

requirement of tolerance will permit the use of the food commodities in this paragraph when treated in accordance with the provisions of the experimental use permit 67979-EUP-6, which is being issued in accordance with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136). This temporary exemption from the requirement of a tolerance expires and is revoked March 31, 2008; however, if the experimental use permit is revoked, or if any experience with or scientific data on this pesticide indicate that the temporary tolerance exemption is not safe, this temporary exemption from the requirement of a tolerance may be revoked at any time.

[FR Doc. E7-7768 Filed 4-24-07; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2007-0224; FRL-8121-2]

Propiconazole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of propiconazole and its metabolites containing the dichlorobenzoic acid (DCBA) moiety expressed as parent compound, in or on peach and nectarine. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on peach and nectarine as a post-harvest treatment. This regulation establishes maximum permissible levels for residues of propiconazole in these food commodities. The tolerances expire and are revoked on December 31, 2010.

DATES: This regulation is effective April 25, 2007. Objections and requests for hearings must be received on or before June 25, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-0224. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced

Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in [regulations.gov](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 either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT:

Andrea Conrath, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9356; e-mail address: conrath.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at <http://www.gpoaccess.gov/ecfr>.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2007-0224 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 25, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA-HQ-OPP-2007-0224, 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's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday,

excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for combined residues of the fungicide propiconazole, and its metabolites containing the dichlorobenzoic acid (2,4-DCBA) moiety expressed as parent compound, in or on peach and nectarine at 2.0 parts per million (ppm). These tolerances expire and are revoked on December 31, 2010. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR).

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

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

children from aggregate exposure to the pesticide chemical residue. . . ."

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

III. Emergency Exemption for Propiconazole as a Post-Harvest Treatment on Peach and Nectarine and FFDCA Tolerances

The applicant states that market demands have required producers to change storage practices for peaches and nectarines, and allow a pre-ripening time of 48 hours at 68°F to enhance fruit quality, prior to placing the fruit in cold storage at 32°F. This extra step has inadvertently fostered increased incidence of sour rot which has caused significant losses to growers. The current storage conditions used were developed to improve fruit quality and satisfy customer demands; returning to previous storage conditions would not result in acceptable fruit quality for the industry or consumer. Without the ability to adequately manage sour rot, economic data provided indicates that significant economic losses will occur. EPA has authorized under FIFRA section 18 the use of propiconazole on peach and nectarine as a post-harvest treatment, for control of sour rot in California. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of propiconazole in or on peach and nectarine. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although these tolerances expire and are revoked on December 31, 2010, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the

tolerances remaining in or on peach and nectarine after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. 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.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether propiconazole meets EPA's registration requirements for use on peach and nectarine as a post-harvest treatment or whether permanent tolerance for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as bases for registration of propiconazole by a State for special local needs under section 24(c) of FIFRA. Nor do these tolerances serve as the basis for any State other than California to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for propiconazole, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of propiconazole and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for time-limited tolerances for combined residues or residues of propiconazole in or on peach and nectarine at 2.0 ppm. While this post-harvest use under section 18 is not expected to result in residues exceeding 1.0 ppm, there is a pre-harvest use registered for use on stone fruit (includes peach and nectarine) for which a permanent tolerance is

established at 1.0 ppm. Therefore, EPA does not expect total residues from both of these uses to exceed 2.0 ppm in or on peach and nectarine.

On September 22, 2006 the Agency published a Final Rule (71 FR 55300, FRL-8092-1) establishing tolerances for combined residues of propiconazole and its metabolites containing the dichlorobenzoic acid (2,4-DCBA) moiety expressed as parent compound, in or on various commodities; and inadvertent residues in or on alfalfa, forage, and alfalfa, hay. When the Agency conducted the risk assessments in support of these tolerance actions it assumed that propiconazole residues would be present on peach and nectarine at 2.0 ppm, in association with this section 18 post-harvest use and the already registered pre-harvest use (for which there is a permanent tolerance established at 1.0 ppm), as well as on all foods covered by the proposed and established tolerances. Residues on peach and nectarine were included because there was a pending emergency exemption application under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.*, for emergency post-harvest use on these commodities. Therefore, establishing the peach and nectarine tolerances will not change the most recent estimated aggregate risks resulting from use of propiconazole, as discussed in the September 22, 2006 **Federal Register**. Refer to the September 22, 2006 **Federal Register** document, and its associated docket EPA-HQ-OPP-2006-0347, for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action.

Based on the risk assessments discussed in the final rule published in the **Federal Register** of September 22, 2006, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to propiconazole residues. The September 22, 2006 final rule contains a docket that has a risk assessment that describes the exposure and safety findings in detail.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (a gas chromatography (GC) method using electron capture detection (Method AG-454) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch,

Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: residuemethods@epa.gov.

B. International Residue Limits

The Codex Alimentarius Commission has established a maximum residue limit (MRL) for propiconazole in/on stone fruit, which includes peach and nectarine, at 1.0 ppm, expressed in terms of propiconazole *per se*. In addition, Canada has established MRLs on peach and nectarine of 1.0 ppm, expressed as propiconazole and its metabolites including the 2,4-DCBA moiety. As discussed above, there is a permanent U.S. tolerance set at 1.0 ppm for the stone fruit crop group, in association with a registered pre-harvest use. Therefore, to the extent possible, the U.S. tolerances are numerically harmonized with Codex and Canada. However, this section 18 emergency use represents a difference in the use pattern and the supporting residue data indicates a tolerance of 2.0 ppm will be necessary to cover total residues which may occur as a result of both the registered pre-harvest use, as well as this section 18 post-harvest use. A summary of Codex MRLs, Canadian MRLs, and Mexican tolerances and the corresponding U.S. tolerances for propiconazole is discussed at <http://www.regulations.gov> Docket No. EPA-HQ-OPP-2006-0347-0004; pages 53-54.

VI. Conclusion

Therefore, the tolerances are established for combined residues of propiconazole, and its metabolites containing the dichlorobenzoic acid (DCBA) moiety expressed as parent compound in or on peach and nectarine at 2.0 ppm.

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance 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 rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) 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 6, 2000) do not apply to this rule. In addition, This 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).

VIII. 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 12, 2007.

Donald R. Stubbs,

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 180.434 is amended by adding text and table to paragraph (b) to read as follows:

§180.434 Propiconazole; tolerances for residue.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of propiconazole (1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl] methyl]-1H-1,2,4-triazole) and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table:

Commodity	Parts per million	Expiration/revocation date
Nectarine	2.0	12/31/2010
Peach	2.0	12/31/2010

* * * * *

[FR Doc. E7-7678 Filed 4-24-07; 8:45 am]

BILLING CODE 6560-50-S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[WT Docket No. 04-435; FCC 07-47]

Amendment of the Commission's Rules To Facilitate the Use of Cellular Telephones and Other Wireless Devices Aboard Airborne Aircraft

AGENCY: Federal Communications Commission.

ACTION: Final rule, termination of proceeding.

SUMMARY: This document provides notice of the termination of the proceeding in WT Docket No. 04-435, involving the Commission's ban on the airborne use of cellular telephones as set out in the Commission's prohibition on airborne operation of cellular telephones rules.

DATES: Effective April 3, 2007.

FOR FURTHER INFORMATION CONTACT: Linda Chang, Mobility Division, Wireless Telecommunications Bureau, 202-418-1339, Linda.Chang@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, released April 3, 2007. The complete text of the *Memorandum Opinion and Order* is available for inspection and copying during business hours at the

FCC Reference Information Center, Portals II, 445 12th St., SW., Room CY-A257, Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY-B402, Washington, DC 20554. The complete text may also be downloaded at: <http://www.fcc.gov>.

Synopsis of Memorandum Opinion and Order:

1. On December 15, 2004, the Commission adopted a *Notice of Proposed Rulemaking (NPRM)* at 70 FR 11916, March 10, 2005 in the above-captioned docket proposing to replace or relax its ban under § 22.925 of the Commission's rules on the use of 800 MHz cellular handsets on airborne aircraft. The *NPRM* explored several different options for allowing airborne use of wireless devices, including a proposal to remove the current ban on the airborne use of cellular phones. Given the lack of technical information in the record upon which the Commission may base a decision, it has determined at this time that this proceeding should be terminated.

2. In the *NPRM*, the Commission specifically requested technical comment, emphasizing that the ban on the airborne use of cell phones would not be removed without sufficient information regarding possible technical solutions. The *NPRM* also noted that the Federal Aviation Administration (FAA) prohibits the use of portable electronic devices (PEDs) on airborne aircraft, and that RTCA, Inc. (RTCA), a Federal

Advisory Committee, is currently studying the effect of PEDs on aircraft navigation and safety at the request of the FAA. RTCA published findings in December 2006, and is expected to issue recommendations regarding airplane design and certification requirements in 2007.

3. The comments filed in this proceeding provide insufficient technical information that would allow the Commission to assess whether the airborne use of cellular phones may occur without causing harmful interference to terrestrial networks. Similarly, the December 2006 RTCA report does not provide data that would allow the Commission to evaluate the potential for interference between PED operations onboard airplanes and terrestrial-based wireless systems. Further, because it appears that airlines, manufacturers, and wireless providers are still researching the use of cell phones and other PEDs onboard aircraft, the Commission does not believe that seeking further comment at this juncture will provide the necessary technical information in the near term. Accordingly, the Commission concludes that this proceeding should be terminated. The Commission may, however, reconsider this issue in the future if appropriate technical data is available for its review.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. E7-7791 Filed 4-24-07; 8:45 am]

BILLING CODE 6712-01-P