

preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### **X. 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 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: December 1, 1998.

#### **Stephen L. Johnson**

*Deputy Director, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I, part 180 is amended as follows:

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

**Authority:** 21 U.S.C. 346a and 371.

2. Section 180.1204 is added to read as follows:

#### **§ 180.1204 Harpin protein; exemption from the requirement of a temporary tolerance.**

The biological pesticide Harpin is exempted from the requirement of a temporary tolerance when applied

under the terms of Experimental Use Permit 69834-EUP-1, for the broad spectrum control of various bacterial, fungal, and viral plant diseases when used on all food commodities. The exemption from the requirement of a tolerance will expire on October 31, 2000.

[FR Doc. 98-33629 Filed 12-17-98; 8:45 am]

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 180**

[OPP-300766; FRL-6049-4]

RIN 2070-AB78

### **Tebufenozide; Pesticide Tolerances for Emergency Exemptions**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for residues of the insecticide tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide in or on eggs; grass, forage; grass, hay; hogs, fat; hogs, kidney; hogs, liver; hogs, meat; hogs, mby; peanuts; peanut, hay; peanuts, meal; peanut, oil; poultry, fat; poultry, meat; poultry, mby; rice, bran; rice, grain; rice, hulls; rice, straw; and sweet potatoes. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on pasture land, peanuts, rice, and sweet potatoes. This regulation establishes maximum permissible levels for residues of tebufenozide in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. These tolerances will expire and are revoked on December 31, 2000.

**DATES:** This regulation is effective December 18, 1998. Objections and requests for hearings must be received by EPA on or before February 16, 1999.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number, [OPP-300766], 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-300766], 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 (CM #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. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300766]. No Confidential Business Information (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.

**FOR FURTHER INFORMATION CONTACT:** By mail: Barbara Madden, 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: CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-6463, e-mail: Madden.barbara@epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA, on its own initiative, pursuant to sections 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the insecticide, tebufenozide in or on eggs at 0.01 part per million (ppm); grass, forage at 5 ppm; grass, hay at 18 ppm; hogs, fat at 0.1 ppm; hogs, kidney at 0.02 ppm; hogs, liver at 1 ppm; hogs, meat at 0.02 ppm; hogs, mby at 0.1 ppm; peanuts at 0.05 ppm; peanut, hay at 5 ppm; peanut, meal at 0.15 ppm; peanut, oil at 0.15 ppm; poultry, fat at 0.1 ppm; poultry, meat at 0.01 ppm; poultry, mby 0.05 ppm; rice, bran at 0.8 ppm; rice, grain at 0.1 ppm; rice, hulls at 0.5 ppm; rice, straw at 6 ppm; and sweet potatoes at 0.25. These

tolerances will expire and are revoked on December 31, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

### **I. Background and Statutory Findings**

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL-5572-9).

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

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

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.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

### **II. Emergency Exemption for Tebufenozide on Certain Commodities and FFDCA Tolerances**

During the 1998 growing season several states (Arkansas, Louisiana, Oklahoma, and Texas) availed themselves of the authority to declare a crisis exemption to use tebufenozide for control of armyworms (*Spodoptera sp.*) on pasture land, peanuts, rice, and sweet potatoes. Due to the mild winter, severe drought and unusually hot summer in the southern United States, many growers experienced heavy infestations of armyworm. The use of tebufenozide to control armyworm is in accordance with 40 CFR part 166, Subpart C.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of tebufenozide in or on pasture land, peanuts, rice, and sweet potatoes. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) 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 these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on 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 this tolerance 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 tebufenozide meets EPA's registration requirements for use on 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 tebufenozide 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 to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for tebufenozide, contact the Agency's Registration Division at the address provided above.

