

and pests, Reporting and recordkeeping requirements.

Dated: September 21, 2001.

Richard P. Keigwin, Jr.,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is corrected as follows:

PART 180—[CORRECTED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. In FR Doc. 01-20391 published in the **Federal Register** of August 15, 2001, on page 42779, in column 3, under amendatory instruction number 2. for 40 CFR 180.1001, correct item ii. to read as follows:

“ii. The table in paragraph (d) is amended by removing the entire entry for Calcium hypochlorite; the entire first entry for Diethylene glycol; and the entire entries for Isopropyl alcohol; *n*-Propanol; and Sodium mono-, di-, and triisopropyl naphthalenesulfonate.”

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-301179; FRL-6802-3]

RIN 2070-AB78

Sethoxydim; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on safflower, milk; and meat byproducts of cattle, goats, hogs, horses, and sheep. This action is in response to EPA’s granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on safflower. This regulation establishes maximum permissible levels for residues of sethoxydim in these food commodities. The tolerances will expire and are revoked on December 31, 2003.

DATES: This regulation is effective October 10, 2001. Objections and requests for hearings, identified by docket control number OPP-301179,

must be received by EPA on or before December 10, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP-301179 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-9364; and e-mail address: *pemberton.libby@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 categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing 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 the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet homepage at *http://www.epa.gov/*. To access this document,

on the homepage select “Laws and Regulations,” “Regulations and Proposed Rules,” and then look up the entry for this document under the “**Federal Register—Environmental Documents.**” You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html*, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-301179. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall # 2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for combined residues of the herbicide sethoxydim (2-[1-(ethoxymino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety, in or on safflower at 15.0 parts per million (ppm), in milk at 0.5 ppm; and in meat byproducts of cattle, goats, hogs, horses, and sheep at 1.0 ppm. These tolerances will expire and are revoked on December 31, 2003. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by

EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) 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 the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Sethoxydim on Safflower and FFDCA Tolerances

The shift to no-till or direct seed systems has dramatically reduced the efficacy of herbicides labeled for use in safflower. As a result, wild oat has emerged as a larger management problem in safflower production. Cool, moist conditions, as in recent years, promotes maximum emergence. EPA has authorized under FIFRA section 18 the use of sethoxydim on safflower for control of wild oats in Montana and North Dakota. After having reviewed the submissions, EPA concurs that emergency conditions exist for these States.

As part of its assessment of these emergency exemptions, EPA assessed the potential risks presented by residues of sethoxydim in or on safflower. 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 as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 2003, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on safflower or milk or meat after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether sethoxydim meets EPA's registration requirements for use on safflower or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of sethoxydim 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 Montana and North Dakota to use this pesticide on this crop 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 sethoxydim, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 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 sethoxydim and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for combined residues of sethoxydim (2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on safflower at 15.0 ppm, in milk at 0.5 ppm; and in meat byproducts of cattle, goats, hogs, horses and sheep at 1.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100.

To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate

risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x 10⁻⁶ or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an

endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for sethoxydim used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SETHOXYDIM FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and LOC for Risk Assessment	Study and Toxicological Effects
Acute Dietary (females 13–50 years of age)	NOAEL = 180 mg/kg/day UF = 100 Acute RfD = 1.8 mg/kg/day	FQPA SF = 3x aPAD = acute RfD ÷ FQPA SF = 0.6 mg/kg/day	Developmental - Rat (MRID 43092902) LOAEL = 650 mg/kg based on decreased fetal weights, filamentous tail, lack of tail, and delayed ossification.
Acute dietary (general population including infants and children)	NOAEL = 180 mg/kg/day UF = 100 Acute RfD = 1.8 mg/kg/day	FQPA SF = 1x aPAD = acute RfD ÷ FQPA SF = 1.8 mg/kg/day	Developmental - Rat (MRID 43092902) LOAEL = 650 mg/kg based on irregular gait, decreased activity, excessive salivation and ano-genital staining.
Chronic dietary (all populations)	NOAEL = 8.86 mg/kg/day UF = 100 Chronic RfD = 0.09 mg/kg/day	FQPA SF = 1x cPAD = chronic RfD ÷ FQPA SF = 0.09 mg/kg/day	1–Year feeding study - Dog (MRID 00152669) LOAEL = 17.5 mg/kg/day based on equivocal anemia in males.
Short-, intermediate-, and long-term dermal (Occupational/Residential)	none	No dermal or systemic toxicity was seen at the limit dose (1,000 mg/kg/day). This risk assessment is not required.	21–Day dermal toxicity study - Rabbit (MRID 41987203)
Short-, intermediate-, and long-term inhalation (Occupational/Residential)	none	Sethoxydim is placed in Toxicity Category IV.	Acute inhalation study (MRID 00045849) LC50 = 6.03 mg/L in males and 6.28 mg/L in females. There are no subacute, subchronic, or chronic inhalation studies.

