PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

■ 1. The authority citation for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 1782, 1784, 1785, 1786, 1787; 42 U.S.C. 4012a; Public Law 101–410; Public Law 104–134.

■ 2. Subpart K is revised to read as follows:

Subpart K—Inflation Adjustment of Civil Monetary Penalties

§ 747.1001 Adjustment of civil money penalties by the rate of inflation.

(a) NCUA is required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note)) to adjust the maximum amount of each civil money penalty within its jurisdiction by the rate of inflation. The following chart displays those adjustments, as calculated pursuant to the statute:

U.S. code citation	CMP description	New maximum amount
(1) 12 U.S.C. 1782(a)(3)	Inadvertent failure to submit a report or the inadvertent submission of a false or misleading report.	$2,200.
(2) 12 U.S.C. 1782(a)(3)	Non-inadvertent failure to submit a report or the non-inadvertent submission of a false or misleading report.	$22,000.
(3) 12 U.S.C. 1782(a)(3)	Failure to submit a report or the submission of a false or misleading report done knowingly or with reckless disregard.	$1,300,000 or 1 percent of the total assets of the credit union, whichever is less.
(4) 12 U.S.C. 1782(d)(2)(A)	First tier	$2,200.
(5) 12 U.S.C. 1782(d)(2)(B)	Second tier	$22,000.
(6) 12 U.S.C. 1782(d)(2)(C)	Third tier	$1,300,000 or 1 percent of the total assets of the credit union, whichever is less.
(7) 12 U.S.C. 1785(e)(3)	Non-compliance with NCUA security regulations.	$110.
(8) 12 U.S.C. 1786(k)(2)(A)	First tier	$7,500.
(9) 12 U.S.C. 1786(k)(2)(B)	Second tier	$37,500.
(10) 12 U.S.C. 1786(k)(2)(C)	Third tier	For a person other than an insured credit union: $1,375,000; For an insured credit union: $1,375,000 or 1 percent of the total assets of the credit union, whichever is less.
(11) 42 U.S.C. 4012a(f)	Per violation	$385.
	Per calendar year	$130,000.

(b) The adjustments displayed in paragraph (a) of this section apply to acts occurring after the date of publication in the **Federal Register**.

[FR Doc. E9–4608 Filed 3–3–09; 8:45 am]

BILLING CODE 7535–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0258; FRL–8401–6]

Dimethomorph; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of dimethomorph in or on ginseng and turnip, greens. Additionally, it establishes tolerances with regional registrations in or on beans, lima, succulent and grape. This regulation also deletes the existing grape import tolerance, as a regional tolerance supersedes it. Finally, it increases the existing tolerance level for potato, wet peel and re-establishes the tolerance for potato. The Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 4, 2009. Objections and requests for hearings must be received on or before May 4, 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–2008–0258. 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: Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; e-mail address: *nollen.laura@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*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm*.

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–2008–0258 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 May 4, 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–2008–0258, 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 May 16, 2008 (73 FR 28461) (FRL–8361–6), 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 8E7314) by Interregional Research Project (IR-4), 500 College Rd. East, Suite 201 W., Princeton, NJ 08540. The petition requested that 40 CFR 180.493 be amended by establishing tolerances for residues of the fungicide dimethomorph, (*E,Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine, in or on beans, lima at 0.60 parts per million (ppm); ginseng at 0.85 ppm; grape at 3.5 ppm; grape, raisin at 6.0 ppm; and turnip, greens at 20.0 ppm. In the **Federal Register** of October 8, 2008 (73 FR 58962) (FRL–8383–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of an amendment to the pesticide petition (PP 8E7314) by IR-4, which requested that 40 CFR 180.493 be amended for residues of the fungicide dimethomorph by increasing the tolerance in or on potato, wet peel from 0.15 ppm to 0.20 ppm, and re-establishing the tolerance in or on potato at 0.05 ppm. These notices referenced a summary of the petition prepared on behalf of IR-4 by BASF Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notices of filing.

Based upon review of the data supporting the petition, EPA has determined that the proposed tolerance level for ginseng should be increased. EPA has additionally determined that the proposed tolerances for beans, lima and grape should be established as regional tolerances, and that the import tolerance for grape, raisin should remain. The reasons for these changes are explained in Unit IV.D.

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 dimethomorph on beans, lima at 0.60 ppm; ginseng at 0.90 ppm; grape at 3.5 ppm; grape, raisin at 6.0 ppm; potato at 0.05 ppm; potato, wet peel at 0.20 ppm; and turnip, greens at 20 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The existing dimethomorph data indicate that it possesses relatively low toxicity. No appropriate toxicological endpoints attributable to a single exposure were identified in oral studies. Consequently, it was determined that there was no basis for selecting a dose

and endpoint for an acute reference dose (aRfD).

In the dimethomorph rat chronic dietary feeding study, there were significant body weight decrements, and liver effects in female rats. Available data for dimethomorph do not show potential for immunotoxic nor neurotoxic effects. Neither the subchronic nor chronic toxicity studies in rats or dogs, nor the developmental toxicity studies indicated that the nervous system was affected by treatment with dimethomorph.

