

Regulation Development Section, Air Toxics and Radiation Branch (At-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for public review during normal business hours at the above address. (It is recommended that you telephone Kathleen D'Agostino at (312) 886-1767 before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Regulation Development Section, Air Toxics and Radiation Branch (AT-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1767.
SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: June 20, 1995.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95-18522 Filed 7-27-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 81

[UT22-1-6925b; FRL-5265-6]

Designation of Area for Air Quality Planning Purposes; Utah; Designation of Ogden City PM₁₀ Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this document, EPA is proposing to revise the PM₁₀ (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) National Ambient Air Quality Standards (NAAQS) designation for a portion of Weber County, Utah. Previously, consistent with section 107(d)(3)(A) of the Act, EPA notified the Governor of Utah that Weber County, Utah should be redesignated from unclassifiable to nonattainment for PM₁₀. The redesignation is based upon violations of the PM₁₀ NAAQS which were monitored between January 1991 and January 1993.

In the final rules section of this **Federal Register**, EPA is revising the designation of a portion of Weber County, Utah as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are

received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by August 28, 1995.

ADDRESSES: All written comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch, EPA Region VIII, at the address listed below. Information supporting this action can be found at the following location: EPA Region VIII, Air Programs Branch, 999 18th Street, 3rd Floor, South Terrace, Denver, Colorado 80202-2466. The information may be inspected between 8 a.m. and 4 p.m., on weekdays, except for legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Lee Hanley, Air Programs Branch, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2466, (303) 293-1760.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the Rules Section of the **Federal Register**.

Dated: July 19, 1995.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 95-18519 Filed 7-27-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 185

[OPP-300394; FRL-4969-9]

RIN 2070-AC18

Trifluralin; Revocation of Food Additive Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke tolerances for residues of the herbicide trifluralin in or on peppermint oil and spearmint oil, and to withdraw a prior final rule revoking those tolerances. EPA is taking this action because peppermint oil and spearmint oil are not ready-to-eat commodities, and residues of trifluralin are not likely to concentrate in ready-to-eat forms of peppermint and spearmint oil. Therefore, food additive tolerances are not required. In addition, after the

tolerances are revoked pursuant to this action, the basis for the prior revocation will be eliminated.

DATES: Written comments, identified by the document control number [OPP-300394], must be received on or before August 28, 1995.

ADDRESSES: By mail, submit written comments 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 comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-300394]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed 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: Jean M. Frane, Policy and Special Projects Staff (7501C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Crystal Mall #2, Rm. 1113, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-5944; e-mail: frane.jean@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA is proposing two separate actions in this document. First, EPA proposes to revoke the food additive regulations (FARs) for residues of the herbicide trifluralin in or on peppermint oil and spearmint oil (40 CFR 185.5900). Second, EPA proposes to withdraw its Order dated July 14, 1993 (58 FR 37862) to the extent that it revoked the food additive regulations for trifluralin in or on peppermint oil and spearmint oil.

A. Statutory Background

The Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., authorizes the establishment by regulation of maximum permissible levels of pesticides in foods. Such regulations are commonly referred to as "tolerances." Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is "adulterated" under section 402 of the FFDCA and may not be legally moved in interstate commerce. 21 U.S.C. 331, 342. EPA was authorized to establish pesticide tolerances under Reorganization Plan No. 3 of 1970. 5 U.S.C. App. at 1343 (1988). Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA). EPA can establish a tolerance in response to a petition (FFDCA 408(d)(1), 409(b)(1)), or on its own initiative (FFDCA 408(e), 409(d)).

