

Public Docket No. A-92-01 VIII.G, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M-1500.

The public hearing will be held at the EPA Auditorium, 401 M Street, SW., Washington, DC.

All supporting materials are contained in Docket A-92-01. Dockets may be inspected from 8 a.m. until 4 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Cindy Newberg, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205-J), 401 M Street, SW., Washington, DC 20460, (202) 233-9729. The Stratospheric Ozone Information Hotline at 1-800-296-1996 can also be contacted for further information.

## I. Supplementary Information

If no significant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule and the direct final rule in the final rules section of today's Federal Register will be final and become effective in accordance with the information discussed in that action. If significant adverse comments are timely received the direct final rule will be withdrawn and all public comments will be addressed in a subsequent final rule. The Agency will not institute a second comment period on this proposed rule; therefore, any parties interested in commenting should do so during this comment period.

For more detailed information and the rationale, the reader should review the information provided in the direct final rule in the final rules section of today's Federal Register.

## II. Summary of Supporting Analysis

### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this action to propose amending the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

### B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this rulemaking is estimated to result in the expenditure by State, local, and tribal governments or private sector of less than \$100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. As discussed in this preamble, this rule merely extends the current reclamation requirements during consideration of a more flexible approach that may result in reducing the burden of part 82 Subpart F of the

Stratospheric Protection regulations on regulated entities, including State, local, and tribal governments or private sector entities.

### C. Paperwork Reduction Act

There is no additional information collection requirements associated with this rulemaking EPA has determined that the Paperwork Reduction Act does not apply. The initial § 608 final rulemaking did address all recordkeeping associated with the refrigerant purity provisions. An Information Collection Request (ICR) document was prepared by EPA and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This ICR is contained in the public docket A-92-01.

### D. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have an economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that since this amendment merely extends a current requirement designed to protect purity of refrigerants temporarily, there will be no adverse effects for the regulated community, including small entities. An examination of the impacts of these provisions was discussed in the initial final rule promulgated under § 608(58 FR 28660). That final rule assessed the impact the rule may have on small entities. A separate regulatory impact analysis was developed. That impact analysis accompanied the final rule and is contained in Docket A-92-01.

I certify that this proposed amendment to the refrigerant recycling rule will not have any additional negative economic impacts on any small entities.

Dated: February 14, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96-4037 Filed 2-28-96; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 180****[PP 9F3804/P646: FRL-5351-8]****RIN 2070-AB18****Sethoxydim; Pesticide Tolerance****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to increase the established pesticide tolerance for the combined residues of the herbicide sethoxydim; 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolite containing the 2-cyclohexene-1-one (calculated as the herbicide) in or on the raw agricultural commodities (RACs): apricots, cherries (sweet and sour), nectarines, and peaches at 0.2 part per million (ppm). These regulations to establish the maximum permissible levels for residues of the pesticide in or on the above commodities were requested in petitions submitted by BASF Corporation.

**DATES:** Comments, identified by the docket control number [PP 9F3804/P646], must appear on or before April 1, 1996.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment 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. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: 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.

Comments and data will also be accepted on disks in Word Perfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 9F3804/P646]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

**FOR FURTHER INFORMATION CONTACT:** By mail, Robert J. Taylor, Product Manager (PM-25), 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 241, CM #2, 1921 Jefferson-Davis Hwy., Arlington, VA, (703) 305-6027; e-mail: taylor.robert@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA issued notices, published in the Federal Register of January 9, 1990 (54 FR 779), which announced that BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709-3528, had submitted pesticide petition (PP) 9F3804 and a food additive petition (FAP) 8H 5559 to EPA. Pesticide Petition 9F3804 requests that the Administrator, pursuant to section 408 (d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346 a(d), amend 40 CFR part 180 by establishing a tolerance for the combined residues of the herbicide sethoxydim; 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the crop grouping stone fruits at 0.2 part per million (ppm). Food additive petition 8H5559 requests that the Administrator, pursuant to section 408 of FFDCA (21 U.S.C. 348), amend 40 CFR part 186 by establishing a food additive regulation for the combined residues of the herbicide sethoxydim; 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the processed food dried prunes at 0.4 ppm.

There were no comments or requests for referral to an advisory committee received in response to these notices.

