

Although these rules are published by the Bureau of Indian Affairs (BIA), the Bureau of Land Management is processing comments under agreement with BIA. If you wish to comment on these proposed rules, you may submit your comments by any one of several methods:

(1) You may mail comments to Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1076-AE51.

(2) You may submit comments electronically by direct Internet response to either <http://www.blm.gov/nhp/news/regulatory/index.html>, or <http://www.blm.gov>, or at [regulations.gov](http://regulations.gov) under Indian Affairs Bureau.

(3) You may hand-deliver comments to 1620 L Street, NW., Room 401, Washington, DC 20036.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request that we withhold their home address from the rulemaking record. We will honor the request to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: July 16, 2004.

**David W. Anderson,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 04-16658 Filed 7-19-04; 10:58 am]

BILLING CODE 4310-6W-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-2004-0191; FRL-7365-5]

#### **Pesticides: Tolerance Exemptions for Crustacea, Eggs, Fish, Milk, Peanuts, Soybeans, Tree Nuts, and Wheat**

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to establish an exemption from the

requirement of a tolerance for residues of peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and/or wheat when used as inert or active ingredients in pesticide products, for certain use patterns, under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

**DATES:** Comments, identified by docket ID number OPP-2004-0191, must be received on or before September 20, 2004.

**ADDRESSES:** Submit your comments, identified by docket ID number OPP-2004-0191, by one of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov/>. Follow the on-line instructions for submitting comments.

*Agency Website:* <http://www.epa.gov/edocket/>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

*E-mail:* Comments may be sent by e-mail to [opp-docket@epa.gov](mailto:opp-docket@epa.gov), Attention: Docket ID Number OPP-2004-0191.

*Mail:* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2004-0191.

*Hand delivery:* Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP-2004-0191. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to docket ID number OPP-2004-0191. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://regulations.gov), or e-mail. The EPA EDOCKET and the [regulations.gov](http://regulations.gov) websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the

body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL-7181-7).

*Docket:* 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:**

Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6304; fax number: (703) 305-0599; e-mail address: [boyle.kathryn@epa.gov](mailto:boyle.kathryn@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:

- Industry (NAICS 111), e.g., crop production.

- Industry (NAICS 32532), e.g., pesticide manufacturing.

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/>.

#### *C. What Should I Consider as I Prepare My Comments for EPA?*

1. **Submitting CBI.** Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

#### **II. What is the Agency's Authority for Taking this Action?**

This proposed rule is issued under section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170). Section 408(e) of FFDCA authorizes EPA to establish, modify, or revoke tolerances, or exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities and processed foods.

#### **III. Background**

In the **Federal Register** of May 24, 2002 (67 FR 36534) (FRL–6834–8), the Agency placed an expiration date of May 24, 2005, on the following tolerance exemptions for allergen-containing commodities:

40 CFR	Tolerance Exemption
180.910 formerly 180.1001(c)	Casein
180.910 formerly 180.1001(c)	Fish meal
180.910 formerly 180.1001(c)	Soy protein, isolated
180.910 formerly 180.1001(c)	Soybean flour
180.910 formerly 180.1001(c)	Wheat, including flour, bran, and starch
180.920 formerly 180.1001(d)	Sodium caseinate
180.930 formerly 180.1001(e)	Soy protein, isolated
180.930 formerly 180.1001(e)	Wheat shorts
180.1071	Egg solids (whole)

The 3-year expiration date was added to give the Agency time to examine the use patterns of allergens used in pesticide products and notify affected registrants of any concerns this examination disclosed with use of these substances. (See the January 15, 2002, **Federal Register** (67 FR 1925) (FRL–6807–8) for additional information). Registrants would also have the same 3 years to consider their options and then carry-out the actions needed to maintain their registrations.

#### **IV. What Action is the Agency Taking?**

Since placing the May 24, 2005, expiration date on the food allergen tolerance exemptions, the Agency has completed its review of the various ways that chemical substances such as food allergens are used in pesticide products. In this proposed rule, the Agency is proposing to establish tolerance exemptions for certain specified uses of the raw and processed forms of crustacea, eggs, fish, milk, peanuts, soybeans, tree nuts, and wheat.

