

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 18, 2011.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 2011-6879 Filed 3-22-11; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2011-0121]

Drawbridge Operation Regulation; Cerritos Channel, Long Beach, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Commodore Schuyler F. Heim Drawbridge across Cerritos Channel, mile 4.9, at Long Beach, CA. The deviation is necessary to allow the California Department of Transportation to perform critical repair and replacement of electrical components for drawspan operation.

DATES: This deviation is effective from 7 a.m. to 7 p.m. on March 26, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of the docket USCG-2011-0121 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0121 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510-437-3516, e-mail David.H.Sulouff@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager,

Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION: The California Department of Transportation requested a temporary change to the operation of the Commodore Schuyler F. Heim Drawbridge, mile 4.9, over Cerritos Channel, at Long Beach, CA. The drawbridge navigation span provides a vertical clearance of 37 feet above Mean High Water in the closed-to-navigation position and 163 feet in the full open to navigation position. As required by 33 CFR 117.147, the draw shall open on signal; except that, from 6:30 a.m. to 8 a.m. and 3:30 p.m. to 6 p.m., Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels. Navigation on the waterway is commercial, recreational, search and rescue, and law enforcement.

The drawspan will be secured in the closed-to-navigation position from 7 a.m. through 7 p.m. on March 26, 2011 to perform critical repair and replacement of electrical components for drawspan operation. The alternative path around Terminal Island will be available for routine and emergency navigation. This temporary deviation has been coordinated with commercial and recreational waterway users. No objections to the proposed temporary deviation were raised.

Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 9, 2011.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2011-6880 Filed 3-22-11; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2010-0101; FRL-8868-7]

Aspergillus flavus AF36; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a

tolerance for residues of the microbial pesticide, *Aspergillus flavus* AF36, in or on corn food and feed commodities, when applied/used as an antifungal agent. The Arizona Cotton Research and Protection Council submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an amendment to the existing exemption from the requirement of a tolerance for *Aspergillus flavus* AF36. This regulation eliminates the need to establish a maximum permissible level for residues of *Aspergillus flavus* AF36 under the FFDCA.

DATES: This regulation is effective March 23, 2011. Objections and requests for hearings must be received on or before May 23, 2011, 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-2010-0101. 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 Office of Pesticide Programs (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: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8097; e-mail address: bacchus.shanaz@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 site at <http://www.gpoaccess.gov/ecfr>.

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-2010-0101 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 May 23, 2011. 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. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA-HQ-OPP-2010-0101, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the

on-line instructions for submitting comments.

- *Mail:* 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

In the **Federal Register** of March 3, 2010 (75 FR 9596) (FRL-8811-2), 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 tolerance petition (PP 9E7662) by the Arizona Cotton Research and Protection Council, 3721 East Wier Ave., Phoenix, AZ 85040-2933. The petition requested that 40 CFR 180.1206 be amended by establishing an exemption from the requirement of a tolerance for residues of *Aspergillus flavus* AF36 in or on corn food and feed commodities. This notice referenced a summary of the petition prepared on behalf of the petitioner, Arizona Cotton Research and Protection Council, 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 VII.C.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(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. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require 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. * * *" Additionally, section 408(b)(2)(D) of FFDCA requires that EPA consider "available information concerning the cumulative effects of [a particular pesticide's] residues and other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability, and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The nature and toxicological profile of *Aspergillus flavus* AF36 was previously described in the **Federal Register** of July 14, 2003 (68 FR 41541) (FRL-7311-6). Those health effects data were the basis for establishing the tolerance exemption for *Aspergillus flavus* AF36, a non-aflatoxin-producing strain of *Aspergillus flavus*, in or on cotton and its food/feed commodities in 40 CFR 180.1206 and also for temporary tolerance exemptions for experimental use of *Aspergillus flavus* AF36 on pistachio (72 FR 28871, May 23, 2007) (FRL-8129-4) and on corn (72 FR 72965, Dec. 26, 2007) (FRL-8342-1). EPA has reviewed the available data in support of this action.

Aspergillus flavus AF36 is neither toxic nor infective via the oral and pulmonary routes. It was placed in Toxicity Category IV for acute oral effects. The Toxicity Category III designation for acute inhalation effects is based on the granular nature of the pesticide and the submitted pulmonary studies. This microbial pesticide has been used for more than a decade in experimental laboratory and field trials and in agricultural practice on cotton in Arizona, California, and Texas without any reports of adverse dermal irritation or hypersensitivity effects. Data and information from the public literature

indicate that there will not be any incremental harm from the use of *Aspergillus flavus* AF36 for reduction of aflatoxin. No further toxicological data are required to support this exemption from the requirement of a tolerance for *Aspergillus flavus* AF36 in or on the food and feed commodities of corn.