The FFDCA has separate provisions for tolerances for pesticide residues on raw agricultural commodities (RACs) and tolerances on processed food. For pesticide residues in or on RACs, EPA establishes tolerances, or exemptions from tolerances when appropriate, under section 408 of the act. 21 U.S.C. 346a. EPA regulates pesticide residues in processed foods under section 409, which pertains to "food additives." 21 U.S.C. 348. Maximum residue regulations established under section 409 are commonly referred to as food additive regulations (hereinafter referred to as "FARs"). Section 409 FARs are needed, however, only for certain pesticide residues in processed food. Under section 402(a)(2) of the FFDCA, a pesticide residue in processed food generally will not render the food adulterated if the residue results from application of the pesticide to a RAC and the residue in the processed food when ready to eat is below the RAC tolerance. This exemption in section 402(a)(2) is commonly referred to as the "flow-through" provision because it

allows the section 408 raw food tolerance to flow through to the processed food forms. Thus, a section 409 food additive regulation is only necessary to prevent foods from being deemed adulterated when the concentration of the pesticide residue in a processed food when ready to eat is greater than the tolerance prescribed for the RAC, or if the processed food itself is treated or comes in contact with a pesticide.

B. Regulatory Background

On July 14, 1993, EPA issued a final order, subject to objections and requests for a hearing, revoking the trifluralin FARs for peppermint oil and spearmint oil (58 FR 37862, hereinafter referred to as "1993 Order"). This Order was issued in response to the decision by the U.S. Court of Appeals, Ninth Circuit, in the case of *Les v. Reilly*, 968 F.2d 985 (9th Cir. 1992), cert. denied, 113 S.Ct. 1361 (1993). DowElanco, the manufacturer of trifluralin, filed objections to the revised Order, as well as requests for a hearing on and a stay of, the revocation Order. On June 30, 1994, EPA issued a final order denying DowElanco's objections and requests for a hearing and a stay of the revocation (59 FR 33684, hereinafter referred to as "1994 Order"). On July 14, 1994, DowElanco filed an action in the U.S. Court of Appeals, D.C. Circuit for review of EPA's 1993 Order, and moved for summary reversal or, in the alternative, an emergency stay of the revocation. *E.I. DuPont DeNemours and Co., et al. v. EPA*, Civ. Action No. 94-1504 (D.C. Cir.). On August 24, 1994, the Court denied DowElanco's motion for summary reversal, but issued an emergency stay of the revocation. In the **Federal Register** of September 12, 1994 (59 FR 46768), EPA reinstated the FARs for trifluralin (as well as for the other pesticides involved in the litigation), and they are currently in effect.

On September 11, 1992, the National Food Processors Association (NFPA) and other organizations filed a petition with EPA challenging, among other things, EPA's interpretation of the phrase "ready to eat" in the Delaney Clause. (Petition to the Environmental Protection Agency, Office of Pesticide Programs, Concerning EPA's Pesticide Concentration Policy (1992)) (hereinafter cited as "NFPA petition"). The petition requested that EPA apply the term "ready to eat" in the flow-through provision according to what NFPA asserts is its plain meaning. EPA sought public comment on the petition (**Federal Register** of Feb. 5, 1993 (58 FR 7470)). In the **Federal Register** of June 14, 1995 (60 FR 31300), EPA issued a partial response to the NFPA petition,

addressing the "ready to eat" policy. In that response, EPA agreed that the term "ready to eat" food has a common-sense meaning of food which is consumed without further preparation and stated its intention to apply that interpretation in future actions.

II. Revocation of the Food Additive Regulations for Trifluralin in Peppermint Oil and Spearmint Oil

EPA has reviewed the trifluralin FARs for peppermint oil and spearmint oil. EPA has determined that no section 409 tolerance is necessary for mint oils because they are not "ready to eat" processed foods, and because ready to eat foods containing mint oils are unlikely to have trifluralin residues greater than the RAC tolerances for peppermint hay and spearmint hay.

As noted above, under FFDCA section 402(a)(2), processed foods containing pesticide residues are not deemed adulterated if the level of pesticide residues in the processed food "when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity." EPA believes that the common-sense meaning of the term "ready to eat" food is food ready for consumption without further preparation. Mint oils are not consumed "as is" but are used as a flavoring in other foods. As such, peppermint oil and spearmint oil are not "ready to eat."

