



BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2019-0692; FRL-10014-38]

### *Aspergillus flavus* NRRL 21882; Amendment to an Exemption from the Requirement of a Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation amends the existing tolerance exemptions for residues of *Aspergillus flavus* NRRL 21882 in or on corn and peanut commodities by clarifying that the exemption covers all food and feed commodities of these crops and by establishing an exemption for all food and feed commodities of almond and pistachio. Syngenta Crop Protection, LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting that EPA amend the existing tolerance exemption for *Aspergillus flavus* NRRL 21882. This regulation eliminates the need to establish a maximum permissible level for residues of *Aspergillus flavus* NRRL 21882 on these crops.

**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-2019-0692, is available at <https://www.regulations.gov> or at the Office of Pesticide

Programs Regulatory Public Docket (OPP Docket) in the EPA 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.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Anne Overstreet, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: [BPPDFRNotices@epa.gov](mailto:BPPDFRNotices@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 Publishing Office's e-CFR site at [https://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](https://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 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-2019-0692 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-2019-0692, by one of the following methods:

- *Federal eRulemaking Portal*: <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/about-epa-dockets>.

## **II. Background**

In the *Federal Register* of February 10, 2020 (85 FR 7499) (FRL-10004-54), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance exemption petition (PP 9F8780) by Syngenta Crop Protection, LLC, 410 South Swing Rd., Greensboro, NC 27409. The petition requested that 40 CFR 180.1254 be amended by establishing an exemption from the requirement of a tolerance for residues of the fungicide *Aspergillus flavus* NRRL 21882 in or on almond and pistachio. That document referenced a summary of the petition prepared by the petitioner Syngenta Crop Protection, LLC and is available in the docket via <https://www.regulations.gov>. No comments were received on the notice of filing.

Since the time the original notice of filing was published, the petitioner provided a revised petition requesting a revision to the existing tolerance exemption to include all food and feed commodities of almond; corn, field; corn, pop; corn, sweet; peanut; and pistachio. In order

to give the public an opportunity to comment on this new information, EPA published its receipt of this revised petition in the *Federal Register* of June 1, 2020 (85 FR 33059) (FRL-10009-29) and placed a revised petition from Syngenta Crop Protection, LLC into the docket. No comments were received in response to the republished notice of filing.

### **III. Final Rule**

#### *A. EPA's safety determination*

Section 408(c)(2)(A)(i) of FFDCFA allows EPA to establish an exemption from the requirement of 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 FFDCFA 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 FFDCFA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCFA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption 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, FFDCFA section 408(b)(2)(D) 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 evaluated the available toxicological and exposure data on *Aspergillus flavus* NRRL

21882 and considered their validity, completeness, and reliability, as well as the relationship of this information to human risk. A full explanation of the data upon which EPA relied can be found in the preamble to the 2004 tolerance exemption in the *Federal Register* of June 30, 2004 (69 FR 39341) (FRL-7364-2) and in its risk assessment entitled “Federal Food, Drug, and Cosmetic Act (FFDCA) Safety Determination for *Aspergillus flavus* NRRL 21882” (Safety Determination Document). The Safety Determination Document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**. Based upon its evaluation in the Safety Determination Document, 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* NRRL 21882.

#### *B. Analytical enforcement methodology*

An analytical method is not required for *Aspergillus flavus* NRRL 21882 because EPA is amending an exemption from the requirement of a tolerance without any numerical limitation.

#### **IV. Conclusion**

Therefore, the existing tolerance exemption for *Aspergillus flavus* NRRL 21882 is amended by establishing an exemption from the requirement of tolerance for residues of *Aspergillus flavus* NRRL 21882 in or on all food and feed commodities of almond; corn, field; corn, pop; corn, sweet; peanut; and pistachio when used in accordance with label directions and good agricultural practices.

#### **V. Statutory and Executive Order Reviews**

This action modifies and establishes tolerance exemptions under FFDCA section 408(d) 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 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), nor is it considered a regulatory action under Executive Order 13771, entitled “Reducing Regulations and Controlling Regulatory Costs” (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act, 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 modified on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this action, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (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. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA 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 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 (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require EPA’s consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 272 note).

#### **VI. 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: September 17, 2020.

**Jean Overstreet,**

*Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

**PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL  
RESIDUES IN FOOD**

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

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

2. Revise § 180.1254 to read as follows:

**§180.1254 *Aspergillus flavus* NRRL 21882; exemption from the requirement of a tolerance.**

Residues of *Aspergillus flavus* NRRL 21882 are exempt from the requirement of a tolerance in or on all food and feed commodities of almond; corn, field; corn, pop; corn, sweet; peanut; and pistachio when used in accordance with label directions and good agricultural practices.

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