

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 section 408(n)(4) of the FFDCA. 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.

IX. 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: January 14, 2005.

Betty Shackelford,

Acting 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 180.588 is amended by adding text to paragraph (b) to read as follows:

§ 180.588 Quinoxifen; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the fungicide quinoxifen, 5,7-dichloro-4-(4-fluorophenoxy)quinoline in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The time-limited tolerances will expire and are revoked on the date specified in the following table:

Commodity	Parts per million	Expiration/revocation date
Pumpkin	0.30	12/31/07
Squash, winter ..	0.30	12/31/07
Vegetable, cucurbit, subgroup 9A	0.30	12/31/07

* * * * *

[FR Doc. 05-1638 Filed 1-27-05; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2005-0012; FRL-7696-2]

Bifentazate; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for the combined residues of bifentazate in or on timothy hay and timothy forage. This action is in response to EPA’s granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on

timothy. This regulation establishes a maximum permissible level for residues of bifentazate in these feed commodities. These tolerances will expire and are revoked on December 31, 2007.

DATES: This regulation is effective January 28, 2005. Objections and requests for hearings must be received on or before March 29, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under docket identification (ID) number OPP-2005-0012. 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: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6463; e-mail address: Madden.Barbara@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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the section above. 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

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for the combined residues of the insecticide bifentazate, (1-methylethyl 2-(4-methoxy[1,1'-biphenyl]-3-yl)hydrazinecarboxylate) and diazinocarboxylic acid, 2-(4-methoxy[1,1'-biphenyl]-3-yl, 1-methylethyl ester, in or on timothy, hay at 150 parts per million (ppm) and timothy, forage at 50 ppm. These tolerances will expire and are revoked on December 31, 2007. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

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 does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the 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 the 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 the 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 the 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 the 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." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

EPA has received objections to a tolerance it established for bifentazate on a different food commodity. The objections were filed by the Natural Resources Defense Council (NRDC) and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. Although these objections concern separate rulemaking proceedings under the FFDCA, EPA has considered whether it is appropriate to establish this emergency exemption tolerance for bifentazate while the objections are still pending.

Factors taken into account by EPA included how close the Agency is to concluding the proceedings on the objections, the nature of the current action, whether NRDC's objections raised frivolous issues, and extent to which the issues raised by NRDC had already been considered by EPA. Although NRDC's objections are not frivolous, the other factors all support establishing this tolerance at this time. First, the objections proceeding is unlikely to conclude prior to when action is necessary on this petition. NRDC's objections raise complex legal, scientific, policy, and factual matters.

EPA has published a notice describing the nature of the NRDC's objections in more detail. This notice offered an opportunity for the public to comment on this matter and published in the **Federal Register** of June 19, 2002 (67 FR 41628) (FRL-7167-7). EPA is now examining the extensive comments received. Second, the nature of the current action is extremely time-sensitive and addresses an emergency situation. Third, the issues raised by NRDC are not new matters but questions that have been the subject of considerable study by EPA and comment by stakeholders. Accordingly, EPA is proceeding with establishing the tolerance for bifentazate.

III. Emergency Exemption for Bifentazate on Timothy and FFDCA Tolerances

The banks grass mite became a pest of economic significance for timothy growers beginning in 2002 when it was recognized that the pest had developed resistance to the registered alternatives. Based on information submitted by the State, without the use of bifentazate to control banks grass mites, many timothy growers will experience significant economic losses. Dietary risk will be minimal because the bulk of the treated hay will be used as horse feed. EPA has authorized under FIFRA section 18 the use of bifentazate on timothy, hay and timothy, forage for control of banks grass mites in Nevada. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of bifentazate in or on timothy. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although these tolerances will expire and are revoked on December 31, 2007, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on timothy, hay and timothy, forage after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the

residues do not exceed a level that was authorized by these tolerances at the time of that application. 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.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether bifenthrin meets EPA's registration requirements for use on timothy or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of bifenthrin by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Nevada to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for bifenthrin, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL-5754-7).

Consistent with section 408(b)(2)(D) of the FFDCA, 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 bifenthrin and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for time-limited tolerances for the combined residues of bifenthrin, (1-methylethyl 2-(4-methoxy[1,1'-biphenyl]-3-yl)hydrazinecarboxylate) and diazinencarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl, 1-methylethyl ester, in or on timothy, hay at 150 ppm and timothy, forage at 50 ppm.

