

• 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 Clean Air Act; 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 (65 FR 67249, 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.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action 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 the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *November 17, 2009*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules

section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Dated: September 4, 2009.

Carol Rushin,

Acting Regional Administrator, Region 8.

■ 40 CFR part 52 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 G—Colorado

■ 2. Section 52.321 is amended by revising the introductory text to read as follows:

§ 52.321 Classification of regions.

The revised Denver Emergency Episode Plan, adopted by the State of Colorado February 28, 1996, was submitted by the Governor of Colorado with a September 16, 1997 letter.

* * * * *

[FR Doc. E9-22279 Filed 9-17-09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2008-0813; FRL-8431-5]

Tembotrione; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation revises the tolerances for residues of the herbicide tembotrione, including its metabolites and degradates, in or on corn, sweet forage; corn, sweet, stover; and corn, sweet, kernel plus cob with husks removed. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 18, 2009. Objections and

requests for hearings must be received on or before November 17, 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-2008-0813. 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:

Joanne Miller, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6224; e-mail address: miller.joanne@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-2008-0813 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 November 17, 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-2008-0813, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility’s normal hours of operation

(8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

II. Petition for Tolerance

In the **Federal Register** of December 3, 2008 (73 FR 73651) (FRL-8391-3), 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 8F7452) by Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.634 be amended by revising tolerances for combined residues of the herbicide tembotrione and its metabolites in or on corn, sweet, kernel plus cob with husks removed from 0.04 to 0.01 parts per million (ppm); corn, sweet, forage from 1.0 ppm to 0.09 ppm; and corn, sweet, stover from 1.2 ppm to 0.15 ppm. That notice referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available to the public 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 determined that the proposed tolerances should be revised as follows: corn, sweet, forage at 0.35 ppm; corn, sweet, stover at 0.60 ppm. EPA has also determined that the tolerance for corn, sweet, kernel plus cob with husks removed is acceptable at the proposed level of 0.01 ppm but that compliance with the tolerance level is to be determined by measuring only parent tembotrione. The reasons for these changes are 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 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 the herbicide tembotrione and its metabolites and degradates, in or on corn, sweet, kernel plus cob with husks removed at 0.01 ppm; corn, sweet, forage at 0.35 ppm; and corn, sweet, stover at 0.60 ppm. EPA’s assessment of exposures and risks associated with establishing tolerances follows.

In the **Federal Register** of September 28, 2007 (72 FR 55078) (FRL-8148-2) the Agency published a final rule establishing tolerances for combined residues of tembotrione and its M5 metabolite in or on corn, sweet, kernel plus cob with husks removed at 0.04 ppm; corn, sweet, forage at 1.0 ppm; and corn, sweet stover at 1.2 ppm. When the Agency conducted the risk assessment in support of the September 2007 tolerance action, it considered the use of tembotrione on corn (field and sweet), incorporating potential residues of tembotrione and its metabolites in or on corn commodities and secondary residues of tembotrione in livestock commodities from consumption of treated feedstuffs, including corn forage. Residues of tembotrione on corn and livestock commodities were assumed to be present at tolerance levels. Since EPA considered the residues of tembotrione on corn, sweet, kernel plus cob with husks removed; corn, sweet, forage; and corn, sweet, stover at a higher level in its most recent risk assessments, reducing the tolerances on sweet corn commodities will reduce the estimated aggregate exposures resulting from use of tembotrione. While it is true that lowering the tolerances will reduce the estimated exposure to tembotrione, changes have occurred in toxicology data requirements for pesticides since the 2007 risk assessment was completed which could impact the Food Quality Protection Act (FQPA) safety factor (SF) for tembotrione, currently retained at 10X for acute and chronic dietary risk assessment. EPA’s assessment of the new data requirements as they relate to the FQPA safety factor for tembotrione is discussed below.

EPA began requiring acute and subchronic neurotoxicity testing and

functional immunotoxicity testing of all food and non-food use pesticides on December 26, 2007 (40 CFR part 158 subpart F). Acute and subchronic neurotoxicity studies in rats, as well as a developmental neurotoxicity (DNT) study in rats are available for tembotrione and were considered by EPA in its 2007 aggregate risk assessment and FQPA safety factor determination. Immunotoxicity data are not available for tembotrione. In the absence of specific immunotoxicity studies, EPA has evaluated the available tembotrione toxicity data to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity. The decreased absolute and relative thymus weights observed in female rats in the subchronic oral toxicity study were not corroborated with histopathological changes, and there were no thymus effects in other subchronic, chronic and carcinogenicity studies in rats. Therefore, the thymus weight changes in this study are spurious effects and not indicative of immunotoxicity. The increased incidence of minimal extramedullary hematopoiesis of the spleen in the rat offspring of the reproduction toxicity study and the anemia seen in the mice in the carcinogenicity study are indicators of toxicity to the hematopoietic system and not indicators of frank immunotoxicity. No other effects on organs of the immune system were seen, and the toxicity profile clearly indicates the eye, liver and kidneys to be the target organs for tembotrione-induced toxicity. Additionally, tembotrione does not belong to a class of chemicals (e.g., the organotins, heavy metals, or halogenated aromatic hydrocarbons) that would be expected to be immunotoxic in laboratory animals. Therefore, the Agency does not believe that conducting immunotoxicity testing will result in doses lower than those currently used for overall risk assessments (0.8 milligrams/kilograms/day (mg/kg/day) for acute and 0.04 mg/kg/day for repeated exposures) and an additional uncertainty factor is not needed to account for potential immunotoxicity. Based on these considerations, EPA concludes that no uncertainty factors are required in addition to those used in the 2007 risk assessment for tembotrione.

