| Commodity | Parts per million |
|---|---|
| Brassica, head and stem, subgroup 5A | 6.0 |
| Brassica, leafy greens, subgroup 5B | 30.0 |
| * * * * * | |
| Grape | 3.0 |
| Grape, raisin | 7.0 |
| * * * * * | |
| Onion, bulb, subgroup 3–07A | 0.6 |
| Onion, green, subgroup 3–07B | 15.0 |
| * * * * * | |
| Vegetable, leafy (except Brassica) group 4 | 30.0 |

* * * * *

(d) *Indirect or inadvertent residues.* Tolerances are established for the indirect or inadvertent residues of the fungicide dimethomorph, in or on the commodities in the following table. Compliance with the following tolerance levels specified in the following table is to be determined by measuring only dimethomorph (*E,Z*)-4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)acryloyl]morpholine calculated in or on the following commodities:

| Commodity | Parts per million |
|---|---|
| Wheat, forage | 0.15 |
| Wheat, hay | 0.15 |
| Wheat, straw | 0.4 |

[FR Doc. 2012–10709 Filed 5–3–12; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2009–0677; FRL–9345–3]**

### Fluoxastrobin; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of fluoxastrobin in or on peanut and peanut, refined oil. Arysta LifeScience North America, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective May 4, 2012. Objections and requests for hearings must be received on or before July 3, 2012, 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–2009–0677. 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:** Heather Garvie, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–0034; email address: *garvie.heather@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 get electronic access to other related information?*

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 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–2009–0677 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 3, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

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. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0677, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online 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. Summary of Petitioned-For Tolerance

In the **Federal Register** of July 20, 2011 (76 FR 43236) (FRL–8880–1), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP #1F7871) by Arysta LifeScience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513. The petition requested that 40 CFR 180.609 be amended by revising tolerances for residues of the fungicide fluoxastrobin in or on peanut and peanut oil, from 0.01 and 0.03 to 0.02 and 0.06 parts per million (ppm) respectively. That notice referenced a summary of the petition prepared by Arysta LifeScinece North America, LLC, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has corrected the commodity definition for peanut oil. The reason for this change is explained in Unit IV.C.

## 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 FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), 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 fluoxastrobin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fluoxastrobin 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 most recent human health risk assessment for fluoxastrobin was conducted for use on the squash/cucumber crop subgroup 9B. Since that time, no new toxicology data have been submitted to the Agency and the hazard characterization and toxicity endpoints for risk assessment remain unchanged. Specific information on the studies received and the nature of the adverse effects caused by fluoxastrobin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule that established a tolerance for residues of fluoxastrobin in or on squash/cucumber subgroup 9B. This rule was published in the **Federal Register** of August 17, 2011 (76 FR 50893) (FRL–8884–4).

### *B. Toxicological Points of Departure/ Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/ safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). 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 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 fluoxastrobin used for human risk assessment is shown in Table 1 of the final rule published in the **Federal Register** of August 17, 2011.

### *C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluoxastrobin, EPA considered exposure under the petitioned-for tolerances as well as all existing fluoxastrobin tolerances in 40 CFR 180.609. EPA assessed dietary exposures from fluoxastrobin 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 fluoxastrobin; 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 United States Department of Agriculture (USDA) 1994–1996 and 1998 Continuing Survey of Food Intake by Individuals (CSFII). As to residue levels in food, EPA conducted a conservative dietary exposure assessment for fluoxastrobin. The assumptions of this dietary assessment included tolerance level residues and 100 percent crop treated (PCT).

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that fluoxastrobin does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

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

2. *Dietary exposure from drinking water.* Based on laboratory studies, fluoxastrobin persists in soils for several months to several years and is slightly to moderately mobile in soil.

The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fluoxastrobin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluoxastrobin. 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 Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of fluoxastrobin for chronic exposures for non-cancer assessments are estimated to be 52.9 parts per billion (ppb) for surface water and 0.23 ppb for ground water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 53 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). Fluoxastrobin is currently registered for the following uses that could result in residential exposures: Spot treatment and/or broadcast control of diseases on turf, including lawns and golf courses. EPA assessed residential exposure using the following assumptions: Because of the potential for application four times per year, exposure duration is expected to be short-term and intermediate-term. A short-term dermal endpoint was not identified; therefore, only intermediate-term dermal risks as well as short- and intermediate-term inhalation risks were assessed. Homeowner residential applicators are expected to be adults.

There is also the potential for homeowners and their families (of varying ages) to be exposed as a result of entering areas that have previously been treated with fluoxastrobin. Exposure might occur on areas such as lawns used by children or recreational areas such as golf courses used by adults and youths. Potential routes of exposure include dermal (adults and children) and incidental oral ingestion (children). Since no acute hazard has been identified, an assessment of episodic granular ingestion was not conducted. While it is assumed that most residential use will result in short-term (1 to 30 days) post-application exposures, it is believed that intermediate-term exposures (greater than 30 days up to 180 days) are also possible. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at: *http://www.epa.gov/pesticides/science/residential-exposure-sop.html.*

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 fluoxastrobin to share a common mechanism of toxicity with any other substances, and fluoxastrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fluoxastrobin 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 Web site 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 Food Quality Protection Act Safety Factor (FQPA 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 database for evaluating *in utero* or postnatal susceptibility includes developmental toxicity studies in both rats and rabbits and a 2-generation reproduction study in the rat. The data provide no indication of increased susceptibility of rats or rabbits to prenatal and postnatal exposure to fluoxastrobin.

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 fluoxastrobin is complete with the exception of an acceptable functional immunotoxicity study. The Agency does have an immunotoxicity study for fluoxastrobin but it has deficiencies that make it unacceptable at this time. The study may be acceptable if additional information is submitted. Nonetheless, the Agency does not believe that conducting a new immunotoxicity study will result in a lower NOAEL than the regulatory dose for risk assessment. First, the available data do not indicate that fluoxastrobin results in primary immune system effects; a NOAEL for decreased spleen weight in the absence of histopathological findings (male rats) was 53 milligrams/kilogram/day (mg/kg/day). In addition, there was no indication of a functional effect on the immune system in the unacceptable mouse immunotoxicity study at doses as high as 2,383 mg/kg/day. Finally, the registrant recently submitted a new immunotoxicity study. The Agency has not fully reviewed the study at this time, but a preliminary screen indicates that fluoxastrobin does not appear to significantly affect the immune system and would not provide a Point of Departure lower than that currently used for risk assessment. For all of these reasons, the Agency therefore believes that no additional safety factor is needed to account for the deficiencies in the first immunotoxicity study.

ii. There is no indication that fluoxastrobin is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional uncertainty factors to account for neurotoxicity.

iii. There is no evidence that fluoxastrobin results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to fluoxastrobin in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by fluoxastrobin.

### *E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and

chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer 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 appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from 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, fluoxastrobin 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 fluoxastrobin from food and water will utilize 47% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fluoxastrobin is not expected.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure take into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fluoxastrobin is currently registered for uses that could result in both short- and intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short- and intermediate-term residential exposures of adults and children to fluoxastrobin. Because all short- and intermediate-term quantitative hazard assessments (via the dermal and incidental oral routes) for fluoxastrobin are based on the same endpoint, a screening-level, conservative aggregate risk assessment was conducted that combined the short-term incidental oral and intermediate-term exposure estimates (i.e., the highest exposure estimates) in the risk assessments for adults. The Agency believes that most residential exposure will be short-term, based on the use pattern.

There is potential short- and intermediate-term exposure to fluoxastrobin via the dietary (which is considered background exposure) and residential (which is considered primary) pathways. For adults, these pathways lead to exposure via the oral (background), and dermal and inhalation (primary) routes. For children, these pathways lead to exposure via the oral (background), and incidental oral and dermal (primary) routes.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short- and intermediate-term food, water, and residential exposures result in aggregate MOEs of 630 for adults; 170 for children (1–2 years old). Because EPA's level of concern for fluoxastrobin is a MOE of 100 or below, these MOEs are not of concern.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, fluoxastrobin 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 fluoxastrobin residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology (liquid chromatography/mass spectrometry/mass spectrometry) is available to enforce the tolerance expression. Method No. 00604 is available for plant commodities and Method No. 00691 is available for animal commodities. 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; email address: *residuemethods@epa.gov.*

### *B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are currently no established Mexican, Canadian, or Codex MRLs or tolerances for fluoxastrobin in/on peanuts.

### *C. Revisions to Petitioned-For Tolerances*

The proposed commodity term has been revised to agree with the Agency's Food and Feed Commodity Vocabulary. The petitioned for commodities were peanut and peanut oil. The correct commodity definitions are peanut and peanut, refined oil.

## V. Conclusion

Therefore, tolerances are established for residues of fluoxastrobin, in or on peanut and peanut, refined oil at s 0.02 and 0.06 ppm respectively.

## VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) 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 FFDCA section 408(d), 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 FFDCA section 408(n)(4). 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) (Pub. L. 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: April 25, 2012.

**Daniel J. Rosenblatt,**

*Acting 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 180.609 is amended by revising the following entries in the table in paragraph (a)(1) to read as follows:

**§ 180.609 Fluoxastrobin; tolerances for residues.**

(a) * * *

(1) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Peanut | 0.02 |
| * * * * * | |
| Peanut, refined oil | 0.06 |
| * * * * * | |

* * * * *

[FR Doc. 2012–10704 Filed 5–3–12; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 40

**[Docket DOT–OST–2010–0026]**

**RIN 2105–AE14**

## Procedures for Transportation Workplace Drug and Alcohol Testing Programs: 6-acetylmorphine (6–AM) Testing

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Interim final rule.

**SUMMARY:** The Department is amending certain provisions of its drug testing procedures for 6-acetylmorphine (6–AM), a unique metabolite of heroin. Laboratories and Medical Review Officers (MROs) will no longer be required to consult with one another regarding the testing for the presence of morphine when the laboratory confirms the presence of 6–AM. This rule is intended to streamline the laboratory process for analyzing and reporting 6–AM positive results and will facilitate MRO verification of 6–AM positive results.

**DATES:** The rule is effective July 3, 2012. Comments to this interim final rule should be submitted by June 4, 2012. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building Ground Floor Room W12–140, Washington, DC 20590–0001;
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329;

*Instructions:* You must include the agency name and docket number DOT-OST–2010–0026 or the Regulatory Identification Number (2105–AE14) for the rulemaking at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Bohdan Baczara, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE., Washington, DC 20590; 202–366–3784 (voice), 202–366–3897 (fax), or *bohdan.baczara@dot.gov* (email).

**SUPPLEMENTARY INFORMATION:**

### Background

For its drug testing regulation, the Department of Transportation (DOT) is required by the Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act) to incorporate the laboratory testing protocols and standards established by the U.S. Department of Health and Human Services (HHS). The Omnibus Act requires that we utilize HHS-certified laboratories and that we follow the HHS Mandatory Guidelines for identifying the specific drugs for which we test and the scientific methodologies the laboratories must use for testing. Because of these requirements and to create consistency with certain aspects of the new HHS Mandatory Guidelines effective October 1, 2010 [73 FR 71858], the DOT published its final rule on August 16, 2010 [75 FR 49850], also effective October 1, 2010, to harmonize with many aspects of the revised Mandatory Guidelines.

One item with which the DOT harmonized was the laboratory testing for 6-acetylmorphine (6–AM) without a morphine marker. 6–AM is a unique metabolite produced when a person uses the illicit drug heroin. Prior to the October 1, 2010 rulemaking, both HHS and DOT regulations required the laboratory to first test for morphine, and if it detected morphine at the HHS/DOT cutoff of 2000ng/mL, the lab would then test for 6–AM.