

*Federal Law Enforcement Officer* means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

*Large Passenger Vessel* means any cruise ship over 100 feet in length carrying passengers for hire, and any auto ferries and passenger ferries over 100 feet in length carrying passengers for hire such as the Washington State Ferries, M/V COHO and Alaskan Marine Highway Ferries. Large Passenger Vessel does not include vessels inspected and certificated under 46 CFR, Chapter I, Subchapter T such as excursion vessels, sight seeing vessels, dinner cruise vessels, and whale watching vessels.

*Large Passenger Vessel Security and Safety Zone* is a regulated area of water established by this section, surrounding large passenger vessels for a 500-yard radius to provide for the security and safety of these vessels.

*Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.

*Navigation Rules* means the Navigation Rules, International—Inland.

*Official Patrol* means those persons designated by the Captain of the Port to monitor a large passenger vessel security and safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the Captain of the Port. Persons authorized in paragraph (l) to enforce this section are designated as the Official Patrol.

*Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

*Washington Law Enforcement Officer* means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(c) *Security and safety zone.* There is established a large passenger vessel security and safety zone extending for a 500-yard radius around all large passenger vessels located in the navigable waters of the United States in Puget Sound, WA, east of 123°30' West Longitude. [Datum: NAD 1983].

(d) *Compliance.* The large passenger vessel security and safety zone established by this section remains in effect around large passenger vessels at all times, whether the large passenger vessel is underway, anchored, or moored. Upon notice of enforcement by the Captain of the Port Puget Sound, the

Coast Guard will enforce the large passenger vessel security and safety zone in accordance with rules set out in this section. Upon notice of suspension of enforcement by the Captain of the Port Puget Sound, all persons and vessels are authorized to enter, transit, and exit the large passenger vessel security and safety zone, consistent with the Navigation Rules.

(e) The Navigation Rules shall apply at all times within a large passenger vessel security and safety zone.

(f) When within a large passenger vessel security and safety zone all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the on-scene official patrol or large passenger vessel master. No vessel or person is allowed within 100 yards of a large passenger vessel that is underway or at anchor, unless authorized by the on-scene official patrol or large passenger vessel master. No vessel or person is allowed within 25 yards of a large passenger vessel that is moored.

(g) To request authorization to operate within 100 yards of a large passenger vessel that is underway or at anchor, contact the on-scene official patrol or large passenger vessel master on VHF-FM channel 16 or 13.

(h) When conditions permit, the on-scene official patrol or large passenger vessel master should:

(1) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of a large passenger vessel in order to ensure a safe passage in accordance with the Navigation Rules; and

(2) Permit vessels that must transit via a navigable channel or waterway to pass within 100 yards of an anchored large passenger vessel or within 25 yards of a moored large passenger vessel with minimal delay consistent with security.

(i) When a large passenger vessel approaches within 100 yards of any vessel that is moored or anchored, the stationary vessel must stay moored or anchored while it remains within the large passenger vessel's security and safety zone unless it is either ordered by, or given permission by the Captain of the Port Puget Sound, his designated representative or the on-scene official patrol to do otherwise.

(j) *Exemption.* Public vessels as defined in paragraph (b) of this section are exempt from complying with paragraphs (c), (d), (f), (g), (h), and (i), of this section.

(k) *Exception.* 33 CFR part 161 contains Vessel Traffic Service regulations. When measures or directions issued by Vessel Traffic

Service Puget Sound pursuant to 33 CFR part 161 also apply, the regulations govern rather than the regulations in this section.

(l) *Enforcement.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to provide effective enforcement of this section in the vicinity of a large passenger vessel, any Federal Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 33 CFR 6.04–11. In addition, the Captain of the Port may be assisted by other federal, state or local agencies in enforcing this section.

(m) *Waiver.* The Captain of the Port Puget Sound may waive any of the requirements of this section for any vessel or class of vessels upon finding that a vessel or class of vessels, operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety or environmental safety.

Dated: December 10, 2003.

**Danny Ellis,**

*Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.*

[FR Doc. 04–747 Filed 1–13–04; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP–2003–0402; FRL–7339–8]

#### Extension of Tolerances for Emergency Exemptions Multiple Chemicals

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

**ACTION:** Final rule.

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

will result from the use of a pesticide under an emergency exemption granted by EPA.

**DATES:** This regulation is effective January 14, 2004. Objections and requests for hearings, identified by docket ID number OPP-2003-0402, must be received by EPA on or before February 13, 2004.