The following types of uses are proposed:

- When used in seed treatment products.
- Nursery, potting and container uses.
- Pre-plant and at-transplant applications.
- Incorporation into seedling and planting beds.
- Applications to cuttings and bare roots.
- Applications that occur after the harvested crop has been removed.
- Soil-directed applications around and adjacent to all plants.
- Applications to rangelands, which is land, mostly grasslands, whose plants can provide food (i.e., forage) for grazing or browsing animals.
- When used in chemigation and irrigation via flood, drip, or furrow application.
- Application as part of a dry fertilizer on which an active ingredient is impregnated.
- Aerial and ground applications that occur when no above-ground harvestable food commodities are present (usually pre-bloom).
- Application as part of an animal feed-through product.
- Applications as gel and solid (non-liquid/non-spray) crack and crevice treatments that place the gel or bait directly into or on top of the cracks and crevices via a mechanism such as a syringe.
- Applications to the same crop from which the food commodity is derived, e.g., applications of peanut meal when applied to peanut plants.

EPA's intent is to establish exemptions from the requirement of a tolerance for these allergen-containing substances only for those uses which are unlikely to result in residues of an allergen-containing material mixed-in with other (different) food commodities as a result of a pesticide application. With the exception of the last three uses, the uses described above are soil-directed, or occur at a time that the crop is not present. If these allergens are placed directly in/on the soil (no matter the application method), then it could be expected that degradation via naturally-occurring mechanisms would occur.

Animal feed-through products are used to control flies in manure. Most animal feed-through products contain an active ingredient that is coated on a small amount of an animal feed item. The animal feed item could be an allergen-containing material such as wheat. This coated animal feed item is then mixed in with the usual animal feed items. The animal's consumption of small amounts of allergens as a result of this tolerance exemption should not impact their production of meat, milk, poultry and eggs for human consumption, and should not result in residues of allergenic-materials in food commodities.

Applications of gel and solid (non-liquid/non-spray) crack and crevice treatments that contain allergens are also not expected to result in residues in food. Food commodities can play a critical role in certain pesticide formulations used in food processing areas to control rodent populations. The rodents are attracted to and then consume the food which is coated with or contains within the active pesticide ingredient. The Agency believes that these solid gel and bait formulations that are not sprayed, but directly placed in cracks and crevices would not be inadvertently mixed-in with the near-by food commodities.

The Agency believes that aerial and ground applications, that are not soil-directed, but take place when no above-ground harvestable food is present are unlikely to result in residues in food. It is assumed that some of the allergen could come in contact with the growing plant and in certain cases the developing edible crop. EPA generally believes that the allergenic material would not be taken up by the growing plant, due to such factors as the large size of the molecules and the difficulty of passing through the plant leaf cuticle layer, but no definitive information is available. While it can be hypothesized that the allergenic material would simply "slide off" certain developing

crops that have smooth surfaces and semi-spherical exteriors (e.g., apple, orange, banana, grape or tomato), the allergen might also be enfolded in crops that do not have such characteristics such as lettuce or spinach. The Agency would welcome additional information on these issues during the comment period.

The intent of these tolerance exemptions is to protect those with allergies from being unknowingly exposed to these most common allergens via consumed foods. However, there are those who are not allergic and willingly consume foods such as peanuts or wheat. Application of a pesticide product containing wheat to stored wheat commodities does not create concerns for those who are not allergic to wheat. Therefore, applications to the same crop from which the food commodity is derived, are proposed to be exempted because any residue from the allergen would not present a different allergenic risk than the underlying food commodity.

Post-harvest applications of these allergen-containing materials to stored food commodities are not being proposed because those with allergies need assurance that the foods that they consume do not contain small amounts of allergen-containing materials that are introduced via the application of a registered pesticide product. The existing time-limited tolerance exemptions in 40 CFR 180.910, 180.920, and 180.930 will expire on May 24, 2005. There is no plan to extend these tolerance exemptions. Registrants of formulations with post-harvest uses containing these eight allergens have been notified by certified mail of the upcoming expiration date by the Agency.