Timothy is a member of the grass, forage, fodder, and hay crop group. No timothy residue data were submitted for this specific emergency exemption

request. The proposed use rate of bifenthrin for timothy is similar to rates for registered uses. Based on data contained in the Food and Feed Crops of the United States (second edition; forage grass monograph), approximately 3,700 pounds of hay may be produced per acre. Based on the application rate of 0.50 lbs per acre and the expected hay production, a theoretical bifenthrin residue of 135 ppm was calculated. Assuming 25% dry matter content for forage and a 80% dry matter content for hay, a theoretical residue of 42 ppm was calculated for timothy, forage. To ensure that the tolerance levels are adequate, the Agency is establishing levels slightly higher than estimated (150 ppm for timothy, hay and 50 ppm for timothy, forage).

Under the emergency exemption, timothy is being grown as a premium feed for race horses. However, it is possible that a fraction of the treated crop may be diverted to cattle (timothy is not a poultry feed crop). Timothy is not consumed by humans, any inadvertent exposure to residues of bifenthrin from this emergency exemption will result from the consumption of meat or milk. Currently there are bifenthrin tolerances established for residues of bifenthrin in or on ruminant meat, meat byproducts, milk and fat. These tolerances are based on conservative assumptions that the entire livestock diet contains tolerance level residues of bifenthrin. Therefore, the Agency has concluded that the established ruminant tolerances are sufficient to cover any dietary exposure to bifenthrin resulting from the requested timothy use.

Residues of bifenthrin in or on timothy are not expected to increase dietary exposure. The use of bifenthrin on timothy is not expected to result in exceedances of the tolerances that already exist for meat and milk. Therefore, establishing the timothy tolerances will not increase the most recent estimated aggregate risks resulting from use of bifenthrin, as discussed in the February 4, 2004 **Federal Register** (69 FR 5289, FRL-7335-6) Final Rule establishing tolerances for combined residues of bifenthrin, (hydrazine carboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl-, 1-methylethyl ester) and diazinencarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl-, 1-methylethyl ester in or on potatoes, because in that prior action, risk was estimated assuming all meat and milk products contained

tolerance level residues. Refer to the February 4, 2004 **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon that risk assessment and the findings made in the **Federal Register** document in support of this action. Below is a brief summary of the aggregate risk assessment.

An endpoint for acute dietary exposure was not identified since no effects were observed that could be attributable to a single dose in oral toxicity studies, including developmental and maternal toxicity in the developmental toxicity studies. Therefore, an acute dietary risk assessment was not conducted.

Using the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™) an analysis evaluated the individual food consumption as reported by respondents in the United States Department of Agriculture 1994-1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to bifenthrin for each commodity. The chronic dietary exposure analysis assumed tolerance level residues and 100% crop treated for all registered and proposed crops excluding tomato where average field trial residues were used. DEEM™ (ver 7.73) default processing factors were assumed for all commodities excluding apple juice, grape juice, wine/sherry, tomato paste, and tomato puree. The processing factors for these commodities were reduced to 0.23, 0.17, 0.17, 5.0, and 5.0, respectively, based on data from processing studies.

Using the exposure assumptions described, EPA concluded that exposure to bifenthrin from food will utilize 25% of the cPAD for the U.S. population, 60% of the cPAD for all infants <1 year old, 86% of the cPAD for children 1-2 years old (the most highly exposed population subgroup), and 17% of the cPAD for females 13-49 years old. Based on the use pattern, chronic residential exposure to residues of bifenthrin is not expected. However, there is potential for chronic dietary exposure to bifenthrin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 1:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO BIFENAZATE

Population Subgroup	cPAD mg/ kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.01	25	6.4	<0.001	260
All Infants (<1 year old)	0.01	60	6.4	<0.001	75
Children (1–2 years old)	0.01	86	6.4	<0.001	14
Females (13–49 years old)	0.01	17	6.4	<0.001	290

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

Bifenazate is currently registered for use on the following residential non-dietary sites: Commercial application to ornamental plants (including bedding plants, flowering plants, foliage plants, bulb crops, perennials, trees and shrubs; not turf) and all fruit trees which will not bear fruit for a minimum of 12 months as well as application by residents/homeowners. EPA anticipates only short-term dermal and short-term inhalation exposure from the residential uses. The Agency assumed that residential applications will be made

via pump up sprayers, garden hose-end sprayers or similar “homeowner” pesticide devices. Exposure from a hose-end sprayer was assessed rather than that of a compressed air sprayer. For the treatment of shrubs and ornamentals, EPA assumed 100 gallons of finish spray are applied per day. The unit exposure value for a residential handler using open pour mixing/loading for a garden hose-end sprayer is 11 milligrams/pound (mg/lb) handled (dermal) and 0.013 mg/lb handled. Exposures were calculated using the Agency’s draft Residential Standard Operating Procedures.

