



BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2016-0299; FRL-9959-11]

Cloquintocet-mexyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of Cloquintocet-mexyl (acetic acid [5-chloro-8-quinolinyl] oxy)-1-methylhexyl ester) in or on teff when cloquintocet-mexyl is used as an inert ingredient (herbicide safener) in pesticide formulations containing pyroxsulam. Dow AgroSciences LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA) in order to cover residues of cloquintocet-mexyl in imported teff commodities.

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-2016-0299, 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. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Michael L. Goodis, P.E., 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.

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 EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at 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-2016-0299 in the subject line on the first page of your submission. All objections and requests for a hearing 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-2016-0299, 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 <http://www.epa.gov/dockets/contacts.html>.

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 29, 2016 (81 FR 59165) (FRL- 9950-22), EPA issued a document pursuant to FFDCFA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP# 5E8432) by Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. The petition requested that 40 CFR part 180.560 be amended by establishing tolerances without U.S registrations for residues of the cloquintocet-mexyl for use as an inert ingredient (safener) in combination with the

herbicide pyroxulam in or on the raw agricultural commodities teff, forage at 0.2 parts per million (ppm); teff, grain at 0.1 ppm; teff hay at 0.5 ppm; teff straw at 0.1ppm. That document referenced a summary of the petition prepared by Dow AgroSciences, LLC, the registrant, which is available in the docket EPA-HQ-OPP-2016-0299 at <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCFA 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 FFDCFA 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 FFDCFA 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 FFDCFA 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 for cloquintocet-mexyl in or on teff forage, grain, hay and straw, consistent with FFDCA section 408(b)(2).

In the **Federal Register** of August 2, 2016 (81 FR 50630) (FRL-9947-78), EPA established tolerances for residues of cloquintocet-mexyl and its acid metabolite (5-chloro-8-quinolinoxyacetic acid) when used in pesticide formulations containing the active ingredient halauxifen-methyl, in or on barley grain, barley hay, barley straw, and wheat forage, wheat grain, wheat hay, and wheat straw. EPA is relying upon the risk assessments that supported the findings made in the August 2, 2016, **Federal Register** document in support of this action. The toxicity profile of cloquintocet-mexyl has not changed, and the previous risk assessments that supported the establishment of those tolerances remain valid.

The Agency evaluated the request to establish tolerances in or on teff forage, grain, hay, and straw. Teff is prepared like other whole grains, such as rice and barley, and may also be used to make flour in a manner similar to wheat and other cereal grains. In considering likely residue levels on teff, EPA concludes that because of the similarity in application rates for pesticides containing cloquintocet-mexyl between teff and wheat, the likely decline in residue levels as teff moves through commerce, and the similarities to the small grains in terms of morphology, taxonomy and cultural practices, residue levels of cloquintocet-mexyl on teff will be similar to residue levels on wheat. The lack of teff consumption data being reported in the available food consumption data indicates a very low overall consumption of teff in the United States. When teff is consumed in the

U.S., it is typically consumed in place of wheat. Using these assumptions regarding likely residue levels and consumption, EPA concludes that aggregate exposure and risk estimates resulting from cloquintocet-mexyl residues in/on teff would not be substantially different than those presented in the most recent human health risk assessment and published in the August 2, 2016 final rule. As those risk estimates were not of concern to the Agency, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to cloquintocet-mexyl residues.

For a detailed discussion of the aggregate risk assessments and determination of safety for these tolerances, please refer to the August 2, 2016, **Federal Register** document and its supporting documents, available at <http://www.regulations.gov> in docket ID number EPA-HQ-OPP-2012-0843. Further information about EPA's determination that an updated risk assessment was not necessary may be found in the document, "Cloquintocet-mexyl- Human Health Risk Assessment of Tolerances without a US Registration for Use on Teff" in docket ID number EPA-HQ-OPP-2016-0299.

For specific information on the studies received and the nature of the adverse effects caused by cloquintocet-mexyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies, the reader is referred to the final rule published in the **Federal Register** of December 16, 2005 (70 FR 74679) (FRL-7753-4); Docket ID number EPA-HQ-OPP-2005-0234.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, high performance liquid chromatography with ultraviolet detection (HPLC-UV); method REM 138.01 for the cloquintocet-mexyl (parent) and the HPLC-UV Method RED 138.10 for its acid metabolite, are available to enforce the tolerance expression.

The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; email address: *residuemethods@epa.gov*.

B. 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 FFDC 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, FFDC section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for cloquintocet-mexyl.

V. Conclusion

Therefore, tolerances are established for combined residues of cloquintocet-mexyl (acetic acid [(5-chloro-8-quinolinyl) oxy]-1-methylhexyl ester) and its acid metabolite (5-chloro-8-quinlinoxyacetic acid), expressed as cloquintocet-mexyl, for use as an inert ingredient (safener) in combination with the herbicide pyroxsulam in or on teff, forage at 0.2 ppm; teff, grain at 0.1 ppm; teff, hay at 0.5 ppm; and teff, straw at 0.1 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) 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 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 on the basis of a petition under FFDCA section 408(d), 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 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 FFDCFA 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).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), 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 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: March 6, 2017.

Michael Goodis,

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. In § 180.560:

- a. Revise paragraph (a) introductory text; and
- b. Add alphabetically entries for “teff, forage,” “teff, grain,” “teff, hay,” and “teff, straw” to the table in paragraph (a).

The revision and additions read as follows:

§ 180.560 Cloquintocet-mexyl; pesticide tolerances.

- (a) *General.* Tolerances are established for residues of the inert ingredient cloquintocet-mexyl, including its metabolites and degradates, in or on the commodities in the following table when used as a safener in pesticide formulations containing the active ingredients clodinafop-propargyl (wheat only), dicamba (wheat only), flucarbazone-sodium (wheat only), halauxifen-methyl (wheat or barley), pinoxaden (wheat or barley), or pyroxsulam (wheat or teff). Compliance with the tolerance levels specified is to be determined by measuring the combined residues of cloquintocet-mexyl, (acetic acid [(5-chloro-8-quinolinyl)oxy]-, 1-methylhexyl ester; CAS Reg. No. 99607-70-2) and its acid metabolite (5-chloro-8-quinolinoxyacetic acid), expressed as cloquintocet-mexyl, in or on the following commodities:

Commodity	Parts per million
****	***
Teff, forage ¹	0.2
Teff, grain ¹	0.1
Teff, hay ¹	0.5
Teff, straw ¹	0.1
****	***

¹There are no U.S. registrations for use on this commodity as of *[insert date of publication in the **Federal Register**]*.

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[FR Doc. 2017-05705 Filed: 3/21/2017 8:45 am; Publication Date: 3/22/2017]