**ADDRESSES:** Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** See the following table for the name of a specific contact person. The following

information applies to all contact persons: Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

Pesticide/CFR cite	Contact person
Bifenthrin; § 180.442	Andrea Conrath conrath.andrea@epa.gov (703) 308-9356
Avermectin; § 180.449 Azoxystrobin; § 180.507	Libby Pemberton pemberton.libby@epa.gov (703) 308-9364
Fluroxypyr 1-methylheptyl ester; § 180.535 Imidacloprid; § 180.472 Propyzamide; § 180.317	Andrew Ertman ertman.andrew@epa.gov (703) 308-9367
Tebufenozide; § 180.482	Stacey Milan Groce milan.stacey@epa.gov (703) 305-2505

## 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 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 28532)

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

#### B. How Can I Get Copies of this Document and Other Related Information?

1. **Docket.** EPA has established an official public docket for this action under docket identification (ID) number OPP-2003-0402. The official public docket consists of the documents specifically referenced in this action, any public comments received, and

other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. **Electronic access.** You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at [http://www.access.gpo.gov/nara/cfr/cfrhtml\\_00/Title\\_40/40cfr180\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html), a beta site currently under development.

An electronic version of the public docket is available through EPA’s electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in

the system, select “search,” then key in the appropriate docket ID number.

### II. Background and Statutory Findings

EPA published final rules in the **Federal Register** for each chemical/commodity listed. The initial issuance of these final rules announced that EPA, on its own initiative, under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) of 1996 (Public Law 104-170) was establishing time-limited tolerances.

EPA established the tolerances because 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 FIFRA section 18. Such tolerances can be established without providing notice or time for public comment.

EPA received requests to extend the use of these chemicals for this year’s growing season. After having reviewed these submissions, EPA concurs that emergency conditions exist. EPA assessed the potential risks presented by residues for each chemical/commodity. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and 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.

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

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

1. *Avermectin*. EPA has authorized under FIFRA section 18 the use of avermectin on avocado for control of avocado thrip in California. This regulation extends a time-limited tolerance for combined residues of the insecticide avermectin B1 (a mixture of avermectins containing greater than or equal to 80% avermectin B1a (5-O-demethyl avermectin A1) and less than or equal to 20% avermectin B1b (5-O-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A1)) and its delta-8,9-isomer in or on avocado at 0.02 parts per million (ppm) for an additional 3-year period. This tolerance will expire and is revoked on December 31, 2006. A time-limited tolerance was originally published in the **Federal Register** of April 7, 1999 (64 FR 16843) (FRL-6070-6).

EPA has also authorized under FIFRA section 18 the use of avermectin on spinach for control of leafminers in California. This regulation extends a time-limited tolerance for combined residues of the insecticide avermectin B1 in or on spinach at 0.05 ppm for an additional 3-year period. This tolerance will expire and is revoked on December 31, 2006. A time-limited tolerance was originally published in the **Federal Register** of August 19, 1997 (62 FR

44089) (FRL-5737-1). Additionally, this regulation also extends a time-limited tolerance for combined residues of the insecticide avermectin B1 in or on basil at 0.05 ppm for an additional 3-year period in connection with use under section 18 on basil in California to control leafminer. This tolerance will expire and is revoked on December 31, 2006. A time-limited tolerance was originally published in the **Federal Register** of October 29, 1997 (62 FR 56082) (FRL-5750-8).

2. *Azoxystrobin*. EPA has authorized under FIFRA section 18 the use of azoxystrobin on cabbage for control of alternaria leafspot and cercospora leafspot in Texas. This regulation extends a time-limited tolerance for combined residues of the fungicide azoxystrobin (methyl(E)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yl)oxy)phenyl)-3-methoxyacrylate, and the Z-isomer of azoxystrobin methyl(Z)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yl)oxy)phenyl)-3-methoxyacrylate in or on head and stem (Brassica) subgroup at 30 ppm for an additional 3-year period. This tolerance will expire and is revoked on December 31, 2006. A time-limited tolerance was originally published in the **Federal Register** of November 21, 2001 (66 FR 58400) (FRL-6809-3).

3. *Bifenthrin*. EPA has authorized under FIFRA section 18 the use of bifenthrin on sweet potatoes for control of soil beetles and weevils in Louisiana and Mississippi. This regulation extends a time-limited tolerance for residues of the insecticide bifenthrin ((2-methyl[1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropane carboxylate) in or on sweet potato, roots at 0.05 ppm for an additional 2-year period. This tolerance will expire and is revoked on December 31, 2005. A time-limited tolerance was originally published in the **Federal Register** of September 27, 2001 (66 FR 49308) (FRL-6801-5), subsequently corrected by a technical amendment published in the **Federal Register** of September 3, 2003 (68 FR 52353) (FRL-7323-9).

4. *Fluroxypyr 1-methylheptyl ester*. EPA has authorized under FIFRA section 18 the use of fluroxypyr 1-methylheptyl ester on field corn and sweet corn for control of volunteer potatoes in Washington, Oregon, Idaho, and Wisconsin. This regulation extends time-limited tolerances for residues of the herbicide fluroxypyr 1-methylheptyl ester ((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetic acid, 1-methylheptyl ester and its metabolite fluroxypyr in or on corn, sweet, K + CWHR at 0.05 ppm; corn, sweet, forage

at 2.0 ppm; corn, sweet, stover at 2.5 ppm; corn, field, grain at 0.05 ppm; corn, field, forage at 2.0 ppm; corn, field, stover at 2.5 ppm for an additional 3-year period. These tolerances will expire and are revoked on December 31, 2006. Time-limited tolerances were originally published in the **Federal Register** of August 5, 1998 (63 FR 41727) (FRL-6018-4).

5. *Tebufenozide*. EPA has authorized under FIFRA section 18 the use of tebufenozide on grapes for control of omnivorous leafroller and grape leafroller in California. This regulation extends a time-limited tolerance for combined residues of the insecticide tebufenozide (benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide) in or on grapes at 3.0 ppm for an additional 2-year period. This tolerance will expire and is revoked on December 31, 2005. A time-limited tolerance was originally published in the **Federal Register** of July 6, 2000 (FR 67 41594) (FRL-6590-1).

EPA has authorized under FIFRA section 18 the use of imidacloprid on almonds for control of the glassy-winged sharpshooter in California. This regulation extends time-limited tolerances for combined residues of the insecticide imidacloprid; (1-[6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent in or on almond hulls at 4.0 ppm and almond at 0.05 ppm for an additional 2-year period. These tolerances will expire and are revoked on December 31, 2005. Time-limited tolerances were originally published in the **Federal Register** of November 7, 2001 (FR 66 56225) (FRL-6806-9).

EPA has received objections to a tolerance it established for imidacloprid on a specific food commodity. The objections were filed by the Natural Resources Defense Council (NRDC) and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. EPA has considered whether it is appropriate to extend this emergency exemption tolerance for imidacloprid while the objections are still pending.

Factors taken into account by EPA included how close the Agency is to concluding the proceedings on the objections, the nature of the current action, whether NRDC's objections raised frivolous issues, and extent to which the issues raised by NRDC had already been considered by EPA. Although NRDC's objections are not frivolous, the other factors all support

establishing this tolerance at this time. First, the objections proceeding is unlikely to conclude prior to when action is necessary on this petition. NRDC's objections raise complex legal, scientific, policy, and factual matters. EPA has published a notice describing the nature of the NRDC's objections in more detail. This notice offered an opportunity for the public to comment on this matter and published in the **Federal Register** of June 19, 2002 (67 FR 41628) (FRL-7167-7). EPA is now examining the extensive comments received. Second, the nature of the current action is extremely time-sensitive and addresses an emergency situation. Third, the issues raised by NRDC are not new matters but questions that have been the subject of considerable study by EPA and comment by stakeholders.

EPA has also received objections to the tolerance it established for propiconazole on a specific food commodity. The objections were filed by the NRDC and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. EPA has considered whether it is appropriate to extend this emergency exemption tolerance for propiconazole while the objections are still pending.

Factors taken into account by EPA included how close the Agency is to concluding the proceedings on the objections, the nature of the current action, whether NRDC's objections raised frivolous issues, and extent to which the issues raised by NRDC had already been considered by EPA. Although NRDC's objections are not frivolous, the other factors all support establishing this tolerance at this time. First, the objections proceeding is unlikely to conclude prior to when action is necessary on this petition. NRDC's objections raise complex legal, scientific, policy, and factual matters. EPA has published a notice describing the nature of the NRDC's objections in more detail. This notice offered an opportunity for the public to comment on this matter and published in the **Federal Register** of June 19, 2002 (67 FR 41628) (FRL-7167-7). EPA is now examining the extensive comments received. Second, the nature of the current action is extremely time-sensitive and addresses an emergency situation. Third, the issues raised by NRDC are not new matters but questions that have been the subject of considerable study by EPA and comment by stakeholders.

6. *Propyzamide*. EPA has authorized under FIFRA section 18 the use of propyzamide on cranberries for control

of dodder in Delaware, Massachusetts, New Jersey, and Rhode Island. This regulation extends a time-limited tolerance for the combined residues of the herbicide propyzamide and its metabolites containing the 3,5-dichlorobenzoyl moiety (calculated as 3,5-dichloro-N-1,1-dimethyl-2-propenyl benzamide) in or on cranberries at 0.05 ppm for an additional 3-year period. This tolerance will expire and is revoked on December 31, 2006. A time-limited tolerance was originally published in the **Federal Register** of September 16, 1998 (63 FR 49479) (FRL-6022-5).

