Ventura County severe 1-hour ozone nonattainment area attained the 1-hour ozone NAAQS by the applicable attainment date of November 15, 2005. EPA also has determined that the Ventura County severe 1-hour ozone nonattainment area is not subject to the requirements of section 185 of the Clean Air Act (CAA) for the 1-hour standard and that the State is not required to submit a SIP under Section 182(d)(3) of the CAA to implement a section 185 program for the 1-hour standard in this area. In addition, the requirements of section 172(c)(9) (contingency measures) for the 1-hour standard do not apply to the area.

(b) [Reserved]

[FR Doc. E9–12135 Filed 5–26–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0554; FRL–8413–5]

Etoxazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of etoxazole in or on stone fruit; plum; prune; spearmint tops and oil; peppermint tops and oil; tomato; and cucumber. This regulation also deletes the existing cherry tolerance, as it will be superseded by inclusion in the stone fruit crop group. The Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 27, 2009. Objections and requests for hearings must be received on or before July 27, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0554. 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–2008–0554 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 July 27, 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–2008–0554, 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 August 13, 2008 (73 FR 47186) (FRL–8375–8), 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 8E7347) by IR-4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W., Princeton, NJ 08540. The petition requested that 40 CFR 180.593 be amended by establishing tolerances for residues of the insecticide etoxazole, 2-(2,6-difluorophenyl)-4-[4-(1,1-dimethylethyl)-2-ethoxyphenyl]-4,5-dihydrooxazole, in or on fruit, stone, group 12, except plum at 1.0 parts per million (ppm); plum at 0.12 ppm; plum, prune, dried at 0.4 ppm; cucumber at 0.02 ppm; tomato at 0.25; spearmint, tops at 10 ppm; peppermint, tops at 10 ppm; peppermint, oil at 20 ppm; and spearmint, oil at 20 ppm. The petition additionally requested to delete the tolerance for residues of etoxazole in or on the food commodity cherry at 1.0 ppm. That notice referenced a summary of the petition prepared on behalf of IR-4 by Valent U.S.A. Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has revised the proposed tolerance levels for plum; plum, prune, dried; and tomato. The reason for these changes is explained in Unit IV.D.

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 etoxazole on fruit, stone, group 12, except plum at 1.0 ppm; plum at 0.15 ppm; plum, prune, dried at 0.30 ppm; cucumber at 0.02 ppm; tomato at 0.20; spearmint, tops at 10 ppm; peppermint, tops at 10 ppm; peppermint, oil at 20 ppm; and spearmint, oil at 20 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The existing etoxazole data indicate that it possess low acute toxicity via all routes of exposure. It is not an eye or dermal irritant or a dermal sensitizer. No toxicity was seen at the limit dose in a 28–day dermal toxicity study in rats.

The liver is the main target organ in mice, rats and dogs. In a 90–day toxicity study in dogs, increased liver weights and centrilobular hepatocellular swelling in the liver were observed. Similar effects were observed in a chronic toxicity study in dogs at similar doses, indicating that systemic effects (mainly liver effects) occur at similar dose levels following short- through long-term exposure without increasing in severity. In a 90–day toxicity study in mice, hepatotoxicity (increased relative liver weight, liver enlargement, and centrilobular hepatocellular swelling) was observed at high doses. Similar effects were observed at the high dose in a mouse carcinogenicity study. Subchronic and chronic toxicity studies in rats produced similar effects (increased liver weights, centrilobular hepatocellular swelling, etc.) to those seen in mice and dogs. In addition, slight increases in thyroid weights and incisors were observed in subchronic and chronic toxicity studies in rats at high doses and at terminal stages of the study. Toxicity was not observed at the highest dose tested (HDT) in another carcinogenicity study in mice. There is no evidence of immunotoxicity or neurotoxicity in any of the submitted studies.

Two studies in mice showed no evidence of carcinogenicity up to the HDT. In a rat carcinogenicity study, which was deemed unacceptable due to inadequate dosing, benign interstitial cell tumors (testis) and pancreas benign islet cell adenomas were observed (in females) at the high dose. These effects were not observed in an acceptable carcinogenicity study in rats at higher doses. In special mechanistic male rat studies there were no observable

changes in serum hormone levels (estradiol, luteinizing hormone (LH), prolactin and testosterone) or reproductive effects (interstitial cell proliferation or spermatogenesis) noted. EPA classified etoxazole as ''not likely to be carcinogenic to humans.'' Etoxazole is not mutagenic.