### **III. 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 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), 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 tebufenozide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of tebufenozide on eggs at 0.01 part per million (ppm); grass, forage at 5 ppm; grass, hay at 18 ppm; hogs, fat at 0.1 ppm; hogs, kidney at 0.02 ppm; hogs, liver at 1 ppm; hogs, meat at 0.02 ppm; hogs, mby at 0.1 ppm; peanuts at 0.05 ppm; peanut, hay at 5 ppm; peanut, meal at 0.15 ppm; peanut, oil at 0.15 ppm; poultry, fat at 0.1 ppm; poultry, meat at 0.01 ppm; poultry, mby at 0.05 ppm; rice, bran at 0.8 ppm; rice, grain at 0.1 ppm; rice, hulls at 0.5 ppm; rice, straw at 6 ppm; and sweet potatoes at 0.25 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

#### **A. Toxicological Profile**

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information

concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by tebufenozide are discussed below.

#### B. Toxicological Endpoint

1. *Acute toxicity.* No toxicological endpoint has been identified for acute toxicity. Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No neurological or systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000 or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (limit-dose) during gestation to pregnant rats or rabbits.

2. *Short- and intermediate-term toxicity.* No toxicological endpoints have been identified for short- and intermediate-term toxicity. No dermal or systemic toxicity was seen in rats administered 15 dermal applications at 1,000 mg/kg/day (limit dose) over 21 days with either technical tebufenozide or 23% active ingredient formulation. Despite hematological effects seen in the dog study, similar effects were not seen in these rats receiving the compound via the dermal route indicating poor dermal absorption. Also, no developmental endpoints of concern were evident due to the lack of developmental toxicity in either rat or rabbit studies.

3. *Chronic toxicity.* EPA has established the Reference Dose (RfD) for tebufenozide at 0.018 milligrams/kilogram/day (mg/kg/day). This RfD is based on the no observable adverse effect level (NOAEL) of 1.8 mg/kg/day based on growth retardation, alterations in hematology parameters, changes in organ weights, and histopathological lesions in the bone, spleen and liver at the lowest observable adverse effect level (LOAEL) of 8.7 mg/kg/day. An uncertainty factor of 100 (10X for inter-species extrapolation and 10X for intra-species variability) was applied to the NOAEL of 1.8 mg/kg/day to calculate the RfD of 0.018 mg/kg/day. EPA has determined that the 10X factor to account for enhanced susceptibility of infants and children (as required by FQPA) can be removed. This determination is based on the results of reproductive and developmental toxicity studies. No evidence of additional sensitivity to young rats or rabbits was observed following pre- or postnatal exposure to tebufenozide.

4. *Carcinogenicity.* Tebufenozide is classified as Group E (no evidence of carcinogenicity in humans).

#### C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on a variety of raw agricultural commodities. Tolerances, in support of registrations, currently exist for residues of tebufenozide on apples and walnuts. Additionally, time-limited tolerances associated with emergency exemptions have been established for cotton, leafy vegetables, pears, pecans, peppers, sugar beet, sugarcane, turnip tops, milk, and livestock commodities of cattle, goats, horses, and sheep. Risk assessments were conducted by EPA to assess dietary exposures and risks from tebufenozide as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. Toxicity observed in oral toxicity studies were not attributable to a single dose or one day exposure. Therefore, no toxicological endpoint was identified for acute toxicity and no acute dietary risk assessment is needed.

ii. *Chronic exposure and risk.* The Agency conducted a chronic dietary exposure analysis and risk assessment. The chronic analysis for tebufenozide used a RfD of 0.018 mg/kg/day. The analysis evaluated individual food consumption as reported by respondents in the USDA 1989–92 Continuing Surveys of Food Intake by Individuals and accumulates exposure to the chemical for each commodity. Tolerance level residues and some percent crop treated (PCT) assumptions were made for the proposed commodities to estimate the Anticipated Residue Concentration (ARC) for the general population and subgroups of interest. Since the FQPA safety factor has been removed for all population subgroups, the percent RfD that would exceed the Agency level of concern would be 100%. The existing tebufenozide tolerances (published, pending, and including the necessary section 18 tolerance(s)) result in an ARC that is equivalent to percentages of the RfD below 100% for all subgroups [i.e., U.S. population, 12% and non-nursing infants (<1 year old), the most highly exposed subgroup, 25%].

