

have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

#### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

#### **List of Subjects in 30 CFR Part 948**

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 21, 2004.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

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**BILLING CODE 4310-05-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 180**

[OPP-2004-0085; FRL-7358-5]

#### **Thifensulfuron-methyl; Proposed Tolerance Actions**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to reinstate corn tolerances for the herbicide thifensulfuron-methyl. These corn tolerances were previously established but inadvertently removed shortly thereafter. Registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of thifensulfuron-methyl on corn currently exist and have existed for more than 9 years.

**DATES:** Comments must be received on or before July 12, 2004.

**ADDRESSES:** Submit your comments, identified by docket ID number OPP-2004-0085, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov/>. Follow the on-line instructions for submitting comments.
- *Agency Website:* <http://www.epa.gov/edocket/>. EDOCKET, EPA's electronic public docket and

comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- *E-mail:* Comments may be sent by e-mail to [opp-docket@epa.gov](mailto:opp-docket@epa.gov), Attention: Docket ID Number OPP-2004-0085.

- *Mail:* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2004-0085.

- *Hand Delivery/carrier:* Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP-2004-0085. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to docket ID number OPP-2004-0085. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket/>, 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 EDOCKET, [regulations.gov](http://regulations.gov), or e-mail. The EPA EDOCKET and the [regulations.gov](http://regulations.gov) websites are anonymous access systems, 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 EDOCKET or [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public 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. For additional information about EPA's public docket visit

EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL-7181-7).

*Docket:* All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket/>. Although listed in the index, some information is not publicly available, i.e., 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 electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460-0001; telephone number: (703) 308-8037; e-mail address: [nevola.joseph@epa.gov](mailto:nevola.joseph@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 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II.A. 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. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgrstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

*C. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, 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:

- i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- ii. 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.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns, and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

## II. Background

### A. What Action is the Agency Taking?

On May 18, 1994 (59 FR 25821) (FRL-4778-9), EPA published a Notice of Final Rulemaking in the **Federal Register** in which the Agency established tolerances for residues of the herbicide thifensulfuron-methyl in 40 CFR 180.439 for field corn fodder, forage and grain at 0.1 parts per million (ppm), 0.1 ppm and 0.05 ppm, respectively, all with an effective date of May 18, 1994.

Not long after, on June 22, 1994 (59 FR 32085) (FRL-4868-8), EPA published a Notice of Final Rulemaking in the **Federal Register** in which the Agency established tolerances for residues of the herbicide thifensulfuron-methyl in 40 CFR 180.439 for oat, grain and oat, straw with an effective date of June 22, 1994. However, the codification section of that June 22<sup>nd</sup> final rule inadvertently left out the corn tolerances that were newly established on May 18, 1994. In the preamble text of the June 22<sup>nd</sup> final rule, no action was directed toward the corn tolerances established on May 18<sup>th</sup>. The establishment of three corn tolerances on May 18<sup>th</sup> was inadvertently missed in the final rule of June 22<sup>nd</sup>. Consequently, the three corn tolerances established on May 18<sup>th</sup> did not appear in § 180.439 of the July 1, 1994 version of the 40 CFR nor in subsequent annual versions.

Currently, there are active products registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) which list corn as a use site for thifensulfuron-methyl application. These registrations have existed since 1994 with associated tolerances established in May 1994. EPA is proposing to correct the inadvertent error.

Also, in accordance with current Agency practice, the commodity terminologies for the tolerances should be revised from corn forage, field to corn, field, forage; corn grain, field to corn, field, grain; and corn fodder, field to corn, field, stover.

Therefore, EPA is proposing to reinstate the tolerances in 40 CFR 180.439 for residues of thifensulfuron-methyl in or on corn, field, forage at 0.1 ppm; corn, field, stover at 0.1 ppm; and corn, field, grain at 0.05 ppm. The Agency will reassess these tolerances according to FQPA standards in the near future.

On February 13, 2004 (69 FR 7161) (FRL-7338-6), EPA published a direct final rule which would have reinstated the three corn tolerances in 40 CFR 180.439. However, during the public

comment period, EPA received in docket OPP-2003-0363 one adverse comment from a private individual. In the February 13<sup>th</sup> direct final rule, EPA stated that if a relevant adverse comment was received during the comment period, that EPA would publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect and that the Agency would publish a notice of proposed rulemaking in a future issue of the **Federal Register**. EPA published a withdrawal of the February 13<sup>th</sup> direct final rule on April 14, 2004 (69 FR 19767) (FRL-7351-9).