The toxicology data for etoxazole provides no indication of increased susceptibility, as compared to adults, of rat and rabbit fetuses to *in utero* exposure in developmental studies. The rabbit developmental toxicity study included maternal toxic effects (liver enlargement, decreased weight gain, and decreased food consumption) at the same dose as developmental effects (increased incidences of 27 presacral vertebrae and 27 presacral vertebrae with 13th ribs). In the two-generation reproduction study conducted with rats, offspring toxicity was more severe (pup mortality) than parental toxicity (increased liver and adrenal weights) at the same dose, indicating increased qualitative susceptibility.

Specific information on the studies received and the nature of the adverse effects caused by etoxazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studiescan be found at *http://www.regulations.gov* in document ''Etoxazole; Human Health Risk Assessment for Proposed Uses on Stone Fruits, Cucumber, Tomato, and Mint,'' pages 29-31 in docket ID number EPA–HQ–OPP–2008–0554.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account 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. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for etoxazole used for human risk assessment can be found at *http://www.regulations.gov* in document ''Etoxazole; Human Health Risk Assessment for Proposed Uses on Stone Fruits, Cucumber, Tomato, and Mint,'' page 15 in docket ID number EPA–HQ–OPP–2008–0554.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to etoxazole, EPA considered exposure under the petitioned-for tolerances as well as all existing etoxazole tolerances in (40 CFR 180.593). EPA assessed dietary exposures from etoxazole in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and 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 1–day or single exposure.

No such effects were identified in the toxicological studies for etoxazole; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA used tolerance-level residues and empirically determined (when available) or DEEM default processing factors. Additionally, EPA assumed 100 percent crop treated (PCT) for all commodities covered by proposed or existing tolerances.

iii. *Cancer*. Two mouse studies showed no evidence of carcinogenicity at the high dose. While benign interstitial cell tumors in the testis and pancreas benign islet cell adenomas were observed in an unacceptable rat carcinogenicity study, these effects were not seen in a repeat study at higher doses. Furthermore, special mechanistic male rat studies resulted in no observable changes in serum hormone levels (estradiol, luteinizing hormone, prolactin and testosterone) or reproductive effects (interstitial cell proliferation or spermatogenesis). EPA determined that cancer risk concerns due to long-term consumption of etoxazole residues are adequately addressed by the chronic dietary exposure analysis; therefore, etoxazole was classified as ''not likely to be carcinogenic to humans,'' and a quantitative exposure assessment to evaluate cancer risk is unnecessary.

iv. *Anticipated residue and PCT information*. EPA did not use anticipated residue or PCT information in the dietary assessment for etoxazole. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for etoxazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of etoxazole. 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*.

Based on the First Index Reservoir Screening Tool (FIRST) model for surface water, and Screening Concentration in Ground Water (SCI-GROW) model for ground water, the estimated drinking water concentrations (EDWCs) of etoxazole and its major metabolites (R-8 and R-13) for surface water are estimated to be 15.73 parts per billion (ppb) for acute exposures and 4.761 ppb for chronic exposures. For ground water, the estimated drinking water concentration is estimated to be 0.746 ppb.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 4.761 ppb was used to assess the contribution to drinking water.

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). Etoxazole

is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of 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.''

EPA has not found etoxazole to share a common mechanism of toxicity with any other substances, and etoxazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that etoxazole does not have 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 EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) 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 based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The toxicology data for etoxazole provides no indication of increased susceptibility, as compared to adults, of rat and rabbit fetuses to *in utero* exposure in developmental studies. In a rat reproduction study, offspring toxicity was more severe (pup mortality) than parental toxicity (increased liver and adrenal weights) at the same dose; thereby indicating increased qualitative susceptibility. Based on the above concerns, a Degree of Concern Analysis was performed by EPA, which concluded that concern is low since:

i. The effects in pups are well-characterized with a clear NOAEL;

ii. The pup effects occur at the same dose as parental toxicity; and

iii. The doses selected for various risk assessment scenarios are lower than the doses that caused offspring toxicity.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for etoxazole is complete except for acute and subchronic neurotoxicity and immunotoxicity studies. Recent changes to 40 CFR 180.158 make acute and subchronic neurotoxicity testing (OPPTS Guideline 870.6200), and immunotoxicity testing (OPPTS Guideline 870.7800) required for pesticide registration. Because these testing requirements went into effect shortly before the tolerance petition was submitted, these studies are not yet available for etoxazole. However, the available data for etoxazole do not show potential for immunotoxicity. Further, there is no evidence of neurotoxicity in any study in the toxicity database for etoxazole. Therefore, EPA does not believe that conducting neurotoxicity and immunotoxicity studies will result in a NOAEL lower than the NOAEL of 4.62 milligrams/kilograms/day already established for etoxazole. Consequently, an additional database uncertainty factor does not need to be applied.

