

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180**

[EPA-HQ-OPP-2005-0253; FRL-8866-6]

**Propylene Oxide; Proposed Pesticide Tolerance****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.**SUMMARY:** This document proposes to amend the propylene oxide tolerance on “nut, tree, group 14” to “nutmeat, processed, except peanuts” to correct an error in a prior rulemaking.**DATES:** Comments must be received on or before April 14, 2011.**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2005-0253, by one of the following methods:

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

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

*Instructions:* Direct your comments to docket ID number EPA-HQ-OPP-2005-0253. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address

will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Heather Garvie, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; *telephone number:* (703) 308-0034; *e-mail address:* [garvie.heather@epa.gov](mailto:garvie.heather@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of

entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. What should I consider as I prepare my comments for EPA?*

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

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

- Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

**II. This Proposal**

In this action, EPA is proposing to amend the propylene oxide tolerance

(40 CFR 180.491) on “nut, tree, group 14” to read “nutmeat, processed, except peanuts.” A final rule published in the **Federal Register** of September 24, 2008 (73 FR 54954) (FRL–8382–2). EPA took the opposite action—amending the propylene oxide tolerance by replacing “nutmeat, processed, except peanuts” with “nut, tree, group 14.” EPA explained that its 2008 action was taken to “conform” the commodity terms in the propylene oxide tolerances with “current Agency practice.” A proposed rule was published in the **Federal Register** of June 4, 2008 (73 FR 31788, 317990) (FRL–8363–9). The Reregistration Eligibility Decision for propylene oxide further explained that although “no change to the current tolerance level is required for nutmeat (processed, except peanuts),” \* \* \* “corrections need to be made to some of the existing commodity definitions” including changing the nutmeats tolerance to a tree nut group tolerance. EPA, published a notice, Reregistration Eligibility Decision for Propylene Oxide, in the **Federal Register** of August 9, 2006 (71 FR 45555) (FRL–8066–9).

Despite these explanations that the change to the nutmeats tolerance was a conforming technical correction without substantive effect, the changed tolerance terminology is significantly different than the commodity term it replaced. Crop Group 14 (tree nuts) applies to a specific list of raw nuts. On its face, “nutmeat, processed, except peanuts” applies to all processed nutmeats other than peanuts. Such a substantive change to the scope of a tolerance cannot be effected unless the Agency makes the necessary statutory findings under FFDCA section 408. Because no such findings were made, EPA considers the prior action to have been without effect and the pre-existing tolerance covering “nutmeat, processed, except peanuts” to define the scope of the propylene oxide tolerance as to nuts. Accordingly, EPA is proposing in this action to correct the propylene oxide tolerance in the CFR by returning to the status quo prior to rulemaking of September 24, 2008. Under this proposal, the nutmeat tolerance for propylene oxide would read “nutmeat, processed, except peanuts,” which is exactly as it did prior to the September 24, 2008 rulemaking.

EPA requests comment on whether its proposed action adequately addresses the error included in its September 24, 2008 rulemaking.

### III. Shortened Comment Period

FFDCA section 408(e)(2) requires a comment period of not less than 60 days on EPA tolerance actions proposed on the Agency’s initiative unless EPA “for

good cause finds that a shorter comment period would be in the public interest \* \* \*.” EPA has determined that such good cause exists here. The September 2008 rulemaking was intended, among other things, to make a minor, routine change to one of the commodity terms in the propylene oxide tolerance for the purpose of conforming the propylene oxide tolerance to the standard list of commodity terms used by EPA. Due to its own mistake, EPA did not merely make a conforming change but substituted a new commodity term that was not co-extensive with the existing commodity term. This has led to confusion as to the scope of the propylene oxide tolerance and was unfair to propylene oxide registrants who relied on EPA assertions that it was making a technical conforming change. EPA is now proposing to return the CFR to the status quo prior to its error. It is in the public interest to remove the confusion arising from EPA’s error with dispatch and thus EPA concludes there is good cause to limit the comment period to 15 days.

### IV. Statutory and Executive Order Reviews

This proposed rule amends a tolerance under section 408(d) of FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary

consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this proposed action will not have significant negative economic impact on a substantial number of small entities. In fact, this rule will have no impact because it merely corrects an error in the propylene oxide tolerance regulation that was inserted in the regulation without proper authority and thus was without legal effect. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This proposed rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000). Executive Order 3175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.” This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

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

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

Dated: March 21, 2011.

**Lois Rossi,**

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

**PART 180—[AMENDED]**

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

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

2. Section 180.491 is amended by revising the “Nut, tree, group 14” commodity in the tables in paragraphs (a)(1) and (a)(2) to read as follows:

**§ 180.491 Propylene oxide; tolerances for residues.**

(a) *General.* (1) \* \* \*

Commodity	Parts per million
* * * * *	*
Nutmeat, processed, except peanuts .....	300
* * * * *	*

(2) \* \* \*

Commodity	Parts per million
* * * * *	*
Nutmeat, processed, except peanuts .....	10.0
* * * * *	*

\* \* \* \* \*

[FR Doc. 2011-7462 Filed 3-29-11; 8:45 am]

**BILLING CODE 6560-50-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 87**

[WT Docket No. 10-61; FCC 11-25]

**Aviation Service Regulations**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document considers a petition for rulemaking requesting comment on a petition for rulemaking filed by OCAS, Inc. (OCAS) regarding audio visual warning systems (AVWS). OCAS, Inc. installs such technology under the trademark OCAS®. AVWS are integrated air hazard notification systems that utilize radar frequencies and VHF voice frequencies to activate obstruction lighting and transmit audible warnings to aircraft on a potential collision course with obstacles such as power lines, wind turbines, bridges and towers. OCAS requests that we amend part 87 of the Commission’s rules to permit AVWS stations to operate radar units, and to transmit audible warnings to pilots. We seek comment on operational, licensing, eligibility and equipment certification issues regarding AVWS stations and technology.

**DATES:** Submit comments on or before May 31, 2011 and reply comments are due June 28, 2011.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 10-61; FCC 11-25, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission’s Web site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Tim Maguire, Mobility Division, Wireless Telecommunications Bureau, (202) 418-2155.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s *Further Notice of Proposed Rulemaking*

(“FNPRM”) in WT Docket No. 10-61, FCC 11-25, adopted February 22, 2011, and released March 4, 2011. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission’s copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room Cy-B402, Washington, DC 20554. The full text may also be downloaded at: [www.fcc.gov](http://www.fcc.gov). Alternative formats are available to persons with disabilities by sending an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

**I. Procedural Matters**

*A. Ex Parte Rules-Permit-but-Disclose Proceeding*

1. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission’s Rules.

*B. Comment Dates*

2. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the