



BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2016-0557; FRL-9958-75]

Flupyradifurone; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of flupyradifurone [4-[[[(6-chloro-3-pyridinyl)methyl](2,2-difluoroethyl)amino]-2(5H)-furanone] in or on sweet sorghum, forage and sorghum, syrup resulting from use of flupyradifurone in accordance with the terms of crisis exemptions issued under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This action is in response to the issuance of crisis emergency exemptions under FIFRA section 18 authorizing use of the pesticide on sweet sorghum. This regulation establishes maximum permissible levels for residues of flupyradifurone in or on sweet sorghum forage and sorghum syrup. These time-limited tolerances expire on December 31, 2019.

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-2016-0557, 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, 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 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 section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. 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-2016-0557 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-2016-0557, 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. Background and Statutory Findings

EPA, on its own initiative, in accordance with FFDCA sections 408(e) and 408(l)(6) of, 21 U.S.C. 346a(e) and 346a(1)(6), is establishing time-limited tolerances for residues of flupyradifurone in or on sweet sorghum, forage at 30.0 parts per million (ppm) and sorghum, syrup at 90.0 ppm. There are no Canadian or Codex MRLs for residues of flupyradifurone in or on sweet sorghum, forage or sorghum, syrup at this time, so international harmonization is not an issue for these time-limited tolerances. These time-limited tolerances expire on December 31, 2019.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement of a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under crisis exemptions issued under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on FIFRA section 18 related time-limited tolerances to set binding precedents for the application of FFDCA section 408 and the safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is “safe.” Section 408(b)(2)(A)(ii) of FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C)

of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .”

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

III. Emergency Exemptions for Flupyradifurone on Sweet Sorghum and FFDCA Tolerances

Crisis exemptions for use of flupyradifurone on sweet sorghum to control sugarcane aphids were issued to the Arkansas, Kentucky, Mississippi, North Carolina, and Tennessee Departments of Agriculture. Sweet sorghum growers in these states experienced severe and damaging infestations of sugarcane aphids.

The state agencies asserted that emergency conditions existed in accordance with the criteria for approval of an emergency exemption, and declared crisis exemptions under 40 CFR part 166, subpart C, to allow the use of flupyradifurone on sweet sorghum for control of sugarcane aphids. After having reviewed the emergency actions, EPA concurred on the crisis exemptions on July 21, 2016 in order to meet the needs of sweet sorghum growers in Arkansas, Kentucky, Mississippi, North Carolina, and Tennessee who faced significant economic loss resulting from sugarcane aphid damage. These crisis exemption programs expired on November 15, 2016.

As part of its evaluation of the proposed crisis exemptions, EPA assessed the potential risks presented by residues of flupyradifurone in or on sweet sorghum. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary time-limited tolerances under FFDCA section 408(1)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on these emergency exemptions in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these time-limited tolerances without notice and opportunity for public comment as provided in FFDCA section 408(1)(6). Although these time-limited tolerances expire on December 31, 2019 under FFDCA section 408(1)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on sweet sorghum, forage and sorghum, syrup after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these time-limited tolerances at the time of that application. EPA will take action to revoke these time-limited tolerances earlier if any experience with scientific data or other relevant information on this pesticide indicate that the residues are not safe.

Because these time-limited tolerances are being approved under emergency conditions, EPA has not made any decisions about whether flupyradifurone meets FIFRA's registration requirements for use on sweet sorghum or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these time-limited tolerance decisions serve as a basis for registration of flupyradifurone by a State for special local needs under FIFRA section 24(c), nor do

these time-limited tolerances by themselves serve as the authority for persons in any State other than Arkansas, Kentucky, Mississippi, North Carolina, and Tennessee to use this pesticide on sweet sorghum under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemptions for flupyradifurone, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is “safe.” Section 408(b)(2)(A)(ii) of FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....”