*The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.412) for the combined residues of sethoxydim, in or on a variety of raw agricultural commodities. Tolerances are already established in or on meat and milk but at levels lower than those discussed in this rule. Risk assessments were conducted by EPA to assess dietary exposures from sethoxydim in food as follows:

i. *Acute exposure.* 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 1–day or single exposure. The Dietary

Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: tolerance level residues and 100 percent crop treated (PCT).

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions

were made for the chronic exposure assessments: tolerance level residues and 100 PCT for all crops except peanuts, potatoes, and tomatoes (for which an average crop treated value of 5% was used) and soybeans (for which the average crop treated value of 2% was used).

iii. *Cancer.* Sethoxydim is not classified. Available studies show no evidence of carcinogenicity in rats or mice.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to

show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows. Assumptions were: 100 PCT for all crops except peanuts, potatoes, and tomatoes (for which an average crop treated value of 5% was used) and soybeans (for which the average crop treated value of 2% was used).

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the

Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which sethoxydim may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for sethoxydim in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of sethoxydim.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) 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.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead 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, and from residential uses. Since DWLOCs address total aggregate exposure to sethoxydim they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the EECs of sethoxydim for acute exposures are estimated to be 42 parts per billion (ppb) for surface water and 33 ppb for ground water. The EECs for chronic exposures are estimated to be 27 ppb for surface water and 3 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Sethoxydim is currently registered for use on the following residential non-dietary sites: ornamentals and flowering plants, recreational areas, and buildings/structures. These uses are not expected to result in chronic exposures but may result in short- and/or intermediate-term exposures. However, dermal and/or inhalation endpoints for short- and intermediate-term exposures were not identified. Therefore, these routes of exposure were not evaluated for risk.

However, children's potential for oral exposure resulting from residential treatments will be considered as a contributor to short-term aggregate risk. A short-term oral endpoint was not identified for sethoxydim. For short-term risk assessment (for incorporation of food, water, or oral hand-to-mouth type exposures into an aggregate risk assessment), the acute oral endpoint (acute RfD = 1.8 mg/kg/day, NOAEL = 180 mg/kg/day) will be used to incorporate the oral component into aggregate risk.

4. *Cumulative exposure to substances with a 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 sethoxydim 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, sethoxydim 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 sethoxydim has 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 final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general.* 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 prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure 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 MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* There was no indication of increased susceptibility in the prenatal developmental toxicity study in rabbits following *in utero* exposure. In the 2-generation reproduction study in rats, effects in the offspring were observed only at or above treatment levels which resulted in evidence of appreciable parental toxicity. No increased susceptibility was demonstrated in the developmental toxicity studies; however developmental toxic effects, were observed at the highest dose tested (LOAEL).

Acceptable developmental toxicity studies have been performed in rats and rabbits; an acceptable 2-generation reproduction study has also been performed in rats. A chronic feeding/carcinogenicity guideline study in rats has been submitted and is currently undergoing review. An initial examination of the study supports the current findings of no evidence of carcinogenicity. There is a complete toxicity data base for sethoxydim and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

The FQPA Safety Factor is to be retained in case of developmental toxicity in the absence of maternal

toxicity. Since malformations were seen in the rat study at levels that produced minimal maternal toxicity. The Agency concluded that an FQPA factor is needed. However, it was determined that the 10X factor need not be retained, instead should be reduced to 3X based on the following weight of evidence considerations: (1) Developmental toxicity was seen in only one species, in the presence of maternal toxicity, and at a very high dose (650 mg/kg/day) that approached the Limit-Dose of 1,000 mg/kg/day; (2) no developmental toxicity was observed in the rabbit study at the highest dose tested (400 mg/kg/day); (3) there was no increased susceptibility seen in the two-generation reproduction study in rats at doses up to 150 mg/kg/day (highest dose tested); and 4) lack of concern for structure activity relationship (i.e. no significant developmental or reproductive toxicity was seen with the structural analog, clethodim.)

Exposure assessments do not indicate a concern for potential risk to infants and children based on: (1) The dietary exposure assessments use field study data and assume 100% crop treated which results in an overestimate of dietary exposure; (2) limited monitoring data is used for ground and surface source drinking water exposure assessments, resulting in estimates considered to be reasonable upper-bound concentrations; (3) there is a potential for post-application hand-to-mouth exposure to toddlers associated with lawn use, however, the use of conservative models and/or assumptions in the residential exposure assessment provide adequate protection of infants and children.

