

amends, or revokes a tolerance regulation or a regulation exempting a pesticide chemical from the need for a tolerance. However, if an objection to such action is submitted to the Administrator in the manner prescribed by part 178 of this chapter, judicial review may be obtained of the Administrator's action on the objections (see sections 408(d)(5) and 408(i) of the Act).

(b) A decision under §§ 180.29 and 180.32 that a request does not warrant the issuance of a proposed regulation is final agency action. Although the Act makes no special provision for review of such final agency action, the action may be reviewable under other provisions of the United States Code (see e.g., 5 U.S.C. 701-706, 28 U.S.C. 1331).

[55 FR 50300, Dec. 5, 1990]

§ 180.31 Temporary tolerances.

(a) A temporary tolerance (or exemption from a tolerance) established under authority of section 408(j) of the act shall be deemed to be a tolerance (or exemption from the requirement of a tolerance) for the purposes of section 408(a) (1) or (2) of the act.

(b)(1) A request for a temporary tolerance or a temporary exemption from a tolerance by a person who has obtained an experimental permit for a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act shall be accompanied by a copy of such experimental permit, such data as are available on subjects outlined in clauses (A), (B), (C), (D), (E), (F), and (G) of section 408(d)(1) of FFDCA, and an advance deposit to cover fees as provided in § 180.33(d), except that no fee under this section shall be levied during the period beginning on October 1, 2003, and ending on September 30, 2008.

(2) Before an experimental permit has been obtained, the Pesticides Tolerance Division upon request of the Environmental Protection Agency or a person who proposes to apply for an experimental permit will consider available data and discuss its adequacy for the purpose of justifying a tolerance or exemption from a tolerance.

(c) A notice of the issuance of a temporary tolerance outlining any restrictions as to use of the chemical imposed under the experimental permit under the Federal Insecticide, Fungicide, and

Rodenticide Act may be published in the FEDERAL REGISTER if the Administrator deems such publication desirable.

(d) A temporary tolerance or exemption from a tolerance may be issued for a period designed to allow the orderly marketing of the raw agricultural commodities produced while testing a pesticide chemical under an experimental permit issued under authority of the Federal Insecticide, Fungicide, and Rodenticide Act when the Administrator concludes that the public health can be adequately protected during such marketing. A temporary tolerance or exemption from a tolerance may be revoked if the experimental permit is revoked, or may be revoked at any time if it develops that the application for a temporary tolerance contains a misstatement of a material fact or that new scientific data or experience with the pesticide chemical indicates that it may be hazardous to the public health.

(e) Conditions under which a temporary tolerance is established shall include:

(1) A limitation on the amount of the chemical to be used on the designated crops permitted under the experimental permit.

(2) A limitation for the use of the chemical on the designated crops to bona fide experimental use by qualified persons as indicated in the experimental permit.

(3) A requirement that the person or firm which obtains the experimental permit for which the temporary tolerance is established will immediately inform the Environmental Protection Agency of any reports on findings from the experimental use that have a bearing on safety.

(4) A requirement that the person or firm which obtained the experimental permit for which the temporary tolerance is established will keep records of production, distribution, and performance for a period of 2 years and, on request, at any reasonable time, make these records available to any authorized officer or employee of the Environmental Protection Agency.

[36 FR 22540, Nov. 25, 1971, as amended at 69 FR 12544, Mar. 17, 2004]