EPA-APPROVED REGULATIONS AND STATUTES IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* *	*	*	* *	*
5–40–310A–E	Standard for Nitrogen Oxides	3/24/04	4/27/05 [Insert page number where the document begins].	
* *	*	*	* *	*
Article 37 Petroleum Liquid Storage and Transfer Operations (Rule 4–3)				
5–40–5200	Applicability and Designation of Affected Facility.	3/24/04	4/27/05 [Insert page number where the document begins].	
* *	*	*	* *	*
5–40–5220	Standard for Volatile Organic Compounds.	3/24/04	4/27/05 [Insert page number where the document begins].	

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[FR Doc. 05–8437 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0080; FRL–7709–2]

Benoxacor; Partial Grant and Partial Denial of Petition, and Amendment of Tolerance to Include S-Metolachlor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting, in part, and denying, in part, pesticide petition 7E3489 submitted by Syngenta Crop Protection, Inc., and is amending the tolerance for benoxacor at 40 CFR 180.460 to include a reference to S-metolachlor, in addition to the existing reference to metolachlor. EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3) in the **Federal Register** of August 3, 2003 (68 FR 46620) (FRL–7317–6) announcing the filing of a petition requesting that the tolerance expression for the inert ingredient benoxacor (safener) in 40 CFR 180.460 be amended to remove references to metolachlor and replace it with references to S-metoloachlor. Although EPA finds it is safe to add a reference to S-metolachlor to this tolerance regulation, EPA does not agree that grounds exist to remove the reference to metolachlor. Thus, EPA is granting Syngenta's petition in as far as it seeks to add the reference to S-metolachlor but is denying the request to remove metolachlor.

DATES: This regulation is effective April 27, 2005. Objections and requests for hearings must be received on or before June 27, 2005.

ADDRESSES: To submit a written objection or hearing request, follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0080. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., 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 either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 306–0404; e-mail address: *angulo.karen@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 Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of August 6, 2003 (68 FR 46620) (FRL–7317–6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petition (7E3489) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that the tolerance expression for the inert ingredient benoxacor (safener) in 40 CFR 180.460

be amended to remove the references to metolachlor and replace it with references to S-metolachlor. Currently, the benoxacor tolerance permits residues of benoxacor in or on raw agricultural commodities for which tolerances have been established for the herbicide metolachlor when benoxacor is used in pesticide formulations containing metolachlor. Syngenta's petition seeks this amendment because it has voluntarily canceled all its metolachlor product registrations, including its metolachlor registrations containing the safener benoxacor, and has registered products containing S-metolachlor in their place. Some or all of these new registrations contain not only S-metolachlor but benoxacor as well.

The notice of filing included a summary of Syngenta's petition. EPA received one comment, which is discussed further in Unit IV.

This final rule is issued pursuant to section 408(d) of FFDCA, as amended by the FQPA (21 U.S.C. 346a(d)). Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or tolerance exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA. If food containing pesticide residues is found to be adulterated, the food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342 (a)).

III. What Action is the Agency Taking?

In this action, EPA is ruling on a petition (7E3489) filed by Syngenta Crop Protection pursuant to FFDCA section 408(d) to amend a tolerance regulation. Section 408(d)(4) authorizes EPA to act on a petition by issuing a final rule adopting the amendment sought by the petition, issuing a final rule that varies from the amendment sought by the petition, or completely denying the petition. For the reasons described below, EPA has chosen the middle course with regard to Syngenta's petition - granting it only in part and denying the remainder.

The Agency is granting Syngenta's petition in part. The Agency has determined that the tolerance for benoxacor at 40 CFR 180.460 should be amended to include a reference to both metolachlor and S-metolachlor. EPA agrees there are sufficient grounds to amend the tolerance expression for benoxacor to include a reference to S-metolachlor, the product Syngenta is now marketing in place of the metolachlor registrations it has voluntarily canceled. EPA has previously determined that the existing benoxacor tolerances meet the safety standard of FFDCA section 408(b)(2)(A)(i). See the **Federal Register** of February 13, 1998, (63 FR 7299) (FRL–5771–1).

A chronic dietary exposure and risk assessment was conducted using Dietary Exposure Evaluation Model-Food Commodity Intake Database (DEEM-FCID™), which uses food consumption data from the United States Department of Agriculture's (USDA's) Continuing Surveys of Food Intakes by Individuals (CSFII) from 1994–1996 and 1998. The chronic analysis assumes tolerance-level residues on all crops with established, pending, or proposed tolerances for metolachlor and/or S-metolachlor. The analysis also assumes that 100% of the crops included in the assessment were treated with metolachlor and/or S-metolachlor and its safener, benoxacor. These assumptions result in over estimates of exposure and are, therefore, highly conservative with respect to dietary risk assessment. Even with these assumptions, the dietary risk estimates for all population subgroups are less than 15% of the chronic Population-Adjusted Dose (cPAD). Generally EPA is concerned when risk estimates exceed 100% of the cPAD. Therefore, the dietary risk estimates are below EPA's level of concern for all population subgroups, including those of infants and children. There are no acute toxicological or cancer concerns for benoxacor.

