[Federal Register Volume 87, Number 115 (Wednesday, June 15, 2022)]

[Rules and Regulations]

[Pages 36071-36074]

From the Federal Register Online via the Government Publishing Office [[www.gpo.gov](http://www.gpo.gov/)]

[FR Doc No: 2022-12880]

-----------------------------------------------------------------------

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2021-0453; FRL-9816-01-OCSPP]

Thiamethoxam; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

-----------------------------------------------------------------------

SUMMARY: This regulation establishes tolerances for residues of

thiamethoxam in or on pineapples. Syngenta Crop Protection, LLC

requested this tolerance under the Federal Food, Drug, and Cosmetic Act

(FFDCA).

DATES: This regulation is effective June 15, 2022. Objections and

requests for hearings must be received on or before August 15, 2022,

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-2021-0453, is available at

[https://www.regulations.gov](https://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 and for the OPP Docket is (202) 566-1744. Please review

the visitor instructions and additional information about the docket

available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Acting Director,

Registration Division (7505T), Office of Pesticide Programs,

Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington,

DC 20460-0001; main telephone number: (202) 566-1030; 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 Office of the

Federal Register's e-CFR site at <https://www.ecfr.gov/current/title-40>.

C. How can I file an objection or hearing request?

 Under FFDCA section 408(g), 21 U.S.C. 346a(g), 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-2021-0453 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

August 15, 2022. 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-2021-0453, by one of

the following methods:

 Federal eRulemaking Portal: [https://www.regulations.gov](https://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 <https://www.epa.gov/dockets/where-send-comments-epa-dockets>.

 Additional instructions on commenting or visiting the docket, along

with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

II. Summary of Petitioned-For Tolerance

 In the Federal Register of August 24, 2021 (86 FR 47275) (FRL-8792-

02-

[[Page 36072]]

OCSPP) EPA issued a document pursuant to FFDCA section 408(d)(3), 21

U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP

1E8908) by Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro,

NC 27419-8300. The petition requested to establish a tolerance in 40

CFR part 180.565 for residues of the insecticide, Thiamethoxam {3-[(2-

chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-N-nitro-4H-1,3,5-

oxadiazin-4-imine{time} and its metabolite [N-(2-chloro-thiazol-5-

ylmethyl)-N'-methyl-N'-nitro-guanidine], in or on pineapple at 0.03

parts per million (ppm) and 0.05 ppm for pineapple, process residue.

That document referenced a summary of the petition prepared by

Syngenta, the petitioner, which is available in the docket, [https://www.regulations.gov](https://www.regulations.gov/). There were no comments received in response to the

notice of filing.

 Based upon review of the data supporting the petition and in

accordance with its authority under FFDCA section 408(d)(4)(A)(i), EPA

is establishing the tolerances at different levels than requested. The

reason for these changes is explained in Unit IV.C.

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. . .

.''

 Tolerances for residues of thiamethoxam are listed in 40 CFR

180.565 and are expressed in terms of the combined residues of the

insecticide thiamethoxam and its metabolite CGA-322704. Metabolite CGA-

322704 is also the registered active ingredient clothianidin (tolerance

listings in 40 CFR 180.586). Clothianidin (hereinafter referred to as

CGA-322704) has a complete toxicological database and appears to have

effects in mammals that are different from those of thiamethoxam. A

separate risk assessment that addresses risks from CGA-322704 residues

resulting from the direct application of CGA-322704 (clothianidin), as

well as risks from residues of CGA-322704 coming from thiamethoxam uses

has been conducted, and there are no risk estimates of concern as a

result of the proposed tolerance for thiamethoxam residues in imported

pineapple. This document entitled, ``Clothianidin. Human Health Risk

Assessment to Address Exposure Associated with a New Tolerance for

Thiamethoxam'' can be found at [https://www.regulations.gov](https://www.regulations.gov/) in docket ID

number EPA-HQ-OPP-2021-0453.

 Consistent with FFDCA section 408(b)(2)(D), and the factors

specified therein, 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 thiamethoxam including exposure resulting from

the tolerances established by this action. EPA's assessment of

exposures and risks associated with thiamethoxam follows.

 In an effort to streamline its publications in the Federal

Register, EPA is not reprinting sections that repeat what has been

previously published for tolerance rulemakings of the same pesticide

chemical. Where scientific information concerning a particular chemical

remains unchanged, the content of those sections would not vary between

tolerance rulemaking, and EPA considers referral back to those sections

as sufficient to provide an explanation of the information EPA

considered in making its safety determination for the new rulemaking.

 EPA has previously published tolerance rulemakings for

thiamethoxam, in which EPA concluded, based on the available

information, that there is a reasonable certainty that no harm would

result from aggregate exposure to thiamethoxam and established

tolerances for residues of that chemical. EPA is incorporating

previously published sections from that rulemaking as described further

in this rulemaking, as they remain unchanged.

A. Toxicological Profile

 For a discussion of the Toxicological Profile of thiamethoxam, see

Unit III.A. of the thiamethoxam tolerance rulemaking published in the

Federal Register of February 15, 2017 (82 FR 10712) (FRL-9957-00).

B. Toxicological Points of Departure/Levels of Concern

 For a summary of the Toxicological Points of Departure/Levels of

Concern for thiamethoxam used for human risk assessment, see Unit

III.B. of the February 15, 2017, thiamethoxam tolerance rulemaking.

C. Exposure Assessment

 Much of the exposure assessment remains the same although updates

have occurred to accommodate exposures from the petitioned-for

tolerances. These updates are discussed in this section; for a

description of the rest of the EPA approach to and assumptions for the

exposure assessment, please reference Unit III.C. of the February 15,

2017, rulemaking.

 EPA's dietary exposure assessments have been updated to include the

additional exposure from the new use of thiamethoxam on imported

pineapple. The acute assessment is based on tolerance-level residues

and assumes 100 percent crop treated (PCT); the acute assessment is

unrefined. The chronic assessment is based on average residues from

crop field trials (except for tolerance-level residues in pineapple

commodities) and assumes 100 PCT; the chronic assessment is partially

refined. The assessments were conducted using the Dietary Exposure

Evaluation Model software with the Food Commodity Intake Database

(DEEM-FCID) Version 4.02. EPA with 2005-2010 food consumption

information from the United States Department of Agriculture's (USDA's)

National Health and Nutrition Examination Survey, What We Eat in

America, (NHANES/WWEIA).

 Anticipated residue and PCT information. Section 408(b)(2)(E) of

FFDCA authorizes EPA to use available data and information on the

anticipated residue levels of pesticide residues in food and the actual

levels of pesticide residues that have been measured in food. If EPA

relies on such information, EPA must require pursuant to FFDCA section

408(f)(1) that data be provided 5 years after the tolerance is

established, modified, or left in effect, demonstrating that the levels

in food are not above the levels anticipated. For the present action,

EPA will issue such data call-ins as are required by FFDCA section

408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be

required to be submitted no later than 5 years from the date of

issuance of these tolerances.

 Drinking water exposure. EPA has revised the thiamethoxam drinking

water assessment since the February 15,

[[Page 36073]]

2017, final rule. Based on the Pesticide in Water Calculator's (PWC)

version 1.52, the estimated drinking water concentrations (EDWCs) of

thiamethoxam in groundwater are 65 parts per billion (ppb) for acute

exposures and 58 ppm for chronic exposures. Groundwater EDWCs were used

in the dietary assessment for all sources of drinking water.

 Cumulative exposure. Section 408(b)(2)(D)(v) of FFDCA requires

that, when considering whether to establish, modify, or revoke a

tolerance, the Agency consider ``available information'' concerning the

cumulative effects of a particular pesticide's residues and ``other

substances that have a common mechanism of toxicity.'' In 2016, EPA's

Office of Pesticide Programs released a guidance document entitled

``Pesticide Cumulative Risk Assessment: Framework for Screening

Analysis.'' The Agency has utilized this framework for thiamethoxam and

determined that thiamethoxam along with clothianidin, acetamiprid,

dinotefuran, imidacloprid, nithiazine and thiacloprid form a candidate

common mechanism group (CMG). This group of pesticides, referred to as

neonicotinoids, is considered a candidate CMG because they share

characteristics to support a testable hypothesis for a common mechanism

of action for neonicotinoids.

 Following this determination, the Agency conducted a screening-

level cumulative risk assessment consistent with the 2016 guidance

document. The current screening assessment indicates that cumulative

risk estimates for neonicotinoids are below the Agency's levels of

concern. A detailed description of the cumulative screening assessment

can be found in the Neonicotinoid Cumulative Screening Risk Assessment

Memo (M. Perron et al., DP460743, 3/01/2021). No further cumulative

evaluation is necessary for thiamethoxam.

D. Safety Factor for Infants and Children

 EPA continues to conclude that there are reliable data to support

the reduction of the Food Quality Protection Act (FQPA) safety factor.

See Unit III.D. of the February 15, 2017, rulemaking for a discussion

of the Agency's rationale for that determination.