2. *From drinking water.* The Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water exposure analysis and risk assessment for tebufenozide. Because the Agency does not have comprehensive and reliable monitoring data, drinking water concentration

estimates must be made by reliance on some sort of simulation or modeling. To date, there are no validated modeling approaches for reliably predicting pesticide levels in drinking water. The Agency is currently relying on GENEEC and PRZM/EXAMS for surface water, which are used to produce estimates of pesticide concentrations in a farm pond and SCI-GROW, which predicts pesticide concentrations in groundwater. None of these models include consideration of the impact processing of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

In the absence of monitoring data for pesticides, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and residential uses. A DWLOC will vary depending on the toxic endpoint, with drinking water consumption, and body weights. Different populations will have different DWLOCs. DWLOCs are used in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. DWLOC values are not regulatory standards for drinking water. Since DWLOCs address total aggregate exposure to tebufenozide they are further discussed in the aggregate risk sections below.

3. *From non-dietary exposure.* Tebufenozide is not currently registered for use on residential non-food sites.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether tebufenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a

common mechanism of toxicity, tebufenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tebufenozide has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

#### *D. Aggregate Risks and Determination of Safety for U.S. Population*

1. *Acute risk.* No toxicological endpoint was identified for acute toxicity. Therefore, no acute aggregate risk assessment is needed.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to tebufenozide from food will utilize 12% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure, non-nursing infants (<1 year old) (discussed below) will utilize 25% of the RfD. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to tebufenozide in drinking water, after calculating DWLOCs and comparing them to conservative model estimates of concentrations of tebufenozide for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Tebufenozide is not currently registered for use on residential non-food sites. Therefore no short- and intermediate-term aggregate risk assessments are needed.

4. *Aggregate cancer risk for U.S. population.* Tebufenozide is classified as Group E (no evidence of carcinogenicity in humans).

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebufenozide residues.

#### *E. Aggregate Risks and Determination of Safety for Infants and Children*

1. *Safety factor for infants and children — i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In prenatal developmental toxicity studies in rats and rabbits, there was no evidence of maternal or developmental toxicity; the maternal and developmental NOAELs were 1,000 mg/kg/day (highest dose tested).

iii. *Reproductive toxicity study.* In 2-generation reproduction studies in rats, toxicity to the fetuses/offspring, when observed, occurred at equivalent or higher doses than in the maternal/parental animals.

iv. *Conclusion.* There is a complete toxicity database for tebufenozide and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. Data provided no indication of increased sensitivity of rats or rabbits to in utero and/or postnatal exposure to tebufenozide. Based on this, EPA

concludes that reliable data support the use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children.

2. *Acute risk.* No toxicological endpoint was identified for acute toxicity. Therefore, no acute aggregate risk assessment is needed.

3. *Chronic risk.* Using the exposure assumptions described above, EPA has concluded that aggregate exposure to tebufenozide from food will utilize 25% of the RfD for infants and 19% of the RfD for children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to tebufenozide in drinking water, after calculating DWLOCs, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* Tebufenozide is not currently registered for use on residential non-food sites. Therefore no short- and intermediate-term aggregate risk assessments are needed.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebufenozide residues.

#### **IV. Other Considerations**

##### *A. Metabolism In Plants and Animals*

Residue of concern in plants is adequately understood and is tebufenozide per se. Residues of concern in animals are not adequately understood. Studies to address residues of concern for animals are currently under Agency review. For the purpose of these section 18 actions only, the Agency has assumed the residue of concern is tebufenozide per se.

##### *B. Analytical Enforcement Methodology*

Adequate enforcement methodology (example - gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-5229.

##### *C. Magnitude of Residues*

Residues of tebufenozide per se are not expected to exceed 0.01 ppm on

eggs; grass, forage at 5 ppm; grass, hay at 18 ppm; hogs, fat at 0.1 ppm; hogs, kidney at 0.02 ppm; hogs, liver at 1 ppm; hogs, meat at 0.02 ppm; hogs, mbyb at 0.1 ppm; peanuts at 0.05 ppm; peanut, hay at 5 ppm; peanut, meal at 0.15 ppm; peanut, oil at 0.15 ppm; poultry, fat at 0.1 ppm; poultry, meat at 0.01 ppm; poultry, mbyb 0.05 ppm; rice, bran at 0.8 ppm; rice, grain at 0.1 ppm; rice, hulls at 0.5 ppm; rice, straw at 6 ppm; and sweet potatoes at 0.25 ppm as a result of these section 18 uses.

