



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2020-0568; FRL-10017-55]

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

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

**ACTION:** Final rule.

**SUMMARY:** This regulation extends time-limited tolerances for residues of the pesticides clothianidin, methyl bromide, and triclopyr in or on various commodities, as identified in this document. These actions are in response to EPA's granting of emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. In addition, 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. Additionally, EPA is removing time-limited tolerances for flonicamid on prickly pear, fruit and pads at 1.5 ppm because this exemption will not be renewed, and the tolerances will expire by the effective date of this rule. EPA is also making non-substantive administrative revisions to the tolerance listings for methyl bromide to update the commodity terminology.

**DATES:** This regulation is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Objections and requests for hearings must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] 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:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2020-0568, is available at <http://www.regulations.gov> or at the Office of Pesticide

Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave., NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Marietta Echeverria, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: [RDFRNotices@epa.gov](mailto:RDFRNotices@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. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Publishing Office's e-CFR site at [http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl).

*C. How can I file an objection or hearing request?*

Under FFDCa section 408(g), 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-2020-0568 in the subject line on the first page of your submission. All objections and requests must be in writing and must be received by the Hearing Clerk on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

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 (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2020-0568, by one of the following methods:

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail*: OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave., NW, Washington, DC 20460-0001.

- *Hand Delivery*: To make special arrangements for hand delivery or delivery of boxed

information, please follow the instructions at <https://www.epa.gov/dockets/where-send-comments-epa-dockets>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

## **II. Background and Statutory Findings**

EPA previously published final rules establishing time-limited tolerances in the *Federal Register* for the chemicals and commodities listed, below, under FFDCA section 408, 21 U.S.C. 346a. EPA established the tolerances because FFDCA section 408(l)(6) 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 at EPA's own initiative and without providing notice or time for public comment.

EPA received requests to extend emergency uses of clothianidin, methyl bromide, and triclopyr for this year's growing season. After having reviewed these submissions, EPA concurs that emergency conditions continue to exist. EPA assessed the potential risks presented by residues for each chemical in the pertinent commodities. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2) and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18.

The data and other relevant material have been evaluated and were discussed in the final rules originally establishing the time-limited tolerances. Based on those data and information considered, the Agency reaffirms that extension of these time-limited tolerances will continue to meet the requirements of FFDCA section 408(l)(6). Therefore, the time-limited tolerances are extended until December 31, 2023. Although these tolerances will expire and are revoked on December 31, 2023, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on the commodities 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. EPA will publish a document in the *Federal Register* to remove the revoked tolerances from the Code of Federal Regulations (CFR).

Time-limited tolerances for the use of the following pesticide chemicals on specific commodities are being extended:

*Clothianidin.* EPA has authorized under FIFRA section 18 the use of clothianidin on citrus for control of the Asian citrus psyllid in Florida and Texas. This regulation extends a time-limited tolerance for residues of the insecticide clothianidin and its metabolites and degradates in or on fruit, citrus, group 10-10 at 0.07 parts per million (ppm) for an additional 3-year period. This tolerance will expire and is revoked on December 31, 2023. The time-limited tolerance was originally published in the *Federal Register* of February 25, 2015 (80 FR 10003) (FRL-9919-59).

*Methyl bromide.* Pursuant to a request by the US Department of Agriculture, Animal and Plant Health Inspection Service, EPA has authorized under FIFRA section 18 the use of methyl bromide on certain imported and domestic commodities, post-harvest for control of invasive non-indigenous quarantine plant pests and to prevent the introduction and/or spread of any new or recently introduced foreign pests to the United States. This regulation extends time-limited tolerances for residues of the pesticide methyl bromide, including its metabolites and degradates, in or on the commodities identified in 40 CFR 180.124(b) (and listed in the regulatory text section of this document) at the levels listed for an additional 3-year period. The tolerances will expire and are revoked on December 31, 2023. The time-limited tolerances were originally published in the *Federal Register* of March 1, 2018 (83 FR 8758) (FRL-9971-19) and October 16, 2020 (85 FR 65729) (FRL-10014-31).

In addition to extending these tolerances, EPA is making several non-substantive revisions to 40 CFR 180.124(b). Entries for avocado, banana, longan, lychee, pomegranate, rambutan, and Spanish lime are deleted, because these commodities are included in Tropical and subtropical fruits, inedible peel, group 24. This regulation also revises certain commodity terms for consistency with current crop groups and commodity vocabulary as follows: “Tropical and subtropical fruits, edible peel, group 23” will now read “Fruit, tropical and subtropical, edible peel, group 23”; “Tropical and subtropical fruits, inedible peel, group 24” will now read “Fruit, tropical and subtropical, inedible peel, group 24”; and “Stalk, stem and leaf petiole vegetables, group 22” will now read “Vegetables, stalk, stem and leaf petiole, group 22”. None of the revisions discussed in this paragraph change the amount of methyl bromide residues permitted on any commodity.

