

finding that the State has corrected the deficiency prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to temporarily stay or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. In addition, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

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

Under the Regulatory Flexibility Act, 5 U.S.C. Section 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. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic 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.

This action, pertaining to the interim final approval of corrections to the Pennsylvania Stage II vapor recovery regulation, temporarily relieves sources of an additional burden potentially placed on them by the sanction provisions of the Act. Therefore, I certify that it does not have an impact on any small entities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping, Ozone, and Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: November 27, 1995.

Stanley Laskowski,
Acting Regional Administrator.

[FR Doc. 95-30111 Filed 12-12-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 140

[FRL-5345-4]

RIN 2040-AC51

Marine Sanitation Devices; Final Regulation to Establish Drinking Water Intake Zones in Two Sections of the Hudson River, New York State

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is establishing two Drinking Water Intake Zones in the Hudson River, in response to an application received by the New York State Department of Environmental Conservation (NYSDEC). Establishment of a Drinking Water Intake Zone serves to completely *prohibit the discharge of vessel sewage*, treated or untreated, to waters contained in that zone. Zone 1 is bounded by the northern confluence of the Mohawk River on the south and Lock 2 on the north. It is approximately 8 miles long. Zone 2 is bounded on the south by the Village of Roseton on the western shore and bounded on the north by the southern end of Houghtaling Island. Zone 2 is approximately 60 miles long.

EFFECTIVE DATES: The final rule will take effect April 11, 1996. In accordance with 40 CFR 23.2, these amendments to the regulation shall be considered issued for purposes of judicial review at 1 p.m. eastern time, two weeks after publication.

ADDRESSES: Patrick M. Durack, Chief, Water Permits and Compliance Branch (25th Floor), U.S. Environmental Protection Agency Region 2, 290 Broadway, New York, New York, 10007-1866.

FOR FURTHER INFORMATION CONTACT: Philip Sweeney, 212-637-3765.

SUPPLEMENTARY INFORMATION:

I. Background

In July 1992 the New York State Department of Environmental Conservation (NYSDEC) submitted an application for two reaches of the Hudson River to be designated by EPA as Drinking Water Intake Zones. Section 312(f)(4)(B) of Public Law 92-500, as amended by Public Law 95-217 and Public Law 100-4, (the "Clean Water Act"), states, "Upon application by a State, the Administrator shall, by regulation, establish a drinking water intake zone in any waters within such State and prohibit the discharge of sewage from vessels within that zone." Region II requested that authority for taking action in response to this application be delegated from the Administrator to the Regional Administrator. That authority was delegated on November 16, 1992.

Zone 1 is in the Hudson River/Champlain Canal and is bounded by an east-west line through the most northern confluence of the Mohawk River which will be designated by the Troy-Waterford Bridge (126th Street Bridge) on the south and Lock 2 on the north. It is approximately 8 miles long. This zone is classified in the Official

Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 941.6, Item Number 1, as one Class A segment. This classification was assigned in February 1967. Class A is the standard given to waters of New York for the protection of a source of water supply for drinking, culinary, or food processing purposes. There is one drinking water intake located in Zone 1, authorized for 2.0 million gallons per day, which serves the Town and Village of Waterford, Saratoga County, New York. This portion of the Hudson River adjoins Saratoga County on the west and Rensselaer County on the east.

Zone 2 is also in the Hudson River and is bounded on the south by the Village of Roseton on the western shore and Low Point on the eastern shore in the vicinity of Chelsea, and on the north by the southern end of Houghtaling Island. This zone is classified in 6 NYCRR as two segments, both Class A. The northern segment, which stretches from the southern end of Houghtaling Island (at light #72) to the southern end of Esopus Island (at light #28), was classified as Class B in 1966 and reclassified by the State of New York as Class A in 1969. The southern segment of Zone 2 stretches from the southern end of Esopus Island (at light #28) to the line formed by Roseton on the west shore and Low Point on the east shore in the vicinity of Chelsea, New York. This southern segment of Zone 2 was classified on October 15, 1966 as Class A. There are six authorized drinking water intakes in Zone 2. They are listed below:

Community served	Authorized taking in million gallons per day
Rhinebeck Village and Hamlet of Rhinecliff	1.0
Hyde Park Fire and Water District, Town of Hyde Park	6.0
City and Town of Poughkeepsie	16.0
New York City, Chelsea Emergency Pump Station	100.0
Port Ewan Water District, Town of Esopus	1.0
Highland Water District	3.0

Authority to enforce the prohibition of vessel sewage discharges lies with the U.S. Coast Guard, which may by agreement utilize enforcement officers of the U.S. Environmental Protection Agency, other Federal agencies, or States, in accordance with § 312(k) of the Clean Water Act.