Based on the toxicity profile for dimethomorph, a developmental neurotoxicity (DNT) study in rats is not required. In a carcinogenicity study in rat, there was no evidence of increased incidence of any neopolasms at any doses. In a carcinogenicity study in mice, there was no dose-related decrease in survival, or in any parameter examined on necropsy. At the maximum dose required by the test guidelines for a dietary oncogenicity study, there was no evidence of carcinogenicity. Therefore, the EPA classified dimethomorph as ''not likely to be carcinogenic to humans.''

The toxicology data on dimethomorph provides no indication of enhanced sensitivity of infants and children, based on the results from developmental studies conducted with rats and rabbits, as well as a 2-generation reproduction study conducted with rats. There were no toxic effects observed in either the rat developmental toxicity, or the rat 2-generation reproductive toxicity studies, that were observed at lower doses than those which produced toxic effects in the parents. No developmental toxicity was demonstrated in the rabbit developmental toxicity study.

Specific information on the studies received and the nature of the adverse effects caused by dimethomorph as well as the no-observed-adverse-effect-level and the lowest-observed-adverse-effect-level from the toxicity studies can be found at *http://www.regulations.gov* in document ''Dimethomorph. Human Health Risk Assessment for the Proposed Food/Feed Use of the Fungicide (Associated with Section 3 Registration) on Succulent Lima Beans, Ginseng, Grapes and Turnip Tops'' at pages 46–49 in docket ID number EPA–HQ–OPP–2008–0258.

B. 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-term, intermediate-term, 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 dimethomorph used for human risk assessment can be found at *http://www.regulations.gov* in document ''Dimethomorph. Human Health Risk Assessment for the Proposed Food/Feed Use of the Fungicide (Associated with Section 3 Registration) on Succulent Lima Beans, Ginseng, Grapes and Turnip Tops'' at pages 17–18 in docket ID number EPA–HQ–OPP–2008–0258.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to dimethomorph, EPA considered exposure under the petitioned-for tolerances as well as all existing dimethomorph tolerances in (40 CFR 180.493). EPA assessed dietary exposures from dimethomorph in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure.

No such effects were identified in the toxicological studies for dimethomorph; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA used tolerance-level residues, the Dietary Exposure Evaluation Model (DEEM) default processing factors, and assumed 100 percent crop treated (PCT) for all proposed commodities.

iii. *Cancer*. Based on the results of the carcinogenicity studies in rats and mice, dimethomorph has been classified as ''not likely to be carcinogenic to humans;'' therefore, a quantitative exposure assessment to evaluate cancer risk is unnecessary.

iv. *Anticipated residue and PCT information*. EPA did not use anticipated residue and/or PCT information in the dietary assessment for dimethomorph. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for dimethomorph in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of dimethomorph. 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*.

The First Index Reservoir Screening Tool (FIRST) Tier 1 model was used to estimate concentrations for dimethomorph in surface water. The Tier 1 Screening Concentration in Ground Water (SCI-GROW) model was utilized to predict concentrations in ground water. The Tier 1 Generic Estimated Environmental Concentration (GENEEC) model, from a previous drinking water assessment, calculated another estimated drinking water concentration (EDWC) for dimethomorph in surface water. The EDWCs of dimethomorph for acute exposures are estimated to be 81.1 parts per billion (ppb) for surface water and 0.264 ppb for ground water. For chronic exposures, the non-cancer assessments are estimated to be 24.7 ppb for surface water, 28.5 ppb for a previously

determined surface water assessment, and 0.264 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the most conservative water concentration of value 28.5 ppb, from GENEEC modeling, was used to assess the contribution to drinking water.

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). Dimethomorph is not registered for any specific use patterns that would result in residential exposure.

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 dimethomorph to share a common mechanism of toxicity with any other substances, and dimethomorph does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that dimethomorph 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 EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. 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 Food Quality Protection Act (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.

2. *Prenatal and postnatal sensitivity*. The toxicology data on dimethomorph provides no indication of enhanced sensitivity of infants and children, based on the results from developmental studies conducted with rats and rabbits, as well as a 2–generation reproduction study conducted with rats. There were no toxic effects observed in either the rat developmental toxicity, or the rat 2–generation reproductive toxicity studies, that were observed at lower doses than those which produced toxic effects in the parents. Further, clear NOAELs were observed for all effects observed in fetuses. These NOAELs are well above the NOAEL used as a point of departure in assessing the safety of dimethomorph. No developmental toxicity was demonstrated in the rabbit developmental toxicity study. Additionally, there is no evidence of neurotoxicity.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for dimethomorph is complete except for the immunotoxicity, acute neurotoxicity, and subchronic neurotoxicity studies. Recent changes to 40 CFR part 158 make acute and subchronic neurotoxicity testing (OPPTS Guideline 870.6200), and immunotoxicity testing (OPPTS Guideline 870.7800) required for pesticide registration. The available data for dimethomorph do not show potential for immunotoxic or neurotoxic effects. Therefore, EPA does not believe that conducting OPPTS Guideline 870.6200 neurotoxicity and OPPTS Guideline 870.7800 immunotoxicity studies will result in a NOAEL lower than the NOAEL of 11 milligram/kilogram/day (mg/kg/day) already set for dimethomorph. Consequently, an additional database uncertainty factor (UF) does not need to be applied.

ii. There is no indication that dimethomorph is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. The developmental and reproductive toxicity data did not indicate increased quantitative or qualitative susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to dimethomorph. There are no residual concerns regarding developmental effects in the young.

iv. There are no residual uncertainties identified in the exposure databases. Dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to dimethomorph in drinking water. These assessments will not underestimate the exposure and risks posed by dimethomorph.

E. 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-term, intermediate-term, 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*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No acute dietary endpoint was identified for any segment of the U.S. population. Therefore, dimethomorph is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to dimethomorph from food and water will utilize 20% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for dimethomorph to consider.

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

Dimethomorph is not registered for any use patterns that would result in residential exposure. Therefore, the short-term and intermediate-term aggregate risk is the sum of the risk from exposure to dimethomorph through food and water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population*. Based on the lack of evidence of carcinogenicity in mice and rats at doses that were judged to be adequate to assess the carcinogenic potential, dimethomorph was classified

as ''not likely to be carcinogenic to humans.'' Therefore, dimethomorph 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 dimethomorph residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (High-Performance Liquid Chromatography using Ultraviolet detection (HPLC/UV) Method, (FAMS) 002–04) 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 Canadian or Mexican maximum residue limits (MRLs) established for residues of dimethomorph in crops associated with this review. Codex MRLs have been finalized in grapes and grape, raisins at 2 and 5 ppm, respectively. However, the proposed tolerances in grape and grape, raisin (3.5 and 6.0 ppm, respectively) cannot be harmonized with the Codex MRLs on these commodities because field trial data shows residue levels for grape that are higher than 2 ppm.

C. Revisions to Petitioned-For Tolerances

Based upon review of the data supporting the petition, EPA revised the proposed tolerance for ginseng, from 0.85 ppm to 0.90 ppm. EPA revised the proposed tolerance based on analysis 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*. EPA also changed the commodity term from ''bean, lima'' to ''bean, lima, succulent'' because field trial data for dry lima beans was not submitted. Use on lima beans is restricted to those varieties intended for harvest as succulent seed. Use on lima beans is also restricted to areas east of the Rocky Mountains, and will therefore be established as a regional tolerance under paragraph (c) *Tolerances with regional registrations* in §180.493. The proposed tolerance for grape will also be restricted to a regional tolerance under §180.493(c), since data were submitted to support use of dimethomorph on grapes grown east of the Rocky Mountains. Since grapes processed for raisin production are only grown west of the Rock Mountains, the import tolerance for raisins will remain, and a tolerance for raisin under § 180.493(c) will not be established.

V. Conclusion

Therefore, tolerances are established for residues of dimethomorph (*E,Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine, in or on ginseng at 0.90 ppm and turnip, greens at 20.0 ppm. Tolerances with regional registrations are established in or on bean, lima, succulent at 0.6 ppm and grape at 3.5 ppm. This regulation also deletes the existing tolerance for use in or on grape, as the regional tolerance supersedes it. Finally, it increases the existing import tolerance level for potato, wet peel from 0.15 to 0.20 ppm and re-establishes the tolerance for potato at 0.05 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

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: February 12, 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 180.493 is amended as follows:

■ i. In paragraph (a), by revising the introductory text; in the table by removing the entry ''Grape,'' by revising the entry ''Potato, wet peel'' and Footnote 1, and by alphabetically adding the following commodities to the table to read as follows:

■ ii. By revising paragraph (c) to read as follows:

§ 180.493 Dimethomorph; tolerances for residues.

(a) *General*. Tolerances are established for the residues of the fungicide dimethomorph, (*E,Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine, in or on the following commodities:

Commodity	Parts per million
* * * *	*
Ginseng	0.90
Grape, raisin[1]	6.0
* * * *	*
Potato	0.05
Potato, wet peel	0.20
* * * *	*
Turnip, greens	20.0
* * * * *	*

[1] There are no U.S. registrations as of March 4, 2009, for the use of dimethomorph on grapes grown for raisin production.

* * * * *

(c) *Tolerances with regional registrations*. Tolerances with regional registrations are established for residues of the fungicide dimethomorph, (*E,Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine, in or on the following commodities:

Commodity	Parts per million
Bean, lima, succulent	0.60
Grape	3.5

* * * * *

[FR Doc. E9–4370 Filed 3–3–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0097; FRL–8399–3]

Tebuconazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation revises the existing tolerance for residues of tebuconazole in or on cherry, pre- and post-harvest. Interregional Research Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 4, 2009. Objections and requests for hearings must be received on or before May 4, 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–2005–0097. 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: Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; e-mail address: *nollen.laura@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–2005–0097 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 May 4, 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