

flutolanil, *N*-(3-(1-methylethoxy)phenyl)-2-(trifluoromethyl)benzamide, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only flutolanil and its metabolites converted to 2-(trifluoromethyl) benzoic acid and calculated as flutolanil, in or on the following commodities.

Commodity	Parts per million
Wheat, bran .....	0.20
Wheat, forage .....	2.5
Wheat, grain .....	0.05
Wheat, hay .....	1.2
Wheat, straw .....	0.20

\* \* \* \* \*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2009-0673; FRL-8817-4]

### Pendimethalin; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation amends the current tolerance for combined residues of pendimethalin and its metabolite, expressed as pendimethalin equivalents, in or on alfalfa forage. BASF Corporation requested this tolerance amendment under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective April 7, 2010. Objections and requests for hearings must be received on or before June 7, 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-2009-0673. 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:** Jim Tompkins, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5697; e-mail address: [tompkins.jim@epa.gov](mailto:tompkins.jim@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>.

##### 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-2009-0673 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 June 7, 2010. 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 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-2009-0673, 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 January 6, 2010 (75 FR 864) (FRL-8801-5), 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 9F7576) by BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.361 be amended by increasing the tolerance for the combined residues of the herbicide pendimethalin, [N-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine], and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenzyl alcohol, in or on alfalfa, forage from 3.0 parts per million (ppm) to 3.5 (ppm). That notice referenced a summary of the petition

prepared by BASF Corporation, the registrant, which is available in the docket, <http://www.regulations.gov>. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.D.

### 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 combined residues of pendimethalin and its metabolite including exposure resulting from the tolerance established by this action. EPA's assessment of exposures and risks associated with pendimethalin, [N-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine] and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenzyl alcohol follows.

On January 27, 2010, the Agency published a final rule (75 FR 4279, FRL-8804-2) establishing tolerances for combined residues of pendimethalin and its metabolite in or on various grass commodities in crop group 17. When the Agency conducted the risk assessment in support of the January, 2010 tolerance action, it considered the use of pendimethalin on alfalfa, including potential residues of pendimethalin and its metabolite in or on alfalfa hay and forage. EPA also considered the potential for secondary residues of pendimethalin in livestock commodities from consumption of

treated alfalfa hay and forage and determined that there was no reasonable expectation of finite residues to occur. Since alfalfa hay and alfalfa forage are both categorized as roughage, EPA assessed the pendimethalin dietary burden of livestock using the higher (more conservative) of the two tolerances (alfalfa hay at 4.0 ppm). Increasing the tolerance for alfalfa forage to 3.5 ppm will not affect the estimated livestock dietary burden or the estimated aggregate risks resulting from use of pendimethalin, as discussed in the January 27, 2010 (75 FR 4279-4284, FRL-8804-2) **Federal Register**. Refer to this **Federal Register** document, available at <http://www.regulations.gov>, for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action.

Therefore, based on the risk assessments discussed in the final rule published in the **Federal Register** of January 27, 2010 (75 FR 4279, FRL-8804-2), 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 pendimethalin residues.

### IV. Other Considerations

#### A. Analytical Enforcement Methodology

Adequate enforcement methodology, using liquid chromatography/mass spectrometry analysis (LC/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 established or proposed Codex maximum residue limits (MRLs) for pendimethalin.

#### C. Revisions to Petitioned-for Tolerances

EPA has revised the pendimethalin tolerance expression for the new and existing tolerances to clarify the chemical moieties that are covered by the tolerances and specify how compliance with the tolerances is to be measured. The revised tolerance expression makes clear that the tolerances cover residues of pendimethalin and its metabolites and degradates, but that compliance with the tolerance levels will be determined by measuring only pendimethalin, [N-(1-ethylpropyl)-3,4-dimethyl-2,6-

dinitrobenzenamine], and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenzyl alcohol, calculated as the stoichiometric equivalent of pendimethalin.

EPA has determined that it is reasonable to make this change final without prior proposal and opportunity for comment, because public comment is not necessary, in that the change has no substantive effect on the tolerance, but rather is merely intended to clarify the existing tolerance expression.

#### D. Response to Comments

EPA received comments from an anonymous submitter objecting to pesticides and other "toxic" chemicals generally and recommending against any tolerances greater than zero for this product. The Agency understands the commenter's concerns and recognizes that some individuals believe that pesticides should be banned completely. However, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) contemplates that tolerances greater than zero may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. This submitter's comments appear to be directed at the underlying statute and not EPA's implementation of it; the citizen has made no contention that EPA has acted in violation of the statutory framework.

### V. Conclusion

Therefore, a tolerance is established for residues of pendimethalin, including its metabolites and degradates, in or on the alfalfa, forage at 3.5 ppm. Compliance with the tolerance level is to be determined by measuring only pendimethalin, [N-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine], and its metabolite, 4-[(ethylpropyl)amino]-2-methyl-3,5-dinitrobenzyl alcohol, calculated as the stoichiometric equivalent of pendimethalin, in or on alfalfa, forage.

### 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: March 26, 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 180.361, revise the introductory text and the entry for Alfalfa, forage in the table in paragraph (a) to read as follows:

#### § 180.361 Pendimethalin; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide pendimethalin, including its metabolites and degradates, in or on the commodities. Compliance with the tolerance levels specified in the following table below is to be determined by measuring only pendimethalin, [N-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine], and its metabolite, 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenzyl alcohol, calculated as the stoichiometric equivalent of pendimethalin, in or on the following commodities:

Commodity	Parts per million
Alfalfa, forage .....	3.5

\* \* \* \* \*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 180

[EPA–HQ–OPP–2009–0057; FRL–8818–4]

#### Nicosulfuron; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of nicosulfuron in or on cattle, fat; cattle, meat; cattle,

meat byproducts; goat, fat; goat, meat; goat, meat byproducts; grass, forage; grass, hay; horse, fat; horse, meat; horse, meat byproducts; milk; sheep, fat; sheep, meat; and sheep, meat byproducts. E. I. du Pont de Nemours and Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). This regulation also removes the existing tolerance for residues of nicosulfuron on corn, forage.

**DATES:** This regulation is effective April 7, 2010. Objections and requests for hearings must be received on or before June 7, 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–2009–0057. 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–