

overdue SIPs. In addition, this action simply starts a "clock" that will not result in sanctions for 18 months, and that the State may "turn off" through the submission of a complete SIP submittal. These reasons support an effective date prior to 30 days after the date of publication.

#### *C. Notice-and-Comment Under the Administrative Procedures Act*

This action is a final agency action but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 533(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submittals, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(d)(3). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert Agency resources from the critical substantive review of submitted SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

### **III. Administrative Requirements**

#### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

#### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

As discussed in section III.C. below, findings of failure to submit required SIP revisions do not by themselves create any new requirements. Therefore, I certify that today's action does not have a significant impact on small entities.

#### *C. Unfunded Mandates Act*

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

In addition, under the Unfunded Mandates Act, before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must have developed, under section 203, a small government agency plan.

EPA has determined that today's action is not a Federal mandate. The CAA provision discussed in this notice requires states to submit SIPs. This notice merely provides findings that Arizona has not met that requirement. This notice does not, by itself, require any particular action by any State, local, or tribal government, or by the private sector.

For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

#### *D. Submission to Congress and the General Accounting Office*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of February 6, 1998. 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 rule is not a

"major rule" as defined by 5 U.S.C. 804(2).

#### *E. Paperwork Reduction Act*

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### *F. Judicial Review*

Under CAA Section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the appropriate circuit by April 27, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2) of the Act.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, particulate matter, Intergovernmental relations.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: February 6, 1998.

**Amy K. Zimpfer,**

*Acting, Regional Administrator, Region IX.*

[FR Doc. 98-4821 Filed 2-24-98; 8:45 am]

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### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 180**

[OPP-300615; FRL-5770-8]

RIN 2070-AB78

#### **Norflurazon; Extension of Tolerances for Emergency Exemptions**

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

**ACTION:** Final rule.

**SUMMARY:** This rule extends time-limited tolerances for residues of the herbicide norflurazon and its desmethyl metabolite in or on bermudagrass forage and hay at 2 and 3 parts per million (ppm), respectively, for an additional 1-year period, to November 30, 1999. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on bermudagrass for control of grassy weeds. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA)

requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

**DATES:** This regulation becomes effective February 25, 1998. Objections and requests for hearings must be received by EPA, on or before April 27, 1998.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number, [OPP-300615], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300615], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

**FOR FURTHER INFORMATION CONTACT:** By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-9364; e-mail: pemberton.libby@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA issued a final rule, published in the **Federal Register** of April 11, 1997 (62 FR 17742-17748) (FRL-5598-2), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established time-limited tolerances for the residues of norflurazon and its

desmethyl metabolite in or on bermudagrass forage and hay at 2 and 3 ppm, respectively, with an expiration date of November 30, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of norflurazon on bermudagrass for this year growing season due to the continuation of the emergency situation in Alabama, Georgia, Mississippi, and Texas. After having reviewed the submission, EPA concurs that emergency conditions exist for these States. EPA has authorized under FIFRA section 18 the use of norflurazon on bermudagrass for control of grassy weeds.

EPA assessed the potential risks presented by residues of norflurazon in or on bermudagrass forage and hay. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of April 11, 1997 (62 FR 17742-17748). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1-year period. Although this tolerance will expire and is revoked on November 30, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on bermudagrass forage and hay after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

### **I. Objections and Hearing Requests**

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new

section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by April 27, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

### **II. Public Record and Electronic Submissions**

The official record for this rulemaking, as well as the public

version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments may be sent directly to EPA at:  
opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300615]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

### III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerance that was previously extended by EPA 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). In addition, 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.*, or 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). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

Since this extension of an existing time-limited tolerance does 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. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

### IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, 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 the rule in the **Federal Register**. This 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: February 6, 1998.

**James Jones,**

*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. 346a and 371.

#### § 180.356 [Amended]

2. In § 180.356, by amending paragraph (b) in the table, for the commodities "Grasses, Bermuda, Forage" and "Grasses, Bermuda, Hay" by removing the date "November 30,

1998" and by adding in its place "11/30/99".

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 180

[OPP-300614; FRL-5769-9]

RIN 2070-AB78

#### Kaolin; Exemption from the Requirement of a Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This document establishes an exemption from the requirement of a tolerance for residues of anhydrous kaolin when used in or on food commodities to aid in the control of insects, fungi, and bacteria (food/feed use). This regulation was requested by Engelhard Corporation.

**DATES:** This regulation becomes effective February 25, 1998. Objections and requests for hearings must be received by EPA on or before April 27, 1998.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number [OPP-300614], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number and submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to: Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically to the OPP by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form