#### **V. What about Chemical Substances Whose Names Are Not Readily Identified as an Allergen-Containing Commodity?**

The relationship of the processed food commodity to the food commodity from which it is derived may not always be apparent by the name. For example, casein is milk protein. Currently, there are time-limited exemptions for casein and sodium caseinate.

To improve communication and to avoid repeated questions on the tolerance exemption status of the certain chemical substances, the Agency intends to create within 40 CFR 180.1071, a paragraph (b) to collect tolerance exemptions for food-commodity types of chemical substances derived from crustacea, eggs, fish, milk, peanuts, soybeans, tree nuts, or wheat that must also be avoided by

those with certain food allergies, and present them using commonly-understood terms.

As stated above, there are time-limited exemptions for casein and sodium caseinate. The tolerance exemption for sodium caseinate is easily understood to be the following chemical substance: Caseins, sodium complexes (CAS Reg. No. 9005-46-3). However, the tolerance exemption for casein has been used as a generalized term to hold several casein chemical substances, which includes the ammonium and potassium salts as well as the hydrolyzed form of casein. To provide specificity on the food-commodity types of chemical substances that could be termed casein, tolerance exemptions are proposed for: Caseins (CAS Reg. No. 9000-71-9); caseins, ammonium complexes (CAS Reg. No. 9005-42-9); caseins, hydrolyzates (CAS Reg. No. 65072-00-6); and caseins, potassium complexes (CAS Reg. No. 68131-54-4).

#### **VI. Cumulative Effects from Substances with a Common Mechanism of Toxicity**

Section 408(b)(2)(D)(v) of the FFDCRA 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."

The raw and processed forms of the eight most common food allergens: crustacea, eggs, fish, milk, peanuts, soybeans, tree nuts, and wheat do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that these chemical substances have a common mechanism of toxicity with other substances. For 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 policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at <http://www.epa.gov/pesticides/cumulative/>.

#### **VII. Determination of Safety for U.S. Population, Infants and Children**

The substances considered in this proposed rule are the food commodities that most commonly can invoke an allergenic response. The intent of these tolerance exemptions is to protect those with allergies from being unknowingly

exposed to these most common allergens via consumed foods. The Agency has selected for this proposal only those uses that are unlikely to result in residues of an allergen-containing material mixed-in with other (different) food commodities as a result of a pesticide application. Those who are allergic to the eight most common food allergens (crustacea, eggs, fish, milk, peanuts, soybeans, tree nuts, and wheat) benefit by having greater surety that these substances will not be present in the foods that they do consume. The amendments and revisions to the existing tolerance exemptions will be beneficial to the regulated community by providing detailed information on how these allergenic food substances can be used in pesticide products.

As noted, the Agency is proposing only those uses which are unlikely to result in residues of an allergen-containing material mixed-in with other (different) food commodities as a result of a pesticide application. Given this fact, EPA believes that the proposed tolerance exemption will be safe for humans including infants and children. Because these exemptions are not expected to contribute to allergic individuals' exposure to allergens, EPA has not assessed the risk of these substances using a safety factor approach. Accordingly, application of an additional 10X safety factor analysis or quantitative risk assessment is not necessary to protect infants and children.

### VIII. Conclusion

Accordingly, EPA is proposing to establish an exemption from the requirement for tolerance for peanuts, tree nuts, milk (including caseins), soybeans, eggs, fish, crustacea, and/or wheat when used according to those uses (as specified above) which are unlikely to result in residues of an allergen-containing material mixed-in with other (different) food commodities as a result of a pesticide application.

### IX. Statutory and Executive Order Reviews

The Agency is acting on its own initiative under FFDCA section 408(e) in establishing a tolerance exemption for the allergen-containing commodities. 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 proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed 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 proposed 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).

This proposed rule establishes new tolerance exemptions in 40 CFR 180.1071. Establishing a new tolerance exemption permits expanded use of pesticide products and thus has a positive economic impact. Under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that the proposed action to establish a new tolerance exemption for allergen-containing materials will not have significant negative economic impact on a substantial number of small entities.