*Triclopyr*. EPA has authorized under FIFRA section 18 the use of triclopyr on sugarcane for control of divine nightshade (*Solanum nigresens*) in Louisiana. This regulation extends a time-limited tolerance for residues of the herbicide triclopyr and its metabolites and degradates in or on sugarcane, cane at 40 ppm for an additional 3-year period. The tolerance will expire and is revoked on December 31, 2023. A time-limited tolerance was originally published in the *Federal Register* of June 8, 2017 (82 FR 26599) (FRL-9961-29).

The time-limited tolerances are being removed at 40 CFR 180.613(b) for residues of the insecticide flonicamid and its metabolites in or on prickly pear, fruit and pads at 1.5 ppm which expire on December 31, 2020. The applicant has not submitted a request for further use of flonicamid on prickly pear. The time-limited tolerances were originally published in the *Federal Register* of January 26, 2018 (83 FR 3610) (FRL-9971-94).

### **III. International Residue Limits**

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs)

established by the Codex Alimentarius Commission (Codex), as required by FFDCa section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCa section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established any MRLs for flonicamid, methyl bromide, or triclopyr on the commodities listed in this document. The Codex has established MRLs for clothianidin in or on citrus at 0.07 ppm, the same as the tolerance established for fruit, citrus, group 10-10 in the United States. Therefore, there are no harmonization issues.

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

This action establishes tolerances under FFDCa section 408(e) and 408(l)(6). 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 action has been exempted from review under Executive Order 12866, this action 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 action 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 under FFDCa sections 408(e) and 408(l)(6), 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 action 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 FFDCA section 408(n)(4). 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 action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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 (NTTAA) (15 U.S.C. 272 note).

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

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA has submitted 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 the rule in the *Federal Register*. This action 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 4, 2020.

**Marietta Echeverria,**

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

**PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

2. In §180.124, revise paragraph (b) to read as follows:

**§ 180.124 Methyl bromide; tolerances for residues.**

\* \* \* \* \*

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the fumigant methyl bromide, including its metabolites and degradates, in or on the specified agricultural commodities in Table 2 to this paragraph (b). Compliance with the tolerance levels specified in Table 2 to this paragraph (b) is to be determined by measuring only methyl bromide, in or on the commodities, resulting from use of the pesticide pursuant to Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) section 18 emergency exemptions. The tolerances expire and are revoked on the dates specified in Table 2 to this paragraph (b).

Table 2 to Paragraph (b)

<b>Commodity</b>	<b>Parts per million</b>	<b>Expiration/ revocation date</b>
Berry and small fruit, group 13-07	5.0	12/31/23
Cactus	3.0	12/31/23
Coconut, copra	8.0	12/31/23
Coffee, green bean	150	12/31/23
Cola, seed	150	12/31/23
Cucurbit, seed	150	12/31/23
Fig	10	12/31/23
Fruit, citrus, group 10-10	2	12/31/23
Fruit, stone, group 12-12	5.0	12/31/23
Fruit, tropical and subtropical, edible peel, group 23	10	12/31/23
Fruit, tropical and subtropical, inedible peel, group 24	5.0	12/31/23
Herb and spice, group 19	35	12/31/23

Hibiscus, seed	150	12/31/23
Ivy gourd	5.0	12/31/23
Kaffir lime, leaves	0.50	12/31/23
Kenaf, seed	150	12/31/23
Oilseed group 20	150	12/31/23
Peppermint, tops	35	12/31/23
Pointed gourd	5.0	12/31/23
Spearmint, tops	35	12/31/23
Vegetable, bulb, group 3-07	2.0	12/31/23
Vegetable, cucurbit, group 9	5.0	12/31/23
Vegetable, foliage of legume, group 7	0.50	12/31/23
Vegetable, fruiting, group 8-10	7.0	12/31/23
Vegetable, head and stem <i>Brassica</i> , group 5-16	1.0	12/31/23
Vegetable, leafy, group 4-16	0.50	12/31/23
Vegetable, leaves of root and tuber, group 2	0.50	12/31/23
Vegetable, legume, group 6	3.0	12/31/23
Vegetable, root and tuber, group 1	3.0	12/31/23
Vegetable, stalk, stem and leaf petiole, group 22	0.50	12/31/23

\* \* \* \* \*

3. In §180.417, revise the table in paragraph (b) to read as follows:

**§ 180.417 Triclopyr; tolerances for residues.**

\* \* \* \* \*

(b) \* \* \*

Table 3 to Paragraph (b)

Commodity	Parts per million	Expiration/revocation date
Sugarcane, cane	40	12/31/23

\* \* \* \* \*

4. In §180.586, revise the entry for “Fruit, citrus, group 10-10” in the table in paragraph (b) to read as follows:

**§ 180.586 Clothianidin; tolerances for residues.**

\* \* \* \* \*

(b) \* \* \*

Commodity	Parts per million	Expiration/revocation date
Fruit, citrus, group 10-10	0.07	12/31/23
* * * * *		

\* \* \* \* \*

**§ 180.613 [Amended]**

5. In §180.613, remove and reserve paragraph (b).

[FR Doc. 2021-02512 Filed: 2/8/2021 8:45 am; Publication Date: 2/9/2021]