The FQPA safety factor is applicable for acute dietary risk assessment for females 13+ because the endpoint occurs only during *in utero* exposure and is not a postnatal effect. Since the effects occur during *in utero* exposure, it is not an appropriate endpoint for acute dietary risk assessment of infants and children. The FQPA safety factor is not applied for chronic risk assessment because the endpoint is an *in utero* effect and can not result from postnatal exposure. The FQPA safety factor is not applicable to the post-application hand-to-mouth exposure associated with the lawn use since this exposure scenario would only be expected for toddlers and not for females 13+.

3. *Conclusion.* There is a complete toxicity data base for sethoxydim and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking 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 and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to sethoxydim in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of sethoxydim on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to sethoxydim will occupy 7% of the aPAD for the U.S. population, 14% of the aPAD for

females 13–50 years (not pregnant, not nursing), 10% of the aPAD for all infants (<1 year) and 14% of the aPAD for children 1–6 years old. In addition, despite the potential for acute dietary

exposure to sethoxydim in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of sethoxydim in surface and ground

water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO SETHOXYDIM

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population (all seasons)	1.8	7	42	33	59,000
Females (13+)	0.6	14	42	33	15,000
Children (1–6 years old)	1.8	14	42	33	16,000
Infants (< 1 year)	1.8	10	42	33	16,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to sethoxydim from food will utilize 22% of the cPAD for the U.S. population, 32% of the cPAD for all infants <1 year and 52% of the cPAD

for children 1–6. Based on the use pattern, chronic residential exposure to residues of sethoxydim is not expected. In addition, despite the potential for chronic dietary exposure to sethoxydim in drinking water, after calculating DWLOCs and comparing them to

conservative model estimated environmental concentrations of sethoxydim in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO SETHOXYDIM

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.09	22	27	3	2,500
Children 1–6 years old	0.09	52	27	3	430
All Infants <1 year old	0.09	32	27	3	610

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

Sethoxydim is currently registered for use(s) that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for sethoxydim.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 1,800 for children 1–6 years old (the subgroup of infants/children with the highest exposure). These aggregate MOEs do not exceed the Agency’s LOC for aggregate exposure to food and residential uses. In

addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of sethoxydim in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency’s LOC, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO SETHOXYDIM

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate LOC	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
Children 1–6 years old	1800	100	27	3	17,000

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Though residential exposure could

occur with the use of sethoxydim, no toxicological effects have been identified for intermediate-term toxicity. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population.* Sethoxydim has not been

classified. Available studies do not show evidence of carcinogenicity in rats or mice. Therefore, an aggregate cancer risk analysis was not conducted.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general

population, and to infants and children from aggregate exposure to sethoxydim residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas-liquid chromatography (GLC) with flame photometric detection) is available (Method I, PAM II) to enforce the tolerance expression.

B. International Residue Limits

There are no CODEX, Canadian, or Mexican maximum residue limits (MRLs) or tolerances for sethoxydim on safflower. Thus, harmonization is not an issue for these section 18 requests.

VI. Conclusion

Therefore, tolerances are established for combined residues of sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety, in or on safflower at 15.0 ppm, in milk at 0.5 ppm; and in meat byproducts of cattle, goats, hogs, horses, and sheep at 1.0 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP-301179 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 10, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260-4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305-5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP-301179, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes time limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections

subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

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 this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: September 21, 2001.

Richard P. Keigwin, Jr.,
Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.412 is amended by alphabetically adding commodities to the table in paragraph (b) to read as follows:

§ 180.412 Sethoxydim; tolerances for residues.

* * * * *
(b) * * *

Commodity	Parts per million	Expiration/revocation date
Cattle, mbypp	1.0	12/31/03
Goats, mbypp	1.0	12/31/03
Hogs, mbypp	1.0	12/31/03
Horses, mbypp	1.0	12/31/03
Milk	0.5	12/31/03
Safflower	15.0	12/31/03
Sheep, mbypp	0.5	12/31/03

* * * * *
[FR Doc. 01-25021 Filed 10-9-01; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 99-168; CS Docket No. 98-120; MM Docket No. 00-39; FCC 01-258]

Clearing of the 740-806 MHz Band; Conversion to Digital Television

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: In this document, the Commission resolves petitions for reconsideration and clarification of the Third Report and Order of this proceeding. The Commission generally affirms the decisions it reached in that proceeding, although it makes certain adjustment to the rules and policies adopted in this proceeding and the related digital television proceeding to broadcasters and new licensees in the 746-806 MHz band. The Commission also rejects arguments by a petitioner seeking to reverse its decisions on interference issues, and clarifies certain