IV. Aggregate Exposure

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food.* Current uses of *Aspergillus flavus* AF36 include use on cotton, pistachios, and corn. EPA does not expect these uses to result in any exposure that is greater than background levels of *Aspergillus flavus*. As a microbial pesticide for use on corn, *Aspergillus flavus* AF36 is labeled for application from the V7 growth stage (i.e., approximately 21–25 days after plant emergence) until silking (i.e., approximately 55–66 days after plant emergence). Once applied to corn and after exposure to moisture, *Aspergillus flavus* AF36 germinates, using the carrier upon which it is placed as a nutrient source, and effectively displaces aflatoxin-producing strains of *Aspergillus flavus* without increasing levels of cyclopiazonic acid (Ref. 1). Further, multiple-year studies, which monitored air and soil populations of *Aspergillus flavus*, including strain AF36, in cotton fields, demonstrated replacement of toxigenic (aflatoxin-producing) fungi with atoxic fungi without an increase in the overall quantity of *Aspergillus flavus* beyond normal background levels (Refs. 2 and 3). Although residues from the use of pesticides containing *Aspergillus flavus* AF36 will likely be present on corn at the time of harvest (although likely not at higher levels than background), much like other microbial pest control agents, commodity-processing procedures (e.g., peeling, shucking, washing, and cooking) should further reduce levels of *Aspergillus flavus* AF36 below typical background levels (Ref. 4). Finally, even with the potential for negligible exposure to *Aspergillus flavus* AF36 on edible corn commodities, a previously reviewed and described acute oral toxicity and pathogenicity study (see Unit III. of the **Federal Register** of July

14, 2003 (68 FR 41541) (FRL–7311–6)) showed no toxicity or infectivity in animals exposed to high levels of this active ingredient.

2. *Drinking water exposure.* Exposure to *Aspergillus flavus* AF36 via drinking water from all uses of *Aspergillus flavus* AF36 is not likely to be greater than current/existing exposures to *Aspergillus flavus* strains, which are already present in the environment. Potential risks via exposure to drinking water or runoff may be mitigated by, among other things, percolation through soil. Thus, EPA expects exposure via drinking water from the proposed use of this non-aflatoxin-producing strain of *Aspergillus flavus* to be low, or at least not greater than existing background levels. In any event, any drinking water exposure is not likely to pose any incremental risk to adult humans, infants and children because of the lack of toxicity or infectivity of this substance. In fact, displacement of the toxigenic strains of *Aspergillus flavus* by AF36 may decrease exposure and risk to the toxigenic strains of *Aspergillus flavus* in the environment.

B. Other Non-Occupational Exposure

Dermal and inhalation non-occupational exposure are expected to be minimal to non-existent for the proposed use of *Aspergillus flavus* AF36 in or on corn. *Aspergillus flavus* AF36 is to be applied to agricultural sites not in the proximity of residential areas, schools, nursing homes, or daycares. Additionally, the *Aspergillus flavus* AF36 product to be applied to corn is in a granular form, thereby minimizing spray drift even for application methods (e.g., aerial) that may be more likely to result in pesticide movement offsite.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, EPA consider “available information concerning the cumulative effects of [a particular pesticide’s] residues and other substances that have a common mechanism of toxicity.”

EPA has not found *Aspergillus flavus* AF36 to share a common mechanism of toxicity with any other substances, and *Aspergillus flavus* AF36 does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that *Aspergillus flavus* AF36 does not have a common mechanism of toxicity with other substances. Following from this, therefore, EPA concludes that there are no cumulative effects associated with *Aspergillus*

flavus AF36 that need to be considered. For information regarding EPA’s efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA’s Web site at <http://www.epa.gov/pesticides/cumulative>.

VI. Determination of Safety for U.S. Population, Infants and Children

There is reasonable certainty that no harm will result from aggregate exposures to residues of *Aspergillus flavus* AF36, in its use as an antifungal agent, to the U. S. population, including infants and children. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. As discussed previously, there appears to be no potential for harm from this fungus in its use as an antifungal agent via dietary exposure since the organism is non-toxic and non-pathogenic to animals and humans. EPA has arrived at this conclusion based on the very low levels of mammalian toxicity for acute oral and pulmonary effects with no toxicity or infectivity at the doses tested (See Unit III. above).

FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional ten-fold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are often referred to as uncertainty (safety) factors. In this instance, based on all the available information, EPA concludes that the fungus, *Aspergillus flavus* AF36, is non-toxic to mammals, including infants and children. Because there are no threshold effects of concern to infants, children and adults when *Aspergillus flavus* AF36 is used as labeled, the provision requiring an additional margin of safety does not apply. As a result, EPA has not used a margin of exposure (safety) approach to assess the safety of *Aspergillus flavus* AF36.

VII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation.

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. In this context, EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. 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, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for *Aspergillus flavus* AF36.

C. Response to Comments

In total, four comments were received in response to the **Federal Register** notice published by EPA to announce receipt of the Arizona Cotton Research and Protection Council's petition. Three comments expressed support for the petition, while the other comment was filed in opposition.

The one substantive, negative comment indicated overall support for *Aspergillus flavus* NRRL 21882, another microbial pesticide intended for aflatoxin reduction. Primarily, this commenter articulated concern about the possible expression of cyclopiazonic acid (CPA) by the *Aspergillus flavus* 36 atoxigenic strain. That is, the commenter asserted that, while reduction of aflatoxin is an admirable goal, the substitution of one mycotoxin, aflatoxin, for another, CPA (albeit a less toxic one), was not acceptable. The commenter claimed that CPA could only be observed in field trials and was not directly observed by analysis of the active ingredient.

Field trial data presented by the petitioner to EPA demonstrated that there was no increase in CPA levels above background in treated corn. In addition, the use of *Aspergillus flavus* AF36 reduced aflatoxin levels in the treated fields compared to untreated plots. Given this new information (See Ref. 1), as well as previously reviewed data on *Aspergillus flavus* AF36, EPA has concluded there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Aspergillus flavus* AF36 in or on the food and feed commodities of corn, when applied/used as an antifungal agent. Thus, under the

standard in FFDCA section 408(c)(2), a tolerance exemption is appropriate.

VIII. Conclusions

EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Aspergillus flavus* AF36. Therefore, an exemption is established for residues of *Aspergillus flavus* AF36 in or on corn, field, forage; corn, field, grain; corn, field, stover; corn, field, aspirated grain fractions; corn, sweet, kernel plus cob with husk removed; corn, sweet, forage; corn, sweet, stover; corn, pop, grain; and corn, pop, stover, when applied/used as an antifungal agent.

IX. References

1. U.S. EPA. 2011. *Aspergillus flavus* AF36 Use on Corn. Memorandum from J.V. Gagliardi, PhD and J.L. Kough, PhD to S. Bacchus dated February 24, 2011 (available as "Supporting & Related Materials" within docket ID number EPA-HQ-OPP-2010-0101 at <http://www.regulations.gov>).
2. U.S. EPA. 2003. Environmental Hazard Assessment for the Microbial Pesticide, *Aspergillus flavus* AF36 for Conditional Registration in Arizona and EUP Extension in Texas. Memorandum from G.S. Tomimatsu, PhD and Z. Vaituzis, PhD to S. Bacchus dated May 16, 2003.
3. U.S. EPA. 2003. BPPD Review of Soil and Air Monitoring Studies and Product Performance Testing (Efficacy) Submitted by USDA Southern Regional Research Center/IR-4 as a Condition of Registration and EUP Extension (Texas) for *Aspergillus flavus* AF36. Memorandum from G.S. Tomimatsu, PhD and J. Kough, PhD to S. Bacchus dated May 15, 2003.
4. U.S. EPA. 1996. Microbial Pesticide Test Guidelines—Background for Residue Analysis of Microbial Pest Control Agents (OPPTS 885.2000). Available from: http://www.epa.gov/ocspp/pubs/frs/publications/Test_Guidelines/series885.htm.

X. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirement of a tolerance under section 408(d) of FFDCA in response to a petition submitted to EPA. 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 exemption 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. As a result, this action does not 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, EPA 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, EPA 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) (Pub. L. 104-4).

This action does not involve any technical standards that would require EPA 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).

XI. 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 11, 2011.

Keith A. Matthews,

Director, Biopesticides and Pollution Prevention 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 180.1206, paragraph (c) is revised to read as follows:

§ 180.1206 *Aspergillus flavus* AF36; exemption from the requirement of a tolerance.

* * * * *

(c) An exemption from the requirement of a tolerance is established for residues of *Aspergillus flavus* AF36 in or on corn, field, forage; corn, field, grain; corn, field, stover; corn, field, aspirated grain fractions; corn, sweet, kernel plus cob with husk removed; corn, sweet, forage; corn, sweet, stover; corn, pop, grain; and corn, pop, stover, when applied/used as an antifungal agent.

[FR Doc. 2011-6545 Filed 3-22-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2007-0099; FRL-8863-8]

Flubendiamide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes, modifies and/or revokes tolerances for residues of flubendiamide N^2 -[1,1-

dimethyl-2-(methylsulfonyl)ethyl]-3-iodo- N^1 -[2-methyl-4-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]phenyl]-1,2-benzenedicarboxamide, in or on multiple food and livestock commodities which are identified, and will be discussed in detail later in this document. Bayer CropScience LP in c/o Nichino America, Inc. (U.S. subsidiary of Nihon Nohyaku Co., Ltd.) requested these tolerances, and revisions to tolerances under the Federal Food, Drug and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 23, 2011. Objections and requests for hearings must be received on or before May 23, 2011, 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-2007-0099. 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: Carmen Rodia, Registration Division (7504P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0001; *telephone number:* (703) 306-0327; *fax number:* (703) 308-0029; *e-mail address:* rodia.carmen@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 site at <http://www.gpoaccess.gov/ecfr>.

C. How 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-2007-0099 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 May 23, 2011. 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. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA-HQ-OPP-2007-0099, by one of the following methods: