Federal Register publication, EPA is simultaneously proposing to approve this SIP revision should adverse or critical comments be filed. This action will be effective November 18, 1997, unless adverse or critical comments concerning this action are submitted and postmarked by October 20, 1997.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received concerning this action will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received on this action, the public is advised that this action will be effective November 18, 1997.

Nothing in this action shall be construed as permitting, allowing, or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. See 46 FR 8709. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA from basing its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted 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 General Accounting Office 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).

E. Petition for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 1997. Filing a petition for reconsideration of this final rule by the Regional Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: August 12, 1997.

Jerry Clifford,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

§ 52.2270 [Amended]

2. Section 52.2270 is amended by removing and reserving paragraph (c)(91).

[FR Doc. 97–24843 Filed 9–18–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[AL–40–7142; FRL–5895–5]

Approval and Promulgation of Implementation Plans for the State of Alabama

Approval and Promulgation of Implementation Plans for the State of Alabama—Proposed Disapproval of the Request to Redesignate the Birmingham, Alabama (Jefferson and Shelby Counties) Marginal Ozone Nonattainment Area to Attainment and the Associated Maintenance Plan.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is disapproving the State of Alabama's request submitted through the Alabama Department of Environmental Management's (ADEM) to redesignate the Birmingham marginal ozone nonattainment area (Jefferson and Shelby Counties) to attainment and the associated maintenance plan as a revision to the state implementation plan (SIP). Prior to the close of the administrative record, EPA determined that the area registered a violation of the ozone national ambient air quality standard (NAAQS). As a result, the Birmingham area no longer meets the

statutory criteria for redesignation to attainment of the ozone NAAQS.

EFFECTIVE DATE: September 19, 1997.

ADDRESSES: The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file AL–40–7142. The Region 4 office may have additional background documents not available at the other locations. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 4, Air Planning Branch, 1 Forsyth, SW, Atlanta, Georgia 30303. Kimberly Bingham, (404) 562–9038.

Alabama Department of Environmental Management, 1751 Congressman, W.L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham at (404) 562–9038.

SUPPLEMENTARY INFORMATION: On March 16, 1995, ADEM submitted a request to EPA to redesignate the Birmingham, Alabama, marginal ozone nonattainment area to attainment. On that date, they also submitted a maintenance plan for the area as a revision to the Alabama SIP.

According to section 107(d)(3)(E) of the Clean Air Act (CAA), 42 U.S.C. 7407(d)(3)(E), redesignation requests must meet five specific criteria in order for EPA to redesignate an area from nonattainment to attainment:

1. The Administrator determines that the area has attained the ozone NAAQS;

2. The Administrator has fully approved the applicable implementation plan for the area under section 110(k);

3. The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollution control regulations and other permanent and enforceable reductions;

4. The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

5. The State containing such area has met all requirements applicable to the area under section 110 and part D.

The EPA provided guidance on redesignation in the General Preamble for the Implementation of the Clean Air Act Amendment of 1990, 57 FR 13498 (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992). The primary memorandum providing further guidance with respect to section 107(d)(3)(E) of the amended Act is dated September 4, 1992, and issued by the Director, Air Quality Management Division, Subject: Procedures for Processing Requests to Redesignate Areas to Attainment (Calcagni Memorandum).

The State submitted its request for redesignation on March 16, 1995. The request included information showing that the Birmingham area had three years of air quality attainment data from 1990–1993. The area continued to maintain the ozone NAAQS through 1994. The submittal was rendered administratively complete on April 11, 1995. Supplemental information was submitted on July 21, 1995. A direct final rule proposing approval of the redesignation request was signed by the Regional Administrator and forwarded to the EPA Federal Register Office on August 15, 1995 for publication. The direct final rule as drafted contained a thirty day period for public comment on the proposed approval of the redesignation request.

Prior to publication of the document, EPA determined that the area registered a violation of the ozone NAAQS on August 18, 1995. EPA therefore directed the Office of the Federal Register to recall the proposed direct final rule from publication. The ambient data which formed the basis of the registered violation was quality assured according to established procedures for validating such monitoring data. The State of Alabama does not contest that the area violated the NAAQS for ozone during the 1995 ozone season. As a result, the Birmingham area no longer meets the statutory criteria for redesignation to attainment of the ozone NAAQS found in section 107(d)(3)(E)(I) of the CAA. After the violations had been quality-assured, EPA issued a notice of proposed rulemaking proposing to disapprove the redesignation request, 62 FR 23421 (April 30, 1997). The maintenance plan SIP revision is also not approvable because its demonstration is based on a level of ozone precursor emissions in the ambient air thought to represent an inventory of emissions that would provide for attainment and maintenance. That underlying basis of the maintenance plan's demonstration is no longer valid due to the violation of the NAAQS that occurred during the 1995 ozone season.

The Administrator is prohibited under section 107(d)(3)(E)(I) from redesignating an area to attainment when it has not attained the NAAQS. Furthermore, section 107(d)(1)(A) defines an attainment area as ''any area that meets'' the NAAQS. Consequently, if a violation occurs prior to EPA's final action on redesignation, the area is no longer in attainment and does not meet the definition of an attainment area under section 107. In the September 4, 1992, policy memorandum of John Calcagni, EPA stated: ''Regions should advise States of the practical planning consequences if EPA disapproves the redesignation request *or if the request is invalidated because of violations recorded during EPA's review.*'' See for example, 59 FR 22757 dated May 3, 1994, disapproving the redesignation of Richmond, Virginia due to violations occurring after the proposed approval; 61 FR 50718 dated September 27, 1996, disapproving the redesignation request for the Kentucky portion of the Cincinnati-Hamilton nonattainment area; and 61 FR 19193 dated May 1, 1996, disapproving of the redesignation request for Pittsburgh, Pennsylvania.

Request for Comments

EPA published a document on April 30, 1997, (62 FR 23421), proposing disapproval of the maintenance plan and redesignation request and soliciting comments on the disapproval and relevant issues. EPA received comments on the proposal. Those comments and the response thereto are summarized below.

Comment #1—''EPA inappropriately considered monitored exceedances which occurred after the redesignation request was submitted. If the Agency had considered only the monitor data which preceded the redesignation request, then EPA should have allowed the direct final rule granting redesignation which had been signed by the regional administrator to be published in the **Federal Register**. If EPA had taken this action, then the Birmingham area could possibly be enjoying attainment status at this time.''

Response—Section 107(d)(1)(A)(ii) of the Act provides that an attainment area is one that ''meets'' the NAAQS. Section 107(d)(3)(E)(I) of the Act prohibits EPA from redesignating an area to attainment unless EPA determines that the area ''has attained'' the NAAQS. By use of the words ''has attained'' (in the present perfect tense), Congress expressed its intent that EPA may not redesignate an area unless it determines that the area is attaining the standard at the time EPA takes its final action. It is not sufficient that at some previous time the area ''had'' attained the NAAQS. EPA must find that the area, in the words of the statute, ''has'' attained the NAAQS. Congress expressed the same intent in the definition of an attainment area in CAA section 107(d)(1)(A)(ii) as an area

that meets the NAAQS. Therefore, contrary to the commenters' contention, it was not ''inappropriate'' for EPA to consider ''exceedances which occurred after the redesignation request was submitted.'' Indeed, EPA was obligated to consider such data.

EPA's redesignation policy (Calcagni Memo) provides that if monitoring data indicates a violation of the NAAQS before a redesignation action is effective, the redesignation should not be approved. EPA may not lawfully redesignate a nonattainment area to attainment unless it is attaining the air quality standard at the time EPA takes its final action. Thus, it is not sufficient that an area show that it had attained the standard prior to submission of its redesignation request. If, during the pendency of EPA's review of the redesignation request, exceedances occur that EPA determines constitute a violation, EPA is obligated to consider those in determining whether the area is attaining the standard. Thus, EPA was obligated to disapprove the request to redesignate the Birmingham nonattainment area, since it could not determine that the area had attained the standard at the time of the final rulemaking.

EPA recently reaffirmed its adherence to the principle that an area may not be redesignated to attainment if it violates the standard while its request for redesignation is pending in a notice of proposed correction to the designation of LaFourche Parish, Louisiana (62 FR 38237, July 17, 1997). After publication of a direct final notice approving the area's redesignation request, but prior to its effective date, a violation of the NAAQS for ozone was recorded at an area monitor. The direct final notice restated EPA's interpretation of the statute: ''If the monitoring data records a violation of the NAAQS before the direct final action is effective, approval of the redesignation will be withdrawn and a proposed disapproval substituted for the direct final approval (60 FR 43021–43022, August 18, 1995). Nonetheless, EPA did not withdraw its approval of the redesignation action, and the area was redesignated to attainment. EPA's proposed correction notice states that allowing the redesignation to become effective was in conflict with the statute, EPA policy, and with the statement in the direct final notice itself.

The LaFourche redesignation was also at odds with other actions regarding areas that EPA determined had violated the NAAQS while their redesignation requests were pending: Richmond, Virginia, (59 FR 22757, May 3, 1994) (final notice of disapproval); the Pittsburgh-Beaver Valley nonattainment area, (61 FR 19193, May 1, 1996) (final notice of disapproval); the Kentucky portion of the Cincinnati-Hamilton nonattainment area, (61 FR 50718, September 27, 1996) (final notice of disapproval); and the Ohio portion of the Cincinnati-Hamilton nonattainment area, (62 FR 7194, February 18, 1997) (notice of proposed disapproval).

Based on the statute, policy, and history of EPA rulemakings, it is clear that redesignating Birmingham to attainment in the face of monitored violations would be an error. EPA was obliged to disapprove the request to redesignate.

The United States Court of Appeals for the Third Circuit recently upheld EPA's interpretation of its statutory obligation to consider exceedances occurring after submission of redesignation requests. *Southwestern Pennsylvania Growth Alliance* v. *Browner*, No. 96–3364 (July 28, 1997). The Court affirmed the application of this interpretation even as to exceedances that occurred more than eighteen months after the submission of a redesignation request.

Comment #2—''In our opinion, EPA failed to consider appropriately the local extreme weather conditions which occurred during the summer of 1995 and the associated ozone exceedances. ADEM pointed out to EPA that July 1995 had more days above 95 degrees Fahrenheit than any July in over 60 years and that August 1995 was the hottest August on record. The nine day period between August 10 and August 18 is the third highest such event in over 60 years. Seven of the eleven exceedances measured in Birmingham in 1995 occurred during this nine day period.''

Comment #3—''It is EPA's own policy to consider exceptional weather events regarding achievement of ozone air quality standards. Yet, EPA stated in a January 11, 1996, letter to ADEM that the summer of 1995 was not the hottest summer in the last ten years *nationally*, and that the conditions during 1995 cannot be considered an exceptional weather event.''

Responses—The commenters contended that even if EPA were correct in considering violations that occurred after the redesignation request was submitted, EPA should have found such exceedances ''attributable to extreme weather.'' But even if 1995 were determined to have been an exceptionally hot year for Birmingham (and 1990, only five years earlier, was even hotter), this provides no grounds for excluding quality-assured monitored exceedances of the ozone standard. EPA's applicable regulations governing ozone attainment provide no basis for excluding data due to exceptionally hot weather (See 40 CFR 50.9 Appendix D and H and part 58). By contrast, the regulations regarding particulate matter expressly authorize adjustments to take into account exceptional events (See 40 CFR 50.6 and Appendix K, section 2.4 ''Adjustments for Exceptional Events and Trends''). The methods used by EPA to determine whether an area is attaining the ozone standard were decided upon through notice and comment rulemaking and EPA is bound by those methods until they are changed through further rulemaking on that subject.

EPA's ''Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events'' sets forth guidance regarding exceptional events that may sufficiently influence the data for various criteria pollutants so as to provide a basis for possible exclusion of data for various regulatory purposes. ''The guideline has no regulatory or legal significance regarding use of any air quality data. Use or non-use of air quality data, whether flagged or not, must be subject to full public disclosure and rulemaking procedures.'' Guideline at 5. Thus, use or non-use of the data is determined by the appropriate statutory or regulatory authority, which does not provide for exclusion of ozone data based on hot weather. Moreover, only one of the l8 exceptional events defined in the Guideline applies to ozone data—stratospheric ozone intrusion. A stratospheric ozone intrusion occurs when a parcel of air originating in the stratosphere falls directly to the surface of the earth (such as occasionally happens during severe thunderstorms). Such events are infrequent, very localized, and of short duration. No allegation that a stratospheric ozone intrusion occurred has been made with respect to Birmingham. Other climatological occurrences, including stagnations and inversions, were considered and rejected as possible exceptional events for data flagging purposes. Thus, neither EPA's regulations nor guidance furnish a justification for excluding quality assured ozone exceedances from consideration based upon a finding that they are an ''extreme weather event'' due to hot weather. It is undisputed that Birmingham experienced eleven exceedances during the summer of 1995.

