

Dated: January 22, 2010.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

#### Subpart P—Indiana

##### § 52.770 [Amended]

■ 2. Section 52.770 is amended by redesignating paragraph (c)(192) as paragraph (c)(191).

[FR Doc. 2010-2248 Filed 2-2-10; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2009-0540; FRL-8808-4]

#### Hexythiazox; Pesticide Tolerances for Emergency Exemptions

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes time-limited tolerances for combined residues of hexythiazox in or on corn, sweet, plus cobs with husks removed (K+CWHR); corn, sweet, forage; and corn, sweet, stover. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on sweet corn grown for seed. This regulation establishes a maximum permissible level for residues of hexythiazox in these food. The time-limited tolerances expire and are revoked on December 31, 2012.

**DATES:** This regulation is effective February 3, 2010. Objections and requests for hearings must be received on or before April 5, 2010, 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-2009-0540. 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:

Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 3087-9367; e-mail address: [ertman.andrew@epa.gov](mailto:ertman.andrew@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 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 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 Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of 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 the Federal Food, Drug, and Cosmetic Act (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. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. 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-2009-0540 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 April 5, 2010.

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 your copies, identified by docket ID number EPA-HQ-OPP-2009-0540, 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. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of FFDCA, 21 U.S.C. 346a(e) and 346a(1)(6), is establishing time-limited tolerances for the 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, in or on corn, sweet, plus cobs with husks removed (K+CWHR) at 0.02 parts per million (ppm); corn, sweet, forage at 6.0 ppm; and corn, sweet, stover at 2.5 ppm. These time-limited tolerances expire and are revoked on December 31, 2012. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR).

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. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on FIFRA section 18 related time-limited tolerances to set binding precedents for the application of section 408 of FFDCA and the new safety standard to other tolerances and exemptions. 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.

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. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

### III. Emergency Exemption for Hexythiazox on Sweet Corn Grown for Seed and FFDCA Tolerances

The applicant, the Idaho Department of Agriculture, states that there has been an increase in mite populations over the past several years and growers currently have no feasible control alternative (either chemical or non-chemical) to control them. Left unchecked, mites can cause significant losses in seed yield and quality. After having reviewed the submission, EPA determined that emergency conditions exist for this State, and that the criteria for an emergency exemption are met. EPA has authorized under FIFRA section 18 the use of hexythiazox on sweet corn grown for seed for control of mites in Idaho.

As part of its evaluation of the emergency exemption application, EPA assessed the potential risks presented by residues of hexythiazox in or on sweet corn plus cobs with husks removed (K+CWHR), sweet corn forage, and sweet corn stover. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of FFDCA. Although these time-limited tolerances expire and are revoked on December 31, 2012, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on sweet corn plus cobs with husks removed (K+CWHR), sweet corn forage, and sweet corn stover after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these time-limited tolerances at the time of that application. EPA will take action to revoke these time-limited tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these time-limited tolerances are being approved under emergency conditions, EPA has not made any decisions about whether hexythiazox meets FIFRA's registration requirements for use on sweet corn grown for seed or whether permanent tolerances for this use would be appropriate. Under these

circumstances, EPA does not believe that this time-limited tolerance decision serves as a basis for registration of hexythiazox by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for persons in any State other than Idaho to use this pesticide on these crops under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for hexythiazox, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

### IV. 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 the factors specified in FFDCA section 408(b)(2)(D), 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 expected as a result of this emergency exemption request and the time-limited 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, in or on corn, sweet, plus cobs with husks removed (K+CWHR) at 0.02 ppm; corn, sweet, forage at 6.0 ppm; and corn, sweet, stover at 2.5 ppm. EPA's assessment of exposures and risks associated with establishing time-limited tolerances follows.

On December 2, 2009 the Agency published a Final Rule (74 FR 63070,

FRL-8799-9) establishing tolerances for combined residues of hexythiazox in or on potato at 0.02 ppm. When the Agency conducted the risk assessments in support of the December 2, 2009 tolerance action, it also assessed the risk resulting from the section 18 use on sweet corn grown for seed. Specifically, in that risk assessment, EPA assumed that hexythiazox would be present in corn, sweet, plus cobs with husks removed (K+CWHR) at 0.02 ppm; corn, sweet, forage at 6.0 ppm; and corn, sweet, stover at 2.5 ppm. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action. Refer to the December 2, 2009 **Federal Register** document (EPA-HQ-OPP-2007-0330), 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 December 2, 2009 (74 FR 63070, FRL-8799-9), 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 hexythiazox residues.

## V. Other Considerations

### A. Analytical Enforcement Methodology

An adequate enforcement methodology (Method AMR-985-87) 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 currently established CODEX, Canadian, or Mexican MRLs for residues of hexythiazox in/on the subject commodities.

## VI. Conclusion

Therefore, time-limited tolerances are established 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, in or on corn, sweet, plus cobs with husks removed (K+CWHR) at 0.02 ppm; corn, sweet, forage at 6.0 ppm; and corn, sweet,

stover at 2.5 ppm. These tolerances expire and are revoked on December 31, 2012.

## VII. Statutory and Executive Order Reviews

This final rule establishes tolerances under sections 408(e) and 408(l)(6) 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 tolerances 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).

## VIII. 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 25, 2010.

**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 by alphabetically adding commodities to the table in paragraph (b) to read as follows:

#### § 180.448 Hexythiazox; tolerance for residues.

*	*	*	*	*
(b)	*	*	*	

Commodity	Parts per million	Expiration/revocation date
Corn, sweet, plus cobs with husks removed (K+CWHR) .....	0.02	12/31/12
Corn, sweet, forage .....	6.0	12/31/12
Corn, sweet, stover .....	2.5	12/31/12

\* \* \* \* \*

[FR Doc. 2010-2148 Filed 2-2-10; 8:45 am]

BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2007-0460; FRL-8808-8]

#### Dithianon; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for residues of dithianon in or on grapes that are imported. BASF requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective February 3, 2010. Objections and requests for hearings must be received on or before April 5, 2010, 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-2007-0460. 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:** Rose Kearns, Registration Division (7505P),

Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5611; e-mail address: [kearns.rosemary@epa.gov](mailto:kearns.rosemary@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 Get Electronic Access to Other Related Information?

You may 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>. To access the OPPTS harmonized test guidelines referenced in this document electronically, please go to <http://www.epa.gov/oppts> and select "Test Methods & Guidelines" on the left-side navigation menu.

###### 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-2007-0460 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 5, 2010.

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-2007-0460, 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 November 4, 2009 (74 FR 57170) (FRL-8797-7), 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 6E7103) by BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709-3528. The petition requested that 40 CFR 180.621 be amended by establishing a tolerance for residues of the fungicide dithianon, 5,10-dihydro-5-10-dioxonaphtho(2,3-b)-1,4-dithiin-2,3-