

CALIFORNIA—PM—10—Continued

Designated Area	Designation		Classification	
	Date	Type	Date	Type
San Joaquin Valley Air Basin; Fresno County, Kings County, Madera County, Merced County, San Joaquin County, Stanislaus County, Tulare County, and that portion of Kern County which lies west and north of a line described as follows: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Libre Land Grant to the point of intersection with the range line common to R. 16 W. and R. 17 W., San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Land Grant to the northwest corner of S. 3, T. 11 N., R. 17 W.; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of S. 34, T. 32 S., R. 30 E., Mount Diablo Base and Meridian; then north to the northwest corner of S. 35, T. 31 S., R. 30 E.; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of S. 18, T. 31 S., R. 31 E.; then east to the southeast corner of S. 13, T. 31 S., R. 31 E.; then north along the range line common to R. 31 E. and R. 32 E., Mount Diablo Base and Meridian, to the northwest corner of S. 6, T. 29 S., R. 32 E.; then east to the southwest corner of S. 31, T. 28 S., R. 32 E.; then north along the range line common to R. 31 E. and R. 32 E. to the northwest corner of S. 6, T. 28 S., R. 32 E., then west to the southeast corner of S. 36, T. 27 S., R. 31 E., then north along the range line common to R. 31 E. and R. 32 E. to the Kern-Tulare County boundary.	December 12, 2008.	Attainment.		
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2008-0175; FRL-8387-8]

Avermectin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of the insecticide avermectin B₁ and its delta-8,9-isomer in or on bean, lima, seed. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on large lima beans. This regulation establishes a maximum permissible level for residues of avermectin in this food commodity. The time-limited tolerance expires and is revoked on December 31, 2010.

DATES: This regulation is effective November 12, 2008. Objections and requests for hearings must be received on or before January 12, 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-2008-0175. All documents in the docket are listed in the docket index available in <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: Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number:

(703) 308-9367; e-mail address: ertman.andrew@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 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 40 CFR part 180 through the Government Printing Office’s e-CFR site at <http://www.gpoaccess.gov/ecfr>.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (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. 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-2008-0175 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 January 12, 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 your copies, identified by docket ID number EPA-HQ-OPP-2008-0175, 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, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of FFDCA, 21 U.S.C. 346a(e) and 346a(l)(6), is establishing a time-limited tolerance for combined residues of the insecticide avermectin B₁ and its delta-8,9-isomer in or on bean, lima, seed at 0.005 parts per million (ppm). This time-limited tolerance expires and is revoked on December 31, 2010. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the CFR.

Section 408(l)(6) of 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 time-limited tolerances to set binding precedents for the application of section 408 of FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of 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 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. . . .”

Section 18 of 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.” EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Avermectin on Large Lima Beans and FFDCA Tolerances

The state of California asserts that large lima bean growers have few miticides to work with for controlling spider mites. Confirmed resistance to dicofol has been demonstrated in fields located in Stanislaus County. In 2006, two-spotted spider mite infestations were pervasive on some ranches and some growers experienced 30% crop losses despite use of the available registered alternatives. After having reviewed the submission, EPA determined that emergency conditions exist for this State, and that the criteria for an emergency exemption are met. EPA has authorized under FIFRA section 18 the use of avermectin on large lima beans for control of spider mites in California.

As part of its evaluation of the emergency exemption application, EPA assessed the potential risks presented by residues of avermectin in or on large lima beans. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of 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 this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of FFDCA. Although this time-limited tolerance expires and is revoked on December 31, 2010, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on large lima beans after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this time-limited tolerance at the time of that application. EPA will take action to revoke this time-limited tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this time-limited tolerance is being approved under emergency conditions, EPA has not made any decisions about whether avermectin meets FIFRA’s registration requirements

for use on large lima beans or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that this time-limited tolerance decision serves as a basis for registration of avermectin by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for persons in any State other than California to use this pesticide on this crop under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for avermectin, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT.**

IV. 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 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 expected as a result of this emergency exemption request and the time-limited tolerance for combined residues of avermectin B₁ and its delta-8,9-isomer in or on bean, lima, seed at 0.005 ppm. EPA's assessment of exposures and risks associated with establishing the time-limited tolerance follows.

A. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for

derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

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

A summary of the toxicological endpoints for avermectin used for human risk assessment is discussed in a tolerance document entitled *Avermectin B₁ and its delta-8,9-isomer; Pesticide Tolerance* (70 FR 7876, FRL-7695-7, February 16, 2005).

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to avermectin, EPA considered exposure under the time-limited tolerance established by this action as well as all existing avermectin tolerances in (40 CFR 180.449). EPA assessed dietary exposures from avermectin in food as follows:

i. *Acute exposure.* In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture

(USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). The following assumptions were made for the acute exposure assessments: A Tier 3, acute probabilistic dietary exposure assessment was conducted for all supported food uses and drinking water. Acute anticipated residues for many foods were derived using market basket survey and new field trial studies. Estimated concentrations of avermectin in drinking water were incorporated directly into the acute assessment.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the DEEM/FCID which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide CSFII, and accumulated exposure to the chemical for each commodity. Percent crop treated and anticipated residues refinements were used. A refined chronic dietary exposure assessment was conducted for the general U.S. population and various population subgroups. The assumptions of the assessment were anticipated residue estimates, PCT estimates for most of the commodities, and default DEEM processing factors when necessary. Estimated concentrations of avermectin in drinking water were incorporated directly into the chronic assessment.

iii. *Cancer.* An aggregate exposure assessment for the purpose of assessing cancer risk was not performed because avermectin has been classified as "not likely to be carcinogenic to humans."