Accordingly, EPA finds for the reasons set forth in the **Federal Register** notice of February 13, 1998 (63 FR 7299), establishing the existing benoxacor tolerances, that these tolerances, as amended today, are safe for the general population, including infants and children, within the meaning of FFDCA section 408(b)(2)(A)(i).

EPA does not agree, however, that grounds exist to remove the reference to metolachlor in 40 CFR 180.460 as requested by the petition. As noted, EPA has found previously that residues of benoxacor resulting from its use with metolachlor, are safe and will be safe under the regulation when amended to also reference S-metolachlor. Further, while Syngenta may have canceled its metolachlor registrations, there are existing metolachlor registrations currently held by other persons. The fact that one registrant of several has chosen to stop marketing the pesticide does not constitute the ''abandonment'' of a pesticide as contemplated by 40 CFR 180.32(b) that would justify the administrative amendment or repeal of a tolerance. Further, as the commenter has made clear, existing metolachlor registrants are interested in retaining the reference to metolachlor in the benoxacor tolerance expression. For these reasons, EPA is denying Syngenta's request to remove metolachlor from the existing tolerance expression.

Based on its decision to grant, in part, and deny, in part, Syngenta's petition, EPA is today amending the tolerance expression for benoxacor at 40 CFR 180.460(a) as found in the regulatory section of this document.

IV. Public Comments

As noted in Unit.II. of this document, EPA received a comment objecting to Syngenta's petition to replace the references to metolachlor in 40 CFR 180.460 with references to S-metolachlor. Specifically, the commenter argues that the proposed amendment is unnecessary to protect public health; that it would establish an inappropriate precedent prior to the adoption of an isomer active ingredient policy; and that the rationale for action that Syngenta has offered is materially incomplete and inadequate. Because EPA has decided for reasons set forth in Unit.III. of this document to retain the references to metolachlor in 40 CFR 180.460, EPA need not reach the commenter's arguments objecting to Syngenta's proposed deletion of metolachlor from that regulation. The commenter also argues, however, that as a general matter Syngenta's petition provides no pertinent new ''data, information and arguments'' or ''reasonable grounds'' in support of the petition. EPA disagrees with this comment to the extent it suggests there are inadequate grounds for adding references to S-metolachlor to the tolerance expression at 40 CFR 180.460. As discussed above, the petition noted that EPA has previously found that benoxacor residues are safe and has determined that this action will not alter the assumptions upon which that determination relied. Accordingly, EPA believes reasonable grounds exist to add references to S-metolachlor to 40 CFR 180.460.

V. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests

for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0080 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 27, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). 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.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0080, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a 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(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VI. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). 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) (Public Law 104–4). 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); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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 of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance 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. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. 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). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with*

Indian Tribal Governments (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

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 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: April 14, 2005.

Lois Rossi,

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. Section 180.460 paragraph (a) is revised to read as follows:

§ 180.460 Benoxacor; tolerances for residues.

(a) *General.* Tolerances are established for residues of the inert ingredient (safener) benoxacor (4-(dichloroacetyl)-3,4-dihydro-3-methyl-2H-1, 4-benzoxazine) at 0.01 parts per million (ppm) when used in pesticide formulations containing metolachlor or S-metolachlor in or on raw agricultural commodities for which tolerances have been established for metolachlor or S-metolachlor.

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[FR Doc. 05–8119 Filed 4–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0046; FRL–7705–1]

Spiromesifen; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for: Primary crops for the combined residues of spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate) and its enol metabolite (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one), calculated as the parent compound equivalents; rotational crops for the inadvertent or indirect combined residues of spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate), its enol metabolite (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one), and its metabolites containing the 4-hydroxymethyl moiety (4-hydroxy-3-[4-(hydroxymethyl)-2,6-dimethylphenyl]-1-oxaspiro[4.4]non-3-en-2-one), calculated as the parent compound equivalents; and livestock commodities for the combined residues of spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate), and its metabolites containing the enol (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one) and 4-hydroxymethyl (4-hydroxy-3-[4-(hydroxymethyl)-2,6-dimethylphenyl]-1-oxaspiro[4.4]non-3-en-2-one) moieties, calculated as the parent compound equivalents. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective April 27, 2005. Objections and requests for hearings must be received on or before June 27, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0046. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., 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 either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Thomas Harris, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9423; e-mail address: *harris.thomas@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 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide