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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2011-0972; FRL-9329-9]

Extension of Tolerances for Emergency Exemptions (Multiple Chemicals)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for the pesticides listed in Unit II. of the **SUPPLEMENTARY INFORMATION**. These actions are in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

DATES: This regulation is effective [*insert date of publication in the Federal Register*]. Objections and requests for hearings must be received on or before [*insert date 60 days after date of publication in the Federal Register*], 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-2011-0972. 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: See the table in this unit for the name of a specific contact person. The following information applies to all contact persons: Emergency Response Team, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

Pesticide/CFR Citation	Contact Person
Diflubenzuron 40 CFR 180.377	Libby Pemberton <i>pemberton.libby@epa.gov</i> (703) 764-0212
Metconazole 40 CFR 180.617	
Pyraclostrobin	

	40 CFR 180.582
Linuron	Andrea Conrath <i>conrath.andrea@epa.gov</i>
40 CFR 180.184	(703) 308-9356
Spiromesifen	
40 CFR 180.607	

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not

listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of 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-2011-0972 in the subject line on the first page of your submission. All requests must be in writing, and must be received by the Hearing Clerk on or before [insert date 60 days after date of publication in the **Federal Register**]. 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-2011-0972 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. Background and Statutory Findings

EPA published final rules in the **Federal Register** for each chemical listed. The initial issuance of these final rules announced that EPA, on its own initiative, under section 408 of FFDCA, 21 U.S.C. 346a, was establishing time-limited tolerances.

EPA established the tolerances because FFDCA section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or time for public comment.

EPA received requests to extend the use of these chemicals for this year's growing season. After having reviewed these submissions, EPA concurs that emergency conditions exist. EPA assessed the potential risks presented by residues for each chemical. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18.

The data and other relevant material have been evaluated and discussed in the final rule originally published to support these uses. Based on that data and information considered, the Agency reaffirms that extension of these time-limited tolerances will continue to meet the requirements of FFDCA section 408(l)(6). Therefore, the time-limited tolerances are extended until the date listed. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on the date listed, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on the commodity after that date will not be unlawful, provided the residue is present as a result of an application or use of a pesticide at a time and in a manner that was lawful under FIFRA, the tolerance was in place at the time of the application, and the residue does not exceed the level that was authorized by the tolerance. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Tolerances for the use of the following pesticide chemicals on specific commodities are being extended:

Diflubenzuron. EPA has authorized under FIFRA section 18 the use of the insecticide, diflubenzuron for control of Mormon crickets (*Anabrus simplex*) and grasshoppers (Family *Acrididae*, various spp.) on alfalfa grown for hay. This regulation extends time-limited tolerances for residues of the insecticide, diflubenzuron and its metabolites p-chlorophenylurea and p-chloroaniline in or on alfalfa, forage and alfalfa, hay at 6.0 parts per million (ppm), for an additional 3-year period. These tolerances will expire and be revoked on December 31, 2014. Time-limited tolerances were originally published in the **Federal Register** of November 28, 2008 (73 FR 72352) (FRL 8388-9).

Linuron. EPA has authorized under FIFRA section 18 the use of linuron on lentils for control of mayweed chamomile and prickly lettuce in Washington and Idaho. This regulation extends a time-limited tolerance for combined residues of the herbicide linuron (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea) and its metabolites convertible to 3,4-dichloroaniline, in or on lentil at 0.1 ppm for an additional 3-year period. This tolerance will expire and is revoked on December 31, 2014. A time-limited tolerance was originally published in the **Federal Register** of September 5, 2008 (73 FR 51722) (FRL-8379-6).

Metconazole. EPA has authorized under FIFRA section 18 the use of the fungicide, metconazole for control of Orange Rust (*Puccinia kuehnii*) on sugarcane in Florida. This regulation extends time-limited tolerances for residues of the fungicide, metconazole, 5-[(4-chlorophenyl)-methyl]-2,2-dimethyl-1-(1H-1,2,4-triazol-1-ylmethyl)cyclopentanol, including its metabolites and degradates, in or on sugarcane, cane at 1.6 ppm and sugarcane, molasses at 3.2 ppm for an additional 3-year period. These tolerances will expire and be revoked on December 31, 2014. Time-limited

tolerances were originally published in the **Federal Register** of May 7, 2009 (74 FR 21260) (FRL 8408-6).

Pyraclostrobin. EPA has authorized under FIFRA section 18 the use of the fungicide, pyraclostrobin for control of Orange Rust (*Puccinia kuehnii*) on sugarcane in Florida. This regulation extends time-limited tolerances for combined residues of the fungicide pyraclostrobin; carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester and its desmethoxy metabolite; (methyl-N-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenylcarbamate, in or on sugarcane, cane at 0.02 ppm and sugarcane, molasses at 0.4 ppm for an additional 3-year period. These tolerances will expire and be revoked on December 31, 2014. Time-limited tolerances were originally published in the **Federal Register** of March 18, 2009 (74 FR 11494) (FRL 8402-8).

Spiromesifen. EPA has authorized under FIFRA section 18 the use of spiromesifen on soybeans for control of spider mites in Delaware. This regulation extends the time-limited tolerances for combined residues of the miticide spiromesifen [2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate] and 4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one, calculated as the stoichiometric equivalent of spiromesifen, in or on soybean forage at 30 ppm, soybean hay at 86 ppm, and soybean seed at 0.02 ppm for an additional 3-year period. These tolerances will expire and are revoked on December 31, 2014. Time-limited tolerances originally published in the **Federal Register** of April 8, 2009 (74 FR 15880) (FRL-8406-6).

III. 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.

The Codex has not established MRL's for diflubenzuron on alfalfa; linuron on lentil; metconazole or pyraclostrobin on sugarcane; nor spiromesifen on soybean hay, forage, or seed.

IV. Statutory and Executive Order Reviews

This final rule establishes time-limited tolerances under section 408(d) of FFDCA in response to petitions 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 tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

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).

V. 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: December 13, 2011.

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.

§ 180.184 [Amended]

2. In § 180.184, in the table to paragraph (b), amend the entry for “Lentil” by revising the expiration date “12/31/2011” to read “12/31/2014.”

§ 180.377 [Amended]

3. In § 180.377, in the table to paragraph (b), amend the entries for “Alfalfa, forage” and “Alfalfa, hay” by revising the expiration dates “12/31/11” to read “12/31/2014.”

§ 180.582 [Amended]

4. In § 180.582, in the table to paragraph (b), amend the entries for “Sugarcane, cane” and “Sugarcane, molasses” by revising the expiration dates “12/31/11” to read “12/31/2014.”

§ 180.607 [Amended].

5. In § 180.607, in the table to paragraph (b), amend the entries for “Soybean, forage”, “Soybean, hay”, and “Soybean, seed” by revising the expiration dates “12/31/11” to read “12/31/2014.”

§ 180.617 [Amended]

6. In § 180.617, in the table to paragraph (b), amend the entries for “Sugarcane, cane” and “Sugarcane, molasses” by revising the expiration dates “12/31/11” to read “12/31/2014.”

[FR Doc. 2011-33250 Filed 12/27/2011 at 8:45 am; Publication Date: 12/28/2011]