Using the exposure assumptions described for short-term exposures, EPA concluded that food and residential

exposures aggregated result in aggregate MOEs of 2,000 for the U.S. population, 2,100 for youth 13–19 years old, 2,400 for adults 20–49 years old, 2,200 for females 13–49 years old, and 2,300 for adults 50+ years old. These aggregate MOEs do not exceed the Agency’s level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of bifenazate in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency’s level of concern, as shown in Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO BIFENAZATE

Population Subgroup	Aggregate MOE (Food + Residen- tial)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. population	2,000	100	6.4	<0.001	3,500
Youth, (13–19 years old)	2,100	100	6.4	<0.001	3,000
Adults, (20–49 years old)	2,400	100	6.4	<0.001	3,500
Females, (13–49 year old)	2,200	100	6.4	<0.001	3,000
Adults (50+ years old)	2,300	100	6.4	<0.001	3,500

Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Residential intermediate-term aggregate exposure (30 days to 6 months) is not expected from use of this chemical. Thus, the intermediate-term risk for the public consists of food and water exposures which were previously addressed.

EPA has classified bifenazate as “not likely” to be a human carcinogen. Therefore, a cancer dietary exposure and risk assessment was not performed.

Based on these risk assessments, EPA concludes that there is a reasonable

certainty that no harm will result to the general population, and to infants and children from aggregate exposure to bifenazate residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (example—gas chromatography) is available to enforce the tolerance expression. 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; e-mail address: residuemethods@epa.gov.

B. International Residue Limits

Canada, Codex, and Mexico do not have maximum residue limits for residues of bifenazate in/on the proposed crop. Therefore, harmonization is not an issue.

VI. Conclusion

Therefore, tolerances are established for the combined residues of bifenazate, (1-methylethyl 2-(4-methoxy[1,1'-biphenyl]-3-yl)hydrazinecarboxylate) and diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]3-yl, 1-methylethyl ester, in or on timothy, hay at 150 ppm and timothy, forage at 50 ppm.

VII. 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, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA 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) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. 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-2005-0012 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 March 29, 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 issue(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 VII.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 the docket ID number OPP-2005-0012, 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 20460-0001. 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 issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Statutory and Executive Order Reviews

This final rule establishes time-limited tolerances under section 408 of the FFDCA. 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 FIFRA section 18 exemption under section 408 of the FFDCA, 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. 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 section 408(n)(4) of the FFDCA. 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.

IX. 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: January 14, 2005.

Betty Shackelford,

Acting 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 180.572 is amended by alphabetically adding commodities to the table in paragraph (b) to read as follows:

§ 180.572 Bifenazate; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
* * *	* * *	* * *
Timothy, forage	50	12/31/07
Timothy, hay	150	12/31/07
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[FR Doc. 05-1624 Filed 1-27-05; 8:45 am]

BILLING CODE 6560-50-S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05-36; MB Docket No. 03-181, RM-10758, and RM-11123]

Radio Broadcasting Services; Blanchard, Elmore City, Weatherford and Wynnewood, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Wright Broadcasting Systems, Inc., licensee of FM Station KWEY, Channel 247C1, Weatherford, Oklahoma, deletes Channel 247C1 at Weatherford, Oklahoma, from the FM Table of Allotments, allots Channel 247A at Blanchard, Oklahoma, as the community's first local FM service, and modifies the license of FM Station KWEY to specify operation on Channel 247A at Blanchard. Channel 247A can be allotted to Blanchard, Oklahoma, in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.1 km (1.3 miles) southwest of Blanchard. The coordinates for Channel

247A at Blanchard, Oklahoma, are 35-07-21 North Latitude and 97-40-18 West Longitude.

DATES: Effective February 25, 2005.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 03-181, adopted January 5, 2005, and released January 10, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (800) 378-3160, or via the company's Web site, <http://www.bcpweb.com>. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 247C1 at Weatherford and by adding Blanchard, Channel 247A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

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