Consistent with the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure expected as a result of these emergency exemption requests and the

time-limited tolerances for residues of flupyradifurone on sweet sorghum, forage and sorghum, syrup at 30.0 and 90.0 parts per million (ppm) respectively. EPA's assessment of exposures and risks associated with establishing these time-limited tolerances follows.

A. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the no observed adverse effect level or NOAEL) and the lowest dose at which adverse effects of concern are identified (the lowest observed adverse effect level or LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level - generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD) - and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <http://www.epa.gov/pesticides/factsheets/riskassess.htm>.

A summary of the toxicological endpoints for flupyradifurone used for human risk assessment is discussed in Table 1 of Unit III B. of the final rule published in the **Federal Register** of January 23, 2015 (80 FR 3483) (FRL-9914-77).

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to flupyradifurone, EPA considered exposure under the time-limited tolerances established by this action as well as all existing flupyradifurone tolerances in 40 CFR 180.679. EPA assessed dietary exposures from flupyradifurone in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for flupyradifurone. In estimating acute dietary exposure, EPA used food consumption data from the United States Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA; 2003-2008), which it should be noted did not identify any individuals as consuming sweet sorghum. The flupyradifurone acute dietary exposure assessment was conducted using the Dietary Exposure Evaluation Model (DEEM, ver. 3.16). An unrefined acute dietary exposure analysis was performed for the established and requested uses of flupyradifurone that incorporated recommended tolerance-level residues, default and empirical processing factors, and assumed that 100% of the crops were treated.

ii. *Chronic exposure.* In conducting the chronic dietary (food and drinking water) exposure and risk assessment EPA used the food consumption data from the USDA's NHANES/WWEIA; 2003-2008, which did not identify any individuals as consuming sweet sorghum. The flupyradifurone chronic dietary exposure assessment was conducted using the Dietary Exposure Evaluation Model (DEEM, ver. 3.16). An unrefined chronic dietary exposure analysis was performed for the established and requested uses of flupyradifurone that incorporated recommended tolerance-level residues, default and empirical processing factors, and assumed that 100% of the crops were treated.

iii. *Cancer.* Based on the data summarized in Table 1 of Unit III B. of the final rule published in the **Federal Register** of January 23, 2015 (80 FR 3483) (FRL-9914-77), EPA has concluded that flupyradifurone does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for flupyradifurone. Tolerance level residues and 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for flupyradifurone in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of flupyradifurone. Further information

regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

Based on the Pesticide Root Zone Model /Exposure Analysis Modeling System (PRZM/EXAMS), Tier 1 Rice Model and Pesticide Root Zone Model Ground Water (PRZM GW) model, the estimated drinking water concentrations (EDWCs) of flupyradifurone for acute exposures are estimated to be 112 parts per billion (ppb) for surface water and 352 ppb for ground water, and for chronic exposures are estimated to be 112 ppb for surface water and 307 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, the water concentration value of 352 ppb was used to assess the contribution to drinking water. For the chronic dietary risk assessment, the water concentration value of 307 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Flupyradifurone is not registered for any specific use patterns that would result in residential exposure. Residential exposure is not anticipated from the proposed section 18 use on sweet sorghum.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at:

<http://www.epa.gov/pesticides/trac/science/trac6a05.pdf>.

4. *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, 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.”

EPA has not found flupyradifurone to share a common mechanism of toxicity with any other substances, and flupyradifurone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this time-limited tolerance action, therefore, EPA has assumed that flupyradifurone does not have a common mechanism of toxicity with other substances. 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 website at

<http://www.epa.gov/pesticides/cumulative>.

C. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence in the rat developmental study that developing animals have increased susceptibility to flupyradifurone. There is quantitative increase in susceptibility in the rabbit developmental and rat reproduction studies. In the rabbit developmental study, no maternal effect was seen at the highest tested dose (80 milligram/kilogram/day (mg/kg/day)), while there was an increase in fetal death and decrease fetal body weight at the same dose level. In the rat reproduction study, decreases in maternal body weight were seen at 137 mg/kg/day, whereas decreases in pup body weight were seen at the next lower dose, 38.7 mg/kg/day. However, the PODs selected for risk assessment are protective of the quantitative susceptibility seen in the rabbit fetuses and rat pups.

