

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2010-0465; FRL-8831-6]

#### 1-Naphthaleneacetic Acid; Time-Limited Tolerance, Technical Correction

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

**ACTION:** Final rule; technical correction.

**SUMMARY:** EPA issued a final rule in the **Federal Register** of September 11, 2009, (74 FR 46689) (FRL-8426-2) concerning azinphos-methyl, disulfoton, esfenvalerate, ethylene oxide, fenvalerate, *et al.*; tolerance actions. Today's rule restores the time-limited tolerance for 1-naphthaleneacetic acid in or on avocados which was inadvertently deleted by the September 11, 2009 final rule.

**DATES:** This final rule is effective June 30, 2010.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2010-0465. 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:** Libby Pemberton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460-0001; telephone number: (703) 308-9364; e-mail address: [pemberton.libby@epa.gov](mailto:pemberton.libby@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Does this Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have

questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

##### II. What Does this Technical Correction Do?

EPA published a final rule in the **Federal Register** of August 12, 2009 (74 FR 40513) (FRL-8428-3) establishing a time-limited tolerance for residues of 1-naphthaleneacetic acid ethyl ester in or on avocados. That time-limited tolerance was inadvertently removed by a final rule published in the **Federal Register** of September 11, 2009 (74 FR 46689) (FRL-8426-2). Today's rule restores the time-limited tolerance for 1-naphthaleneacetic acid in or on avocados inadvertently deleted by the September 11, 2009 final rule.

##### III. Why is this Correction Issued as a Final Rule?

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. Section 408(l)(6) authorizes EPA to establish such tolerances without providing notice or period for public comment. 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.

In addition, section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the Agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment, because the final rule amendment to §180.155 previously published August 12, 2009 (74 FR 40513) (FRL-8428-3) was inadvertently deleted September 11, 2009 (74 FR 46689) (FRL-8426-2). EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

##### IV. Do Any of the Statutory and Executive Order Reviews Apply to this Action?

This document corrects a final rule that established a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The

Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this 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).

**V. 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: June 21, 2010.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is corrected 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. Add § 180.155(b) to read as follows:

**§ 180.155 1-Naphthaleneacetic acid; tolerances for residues.**

\* \* \* \* \*

(b) *Section 18 emergency exemptions.* A time-limited tolerance specified in the following table is established for residues of the ethyl ester of 1-naphthaleneacetic acid in or on the following raw agricultural commodity resulting from use of the pesticide pursuant to FIFRA section 18 emergency exemptions. The tolerance will expire and is revoked on the date specified in the following table:

Commodity	Parts per million	Expiration/revocation
Avocado ..	0.05	12/31/12

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 0907301206-0032-02]

**RIN 0648-XW95**

**Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Adjustment to the Loligo Trimester 2 and 3 Quota**

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

**ACTION:** Temporary rule; inseason adjustment.

**SUMMARY:** NMFS adjusts the 2010 Fishing Year (FY) Trimester 2 and 3 Loligo squid quotas. This action complies with the 2010 Specifications and Management Measures for the Atlantic Mackerel, Squid, and Butterfish Fisheries Management Plan, which modified accounting procedures for underages of Trimester 1 quota in the *Loligo* fishery.

**DATES:** Effective June 30, 2010 through December 31, 2010.

**FOR FURTHER INFORMATION CONTACT:** Lindsey Feldman, Fishery Management Specialist, 978-675-2179, Fax 978-281-9135.

**SUPPLEMENTARY INFORMATION:** NMFS published the final rule for the 2010 Specifications and Management Measures for the Atlantic Mackerel, Squid, and Butterfish Fisheries in the **Federal Register** on February 3, 2010 (75 FR 5537). The final rule modified accounting procedures for underages of Trimester 1 quota in the *Loligo* fishery, so that Trimester 1 quota underages that are greater than 25 percent of the Trimester 1 quota are allocated equally to Trimesters 2 and 3, and underages that are less than 25 percent of the Trimester 1 quota are allocated to Trimester 3.

For FY 2010, the initial *Loligo* Trimester 1 quota was 17,696,509 lb (8,027 mt), which is equal to 43 percent

of the domestic annual harvest (DAH), excluding research set-aside (RSA) quota. The best available landings information indicates that 3,133,110 lb (1,421 mt) of *Loligo* was landed during Trimester 1, and 14,563,399 lb (6,606 mt) remain. Consistent with the 2010 Specifications and Management Measures, as the quota underages for Trimester 1 are greater than 25 percent of the Trimester 1 quota, the underages are divided in half, with half applied to Trimester 2, and the other half applied to Trimester 3. This results in a revised Trimester 2 quota from the initial quota of 6,995,269 lb (3,173 mt) to a new quota of 14,276,968 lb (6,476 mt) and a revised Trimester 3 quota from the initial quota of 16,461,920 lb (7,467 mt) lb to a new quota of 23,743,619 lb (13,770 mt).

**Classification**

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action modifies the Trimester 2 and 3 *Loligo* quotas for FY 2010, as specified in the FY 2010 Specification and Management Measures for the Atlantic Mackerel, Squid, and Butterfish Fisheries. The regulations at § 648.22(a)(2)(i) require such action to ensure the quota is not under-harvested and is distributed evenly throughout the year. Landings information indicates that underages from Trimester 1 are greater than 25 percent of the Trimester 1 *Loligo* quota. Trimester 2 began on May 1, 2010, and a delay in increasing the quota could result in premature closure of the fishery. As such, the distribution of Trimester 1 underages to Trimesters 2 and 3 must occur without delay. The AA further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 25, 2010

**Carrie Selberg,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2010-15933 Filed 6-29-10; 8:45 am]

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