Hot weather does not provide a basis for excluding documented exceedances from consideration. While EPA recognizes that high temperatures can

play a role in ozone formation, quality assured data reflect the quality of the air people are breathing. Exceedances of the standard have been determined to cause measurable health effects in healthy individuals. Compliance with the ozone NAAQS is determined using three consecutive years of data to account for year-to-year variations in emissions and meteorological conditions. These determinations were made pursuant to long-standing EPA regulations, and this rulemaking is not the appropriate forum for comments regarding the ozone standard or the methodology for determining attainment of the standard. Even if temperatures were unusually high in 1995 (and they were not as high as in 1990), in light of the methodology used to determine attainment of the ozone NAAQS, there is no basis for ignoring the violations monitored during the time period. Because the area has not adequately reduced its VOC and NO_X emissions, it is subject to ozone exceedances whenever meteorological conditions are conducive to ozone formation. The nine exceedances that occurred in the Birmingham area in 1996 proves that temperature is not the only precursor for ozone formation. One of the goals of the CAA is to minimize the health risks that people encounter. Since meteorological conditions cannot be controlled, the way to reduce health risks due to ozone in the Birmingham area is to reduce the anthropogenic emissions of VOC and NO_X. (See 61 FR 19193, 191195–19197, May 1, 1996) (disapproval of Pittsburgh-Beaver Valley request for redesignation to attainment for ozone).

Moreover, in a study entitled ''Clean Air Act Ozone Design Value Study, Final Report, dated December, 1994 EPA considered the impact of meteorology in ozone formation and found that ''high temperature by itself is not sufficient to produce high ozone concentrations'' (pages 7–18). It also determined ozone design values should not be adjusted for meteorology, since ''compliance with the ozone standard is judged on the basis of the actual ambient air quality measurements. It is the actual ambient air quality, not a hypothetical adjusted value, which is of concern with respect to the potential for adverse health impacts.'' It concluded that a meteorologically adjusted design value may not be the best indicator of the air people actually breathe, and is a major departure from current EPA policy.

In *Southwestern Pennsylvania Growth Alliance* v. *Browner,* No. 96.3364 (July 28, 1997), the United States Court of Appeals for the Third Circuit recently rejected petitioners' argument that an allegation that exceedances were caused by transport should result in excluding data from consideration in redesignation actions.

''Accordingly, we accept the EPA's position that the origin of the ozone that caused exceedances at issue is legally irrelevant.'' Similarly, here, the allegation that hot weather may have contributed to exceedances is legally irrelevant.

Final Action

EPA is disapproving the State of Alabama's March 16, 1995, redesignation request and maintenance plan SIP revision. The Agency has reviewed this request for redesignation and approval of the maintenance plan as a revision of the Federally-approved SIP for conformance with the provisions of the CAA. The Agency has determined that this action does not conform with the statute as amended and should be disapproved.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this regulatory action pursuant to E.O. 12866.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

EPA's denial of the State's redesignation request under section 107(d)(3)(E) of the CAA does not affect any existing requirements applicable to small entities nor does it impose new requirements. The area retains its current designation status and will continue to be subject to the same statutory requirements. Therefore, the Regional Administrator certifies that the disapproval of the redesignation request will not affect a substantial number of small entities.

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the disapproval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action disapproves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by section 804(2).

Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: September 5, 1997.

A. Stan Meiburg,

Acting Regional Administrator.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart B—Alabama

2. Section 52.66 is added to read as follows:

§ 52.66 Control Strategy: Ozone.

The redesignation request submitted by the State of Alabama, on March 16, 1995 for the Birmingham marginal ozone nonattainment area from nonattainment to attainment was disapproved on September 19, 1997.

[FR Doc. 97–24942 Filed 9–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300550; FRL–5744–2]

RIN 2070–AB78

Cloransulam-methyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of cloransulam-methyl in or on soybeans, soybean forage and soybean hay. DowElanco requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

DATES: This regulation is effective September 19, 1997. Objections and requests for hearings must be received by EPA on or before November 18, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300550], 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–300550], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), 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. 1132, 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 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–300550]. 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: James A. 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: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, e-mail: tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 26, 1997 (52 FR 14421)(FRL–5592–8), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP) 5F4560 for tolerance by DowElanco, 9330 Zionville Road, Indianapolis, IN 46268-1054. This notice included a summary of the petition prepared by DowElanco. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180 be amended by establishing tolerances for residues of the herbicide cloransulam-methyl, *N*-(2-carboxymethyl-6-chlorophenyl)-5-ethoxy-7-fluoro-(1,2,4)-triazolo[1,5c]-pyrimidine-2-sulfonamide, in or on soybean seed at 0.02 parts per million (ppm), soybean forage at 0.1 ppm, and soybean hay at 0.2 ppm. The tolerance expression is being editorially amended to read cloransulam-methyl plus its acid, cloransulam, calculated as parent ester.

I. Risk Assessment and Statutory Findings

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