Both the Federal and New York State governments will take a role in implementation and enforcement of the prohibition in the two drinking water

intake zones. The prohibition will take effect one hundred and twenty (120) days after this notice. A major focus of the implementation plan for this prohibition will be public education, specifically boater education. For the purposes of boater understanding and compliance, it is worthwhile to note landmarks which approximate the boundaries of the drinking water intake zones, which are in view of the Hudson River boater. For Zone 1, the Troy-Waterford Bridge (126th Street Bridge) and Lock #2 are visible landmarks. For Zone 2, the northern border is at the southern end of Houghtaling Island. The Newburgh-Beacon Bridge, which is south of the southern zone border, is an obvious landmark for the southern end of Zone 2. All of Zone 2 lies between Houghtaling Island and the Newburgh-Beacon Bridge, and these landmarks are therefore useful markers for boaters.

II. Public Comments and Response to Most Significant Comments

On July 5, 1995, EPA noticed the proposed regulation in the Federal Register, which regulation would establish drinking water intakes zones in two sections of the Hudson River. Upon publication of the proposed regulation, a sixty day public comment period commenced and was closed on September 5, 1995. During the comment period, two public hearings were held at the following locations:

1. August 9, 1995 at the offices of the NYSDEC, 21 South Putt Corners Road, New Paltz, New York from 6:30 p.m. to 8:30 p.m.
2. August 10, 1995 at the Town of Waterford Civic Center, 35 Third Street, Waterford, New York from 6:30 p.m. to 8:30 p.m.

Written and/or oral statements were received by six individuals. One individual represented the association of towboat operators. Another individual represented the shipping operations for a major petroleum company. Two individuals represented two citizens group interested in the Hudson River. The comments of each individual are summarized and responded to below:

Comment 1: One individual asserted that the proposed rule goes beyond the proscriptions [sic] of the U.S. Coast Guard by effectively mandating that commercial vessels which operate on the Hudson River install a Type III marine sanitation device (MSD). She contended further that while Section 312(f)(4)(B) of the Clean Water Act (CWA) permits the establishment of a "no discharge zone" once a state submits an application to EPA, the statute does not limit the options which

may be considered nor empower EPA to contravene federal regulations promulgated by the U.S. Coast Guard which address MSDs aboard vessels. The individual argued that the proposed rule "oversteps the bounds of established international and domestic statutes related to the discharge of sewage."

Response 1: Section 312 of the CWA requires the Administrator, in conjunction with the U.S. Coast Guard, to promulgate performance standards for MSDs and requires the U.S. Coast Guard to promulgate regulations governing the design, construction, installation and operation of MSDs. Section 312(f)(4)(B) of the CWA, however, addresses an issue other than performance standards, design, construction, installation or operation of MSDs. This subsection of the CWA provides that "[u]pon application by a State, the Administrator shall, by regulation, establish a drinking water intake zone in any waters within such State and prohibit the discharge of sewage from vessels within that zone." The rule, which designates two drinking water intake zones, is, therefore, not inconsistent with Coast Guard regulation and is consistent with the CWA. The comment concerning international agreements and statutes is non-specific and as such cannot be addressed; moreover, the Hudson River is considered domestic waters.

Comment 2: The individual maintained that by proposing to "prohibit the discharge of treated sewage, vessels with Type II MSDs will be rendered non-operational in the winter months and only operational at other times of the year."