Mint oils are used as flavoring agents in foods such as beverages, ice cream, candy and chewing gum. The maximum amounts used are listed in a February 1965 article in *Food Technology* ("Recent Progress in the Consideration of Flavoring Ingredients Under the Food Additives Amendment, III. GRAS Substances," Richard L. Hall and Bernard L. Oser). The highest concentrations of peppermint oil and spearmint oil in foods are in chewing gum at 8,300 ppm and 6,200 ppm, respectively. These equate to dilution factors of 120 and 160, respectively. Using these dilution factors and the mint oil tolerances of 2 ppm or the maximum levels observed from a 1 x rate (i.e., about 1.2 ppm), maximum residues of trifluralin in the ready-to-eat food will be on the order of 0.010 to 0.02 ppm. These are lower than the RAC tolerances of 0.05 ppm. Thus, no section 409 tolerances are needed for peppermint oil and spearmint oil, and EPA proposes to revoke the existing food additive regulations.

III. Withdrawal of the July 14, 1993 Order With Respect to Trifluralin

EPA proposes to withdraw those aspects of EPA's July 1993 Order and EPA's June 1994 Order revoking the

trifluralin peppermint and spearmint oil FARs on grounds that trifluralin "induces cancer" within the meaning of the Delaney clause. As EPA states in this proposal, the trifluralin peppermint and spearmint oil FARs are no longer necessary. Ideally, EPA would prefer to have reached the conclusions announced in this proposal with respect to trifluralin residues in mint oils sooner. However, EPA has only recently been able to complete and release its revised policy interpreting the phrase "ready to eat," a reinterpretation that provides alternative grounds for revoking the trifluralin mint FARs. EPA had an obligation in 1993 to respond promptly to the Ninth Circuit's order in *Les v. Reilly*. Moreover, EPA did not believe it would be appropriate to delay its response to the *Les* Court's order until it had vetted the many issues raised in NFPA's petition, a petition that was filed many years after the petition that was the subject of *Les*.

Given that other, less controversial grounds for revoking these FARs have recently become available, EPA is taking this opportunity to revoke the FARs on these grounds. EPA believes that there is no need to continue to litigate the legality of its 1993 and 1994 Orders relating to trifluralin where there are less controversial grounds available to achieve the revocation of the mint FARs. Therefore, EPA will inform the Court in *DuPont v. EPA* that it is proposing these revocations.

If EPA receives no adverse comments on its notice proposing the revocation of the trifluralin mint FARs on alternative grounds, EPA will issue a final order revoking the FARs. EPA will also request that the D.C. Circuit Court remand the 1993 and 1994 Orders with respect to trifluralin so that EPA may likewise issue a final order withdrawing the trifluralin-related aspects of those Orders.

IV. Procedural Matters

A. Comments

Interested persons may comment on the following: EPA's determination that peppermint oil and spearmint oil are not ready to eat commodities; and EPA's proposal to withdraw the 1993 Order with respect to revocation of the trifluralin FARs.

If EPA receives no adverse comments on the revocation of the FARs for trifluralin in mint oils, it will issue a final order, effective upon publication, subject to objections and requests for a hearing. If a party does not submit comments on this proposal, EPA believes that it would be appropriate to

deny objections or a request for a hearing from that party.

Written comments must bear a notation indicating the document control number, [OPP-300394]. All written comments filed in response to this notice will be available for public inspection in Rm. 1132 at the address given above from 8 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [OPP-300394] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

V. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866, the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under the order, a "significant regulatory action" is an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, and the environment, public health

or safety, of State, local, or tribal governments or communities"; (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this proposed rule is not a "significant" action under E.O. 12866. EPA is taking this action because it has determined that the food additive regulation for trifluralin is not needed. Therefore, the Agency expects that no economic impact will result.

B. Regulatory Flexibility Act

The proposed regulatory action has been reviewed under the Regulatory Flexibility Act of 1980, and, as stated above, EPA expects that it will not have any economic impacts, including impacts on small entities.

C. Paperwork Reduction Act

This proposal does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 185

Environmental protection, Administrative practice and procedures, Agricultural commodities, Food additives, Pesticides and pests, Records and recordkeeping.

Dated: July 24, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 185 be amended as follows:

PART 185—[AMENDED]

1. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.5900 [Removed]

2. By removing § 185.5900 *Trifluralin*.

[FR Doc. 95-18621 Filed 7-27-95; 8:45 am]

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