

**B. Executive Order 12875**

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

**C. Executive Order 13084**

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on

matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

**VIII. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, 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 the rule in the **Federal Register**. This 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: January 14, 1999.

**Marcia E. Mulkey,**

*Director, 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. 346a and 371.

2. By adding §180.549 to read as follows:

**§180.549 Diflufenzopyr; tolerances for residues.**

(a) *General.* Tolerances are established for combined residues of diflufenzopyr, 2-(1-[(3,5-difluorophenylamino)carbonyl]-hydrazono)ethyl)-3-pyridinecarboxylic acid, and its metabolites convertible to M1 (8-methylpyrido[2,3-d]pyridazin-5(6H)-one) in or on the following raw agricultural commodities.

Commodity	Parts per million
Field corn, forage .....	0.05
Field corn, grain .....	0.05
Field corn, stover .....	0.05

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

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

(d) *Indirect or inadvertent residues.* [Reserved]

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

[OPP-300788; FRL-6058-7]

RIN 2070-AB78

**Partial Withdrawal of Cryolite Tolerance Revocations**

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

**ACTION:** Final rule; partial withdrawal.

**SUMMARY:** This final rule and order withdraws the revocation of tolerances for residues of cryolite (fluorine compounds) on apricots, blackberries, boysenberries, dewberries, kale, loganberries, nectarines, and youngberries made in a final rule entitled "Revocation of Tolerances for Canceled Food Uses", (October 26, 1998; (63 FR 57067) (FRL-6035-6) which had an effective date of January 25, 1999. EPA is withdrawing the revocation of those specific tolerances because comments from Gowan Company made to the proposed rule (63 FR 5907, February 5, 1998) (FRL-5743-9) concerning cryolite were inadvertently not addressed.

**DATES:** This rule is effective on January 25, 1999.

**FOR FURTHER INFORMATION CONTACT:** For technical information contact: Joseph Nevola, Special Review Branch, (7508C), Special Review and Reregistration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Special Review Branch, CM #2, 6th floor, 1921 Jefferson Davis Hwy., Arlington, VA. Telephone: (703) 308-8037; e-mail: nevola.joseph@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. Does this Notice Apply to Me?

You may be affected by this notice if you sell, distribute, manufacture, or use pesticides for agricultural applications, process food, distribute or sell food, or implement governmental pesticide regulations. Pesticide reregistration and other actions [see FIFRA section 4(g)(2)] include tolerance and exemption reassessment under section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA). Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Agricultural Stakeholders.	Growers/Agricultural Workers, Contractors [Certified/Commercial Applicators, Handlers, Advisors, etc.], Commercial Processors, Pesticide Manufacturers, User Groups, Food Consumers
Food Distributors.	Wholesale Contractors, Retail Vendors, Commercial Traders/Importers
Intergovernmental Stakeholders.	State, Local, and/or Tribal Government Agencies
Foreign Entities.	Governments, Growers, Trade Groups

This table 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 table could also be affected. If you have any questions regarding the applicability of this action to a particular entity, you can consult with the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

## II. How Can I Get Additional Information or Copies of this or Other Support Documents?

### A. Electronically

You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at <http://www.epa.gov/>. On the Home Page select "Laws and Regulations" and then look up the entry for this document under "Federal Register - Environmental Documents." You can also go directly to the "Federal Register" listings at <http://www.epa.gov/homepage/fedrgstr/>.

### B. In Person or by Phone

If you have any questions or need additional information about this action, please contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section. In addition, the official record for this

notice, including the public version, has been established under docket control number [insert the appropriate docket number], (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Room 119, Crystal Mall (CM) #2, 1921 Jefferson Davis Hwy., Arlington VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is 703-305-5805.

## III. Can I Challenge the Agency's Final Decision Presented in this Document?

Yes. You can file a written objection or request a hearing by March 29, 1999 in the following manner:

### A. By Paper

Written objections and hearing requests, identified by the docket control number OPP-300788, may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, room M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to room 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

### B. Electronically

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending e-mail to [opp-docket@epamail.epa.gov](mailto:opp-docket@epamail.epa.gov), per the instructions given in "By Paper" above. Electronic copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 or 6.1 file format or ASCII file format. All copies of objections and hearing requests in

electronic form must be identified by the docket control number OPP-300788. Do not submit CBI through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository libraries.