Response 2: EPA maintains that vessel operators may operate in compliance with the no discharge requirements by utilizing permanently-installed Type III systems; using portable Type III systems; or by discharging treated waste outside the zone. However, EPA acknowledges that certain circumstances (e.g. winter operation in Zone 2) could preclude the "discharge outside the zone" option for certain vessels. In these circumstances, vessel owners may find it necessary to use either permanent or portable Type III systems. In response to the concern about complying with no discharge requirements during winter months without retrofitting with a permanent Type III system, EPA is delaying the effective date of the rule to 120 days after final notice. This change will allow additional time to retrofit and will allow operators additional time to plan for the more challenging winter operational period.

Comment 3: The two alternatives offered to vessel owners with Type II MSDs is to either install a Type III MSD or discharge treated sewage outside the no discharge zones. An individual argued that the off-loading of sewage at a pump-out station located in the no discharge zone is not a viable option for some vessel operators given the physical dimensions, geographic location and depth of water at many of the pump-out facilities on the Hudson River.

Response 3: Many vessel owners currently operating on the Hudson River use Type III MSDs and are off-loading sewage. The fact that these vessels commonly off-load sewage demonstrates that this is a viable alternative for many other vessel operators, as well. While applications made pursuant to section 312(f)(3) of the CWA must show that adequate facilities for the safe and sanitary removal and treatment of sewage are reasonably available, this is not a criterion for applications or determinations made pursuant to section 312(f)(4)(B) of the CWA.

Comment 4: One individual declared that the proposed regulation will have a detrimental operational and economic impact on commercial vessels which have a Type II marine sanitation device on-board. She criticized that the proposed rule characterizes the costs associated with the purchase of Type III marine sanitation devices as "nominal" and explained that the actual cost associated with the purchase and installation of a holding tank aboard a tugboat can be tens of thousands of dollars depending upon the configuration of the vessel. She concluded that the installation and utilization of a Type III MSD is not a viable alternative for many tug/barge units transporting petroleum products on the Hudson River.

Response 4: Retrofitting is not the only option available and some vessel owners will choose not to retrofit, but will use portable toilets or discharge outside the zones instead. EPA, however, recognizes that some vessels will retrofit with a Type III MSD to comply with the regulation and that there will be a cost associated with retrofitting. EPA's original cost estimates were based on equipment costs and did not include installation costs. The individual points out that cost estimates should include installation of the equipment as well as the purchase price of the equipment. During the public hearing on August 9, 1995, an individual stated that the cost to retrofit would be between \$10,000 and \$75,000 and impact 100 tugboats and 40 to 75 barges (a total of 140 to 175 vessels). Employing the numbers

provided by the industry representative, the most expensive estimates would result in costs of approximately \$13 million to the industry. This dollar amount is well below the \$100 million annual cost ceiling imposed by Congress in the Unfunded Mandates Reform Act of 1995, which amount can be used as a guide in determining what is, in the view of Congress, a substantial cost.

Comment 5: One person commented that the second alternative outlined in the proposed rulemaking is for vessels with a Type II MSD to simply treat and discharge the sewage outside the no discharge zone. She stated that the fact that EPA and DEC are suggesting that vessels discharge outside the proposed sixty-eight mile no discharge zone is disingenuous.

Response 5: Vessels which discharge treated sewage outside of the drinking water intakes zones are in compliance with the regulation. This rule, promulgated to protect specific drinking water intakes, regulates discharges inside the delineated zones as a means of protecting these intakes and does not attempt to control the discharge or prohibit the discharge of treated sewage outside the zones.

Comment 6: One individual speculated that the entire Hudson River would soon be designated as a no discharge zone. She made this speculation because based on her information and belief, the southern segment of Zone 2, from Esopus Island to Chelsea, New York also has drinking water intake valves with the cumulative capacity of 127 millions gallons per day.

Response 6: To date, no other applications have been made by NYSDEC or discussed with EPA. EPA will act on the facts before it and will not act on mere speculation.

With regard to the Chelsea water intake, that intake is included in Zone 2, which is bounded on the south by the Village of Roseton on the western shore and on the north by the southern end of Houghtaling Island. This zone is classified in 6 NYCRR as two segments, both Class A. The northern segment, which stretches from the southern end of Houghtaling Island (at light #72) to the southern end of Esopus Island (at light #28). The southern segment of Zone 2 stretches from the southern end of Esopus Island (at light #28) to the line formed by Roseton on the west shore and Low Point on the east shore in the vicinity of Chelsea, New York.