E. Aggregate Risks and Determination of Safety

 EPA determines whether acute and chronic dietary pesticide

exposures are safe by comparing aggregate exposure estimates to the

acute population adjusted dose (aPAD) and chronic pop- ulation adjusted

dose (cPAD). Short-, intermediate-, and chronic risks are evaluated by

comparing the estimated aggregate food, water, and residential exposure

to the appropriate points of departure to ensure that an adequate

margin of exposure (MOE) exists. For linear cancer risks, EPA

calculates the lifetime probability of acquiring cancer given the

estimated aggregate exposure.

 Acute dietary risks are below the Agency's level of concern of 100%

of the aPAD; they are 12% of the aPAD for children 1 to 2 years old,

the population subgroup with the highest exposure. Chronic dietary

risks are below the Agency's level of concern of 100% of the cPAD; they

are 73% of the cPAD for children 1 to 2 years old, the population

subgroup with the highest exposure.

 EPA has concluded the combined short-term food, water, and

residential exposures result in aggregate MOEs of 130 for adults, 160

for children older than 6 years old, and 340 for children less than 6

years old. Because EPA's level of concern for thiamethoxam is an MOE of

100 or below, short-term aggregate risks are not of concern. Because

there is no intermediate-term expected residential exposure, the

intermediate-term risk has not been assessed. Dietary exposure is the

only relevant route of exposure for chronic durations; therefore, the

chronic dietary risk is the same as the overall aggregate risk for

thiamethoxam and is not of concern. Thiamethoxam is classified as ``Not

likely to be carcinogenic to humans''; therefore, EPA does not expect

thiamethoxam exposures to pose an aggregate cancer risk.

 Therefore, based on the risk assessments and information described

above, EPA concludes there is a reasonable certainty that no harm will

result to the general population, or to infants and children, from

aggregate exposure to thiamethoxam residues. More detailed information

on this action can be found in the document entitled, ``Thiamethoxam.

Human Health Risk Assessment for Use on Imported Pineapple'' in the

docket ID number, EPA-HQ-OPP-2021-0453.

IV. Other Considerations

A. Analytical Enforcement Methodology

 For a discussion of the available analytical enforcement method,

see Unit IV.A. of the February 15, 2017, rulemaking.

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 FFDCA

section 408(b)(4).

 Codex has established an MRL for thiamethoxam in pineapple at 0.01

mg/kg which is different than the U.S. tolerance. At this time, the

Codex and EPA residue definitions are different (Codex's MRL is for the

parent compound, thiamethoxam only, while EPA's is thiamethoxam plus

metabolite CGA-322704); therefore, it is not possible to harmonize with

the Codex MRL.

C. Revisions to Petitioned-For Tolerances

 The tolerance on pineapple is being set at 0.04 ppm and pineapple,

process residue at 0.06 ppm instead of the proposed levels of 0.03 and

0.05, respectively. The petitioner used only thiamethoxam residues as

inputs for the Organization for Economic Cooperation and Development

(OECD) tolerance calculation procedure. Using both thiamethoxam and its

metabolite CGA-322704 for the input data set results in recommended

tolerances of 0.04 ppm for pineapple and 0.06 ppm for pineapple,

process residue.

V. Conclusion

 Therefore, a tolerance is established for residues of thiamethoxam,

including its metabolites and degradates, in or on pineapple at 0.04

ppm and in or on pineapple, process residue at 0.06 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 to 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

[[Page 36074]]

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 FFDCA 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: June 9, 2022.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

 Therefore, for the reasons stated in the preamble, EPA is amending

40 CFR chapter 1 as follows:

PART 180--TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES

IN FOOD

0

1. The authority citation for part 180 continues to read as follows:

 Authority: 21 U.S.C. 321(q), 346a and 371.

0

2. In Sec. 180.565, amend paragraph (a) by designating the table as

``Table 1 to Paragraph (a)'' and adding in alphabetical order the

entries ``Pineapple \1\'' and ``Pineapple, process residue \1\'' to

read as follows:

Sec. 180.565 Thiamethoxam; tolerances for residues.

 (a) \* \* \*

 Table 1 to Paragraph (a)

------------------------------------------------------------------------

 Parts per

 Commodity million

------------------------------------------------------------------------

 \* \* \* \* \*

Pineapple \1\............................................... 0.04

 \* \* \* \* \*

Pineapple, process residue \1\.............................. 0.06

 \* \* \* \*

------------------------------------------------------------------------

\1\ There are no U.S. registrations for these commodities as of June 15,

 2022.

\* \* \* \* \*

[FR Doc. 2022-12880 Filed 6-14-22; 8:45 am]

BILLING CODE 6560-50-P