*Comment.* On February 17, 2004, a private individual from New Jersey commented that he was opposed to the EPA approval of yet another chemical to be placed on plants and stated that zero tolerance is the only tolerance that should be tolerated on plants.

*Agency Response.* The comment was general in nature and did not address the inadvertent or improper removal of the established corn tolerances for thifensulfuron-methyl. Nor did the comment address current active registrations for use of thifensulfuron-methyl on corn, which have existed since 1994. Thus, the action proposed here is not approving a new chemical but reinstating the corn tolerances in 40 CFR 180.439 to correct their inadvertent removal.

### B. What is the Agency's Authority for Taking this Action?

A tolerance represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the FQPA of 1996, Public Law 104-170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore adulterated under section 402(a) of the FFDCA. Such food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States. EPA will establish and

maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as import tolerances, are necessary to allow importation into the United States of food containing such pesticide residues.

*C. When do These Actions Become Effective?*

EPA is proposing that the three corn tolerances for thifensulfuron-methyl be reinstated on the day of publication of a final rule in the **Federal Register**.

**III. Statutory and Executive Order Reviews**

In this proposed rule EPA is proposing to reinstate specific tolerances established under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted this type of action 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, *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) (Public Law 104-4). Nor does it require any special considerations as required by 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 other 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 Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances might significantly impact a substantial number of small entities and concluded

that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, I certify that this action will not have a significant economic impact on a substantial number of small entities. Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. 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 6, 2000). Executive Order 13175, 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: May 3, 2004.

**James Jones,**  
*Director, 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 180.439 is revised to read as follows:

**§ 180.439 Thifensulfuron-methyl (methyl-3-[[[4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophene carboxylate); tolerances for residues.**

(a) *General.* Tolerances are established for residues of the herbicide thifensulfuron-methyl (methyl-3-[[[4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophene carboxylate) in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley, grain .....	0.05
Barley, straw .....	0.1
Corn, field, forage .....	0.1
Corn, field, grain .....	0.05
Corn, field, stover .....	0.1
Oat, grain .....	0.05
Oat, straw .....	0.1
Soybean .....	0.1
Wheat, grain .....	0.05
Wheat, straw .....	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.*  
 [Reserved]  
 [FR Doc. 04-10780 Filed 5-11-04; 8:45 am]  
 BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 194

[FRL-7660-1]

#### Central Characterization Project Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From Lawrence Livermore National Laboratory Proposed for Disposal at the Waste Isolation Pilot Plant

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability; opening of public comment period.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents applicable to characterization by the Central Characterization Project (CCP) of transuranic (TRU) radioactive waste at the Lawrence Livermore National Laboratory (LLNL) in California proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents are available for review in the public docket listed in **ADDRESSES**. We will consider public comments received on or before the due date mentioned in **DATES**. In accordance with EPA's WIPP Compliance Criteria, we will conduct an inspection of the Central Characterization Project (CCP) at LLNL to verify that, using the systems and processes developed as part of the DOE Carlsbad Office's CCP, DOE can characterize TRU waste consistent with the Compliance Criteria. EPA will perform this inspection the week of May 3, 2004. This notice of the inspection and comment period accords with 40 CFR 194.8.

**DATES:** EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before June 11, 2004.

**ADDRESSES:** Comments may be submitted by mail to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR-2004-0066-2004-0053. Comments may also be submitted electronically, by facsimile, or through

hand delivery/courier. Follow the detailed instructions as provided in Unit I.B of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Ed Feltcorn, Office of Radiation and Indoor Air, (202) 343-9422. You can also call EPA's toll-free WIPP Information Line, 1-800-331-WIPP or visit our Web site at <http://www.epa.gov/radiation/wipp>.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OAR-2004-0066. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742. These documents are also available for review in paper form at the official EPA Air Docket in Washington, DC, Docket No. A-98-49, Category II-A2, and at the following three EPA WIPP informational docket locations in New Mexico: In Carlsbad at the Municipal Library, Hours: Monday-Thursday, 10 a.m.-9 p.m., Friday-Saturday, 10 a.m.-6 p.m., and Sunday, 1 p.m.-5 p.m.; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday-Friday, 9 a.m.-5 p.m. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet

under the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will