Comment 7: An individual questioned the beneficial results of designated no discharge zones if the Hudson River continues to be contaminated by combined sewer outfalls and storm water run-off.

Response 7: The prohibition of the discharge of vessel sewage from MSDs is not the only NYSDEC program to protect the drinking water sources of several communities and to improve the water quality in the Hudson River. There are programs in place to reduce and better manage the discharge of storm water and non-point pollution. Combined sewer overflows are regulated through the NYSDEC State Pollutant Discharge Elimination System permitting program. This final rule is in addition to programs already in place and will serve to enhance the Hudson River water quality.

Comment 8: Another individual representing a shipping operations for a major petroleum company provided a letter that reiterated the comments submitted by the association representing the tow boat industry. See comments and responses 1 through 7.

Comment 9: An individual entered an oral statement into the record at the public hearing held on August 10, 1995. This individual expressed his support of the regulation. He also stated that EPA should consider regulations which parallel the Lake Champlain regulations which require that all vessels with a marine toilet on-board must be equipped with a holding tank.

Response 9: EPA acknowledges this support for the proposal. With regard to mandating installation of holding tanks, EPA does not have the authority to prescribe the method of compliance with the rule. EPA expects to address operational procedures in the implementation plan which is to be developed following promulgation.

Comment 10: This individual also named four Class A water segments (a 30-mile stretch in the Mohawk River, the Seneca River, Cayuga Lake and Seneca Lake) as classified by NYSDEC which are navigable and not among the waters which are no discharge zones. These are waters which he feels need to be designated as no discharge zones. He recognized that EPA could not act on this suggestion unless NYSDEC applied for such designation.

Response 10: No response needed.

Comment 11: Another individual commented during the public hearing on August 10, 1995 that he wondered what part of the Mohawk River served as the southern boundary of Zone 1. He recommended that the Green Island-Troy dam be designated as the landmark for the southern boundary. He also stated his support for the regulation.

Response 11: EPA concurs that the description in the proposed rule is ambiguous and needs clarification. The final rule will clarify that the southern border of Zone 1 is the northernmost

confluence of the Mohawk River with the Hudson River; the Troy-Waterford Bridge (126th Street Bridge) will serve as the line delineating the southern boundary of Zone 1. The confluence is not a landmark which is readily apparent to a vessel operator on the water. The Troy-Waterford Bridge (126th Street Bridge) will serve as a landmark which is easily recognized by an operator on the water. EPA considers this clarification to be a minor modification which results in the boundary line being moved approximately 3-4 city blocks to the north of the original boundary. Upon reevaluation of all the boundary delineations, EPA discovered that the description of the southern boundary to Zone 2 may not be easily understood by the public. The final regulation will add the phrase "in the vicinity of Chelsea."

Comment 12: A citizens group through its representative stated its support for the regulation in a letter dated August 25, 1995.

Response 12: EPA acknowledges this support for this proposal.

Comment 13: Another representative of a citizens group provided a comment on September 27, 1995, after the public comment period closed. The comment stated support for the proposed rule.

Response 13: No response required.

III. Compliance with Other Acts and Orders

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 6501 *et seq.*, whenever an agency is developing regulations, it must prepare and make available for public comment the impact of the regulations on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required if the head of the agency certifies that the rule will not have significant economic effect on a substantial number of small entities. EPA policy dictates that an Initial Regulatory Flexibility Analysis (IRFA) be prepared if the action will have any effect on any small entity. An

abbreviated IRFA can be prepared depending on the severity of the economic impact and the relevant statute's allowance of alternatives.