## IV. What Action Is Being Taken?

In the **Federal Register** of February 5, 1998 (63 FR 5907) (FRL-5743-9), EPA issued a proposed rule for specific pesticides announcing the proposed revocation of tolerances for canceled food uses and inviting public comment for consideration and for support of tolerance retention under Federal Food, Drug, and Cosmetic Act (FFDCA) standards. The Agency received comments, considered them, and responded to them in a final rule published in the **Federal Register** on October 26, 1998 (63 FR 57067) (FRL-6035-6), announcing the revocation of tolerances for residues of the pesticides listed in the regulatory text.

In the final rule, the Agency inadvertently overlooked comments on cryolite (fluorine compounds) made to the proposed rule of February 5, 1998 (63 FR 5907). This order addresses those comments and withdraws the revocation of tolerances for residues of cryolite on apricots, blackberries, boysenberries, dewberries, kale, loganberries, nectarines, and youngberries made on October 26, 1998.

Gowan Company's comment letter on the proposed changes to the cryolite tolerances, dated April 3, 1998, did not have a notation indicating the docket control number OPP-300602, as the proposed rule instructed, and consequently the letter was not inserted into the docket. In November, Gowan Co. filed an objection to the final rule (63 FR 57067) with the Hearing Clerk and provided the Agency with documentation that EPA received the comment letter in April, 1998. Gowan Co. supports the apricot and nectarine tolerances using peach data as outlined in 40 CFR 180.34(e)(8) and cites § 180.1(h) which lists the tolerance for the general category "peaches" as applicable to "nectarines". Gowan Co. supports the kale tolerance outlined in § 180.34(e)(19) using collard data. Had EPA seen these comments, the Agency would not have revoked the cryolite tolerances in question.

Also, the Interregional Research Project No. 4 (IR-4 Project), U.S. Department of Agriculture's National Agricultural Program for Minor Use Pest Management, filed an objection to the final rule (63 FR 57067) with the Hearing Clerk in November. The IR-4 Project wrote that EPA was informed of

IR-4's support of cryolite use on blackberry, boysenberry, dewberry, loganberry, and youngberry via the crop group approach outlined in 40 CFR 180.41 in the comment letter from Gowan dated April 3, 1998. In several communications to EPA from 1996 through 1998, the IR-4 Project announced that it was developing data to support cryolite use on blackberry, boysenberry, dewberry, loganberry, and youngberry via the crop group approach. The IR-4 Project is developing data on raspberries to cover canberries. The canberry crop subgroup is outlined in § 180.41(c)(13)(iii). Definitions and interpretations for blackberries and canberries are given in § 180.1(h). In a letter dated May 6, 1998, the IR-4 Project declared it would petition EPA for cryolite use on canberries in 1999.

Pursuant to FFDCA section 408(g)(2)(C), when EPA wishes to revise a tolerance regulation based on an objection to that action, the Agency shall do so by issuing an order stating the action taken and setting forth any revision to the regulation or prior order that the Agency has found to be warranted.

After reviewing the comments made by Gowan Co. and IR-4, it has been determined that the tolerance revocations in 40 CFR 180.145(a)(1) for cryolite use on apricots, blackberries, boysenberries, dewberries, kale, loganberries, nectarines, and youngberries made on October 26, 1998 (63 FR 57067) should be withdrawn. Therefore, this order withdraws those specific tolerance revocations for cryolite. However, tolerance revocations for cryolite use on "apples"; "beans"; "beets, tops"; "carrots"; "corn"; "mustard greens"; "okra"; "peanuts"; "pears"; "peas"; "quinces"; "radish, tops"; "rutabaga, tops"; and "turnip, tops" remain and become effective January 25, 1999 (63 FR 57067).

#### **V. When Does This Action Become Effective?**

EPA is publishing this action as a final rule without prior notice and opportunity to comment because the Agency believes that providing notice and an opportunity to comment is unnecessary and contrary to public interests. The timing of this action, i.e., withdrawal of the Agency's revocation of a tolerance, is critical to ensure that the tolerance is not revoked before the withdrawal takes effect. In addition, the Food Quality Protection Act (FQPA), authorizes the Agency to make these determinations without notice and comment. Once the determination is made, the final rule is issued to amend

the regulations to incorporate the Agency's decision. Notice and an opportunity to comment on a final rule that merely corrects the regulation is unnecessary. EPA therefore finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to make this amendment without prior notice and comment.

#### **VI. How Do the Regulatory Assessment Requirements Apply to this Action?**

##### *A. Is this a "Significant Regulatory Action"?*

No. Under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action." The Office of Management and Budget (OMB) has determined that tolerance actions, in general, are not "significant" unless the action involves the revocation of a tolerance that may result in a substantial adverse and material effect on the economy. In addition, this action is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because this action is not an economically significant regulatory action as defined by Executive Order 12866. Nonetheless, environmental health and safety risks to children are considered by the Agency when determining appropriate tolerances. Under FQPA, EPA is required to apply an additional 10-fold safety factor to risk assessments in order to ensure the protection of infants and children unless reliable data supports a different safety factor.

##### *B. Does this Action Contain Any Reporting or Recordkeeping Requirements?*

No. This action does not impose any information collection requirements subject to OMB review or approval pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

##### *C. Does this Action Involve Any "Unfunded Mandates"?*

No. This action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub.L. 104-4).

##### *D. Do Executive Orders 12875 and 13084 Require EPA to Consult with States and Indian Tribal Governments Prior to Taking the Action in this Document?*

No. Under Executive Order 12875, entitled Enhancing the

Intergovernmental Partnership (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget (OMB) a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

Under Executive Order 13084, entitled Consultation and Coordination with Indian Tribal Governments (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action

does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*E. Does this Action Involve Any Environmental Justice Issues?*

No. This action is not expected to have any potential impacts on minorities and low income communities. Special consideration of environmental justice issues is not required under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

*F. Does this Action Have a Potentially Significant Impact on a Substantial Number of Small Entities?*

No. The Agency has certified that tolerance actions, including the tolerance actions in this document, are not likely to result in a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination, along with its generic certification under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), appears at 63 FR 55565, October 16, 1998 (FRL-6035-7). This generic certification has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

*G. Does this Action Involve Technical Standards?*

No. This tolerance 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), Pub. L. 104-113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

*H. Are There Any International Trade Issues Raised by this Action?*

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a Federal Register document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA is developing a guidance concerning submissions for import tolerance support. This guidance will be made available to interested stakeholders.

*I. Will EPA Submit this Final Rule to Congress and the Comptroller General?*

Yes. The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). EPA has made such a good cause finding for this final rule, and established an effective date of January 25, 1999. Pursuant to 5 U.S.C. 808(2), this determination is supported by the brief statement in Unit V of this preamble. 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 the rule in the **Federal Register**. This 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: January 25, 1999.

**Stephen L. Johnson,**

*Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

For the reasons set forth in the preamble, the amendment to § 180.145, published at 63 FR 57073, October 26, 1998, removing the entries for apricots, blackberries, boysenberries, dewberries, kale, loganberries, nectarines, and youngberries from the table in paragraph (a)(1) is withdrawn. The other removals from § 180.145 are not affected by this withdrawal.

[FR Doc. 99-2009 Filed 1-25-99; 4:23 pm]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 239**

[FRL-6223-8]

RIN 2050-AD03

**Subtitle D Regulated Facilities; State Permit Program Determination of Adequacy; State Implementation Rule—Amendments and Technical Corrections**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to modify the State Implementation Rule ("SIR rule"). This modification changes the withdrawal of state permit programs provision in § 239.13 of the SIR rule so that Agency withdrawals of an approved state municipal solid waste landfill (MSWLF) or conditionally exempt small quantity generator (CESQG) permit program would only apply to the entire approved program.

The final SIR, which was published on October 23, 1998, set forth a flexible framework for modifications of approved programs, established procedures for withdrawal of approvals (including withdrawal of a part or parts of a state program), and confirmed the process for future program approvals so that standards that safeguard human health and the environment are maintained (63 FR 57026). Withdrawal of a part or parts of a state program will no longer apply.

EPA is also making some technical corrections to the withdrawal provision of the SIR rule.