The petitioner subsequently amended these notices by submitting a revised section F withdrawing the proposed food additive tolerance on dried prunes at 0.4 ppm (8H5559) and proposing that

tolerances for residues of the herbicide be established for the raw agricultural commodities (RACs) apricots at 0.2 ppm, cherries (sweet and sour) at 0.2 ppm, nectarines at 0.2 ppm, and peaches at 0.2 ppm. Because the 0.2 ppm tolerances on apricots, cherries (sweet and sour), nectarines at 0.2 ppm and peaches have not been proposed previously and because it has been longer than five (5) years since the original proposal, the tolerances of 0.2 ppm on apricots, cherries (sweet and sour), nectarines, and peaches are being proposed for 30 days to allow for public comment.

The information submitted in the petitions and other relevant material have been evaluated. The pesticide is useful for the purpose for which the tolerances are sought. The toxicological data and other information considered in support of PP 9F3804 in the final rule referring to PP 4F4344, appear elsewhere in today's issue of the Federal Register.

The reference dose (RfD) based on a NOEL of 8.86 mg/kg/day in the 1-year feeding study in dogs and an uncertainty factor of 100 was calculated to be 0.09 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) for existing tolerances for the overall U.S. population is 0.032904 mg/kg bwt/day or 37% of the RfD. The current action will increase the TMRC by 0.000061 mg/kg bwt/day. These tolerances and previously established tolerances utilize 37.67% of the RfD for the overall U.S. population. For U.S. subgroup populations, nonnursing infants and children aged 1 to 6, the current action and previously established tolerances utilize, respectively, a total of 64 and 74.319% of the RfD, assuming that residue levels are at the established tolerances and that 100% of the crop is treated.

Based on the information and the data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that these tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal as it relates to the section 408 tolerance be referred to an Advisory Committee in accordance with section 408 (e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the docket control number [PP 9F3804/P646]. All written comments filed in response to these petitions will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [PP 9F3804/P646] (including comments and data submitted electronically as described below). 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 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

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 rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB). Under section 3 (f), the order defines "significant" as those actions likely to lead to a rule: (1) Having an annual effect of the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or

planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements, or establishing or raising food additive regulations do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

#### List of Subjects in 40 CFR Part 180

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

Dated: February 20, 1996.

Stephen L. Johnson,  
Director, Registration Division, Office of  
Pesticide Programs.

Therefore, 40 CFR part 180 is proposed to be 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 § 180.412(a), by amending the table therein by adding and alphabetically inserting the new entries for apricots, cherries (sweet and sour), nectarines, and peaches to read as follows:

#### § 180.412 2-[1-(Ethoxyimino)butyl]-5-[2-(ethiothio)propyl]-3-hydroxy-2-cyclohexene-1-one; tolerances for residues.

(a) \* \* \*

Commodity	Parts per million
* * * * *	
Apricots .....	0.2
* * * * *	
Cherries (sweet and sour) .....	0.2
* * * * *	
Nectarines .....	0.2

Commodity	Parts per million
Peaches .....	0.2
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* * * * *	

[FR Doc. 96-4400 Filed 2-28-96; 8:45 am]

BILLING CODE 6560-50-F

#### 40 CFR Parts 220 and 227

[FRL-5432-2]

RIN 2040-AC81

#### Testing Requirements for Ocean Dumping

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA today is issuing a proposed rule that would clarify certain provisions of the Agency's ocean dumping regulations relating to requirements for bioassay testing. The purpose of today's proposal is to clarify regulatory language that was interpreted by the U.S. Court of Appeals for the Third Circuit in a different manner than EPA intended. Today's proposal would confirm the validity of existing testing practices, and would not change them.

**DATES:** Written comments on this proposed rule will be accepted until April 1, 1996. All comments must be postmarked or delivered by hand to the address below by this date.

**ADDRESSES:** Send written comments on this proposed rule to the Ocean Dumping Proposed Rule Comment Clerk, Water Docket, MC-4101, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Commenters should submit any references cited in their comments. Commenters are requested to submit an original and three copies of their written comments and any enclosures. Commenters who want receipt of their comments acknowledged should include a self-addressed, stamped envelope. No facsimile or electronic mail transmissions (faxes or e-mail) will be accepted.

A copy of the supporting documents for this proposed rule are available for review at EPA's Water Docket, Room L-102, 401 M Street, SW, Washington, DC 20460. For access to the docket materials, call 202/260-3027 between 9:00 a.m. and 3:30 p.m., for an appointment.

**FOR FURTHER INFORMATION, CONTACT:** John Lishman, Chief, Marine Pollution