The Agency has prepared an IRFA for this final rule. In summary, the IRFA describes that a prohibition of vessel sewage discharge in these two zones will apply to any commercial or recreational vessel with on-board toilet facilities that navigates the Hudson River in the described areas. Only commercial vessels are considered small entities with respect to the Regulatory Flexibility Act. All vessels are already subject to the EPA Marine Sanitation Device Standards at 40 CFR Part 140 and the U.S. Coast Guard Marine Sanitation Device Standards at 33 CFR Part 159. These standards prohibit the overboard discharge of vessel sewage in any freshwater lakes, freshwater reservoirs, or other freshwater impoundments whose inlet or outlet is such as to prevent the ingress or egress by vessel traffic subject to this regulation, or in rivers not capable of being navigated, (40 CFR 140.3). In other waters, including the Hudson River, vessels with on-board toilets shall have U.S. Coast Guard certified marine sanitation devices which either retain sewage or treat sewage to the applicable standards. There are three types of marine sanitation devices certified by the U.S. Coast Guard. Type I and Type II devices are both flow-through devices that treat sewage through maceration and disinfection. Type III devices are holding tanks. Vessel sewage is held in tanks until it can be properly disposed of at a pump-out facility, or it may be discharged untreated outside of U.S. territorial waters. Most Type III devices are equipped with a discharge option, in the form of a Y-valve, which allows the boater to discharge the sewage directly overboard, which is legal only outside of U.S. territorial waters. Since the Hudson River is a U.S. territorial water, the discharge of untreated vessel sewage is prohibited under the existing regulations. Today's rule, therefore, will not change the legal requirements for boats with Type III devices. Consequently, the only small entities affected by this rule will be commercial boats with on-board toilets with a Type I or II marine sanitation device which use these approximately 68 miles of the Hudson River. The rule will affect these vessels by requiring retention and pump-out of their sewage, or discharge outside of the designated zones. This rule requires no reporting or record keeping activity on the part of small entities. Because of the cost associated with purchase of portable Type III

devices and use of pump-out facilities, and the option to discharge sewage in accordance with Federal standards outside of the zones, this final rule imposes no significant economic impact on a substantial number of small entities.

As mentioned above, NYSDEC submitted the application for these Drinking Water Intake Zones under Section 312(f) of the Clean Water Act—the section that sets national standards for discharges of vessel sewage and prohibits the states or political subdivision thereof from adopting or enforcing any other regulation or standard for vessel sewage discharges. There are several exceptions to this prohibition. Section 312(f)(4)(B) is one of these exceptions. This section was added to the Clean Water Act in 1977 in order to provide the states with an opportunity to have a more stringent standard (i.e., a prohibition) for drinking water intake areas. The Act states, “Upon application by a State, the Administrator shall, by regulation, establish a drinking water intake zone in any waters within such State and prohibit the discharge of sewage from vessels within that zone.” EPA wishes to correct its interpretation of CWA section 312(f)(4)(B), as stated in the preamble of the proposed rule at 60 FR 34942. EPA interprets CWA Section 312(f)(4)(B) to give EPA discretion upon application by a state to establish a drinking water intake zone, both with respect to the timing of EPA action on such an application and the substance of such action. There is no mandatory duty for EPA to act upon such an application, as the CWA specifies no date certain for such action. Further, EPA interprets the requirement for states to apply to EPA for the flexibility to promulgate a drinking water intake zone different from that applied for, if EPA believes that a different zone is warranted.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record keeping burden on the regulated community, as well as minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record keeping requirements affecting 10 or more non-Federal respondents be approved by the Office of Management and Budget. Since today's rule would not establish or modify any information and record keeping requirements, it is not subject to the requirements of the Paperwork Reduction Act.

D. Unfunded Mandates Reform Act of 1995

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), P.L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is required for EPA rules, under Section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under Section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in estimated annualized costs of \$100 million or more to either State, local, and tribal governments in the aggregate, or to the private sector. All vessels that are equipped with marine sanitation devices and that navigate the Hudson River are already subject to the EPA Marine Sanitation Device Standards at 40 CFR Part 140 and the U.S. Coast Guard Marine Sanitation Device Standards at 33 CFR Part 159. These standards prohibit the overboard discharge of untreated vessel sewage in the Hudson River and require that vessels with on-board toilets shall have U.S. Coast Guard certified marine sanitation devices which either retain sewage or treat sewage to the applicable standards. There are three types of marine sanitation devices certified by the U.S. Coast Guard. Only those vessels that have either one of the two types of certified flow-through devices will be affected by this rule. Those vessels affected by this rule will either retain and pump out treated sewage or discharge outside of the designated zones. It is therefore estimated that the annualized costs to State, local and

tribal governments in the aggregate, or to the private sector, will not be or exceed \$100 million. Thus, today's rule is not subject to the requirements of Section 202 and 205 of the Act. Because the rule contains no regulatory requirements that might significantly or uniquely affect small governments, it also is not subject to the requirements of Section 203 of the Act. Small governments are subject to the same requirements as other entities whose duties result from this rule and they have the same ability as other entities to retain and pump out treated sewage or discharge outside of the designated zones.

