

Dated: March 13, 2006.

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 180.472 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

(a)* * *

| Commodity | Parts per million |
|--------------------|-------------------|
| * * * * | * |
| Oats, forage | a2.0 |
| Oats, grain | 0.05 |
| Oats, hay | 6.0 |
| Oats, straw | 3.0 |
| * * * * | * |
| Rye, forage | 2.0 |
| Rye, grain | 0.05 |
| Rye, hay | 6.0 |
| Rye, straw | 3.0 |

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2006-0168; FRL-7768-3]

Hexythiazox; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of hexythiazox (trans-5-(4-chlorophenyl)-N-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide) and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety (expressed as parent) in or on grape; citrus fruit, crop group 10 (CA, AZ, TX only); citrus, oil; citrus, dried pulp; fruit, pome, group 11; apple, wet pomace; and cattle, sheep, goat, and horse meat byproducts.

DATES: This regulation is effective March 22, 2006. Objections and requests for hearings must be received on or before May 22, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number EPA-HQ-OPP-2006-0168. All documents in the docket are listed on the www.regulations.gov web site. EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at <http://www.regulations.gov/>. Follow the on-line instructions. Although listed in the index, some information is not publicly available, i.e., 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 either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., 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.

FOR FURTHER INFORMATION CONTACT: Olga Odiott, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9369; e-mail address: odiott.olga@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:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers;

greenhouse, nursery, and floriculture workers; residential users.

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 Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), 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 on E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

II. Background and Statutory Findings

In the **Federal Register** of December 30, 2005 (70 FR 77363-77371) (FRL-7752-1), EPA issued a proposed rule pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), proposing that 40 CFR Part 180 be amended by establishing tolerances for combined residues of the insecticide hexythiazox and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety (expressed as parent), in or on grape at 0.75 ppm; citrus fruit, crop group 10 (CA, AZ, TX only) at 0.35 ppm; citrus, oil at 0.90 ppm; citrus, dried pulp at 1.5 ppm; fruit, pome, group 11 at 1.7 ppm; apple, wet pomace at 2.5 ppm; and cattle, sheep, goat, and horse meat byproducts at 0.12 ppm. That notice followed a notice of filing (**Federal Register** of June 1, 2005, 70 FR, 31455-31459, FRL-7711-8) of a pesticide petition (PP 3F6569) by Gowan Company, the registrant.

There was one comment received on the proposal. The commenter, B. Sachua, requested that a zero tolerance be set for hexythiazox based on the commenter's generalized criticisms of EPA's risk assessment process and EPA's alleged "poor record on keeping tabs of incident reports of negative reports from use of pesticides. . . ." EPA has responded to B. Sachua's generalized comments on several occasions. (See the **Federal Register** of

January 7, 2005 (70 FR 1349, 1354) (FRL-7691-4) and the **Federal Register** of October 29, 2004 (69 FR 63083, 63096) (FRL-7681-9). As to EPA's handling of incident reports, the Agency uses information from various reporting systems, including the National Institute of Occupational Safety and Health's Sentinel Event Notification System for Occupational Risks (NIOSH SENSOR), the National Pesticide Information Center (NPIC), Poison Control Centers, the California Department of Pesticide Regulation, and OPP Incident Data System to track and evaluate pesticide incident reports. These systems collect data from various sources including Federal and State health and environmental agencies, and individual consumers. In addition, Federal law requires registrants of pesticides to inform the Agency about harmful effects of their products. EPA specialists analyze the human and animal incident reports to determine if there is sufficient evidence to challenge the safety of a registered pesticide product and take action to reduce or eliminate the risks.

Many of the incident reports gathered from these sources represent anecdotal, not verifiable information. Nevertheless, unusual risk patterns observed and documented from these anecdotal reports prompt further evaluation by the Agency and may lead to risk mitigation measures to assure that pesticides do not result in unsafe residues in food or cause unreasonable risks when they are used according to label directions and precautions.

EPA's aggregate assessment of exposures and risks associated with establishing the proposed tolerances for hexythiazox are discussed in the **Federal Register** of December 30, 2005 (70 FR 77363-77371) (FRL-7752-1).

III. Conclusion

Based on the risk assessments discussed in the proposed rule and the findings made therein there is reasonable certainty that no harm will result to the U.S. population and to infants and children from aggregate exposure to residues of hexythiazox. Therefore, tolerances are established as set forth below.

IV. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by 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 FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of 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 FFDCA, as was provided in the old sections 408 and 409 of 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 EPA-HQ-OPP-2006-0168 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 May 22, 2006.

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 issue(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 (1900L), 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 Suite 350, 1099 14th St., NW., Washington, DC 20005. 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 (202) 564-6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in

Unit IV.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA-HQ-OPP-2006-0168, to: Public Information and Records Integrity Branch, Information Technology and Resources Management 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 **ADDRESSES**. 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 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 issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

V. Statutory and Executive Order Reviews

This final rule establishes 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 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). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this action will not have significant negative economic impact on a substantial number of small entities. Establishing a tolerance, in effect, removes the statutory bar on the use of a pesticide on the specified crops and thus has no negative economic impact. 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 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.

VI. 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: March 13, 2006.

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 180.448 is amended as follows:

■ a. In the table to paragraph (a) by removing the entries for “apple” and

“pear;” by adding alphabetically entries for “citrus, dried pulp;” “citrus, oil;” “fruit, pome, group 11;” and “grape;” and by revising the entries for “apple, wet pomace;” “cattle, meat byproducts;” “goat, meat byproducts;” “horse, meat byproducts;” and “sheep, meat byproducts.”

■ b. In the table to paragraph (c) by adding an entry for “fruit, citrus group 10 (CA, AZ, TX only).”

§ 180.448 Hexythiazox; tolerances for residues.

(a) * * *

| Commodity | Parts per million |
|-------------------------------|-------------------|
| * * * * | * |
| Apple, wet pomace | 2.5 |
| * * * * | * |
| Cattle, meat byproducts | 0.12 |
| Citrus, dried pulp | 1.5 |
| Citrus, oil | 0.90 |
| * * * * | * |
| Fruit, pome, group 11 | 1.7 |
| * * * * | * |
| Goat, meat byproducts | 0.12 |
| Grape | 0.75 |
| * * * * | * |
| Horse, meat byproducts | 0.12 |
| * * * * | * |
| Sheep, meat byproducts | 0.12 |
| * * * * | * |

* * * *

(c) * * *

| Commodity | Parts per million |
|----------------------------------------------|-------------------|
| * * * | * * * |
| Fruit, citrus group 10 (CA, AZ, TX only) ... | 0.35 |

* * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2005-0251; FRL-7760-6]

Inert Ingredients; Revocation of 29 Pesticide Tolerance Exemptions for 27 Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking 29 exemptions from the requirement of a tolerance that are associated with 27 inert ingredients because these substances are no longer contained in active Federal Insecticide, Fungicide,