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food

derived from such crop is likely to contain the pesticide residue.

- Condition b: The exposure estimate does not understate exposure for any significant subpopulation group.

- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

Almonds 21%; avocado 20%; balsam pear 1%; cantaloupe 7%; casabas 1%; chayote fruit 1%; Chinese waxgourd 1%; cotton 3%; cress (garden, upland) 1%; cucumber 1%; grape 6%; hops 82%; honeydew melon 1%; plum 1%; pumpkin 1%; squash 1%; strawberry 44%; walnut 2%; watermelon 7%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk

assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which avermectin may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for avermectin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of avermectin. 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>. Tier II screening models PRZM (Pesticide Root Zone Model) and EXAMS (Exposure Analysis Modeling System) were used to determine estimated surface water concentrations of avermectin based on the modeled scenario of one seed treatment to cucumbers followed by 3 aerial applications at a 7-day interval in Florida. This use of avermectin represents the worst case potential contribution of avermectin to drinking water when considering currently registered uses, including this one. The full PRZM/EXAMS distribution was used for the acute dietary assessment, and the one in ten year annual mean concentration of 0.190 ppm was used for chronic dietary estimates. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

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).

Avermectin is currently registered for use on the following residential non-dietary sites: Residential lawn application for fire ant control and residential indoor crack and crevice application for cockroaches and ants. These registered residential uses may result in short- to intermediate-term exposures; however, based on current use patterns, long-term exposure (6 or more months of continuous exposure) to avermectin is not expected. Adults may be exposed through handling the pesticide and both adults and children

may be exposed through contact with treated areas following application. Accordingly, handler and post-application exposures were assessed for two major categories of residential avermectin use which are considered to represent the reasonable high-end residential exposure potential:

- Granular baits used to treat lawns, and
- Indoor crack and crevice dust products.

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 avermectin to share a common mechanism of toxicity with any other substances, and avermectin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that avermectin 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 the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at <http://www.epa.gov/pesticides/cumulative>.

C. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor. For avermectin B₁ EPA retained the default 10X factor based on the following combination of factors:

- There is residual uncertainty due to a data gap for a developmental neurotoxicity study (DNT), as well as data gaps for acute and subchronic neurotoxicity studies. These studies are required because avermectin B₁ has been shown to be neurotoxic, with multiple neurotoxic clinical signs (including head and body tremors and limb splay) seen in multiple studies with multiple species.

- For several species, the dose-response curve appears to be steep.

- Severe effects were seen at the LOAELs in several studies (death, neurotoxicity, and developmental toxicity). Although increased susceptibility of the young was observed in several studies, the degree of concern with that susceptibility was judged to be low. Increased susceptibility (qualitative and/or quantitative) was seen in prenatal developmental toxicity studies in CD-1 mice and rabbits following *in utero* exposure to avermectin B₁. There was also an increase in quantitative and qualitative susceptibility in the rat reproductive toxicity study. The concern for susceptibility seen in the developmental study with rabbits and in the reproductive toxicity study in the rat is low because the lowest NOAEL obtained (0.12 mg/kg/day) was used as the basis for the chronic RfD and other non-dietary risk assessment scenarios, which is protective of all of the developmental/offspring effects seen in those studies. Similarly, the concern for susceptibility seen at the LOAEL in the CD-1 mouse developmental toxicity study is low, since the NOAEL in the rat reproductive toxicity study is lower than the dose at which effects were seen in the CD-1 mouse.

D. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary

exposure from food and water to avermectin will occupy 93% of the aPAD for all infants less than 1 year old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to avermectin from food and water will utilize 20% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in the unit regarding residential use patterns, chronic residential exposure to residues of avermectin is not expected.

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

Avermectin is currently registered for uses that could result in short-term and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term and intermediate-term residential exposures to avermectin.

Using the exposure assumptions described in this unit for short-term and intermediate-term exposures, EPA has concluded the combined short-term food, water, and residential exposures aggregated result in aggregate MOEs of 3,000 for the U.S. population, and 1,700 for children 1–2 years old. These aggregate MOEs are greater than the Agency's level of concern of 1,000 for aggregate exposure to food, water and residential uses and therefore acceptable.

4. *Aggregate cancer risk for U.S. population.* Avermectin has been classified as “not likely to be carcinogenic to humans” and therefore 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 avermectin residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology 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

There are no CODEX residue limits for residues of avermectin on bean, lima, seed.

VI. Conclusion

Therefore, a time-limited tolerance is established for combined residues of the insecticide avermectin B₁ and its delta-8,9-isomer in or on bean, lima, seed at 0.005 ppm. This time-limited tolerance expires and is revoked on December 31, 2010.

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under sections 408(e) and 408(l)(6) 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 in accordance with sections 408(e) and 408(l)(6) 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).

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: October 31, 2008.

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 180.449 is amended by alphabetically adding a commodity to the table in paragraph (b) to read as follows:

§ 180.449 Avermectin B₁ and its delta-8,9-isomer; tolerances for residues.

*	*	*	*	*
(b)	*	*	*	*

Commodity	Parts per million	Expiration/revocation date
bean, lima, seed	0.005	12/31/10

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2007-0945; FRL-8387-1]

MCPB; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of free and conjugated MCPB and its metabolite MCPA in or on peppermint, tops and spearmint, tops. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective November 12, 2008. Objections and requests for hearings must be received on or before January 12, 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-2007-0945. 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:

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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**.