List of Subjects in 40 CFR Part 140

Environmental protection, Sewage disposal, Vessels.

Dated: December 5, 1995.

Jeanne M. Fox,
Regional Administrator.

For the reasons set out in the preamble, 40 CFR Part 140 is amended as follows:

PART 140—[AMENDED]

1. The authority citation for Part 140 continues to read as follows:

Authority: Sec. 312, as added Oct. 18, 1972, Pub. L. 92-500, Sec. 2, 86 Stat. 871. Interpret or apply Sec. 312(b)(1), 33 U.S.C. 1322(b)(1).

2. In § 140.4 paragraph (b)(1) is amended by designating the undesignated text after the colon as paragraph (b)(1)(i) and by adding paragraph (b)(1)(ii) to read as follows:

§ 140.4 Complete prohibition.

* * * * *

(b) * * *

(1) * * *

(ii) Two portions of the Hudson River in New York State, the first is bounded by an east-west line through the most northern confluence of the Mohawk River which will be designated by the Troy-Waterford Bridge (126th Street Bridge) on the south and Lock 2 on the north, and the second of which is bounded on the north by the southern end of Houghtaling Island and on the south by a line between the Village of Roseton on the western shore and Low Point on the eastern shore in the vicinity of Chelsea, as described in Items 2 and 3 of 6 NYCRR Part 858.4.

[FR Doc. 95-30406 Filed 12-12-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 180

[PP 3F4222/R2192; FRL-4989-4]

RIN 2070-AB78

Tebuconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the fungicide tebuconazole (*alpha*-[2-(4-chlorophenyl)ethyl]-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) in or on the raw agricultural commodities cherries at 4.0 parts per million (ppm) and peaches (includes nectarines) at 1.0 ppm. Miles, Inc. (now Bayer Corp.) submitted a petition pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) for the regulation to establish these maximum permissible levels for residues of the fungicide.

EFFECTIVE DATE: The effective date of this rule is November 22, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 3F4222/R2192], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections 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 should be identified by the document control number and submitted 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 copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of any 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 in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the document number [PP 3F4222/

R2192]. 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. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6226; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of August 17, 1995 (60 FR 42885), which announced that Miles, Inc., Agricultural Division (formerly Mobay Corp., Agricultural Chemicals Division, now Bayer Corp.), P.O. Box 4913, Kansas City, MO 64120-0013, had submitted pesticide petition (PP) 3F4222 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for residues of the fungicide tebuconazole (*alpha*-(4-chlorophenyl)ethyl]-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) in or on the raw agricultural commodities cherries at 4.0 parts per million (ppm) and peaches (includes nectarines per 40 CFR 180.1(h)) at 1.0 ppm.

There were no comments received in response to the notice of filing. The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. A 90-day rat feeding study with a no-observed-effect level (NOEL) of 34.8 milligrams per kilogram of body weight per day (mg/kg bw/day) (400 ppm) and a lowest-effect-level (LEL) of 171.7 mg/kg bw/day (1,600 ppm) in males, based on decreased body weight gains and histological changes in the adrenals. For females, the NOEL was 10.8 mg/kg bw/day (100 ppm) and the LEL was 46.5 mg/kg bw/day (400 ppm) based on decreased body weights, decreased body weight gains, and histological changes in the adrenals.

2. A 90-day dog-feeding study with a NOEL of 200 ppm (73.7 mg/kg bw/day in males and 73.4 mg/kg bw/day in females) and an LEL of 1,000 ppm (368.3 mg/kg bw/day in males and 351.8 mg/kg bw/day in females). The LEL was