3. *Conclusion.* EPA has determined that reliable data show that the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

- i. The toxicity database for flupyradifurone is complete.
- ii. Although there is evidence that flupyradifurone has neurotoxic effects, EPA has a complete set of neurotoxicity studies (acute, subchronic, and developmental). The effects of those studies are well-characterized and indicate neurotoxic effects that occur at levels above the chronic POD that was selected for risk assessment. The NOAEL for the acute neurotoxicity study is being used for the acute POD. Therefore, there is no need to retain the 10X FQPA SF to account for any uncertainty concerning these effects.
- iii. There is no evidence that flupyradifurone produces increased susceptibility in the prenatal developmental study in rats, but there is increased quantitative susceptibility

in rabbit fetuses and in the rat pups. However, the PODs selected for risk assessment are protective of the quantitative susceptibility seen in the fetuses and rat pups.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to flupyradifurone in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children. These assessments will not underestimate the exposure and risks posed by flupyradifurone.

EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to flupyradifurone in drinking water. These assessments will not underestimate the exposure and risks posed by flupyradifurone.

D. 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 PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. Acute risk. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to flupyradifurone will occupy

37 % of the aPAD for children 1-2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to flupyradifurone from food and water will utilize 86% of the cPAD for (children 1-2 years old) the population group receiving the greatest exposure. There are no residential uses for flupyradifurone and residential uses are not anticipated from the proposed section 18 on sweet sorghum.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

As there are no residential uses of flupyradifurone, flupyradifurone does not pose a short-term aggregate risk that differs from the chronic dietary risk addressed in Unit IV.D.2. Chronic dietary risks do not exceed the Agency's level for the U.S. population or any other population subgroups.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level).

As there are no residential uses of flupyradifurone, flupyradifurone does not pose an intermediate-term aggregate risk that differs from the chronic dietary risk addressed in Unit IV.D.2. Chronic dietary risks do not exceed the Agency's level for the U.S. population or any other population subgroups.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, flupyradifurone is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, 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 flupyradifurone residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An adequate analytical method (Method RV-001-P10-03), which uses high-performance liquid chromatography with tandem mass spectrometry (HPLC/MS/MS) to quantitate residues of flupyradifurone and difluoroacetic acid (DFA) in various crops, is available for enforcement.

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; 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 FFDCA 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, FFDCa section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are currently no established Codex or Canadian MRLs for flupyradifurone residues in sweet sorghum commodities.

VI. Conclusion

Therefore, time-limited tolerances are established for residues of flupyradifurone, [4-[[[(6-chloro-3-pyridinyl)methyl](2,2-difluoroethyl)amino]-2(5*H*)-furanone] in or on sweet sorghum, forage at 30.0 and sorghum, syrup at 90.0 parts per million (ppm).

VII. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCa sections 408(e) and 408(l)(6). 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 in accordance with FFDC sections 408(e) and 408(l)(6), 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 FFDC 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).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA submitted a report containing a draft of 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: February 13, 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 § 180.679, revise paragraph (b) to read as follows:

§ 180.679 Flupyradifurone; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of flupyradifurone, including its metabolites and degradates in or on the specified commodities listed in the table below, resulting from use of the pesticide under section 18 emergency exemptions granted by EPA. The time-limited tolerances expire and are revoked on the date specified in the table. Compliance with the tolerance levels specified in the following table is to be determined by measuring only flupyradifurone, 4-[[[(6-chloro-3-pyridinyl)methyl](2,2-difluoroethyl)amino]-2(5*H*)-furanone in or on the commodity.

Commodity	Parts per million	Expiration date
sorghum, syrup	90.0 ppm	December 31, 2019
sweet sorghum, forage	30.0 ppm	December 31, 2019

* * * * *

[FR Doc. 2017-04794 Filed: 3/9/2017 8:45 am; Publication Date: 3/10/2017]