ii. There is no indication that etoxazole is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional Uncertainity Factors (UFs) to account for neurotoxicity.

iii. Although there is qualitative evidence of increased susceptibility of offspring (pup mortality) compared to less severe parental effects (increased liver and adrenal weights) at the same dose in the rat multi–generation reproduction study, the Agency did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs (10X for interspecies variation and 10X for intraspecies variation) to be used in the risk assessment. Therefore, there are no residual concerns regarding developmental effects in the young.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to etoxazole in drinking water. These assessments will not underestimate the exposure and risks posed by etoxazole.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No adverse effect resulting from a single-oral exposure was identified and no acute dietary endpoint was selected. Therefore, etoxazole is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to etoxazole from food and water will utilize 10% of the cPAD for children 1-2 years old, the population group receiving the greatest exposure. There are no residential uses for etoxazole to consider.

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

Etoxazole is not registered for any use patterns that would result in residential exposure. Therefore, the short-, and intermediate-term aggregate risk is the sum of the risk from exposure to etoxazole through food and water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population*. As discussed in Unit III.C.1.iii., EPA has classified etoxazole as ''not likely to be carcinogenic to humans,'' and it is not expected to pose a cancer risk to humans.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to etoxazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodologies (gas chromatography/nitrogen-phosphorus detection (GC/NPD) and gas chromatography/mass selective detection (GC/MSD) methods) are available to enforce the tolerance expression. The methods 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

Currently, there are no Codex, Canadian, or Mexican maximum residue limits (MRLs) established for residues of etoxazole in or on the subject commodities.

C. Response to Comments

EPA received one comment to the Notice of Filing that made a general objection to the presence of any pesticide residues on crops and stated that EPA should set no pesticide tolerance greater than zero. The Agency understands the commenter's concerns and recognizes that some individuals believe that pesticides should be banned completely. However, the existing legal framework provided by section 408 of FFDCA states that tolerances greater than zero may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. This citizen's comment appears to be directed at the underlying statute and not EPA's implementation of it; the citizen has made no contention that EPA has acted in violation of the statutory framework.

D. Revisions to Petitioned-For Tolerances

Based upon review of the data supporting the petition, EPA revised tolerances for certain proposed commodities, as follows: Plum from 0.12 ppm to 0.15 ppm; plum, prune, dried from 0.40 ppm to 0.30 ppm; and tomato from 0.25 ppm to 0.20 ppm. EPA revised the tolerance levels based on analysis of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's *Guidance for Setting Pesticide Tolerances Based on Field Trial Data*.

V. Conclusion

Therefore, tolerances are established for residues of etoxazole, 2-(2,6-difluorophenyl)-4-[4-(1,1-dimethylethyl)-2-ethoxyphenyl]-4,5-dihydrooxazole, in or on fruit, stone, group 12, except plum at 1.0 ppm; plum at 0.15 ppm; plum, prune, dried at 0.30 ppm; cucumber at 0.02 ppm; tomato at 0.20 ppm; spearmint, tops at 10 ppm; peppermint, tops at 10 ppm; spearmint, oil at 20 ppm; and peppermint, oil at 20 ppm. This regulation also deletes the existing tolerance in or on cherry at 1.0 ppm, as it is superseded by inclusion in fruit, stone, group 12.

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: May 15, 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 180.593 is amended in paragraph (a), by removing the commodity ''Cherry'' and by alphabetically adding the following commodities to the table to read as follows:

§ 180.593 Etoxazole; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * * * *	
Cucumber	0.02
* * * * *	
Fruit, stone, group 12, except plum	1.0
* * * * *	
Peppermint, oil	20
Peppermint, tops	10
* * * * *	
Plum	0.15
Plum, prune, dried	0.30
* * * * *	
Spearmint, oil	20
Spearmint, tops	10
* * * * *	
Tomato	0.20
* * * * *	

* * * * *

[FR Doc. E9–12292 Filed 5–26–09; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 286

RIN 0970–AC40

Temporary Assistance for Needy Families (TANF) Carry-Over Funds

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Interim final rule.