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 proposed

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 proposed 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 proposed 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 proposed rule.

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 6, 2004.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR chapter I be 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 180.1071 is revised to read as follows:

**§ 180.1071 Crustacea, Eggs, Fish, Milk, Peanuts, Soybeans, Tree Nuts, and Wheat; exemption from the requirement of a tolerance.**

(a) Residues resulting from the following uses of the food commodity forms of crustacea, eggs, fish, milk,

peanuts, soybeans, tree nuts, and wheat are exempted from the requirement of a tolerance under FFDCA section 408 (when used as either an inert or an active ingredient in a pesticide formulation), if such use is in accordance with good agricultural practices:

(1) Use in pesticide products intended to treat seeds.

(2) Use in nursery and greenhouse operations, as defined in 40 CFR 170.3, which includes seeding, potting and transplanting activities.

(3) Pre-plant and at-transplant applications.

(4) Incorporation into seedling and planting beds.

(5) Applications to cuttings and bare roots.

(6) Applications to the field that occur after the harvested crop has been removed.

(7) Soil-directed applications around and adjacent to all plants.

(8) Applications to rangelands, which is land, mostly grasslands, whose plants can provide food (i.e., forage) for grazing or browsing animals.

(9) Use in chemigation and irrigation via flood, drip, or furrow application.

(10) Application as part of a dry fertilizer on which an active ingredient is impregnated.

(11) Aerial and ground applications that occur when no above-ground harvestable food commodities are present (usually pre-bloom).

(12) Application as part of an animal feed-through product.

(13) Applications as gel and solid (non-liquid/non-spray) crack and crevice treatments that place the gel or bait directly into or on top of the cracks and crevices via a mechanism such as a syringe.

(14) Applications to the same crop from which the food commodity is derived, e.g., applications of peanut meal when applied to peanut plants.

(b) *Specific chemical substances.* Residues resulting from the use of the following substances as either an inert or an active ingredient in a pesticide formulation are exempted from the requirement of a tolerance under FFDCA section 408, if such use is in accordance with good agricultural practices and such use is included in paragraph (a) of this section:

Chemical Substance	CAS No.
Caseins .....	9000-71-9
Caseins, ammonium complexes	9005-42-9
Caseins, hydrolyzates .....	65072-00-6
Caseins, potassium complexes	68131-54-4

Chemical Substance	CAS No.
Caseins, sodium complexes .....	9005-46-3

[FR Doc. 04-16214 Filed 7-20-04; 8:45 am]

BILLING CODE 6560-50-S

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 04-2048; MB Docket No. 04-249; RM-10998]

### Radio Broadcasting Services; Benton and Yazoo City, MS

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rulemaking filed by SSR Communications, Inc., licensee of Station WYAB(FM), Yazoo City, Mississippi, proposing the reallocation of Channel 226A from Yazoo City, Mississippi to Benton, Mississippi, as the community's first local transmission service, and the modification of the license for Station WYAB(FM) to reflect the changes. The coordinates for Channel 226A at Benton are 32-50-29 NL and 90-16-28 WL.

**DATES:** Comments must be filed on or before August 30, 2004, and reply comments on or before September 14, 2004.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Matthew K. Wesolowski, General Manager, SSR Communications, Incorporated, 5270 West Jones Bridge Road, Norcross, Georgia 30092-1628.

**FOR FURTHER INFORMATION CONTACT:** Victoria McCauley, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 04-249, adopted July 7, 2004, and released July 9, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th

Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160 or [www.BCPIWEB.com](http://www.BCPIWEB.com).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 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 Mississippi, is amended by adding Benton, Channel 226A, and by removing Channel 226A at Yazoo City.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 04-16608 Filed 7-20-04; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 04-2049; MB Docket No. 04-248, RM-10990]

### Radio Broadcasting Services; Big Pine Key, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Audio Division requests comment on a Petition for Rule Making filed by Call Communications Group proposing the reservation of vacant Channel 239A at Big Pine Key, Florida for noncommercial educational use. The reference coordinates for Channel