#### *D. International Residue Limits*

There are currently no Canadian, or Mexican listings for tebufenozide residues. Codex maximum residue levels (MRLs) have been set for tebufenozide at 0.1 ppm for rice (husked), 0.05 ppm for walnuts, and 1 ppm for pome fruits.

#### *E. Rotational Crop Restrictions*

Rotational Crop data are currently under review by the Agency. Crops which the label allows to be treated directly can be planted at any time. Based on preliminary data, a 30-day plantback interval is adequate for root, tuber, bulb, leafy, brassica, fruiting, and cucurbit vegetables. All other crops cannot be planted within 12 months of the last tebufenozide application.

#### **V. Conclusion**

Therefore, tolerances are established for residues of tebufenozide in or on eggs at 0.01 ppm; grass, forage at 5 ppm; grass, hay at 18 ppm; hogs, fat at 0.1 ppm; hogs, kidney at 0.02 ppm; hogs, liver at 1 ppm; hogs, meat at 0.02 ppm; hogs, mbyb at 0.1 ppm; peanuts at 0.05 ppm; peanut, hay at 5 ppm; peanut, meal at 0.15 ppm; peanut, oil at 0.15 ppm; poultry, fat at 0.1 ppm; poultry, meat at 0.01 ppm; poultry, mbyb 0.05 ppm; rice, bran at 0.8 ppm; rice, grain at 0.1 ppm; rice, hulls at 0.5 ppm; rice, straw at 6 ppm; and sweet potatoes at 0.25 at ppm.

#### **VI. 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 February 16, 1999, 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 regulation. 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). EPA is authorized to waive any fee requirement "when in the judgment of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, 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. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, [tomkins.jim@epa.gov](mailto:tomkins.jim@epa.gov). Request for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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.

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

EPA has established a record for this regulation under docket control number [OPP-300766] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C) Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:  
[opp-docket@epamail.epa.gov](mailto:opp-docket@epamail.epa.gov).

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, 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 record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

#### **VIII. Regulatory Assessment Requirements**

##### *A. Certain Acts and Executive Orders*

This final rule establishes a 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). 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 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).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. 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.

#### B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the

requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

#### C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### IX. 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: December 9, 1998.

**Arnold E. Layne,**

*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. 346a and 371.

2. In § 180.482, add the following commodities to the table in paragraph (b) to read as follows:

#### § 180.482 Tebufenozide; tolerances for residues.

\* \* \* \* \*

(b) \* \* \*

Commodity	Parts per million	Expiration/Revocation Date
* * *	* *	* *
Eggs .....	0.01	12/31/00
* * *	* *	* *
Grass, forage .....	5	12/31/00
Grass, hay .....	18	12/31/00
Hogs, fat .....	0.1	12/31/00
Hogs, kidney .....	0.02	12/31/00
Hogs, liver .....	1	12/31/00
Hogs, meat .....	0.02	12/31/00
Hogs, mbyp .....	0.1	12/31/00
* * *	* *	* *
Peanuts .....	0.05	12/31/00
Peanut, hay .....	5	12/31/00
Peanut, meal .....	0.15	12/31/00
Peanut, oil .....	0.15	12/31/00
* * *	* *	* *
Poultry, fat .....	0.1	12/31/00
Poultry, meat .....	0.01	12/31/00
Poultry, mbyp .....	0.05	12/31/00
Rice, bran .....	0.8	12/31/00
Rice, grain .....	0.1	12/31/00
Rice, hulls .....	0.5	12/31/00
Rice, straw .....	6	12/31/00
* * *	* *	* *
Sweet potatoes ...	0.25	12/31/00

\* \* \* \* \*

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