Therefore, based on the risk assessments discussed in the final rule published in the **Federal Register** of September 28, 2007, 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 tembotrione residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An Adequate enforcement methodology, liquid chromatography/mass spectroscopy (LC/MS/MS) method 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) 305-905; e-mail address: residuemethods@epa.gov.

B. International Residue Limits

There is neither a Codex proposal, nor Canadian or Mexican limits for residues of tembotrione and its metabolites in or on crops or livestock commodities.

C. Revisions to Petitioned-For Tolerances

The submitted data support the following revised tolerances for residues of tembotrione in or on sweet corn commodities: Corn, sweet, kernel plus cob with husks removed at 0.01 ppm; corn, sweet, forage at 0.35 ppm; corn, sweet, stover at 0.60 ppm. EPA revised the tolerance levels for corn, sweet, forage and stover from those proposed by the registrant based on analyses 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*. There were no detectable residues of tembotrione in corn, sweet, kernel plus cob with husks removed; and metabolism data for tembotrione show that while M5 is a major metabolite in forage and stover, it was present at less than 1% of the Total Radioactive Residue (TRR) in corn grain. Based on the results of these field trial and metabolism studies, the tolerance for corn, sweet, kernel plus cob with husks removed is being established at the limit of quantitation (0.01 ppm) for tembotrione.

Tolerances for tembotrione are currently expressed in terms of "2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-1,3-cyclohexanedione, and its metabolite, 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-4,6-dihydroxy-1,3-cyclohexanedione." EPA is revising the tolerance expression for existing tolerances and the new tolerances on sweet corn commodities to clarify the chemical moieties that are covered by the tolerances and specify how compliance with the tolerances is to be measured. The revised tolerance

expression makes clear that the tolerances cover "residues of tembotrione, including its metabolites and degradates," and that compliance with the tolerance levels for all commodities except corn, sweet, kernel plus cob with husks removed, will be determined by measuring only the sum of tembotrione, 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-1,3-cyclohexanedione and its metabolite, 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-4,6-dihydroxy-1,3-cyclohexanedione, calculated as the stoichiometric equivalent of tembotrione. Compliance with the tolerance level for corn, sweet, kernel plus cob with husks removed will be determined by measuring only tembotrione.

EPA has determined that it is reasonable to make this change final without prior proposal and opportunity for comment, because public comment is not necessary, in that the change has no substantive effect on the tolerances, but rather is merely intended to clarify the existing tolerance expression.

V. Conclusion

Therefore, tolerances are revised for residues of the herbicide tembotrione, including its metabolites and degradates, in or on corn, sweet, kernel plus cob with husks removed at 0.01 ppm; corn, sweet, forage at 0.35 ppm; and corn, sweet, stover at 0.60 ppm. Compliance with the tolerance levels specified for corn, sweet, forage and stover is to be determined by measuring only the sum of tembotrione, 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-1,3-cyclohexanedione and its metabolite, 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-4,6-dihydroxy-1,3-cyclohexanedione, calculated as the stoichiometric equivalent of tembotrione, in or on the commodities. Compliance with tolerance level for corn, sweet, kernel plus cob with husks removed, will be determined by measuring only tembotrione.

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: September 8, 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 180.634 is amended as follows:

a. By revising the introductory text of paragraph (a) and redesignating it as paragraph (a)(1).

b. In the table to newly redesignated paragraph (a)(1) by revising the entries for corn, sweet, forage, and corn, sweet, stover, and by removing the entry for corn, sweet, kernel plus cob with husks removed.

c. By adding paragraph (a)(2). The revised and added text reads as follows:

§ 180.634 Tembotrione; tolerances for residues.

(a) * * * (1) Tolerances are established for residues of the herbicide tembotrione, including its metabolites and degradates, in or on the commodities listed in the table to this paragraph. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of tembotrione, 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-1,3-cyclohexanedione and its metabolite, 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-4,6-dihydroxy-1,3-cyclohexanedione, calculated as the stoichiometric equivalent of tembotrione, in or on the following commodities.

Commodity	Parts per million
* * *	* *
Corn, sweet, forage	0.35
Corn, sweet, stover	0.60
* * *	* *

(2) Tolerances are established for residues of the herbicide tembotrione, including its metabolites and degradates, in or on the commodities listed in the table to this paragraph. Compliance with the tolerance levels specified below is to be determined by measuring only tembotrione, 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-1,3-cyclohexanedione in or on the following commodities.

Commodity	Parts per million
Corn, sweet, kernel plus cob with husks re- moved	0.01

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket 03-123 and WC Docket No. 05-196; DA 09-1323]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers

AGENCY: Federal Communications Commission.

ACTION: Final rule; extension of deadline.

SUMMARY: In this document, the Commission via the Consumer and Governmental Affairs Bureau (Bureau) extends the registration deadline established in the *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, Second Report and Order and Order on Reconsideration (*Second Internet-based TRS Order*), during which Internet-based Telecommunications Relay Service (TRS) providers may continue to complete the non-emergency calls of unregistered users. This action is necessary because extending the deadline will ensure a more orderly transition to ten-digit numbering for