SUMMARY: This rule implements the statutory change to section 404(e) of the Social Security Act (42 U.S.C. 604(e)) as enacted by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5). This change allows States, Tribes and Territories to use Temporary Assistance for Needy Families (TANF) program funds carried over from a prior year for any allowable TANF benefit, service or activity. Previously these funds could be used only to provide assistance. This interim final rule applies to States, local governments, and Tribes that administer the TANF program.

DATES: *Effective Date:* May 27, 2009.

Comment Date: Comments are due on or before July 27, 2009.

ADDRESSES: You may mail or hand-deliver comments regarding this interim rule to the Administration for Children and Families, Office of Family Assistance, 370 L'Enfant Promenade, SW., 5th floor, Washington, DC 20447. You also may transmit comments electronically via the Internet at: *http://www.regulations.gov*. You may download an electronic version of this rule at: *http://www.regulations.gov*.

All comments received, including any personal information provided, will be available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m., at 901 D St., SW., 5th Floor, Washington DC.

FOR FURTHER INFORMATION CONTACT: Robert Shelbourne, Director, Division of State TANF Policy and Acting Director, Division of Tribal TANF Management, Office of Family Assistance, ACF, at (202) 401–5150.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

Section 417 of the Social Security Act (42 U.S.C. 617) limits the authority of the Federal government to regulate State conduct or enforce the TANF provisions of the Social Security Act, except as expressly provided. We have interpreted this provision to allow us to regulate where Congress has charged HHS with enforcing certain TANF provisions by assessing penalties. Because the improper use of Federal TANF carry-over funds can result in a financial penalty pursuant to 42 U.S.C. 609(a)(1), we have the authority to regulate in this instance.

Justification for Interim Final Rule

The Administrative Procedures Act requirements under 5 U.S.C. 553 for notice of proposed rulemaking do not apply to rules when the agency finds good cause that notice is impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)). We find proposed rulemaking unnecessary because the policy was effective upon enactment and this regulatory action merely updates program regulations to reflect current law and avoid any unnecessary confusion on the part of States and Tribes. The change made to the TANF program by the Recovery Act on the use of carry-over funds was intended to provide increased flexibility immediately to States and Tribes to support work and families especially during this difficult economic period. If this regulation were delayed, States and Tribes might be hesitant to take advantage of the flexibility afforded by the statutory change because of the conflict with the regulation, and any confusion resulting from that conflict.

For the same reason given above, we also find good cause for waiving the Administrative Procedures Act requirement under 5 U.S.C. 553(d) which provides that a rule generally may not become effective less than 30 days after it is published in the **Federal Register**. Since the statute was effective upon enactment and because this regulation merely updates the regulations to reflect the current law, this rule is effective upon publication.

II. American Recovery and Reinvestment Act of 2009

On February 17, 2009, the President signed the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), which included a provision to lift the restriction on unspent Federal TANF funds reserved or ''carried over'' into a succeeding fiscal year. Prior to Public Law 111–5, carry-over funds could only be used to provide assistance (*i.e.*, ongoing basic needs payments, and supportive services such as transportation and child care to families who are not employed). Section 2103 of Division B of Public Law 111–5 amends section 404(e) of the Social Security Act (Act) by allowing States, District of Columbia, the Territories and Tribes to use the carry-over funds for any allowable TANF benefit, service, or activity (such as job skills training or re-training activities, employment counseling services, parental counseling services, teen pregnancy prevention activities, services for victims of domestic violence, after-school programs)—and not just assistance.

Thus, the policy reflected in this interim final rule is effective immediately and applies to all Federal TANF funds carried over into fiscal year 2009 as well as to all future Federal TANF funds carried over into a subsequent year.

Herein after and as defined in section 419(5) of the Social Security Act, we will use ''States'' to mean the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa. (However, American Samoa has chosen not to participate in the TANF program.)

III. Regulatory Provisions

As discussed below, section 2103 of Public Law 111–5 requires a change in the Tribal TANF regulation at 45 CFR 286.60. The TANF regulations at 45 CFR Part 263, applicable to States and Territories, require no change.

Part 286—Tribal TANF Provisions

Section 286.60: Must Tribes obligate all Tribal Family Assistance Grant funds by the end of the fiscal year in which they are awarded?

Under prior law, section 404(e) of the Act, entitled ''Authority to Reserve Certain Amounts for Assistance,'' allowed States and Indian Tribes