

## VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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: July 29, 2008.

**Donald R. Stubbs,**

*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), 346a and 371.

■ 2. Section 180.474 is amended by revising the introductory text of paragraph (a)(1), by alphabetically adding the following commodities to the table in paragraph (a)(1); by removing the text from paragraph (b) and reserving the paragraph designation and heading; and by adding a new paragraph (c).

#### § 180.474 Tebuconazole; tolerances for residues.

(a) *General.* (1) Tolerances are established for the residues of the fungicide, tebuconazole, alpha-[2-(4-Chlorophenyl)ethyl]-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol in or on the following commodities:

Commodity	Parts per million
* * * * *	*
Apple, wet pomace .....	0.1
Asparagus .....	0.05
* * * * *	*
Bean, succulent .....	0.1
Bean, dry seed .....	0.1
Beet, garden, roots .....	0.70
Beet, garden, tops .....	7.0

Commodity	Parts per million
Brassica, leafy greens, subgroup 5B .....	2.5
Coffee, green bean <sup>1</sup> .....	0.15
Coffee, roasted bean <sup>1</sup> .....	0.3
Corn, field, grain .....	0.05
Corn, field, forage .....	4.0
Corn, field, stover .....	3.5
Corn, pop, grain .....	0.05
Corn, pop, stover .....	3.5
Corn, sweet, kernel plus cob with husks removed .....	0.5
Corn, sweet, forage .....	7.0
Corn, sweet, stover .....	6.0
Cotton, undelinted seed .....	2.0
Cotton, gin byproducts .....	25.0
Fruit, pome, group 11 .....	0.05
Fruit, stone, group 12, except cherry .....	1.0
Grain, aspirated fractions .....	16.0
* * * * *	*
Hop, dried cones .....	35.0
Lychee .....	1.6
Mango, postharvest .....	0.15
* * * * *	*
Okra .....	1.2
Onion, bulb, subgroup 3-07A .....	0.2
Onion, green, subgroup 3-07B .....	1.3
* * * * *	*
Plum, pre- and post-harvest .....	1.0
* * * * *	*
Soybean, forage .....	25
Soybean, hay .....	50
Soybean, seed .....	0.08
Sunflower, seed .....	0.05
Sunflower, meal .....	0.2
Sunflower, refined oil .....	0.2
Vegetable, cucurbit, group 9 .....	0.09
* * * * *	*

<sup>1</sup>There are no U.S. registrations as of 7/31/2008.

\* \* \* \* \*

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

(c) *Tolerances with regional registrations.* Tolerances with regional registrations for the residues of the fungicide, tebuconazole, alpha-[2-(4-Chlorophenyl)ethyl]-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol in or on the following commodities:

Commodity	Parts per million
Turnip, roots .....	0.5
Turnip, tops .....	7.0

\* \* \* \* \*

[FR Doc. E8-18625 Filed 8-12-08; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2007-0564; FRL-8374-4]

### Thifensulfuron Methyl; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of thifensulfuron methyl in or on barley, hay; oat, forage; oat, hay; wheat, forage, and wheat, hay. E.I. DuPont de Nemours and Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective August 13, 2008. Objections and requests for hearings must be received on or before October 14, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-0564. To access the electronic docket, go to <http://www.regulations.gov>, and search for the docket ID number. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 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 Docket Facility is open 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:

Vickie Walters, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number:

(703) 305-5704; e-mail address: [walters.vickie@epa.gov](mailto:walters.vickie@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 those engaged in the following activities:

- 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 to provide 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. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at <http://www.gpoaccess.gov/ecfr>.

###### C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2007-0564 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 as required by 40 CFR part 178 on or before October 14, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA-HQ-OPP-2007-0564, 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'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.

##### II. Petition for Tolerance

In the **Federal Register** of September 19, 2007 (72 FR 53577) (FRL-8144-3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F7219) by E.I. DuPont de Nemours and Company, DuPont Crop Protection, P.O. Box 80038, Wilmington, DE 19880-0038. The petition requested that 40 CFR 180.439(a) be amended by establishing tolerances for residues of the herbicide, thifensulfuron methyl, methyl-3-[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate, in or on barley, hay at 0.7 part per million (ppm), oat, forage at 0.2 ppm; oat, hay at 2.0 ppm; wheat, forage at 1.0 ppm; and wheat, hay at 0.8 ppm. That notice referenced a summary of the petition prepared by E. I. DuPont de Nemours and Company, the registrant, which is available to the public in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

Thifensulfuron methyl currently has tolerances for grain and straw from barley, oats, and wheat. No tolerances

have been established for hay and forage of these commodities because thifensulfuron methyl's registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), U.S.C. 136 et seq., restricts the feeding of hay and forage from treated barley, oats, and wheat to livestock. DuPont has applied to EPA to lift the feeding restriction in its FIFRA registration and this petition for hay and forage was filed in conjunction with that requested change.

Based upon review of the field trial data supporting the petition, EPA is revising the tolerance levels for pending commodities as follows: barley, hay at 0.8 ppm; oat, hay at 0.05 ppm; wheat, forage at 2.5 ppm; and wheat, hay at 0.7 ppm.

##### III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of 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) of FFDCA 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) of FFDCA 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."

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, 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 and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of thifensulfuron methyl, methyl-3-[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate, on barley, hay at 0.8 ppm; oat, forage at 0.2 ppm; oat, hay at 0.05 ppm; wheat, forage at 2.5 ppm and wheat, hay at 0.7 ppm.

EPA has previously concluded that aggregate exposure to thifensulfuron methyl on the grain and straw of barley, oats, and wheat as well as other

commodities is safe. (72FR13179 (March 21, 2007)). Establishment of the requested thifensulfuron methyl tolerances on hay and forage of barley, oats, and hay will not change the exposure or risk estimates from this prior tolerance action because:

1. The requested change in FIFRA registration for thifensulfuron methyl is only for the lifting of the feeding restriction on treated barley, oats, and wheat. There are no requested changes, such as to application rates that could affect residue levels on human food items. No changes in existing tolerances are necessary.

2. The Agency has determined that there will not be finite residues of thifensulfuron methyl in animal commodities as a result of animals consuming thifensulfuron methyl-treated barley, oats or wheat.

3. Since thifensulfuron methyl is not being registered on any additional crops and the application rates to the registered crops are not increasing, there is no change in estimated drinking water estimates.

4. No residential uses are being proposed.

The toxicological profile, endpoints and current risk assessments are discussed in the final rule published in the Federal Register of March 21, 2007 (72FR13179)(FRL-8117-1) which established tolerances for residues of thifensulfuron methyl in rice, grain at 0.05 ppm; rice, straw at 0.05 ppm; sorghum, grain, forage at 0.05 ppm; sorghum, grain, grain at 0.05 ppm; and sorghum, grain, stover at 0.05 ppm. These previous risk assessments and the reasons that the current action does not change that risk assessment are discussed in the document entitled "Ingredient: Thifensulfuron Methyl Title: Label Amendments and Petition for Tolerances on Wheat Forage and Hay, Oat Forage and Hay, and Barley, Hay." This document can be found at <http://www.regulations.gov> in docket EPA-HQ-OPP-2007-0564 and is identified as document 004. Based on risk assessments and the findings presented in the Federal Register notice above, 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 thifensulfuron methyl residues.

#### IV. Other Considerations

##### A. Analytical Enforcement Methodology

Adequate enforcement methodology ((liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS)) is available to enforce the

tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

##### B. International Residue Limits

There are no established or proposed Codex Maximum residue limits (MRLs) for residues of thifensulfuron methyl. Canada and Mexico have established MRLs for thifensulfuron methyl on several plant commodities. However, no Canadian or Mexican MRLs for thifensulfuron methyl have been proposed or established for barley, hay; oat, forage; oat, hay; wheat, forage; or wheat, hay.

#### V. Conclusion

Therefore, tolerances are established for residues of thifensulfuron methyl, methyl-3-[[[4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino)sulfonyl]-2-thiophenecarboxylate, on barley, hay at 0.8 ppm; oat, forage at 0.2 ppm; oat, hay at 0.05 ppm; wheat, forage at 2.5 ppm and wheat, hay at 0.7 ppm.

#### VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. 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 final rule has been exempted from review under Executive Order 12866, this final 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) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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.*, 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).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, 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.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not 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).

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).

#### VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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: July 31, 2008.

**Donald R. Stubbs,**

*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), 346a and 371.