### III. Objections and Hearing Requests

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. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

#### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP-2003-0402 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 February 13, 2004.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing

request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603-0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305-5697, by e-mail at [tompkins.jim@epa.gov](mailto:tompkins.jim@epa.gov), or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP-2003-0402, to: Public Information

and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opdocket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

#### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

#### **IV. Statutory and Executive Order Reviews**

This final rule establishes time-limited tolerances under section 408 of the FFDCA. 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 due to its lack of significance, 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). 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.*, or 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). 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); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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). Since tolerances and exemptions that are established under section 408(l)(6) of the FFDCA in response to an exemption under FIFRA section 18, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal

implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

#### **V. Congressional Review Act**

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 rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 31, 2003.

**Meredith F. Laws,**

*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), 346(a) and 371.

#### **§ 180.317 [Amended]**

■ 2. In § 180.317, in the table to paragraph (b), amend the entry for cranberries by revising the expiration date “12/31/03” to read “12/31/06”.

#### **§ 180.442 [Amended]**

■ 4. In § 180.442, in the table to paragraph (b), amend the entry for sweet

potato, roots by revising the expiration date "12/31/03" to read "12/31/05".

#### § 180.449 [Amended]

■ 5. In § 180.449, in the table to paragraph (b), amend the entries for avocado, basil, and spinach by revising the expiration dates "12/31/03" to read "12/31/06".

#### § 180.472 [Amended]

■ 6. In § 180.472, in the table to paragraph (b), amend the entries for almond and almond hulls by revising the expiration dates "12/31/03" to read "12/31/05".

#### § 180.482 [Amended]

■ 7. In § 180.482, in the table to paragraph (b), amend the entry for grape by revising the expiration date "12/31/03" to read "12/31/06".

#### § 180.507 [Amended]

■ 8. In § 180.507, in the table to paragraph (b), amend the entry for head and stem (Brassica) subgroup by revising the expiration date "12/31/03" to read "12/31/06".

#### § 180.535 [Amended]

■ 9. In § 180.535, in the table to paragraph (b), amend the entry for corn, field, forage; corn, field, grain; corn, field, stover, corn, sweet, forage; corn, sweet, kernel plus cob with husks removed; and corn, sweet, stover; by revising the expiration date "12/31/03" to read "12/31/06".

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No 031119283-4001-02; I.D. 110703A]

RIN 0648-AQ80

#### 50 CFR Part 648

#### Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2004 Specifications

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; final 2004 specifications, and preliminary quota adjustment; notification of 2004 commercial summer flounder quota harvest for Delaware.

**SUMMARY:** NMFS issues final specifications for the 2004 summer flounder, scup, and black sea bass fisheries and makes preliminary adjustments to the 2004 commercial quotas for these fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries, including scup possession limits. This action also prohibits federally permitted commercial vessels from landing summer flounder in Delaware in 2004. Regulations governing the summer flounder fishery require publication of this notification to advise the State of Delaware, Federal vessel permit holders, and Federal dealer permit holders that no commercial quota is available for landing summer flounder in Delaware in 2004. The intent of this action is to establish allowed 2004 harvest levels and other measures to attain the target fishing mortality (F) or exploitation rates, as specified for these species in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP).

**DATES:** This rule is effective from January 14, 2004, through December 31, 2004.

**ADDRESSES:** Copies of the specifications document, including the Environmental Assessment, Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and other supporting documents for the specification are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901-6790. The specifications document is also accessible via the Internet at <http://www.mafmc.org>. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, Fishery Policy Analyst, (978) 281-9279, fax (978) 281-9135, e-mail [sarah.mclaughlin@noaa.gov](mailto:sarah.mclaughlin@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic

Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

The regulations outline the process for specifying annually the catch limits for the summer flounder, scup, and black sea bass commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, gear restrictions, possession restrictions, and area restrictions) for these fisheries. The measures are intended to achieve the annual targets set forth for each species in the FMP, specified either as an F rate or an exploitation rate (the proportion of fish available at the beginning of the year that are removed by fishing during the year). Once the catch limits are established, they are divided into quotas based on formulas contained in the FMP. Detailed background information regarding the status of the summer flounder, scup, and black sea bass stocks and the development of the 2004 specifications for these species was provided in the proposed specifications (68 FR 66784, November 28, 2003). That information is not repeated here. NMFS makes one correction to the text published in the proposed 2004 specifications in this final rule. The amount of the summer flounder Total Allowable Landings (TAL) set aside for research activities to be conducted by the National Fisheries Institute and Rutgers University is 174,750 lb (79.3 mt), rather than 74,750 lb (40 mt), which was a typographical error.

NMFS will establish the 2004 recreational management measures for summer flounder, scup, and black sea bass by publishing a proposed and final rule in the **Federal Register** at a later date, following receipt of the Council's recommendations as specified in the FMP.

##### Summer Flounder

The FMP specifies an F of  $F_{max}$  that is the level of fishing that produces maximum yield per recruit. The best available scientific information