

Insured amount not over	Fee	Insured amount not over	Fee
100 .....	3.40		
200 .....	4.40		
300 .....	5.40		
400 .....	6.40		
500 .....	7.40	\$5,000 max .....	\$52.40

\* \* \* \* \*

[Revise the following Extra Services fees in the Individual Country Listings:]

- Registered Mail (330) Fee: \$11.50**
- Restricted Delivery (350) Fee: \$4.50**
- Return Receipt (340) Fee: \$2.30**

\* \* \* \* \*

**Neva R. Watson,**  
*Attorney, Legislative.*  
 [FR Doc. E9-3962 Filed 2-24-09; 8:45 am]  
**BILLING CODE 7710-12-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2008-0262; FRL-8398-8]

**Spiromesifen; Pesticide Tolerances**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for combined residues of spiromesifen in or on tomato, paste. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective February 25, 2009. Objections and requests for hearings must be received on or before April 27, 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-2008-0262. 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:** Jennifer Gaines, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number (703) 305-5967; e-mail address: [gaines.jennifer@epa.gov](mailto:gaines.jennifer@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-2008-0262 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 April 27, 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-2008-0262, 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 December 3, 2008 (73 FR 73643) (FRL-8390-4), 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 8F7444) by Bayer CropScience, Box 12014, 2 T.W., Alexander Dr, Research, Triangle Park, NC 27709. The petition requested that 40 CFR 180.607 be amended by increasing the tolerance for combined residues of the insecticide spiromesifen, 2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate, and its enol metabolite, 4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one, in or on tomato, paste to 0.80 parts per million (ppm). That notice referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available to the public in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

This petition is related to Bayer CropScience's application to amend its registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), for spiromesifen to decrease the preharvest interval (PHI) on tomato from 7 days to 1 day. Crop field residue data for that revised PHI indicated that the existing tolerance applicable to spiromesifen on tomato is adequate but the tolerance on tomato, paste, needed to be raised from 0.60 ppm to 0.80 ppm.

## 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 combined residue of spiromesifen on tomato, paste at 0.80 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

On September 10, 2008 the Agency published a Final Rule (73 FR 52603, FRL-8379-8) establishing tolerances for combined residues of spiromesifen in or on corn, field, at 5.0 ppm for forage and 8.0 ppm for stover. When the Agency conducted the risk assessments in support of the September, 2008 tolerance action, it also assessed the risk resulting from the increased residues in tomato, paste which would occur from the proposed decreased PHI for spiromesifen on tomato. Specifically, in that risk assessment, EPA assumed that spiromesifen would be present in tomato, paste at 0.80 ppm. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action. Refer to the September 10, 2008 **Federal Register** document, available at <http://www.regulations.gov>, for a detailed discussion of the aggregate risk assessments and determination of safety.

Based on the risk assessments discussed in the final rule published in the **Federal Register** of September 10, 2008 (73 FR 52603, FRL-8379-8), EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to spiromesifen residues.

## IV. Other Considerations

### A. Analytical Enforcement Methodology

Adequate enforcement methodology—high-performance liquid chromatography (HPLC)/triple stage quadruple mass spectrometry (MS/MS) 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](mailto:residuemethods@epa.gov).

### B. International Residue Limits

There are no CODEX MRLs (maximum residue limits) established for spiromesifen on tomato, paste commodities.

## V. Conclusion

Therefore, tolerances are established for combined residues of spiromesifen, 2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate, and its enol metabolite, 4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one, in or on tomato, paste at 0.80 ppm.

## VI. Statutory and Executive Order Reviews

This final rule establishes tolerances 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 on the basis of a petition under section 408(d) 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).

**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: January 9, 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 180.607 is amended by revising the entry for the commodity

"tomato, paste" in the table in paragraph (a)(1) to read as follows:

**§ 180.607 Spiromesifen; tolerances for residues.**

(a) \* \* \*  
(1) \* \* \*

Commodity	Parts per million
* * * * *	* * * * *
Tomato, paste .....	0.80
* * * * *	* * * * *

[FR Doc. E9-4058 Filed 2-24-09; 8:45 am]

**BILLING CODE 6560-50-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 09100091344-9056-02]

**RIN 0648-XM99**

**Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Non-American Fisheries Act Crab Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for the A season allowance of the 2009 Pacific cod sideboard limits apportioned to non-American Fisheries Act (AFA) crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2009 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), February 22, 2009, until 1200 hrs, A.l.t., September 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council

under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of 2009 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA is 788 metric tons (mt) for the GOA, as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009).

In accordance with § 680.22(e)(2)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allowance of the 2009 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a sideboard directed fishing allowance for Pacific cod as 781 mt in the Gulf of Alaska. The remaining 7 mt in the Gulf of Alaska will be set aside as bycatch to support other anticipated groundfish fisheries. In accordance with § 680.22(e)(3), the Regional Administrator finds that this sideboard directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the sideboard directed fishing closure of Pacific cod apportioned to