■ 2. Section 180.439 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

#### **§180.439 Thifensulfuron methyl; tolerances for residues.**

(a) \* \* \*

Commodity	Parts per million
* * *	* * *
Barley, hay	0.8
* * *	* * *
Oat, forage	0.2
* * *	* * *
Oat, hay	0.05
* * *	* * *
Wheat, forage	2.5
* * *	* * *
Wheat, hay	0.7
* * *	* * *

\* \* \*

[FR Doc. E8-18457 Filed 8-12-08; 8:45 am]

**BILLING CODE 6560-50-S**

#### **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

#### **Centers for Medicare & Medicaid Services**

#### **42 CFR Part 483**

**[CMS-3191-F]**

**RIN 0938-AN79**

#### **Medicare and Medicaid Programs; Fire Safety Requirements for Long Term Care Facilities, Automatic Sprinkler Systems**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule requires all long term care facilities to be equipped with sprinkler systems by August 13, 2013. Additionally, this final rule

requires affected facilities to maintain their automatic sprinkler systems once they are installed.

**DATES:** These regulations are effective on October 14, 2008. The incorporation by reference listed in the rule is approved by the Director of the Federal Register October 14, 2008.

#### **FOR FURTHER INFORMATION CONTACT:**

Danielle Shearer, (410) 786-6617; James Merrill, (410) 786-6998; Marcia Newton, (410) 786-5265; or Jeannie Miller, (410) 786-3164.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

##### *A. Overview of the Life Safety Code*

The Life Safety Code (LSC), published by the National Fire Protection Association (NFPA), a private, nonprofit organization dedicated to reducing loss of life due to fire, is a compilation of fire safety requirements. The LSC contains fire safety requirements for both new and existing buildings. It is updated through a consensus process and generally published every 3 years. Sections 1819(d)(2)(B) and 1919(d)(2)(B) of the Social Security Act (the Act) require that long term care facilities participating in the Medicare and Medicaid programs generally meet the applicable provisions of the edition of the LSC that is adopted by the Secretary.

Beginning with the adoption of the 1967 edition of the LSC in 1971, Medicare and Medicaid regulations have historically incorporated the LSC requirements by reference for all long term care facilities as well as other providers, while providing the opportunity for a Secretarial waiver of a requirement under certain circumstances. The statutory basis for incorporating NFPA's LSC for our other providers is under the Secretary's general rulemaking authority at sections 1102 and 1871 of the Act, and under provider-specific provisions of title XVIII that permit us to issue regulations to protect the health and safety of participants in Medicare and Medicaid.

We adopted the LSC to ensure that patients and residents are consistently protected from fire, regardless of the location in which they receive care. Since adopting and enforcing the 1967 and subsequent editions of the LSC, there has been a significant decline in the number of multiple death fires, indicating that the LSC has been effective in improving fire safety in health care facilities.

On October 26, 2001, we published a proposed rule (66 FR 54179), and on January 10, 2003, we published a final rule in the **Federal Register**, entitled "Fire Safety Requirements for Certain

Health Care Facilities" (68 FR 1374). In that final rule, we adopted the 2000 edition of the LSC provisions as the standard governing Medicare and Medicaid health care facilities, including long term care facilities. The final rule required all existing long term care facilities to comply with the 2000 edition of the LSC.

The 2000 edition of the LSC required all newly constructed buildings containing health care facilities to have an automatic sprinkler system installed throughout the building. However, like all previous editions, the LSC did not require existing buildings to install automatic sprinkler systems throughout if they met certain construction standards, ranging from the size of the buildings to the types of material used in their construction.

In accordance with the 2000 edition of the LSC, an existing building that meets the above-mentioned construction standards must install sprinklers if it undergoes a major renovation. However, in such cases, it is required to install sprinklers only in the renovated section(s). Therefore, a building may have sprinklers only on one floor or in one wing. We did not receive any timely public comments in response to the October 2001 proposed rule that addressed the issue of installing automatic sprinkler systems in buildings not undergoing major renovations. That is to say, no public comments supported, questioned or challenged our proposal to incorporate this LSC provision by reference.

In the 2006 edition of the LSC, the NFPA decided to include an automatic sprinkler system requirement for all long term care facilities. We support the NFPA in its decision. We decided to proceed with this rule, without proposing adoption of the NFPA 2006 edition of the LSC, because we want to avoid further delay in requiring an automatic sprinkler system in long term care facilities. As stated in the October 27, 2006 proposed rule (71 FR 62957, 62960), given the large scope of the LSC, we would not be able to adopt and enforce compliance with the 2006 edition of the LSC until 2009 or 2010. Therefore, we decided at this time to proceed with rulemaking that does not include adoption of the NFPA 2006 LSC.

We will continue to work with the NFPA to revise and refine each edition of the LSC. We are currently working with the NFPA through its consensus process to revise and refine the 2009 edition of the LSC. Once the 2009 edition is issued, we will review the code in its entirety and explore the possibility of adopting it for all