

approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 8, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: January 16, 2002.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(282) and (c)(284)(i)(B) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(282) New and amended regulations for the following APCDs were submitted on May 31, 2001, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(1) Rules 1631, 1632, 1633, and 2507 adopted on May 11, 2001.

\* \* \* \* \*

(284) \* \* \*

(i) \* \* \*

(B) South Coast Air Quality Management District.

(1) Rule 1612.1 adopted on March 16, 2001.

\* \* \* \* \*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 180

[OPP-301166A; FRL-6823-4]

RIN 2070-AC18

#### Sulfuryl Fluoride; Temporary Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes temporary tolerances for residues of sulfuryl fluoride and inorganic fluoride in or on walnuts and raisins. The Agency is establishing these temporary

tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 to support an Experimental Use Permit (EUP) that involves testing a possible alternative to methyl bromide in the post-harvest fumigation of stored commodities. This experimental use fumigant program is being proposed as a methyl bromide alternative for the post-harvest fumigation of stored walnuts and raisins. These temporary tolerances will support a 3-year EUP effective between March 1, 2002 through March 1, 2005 and allows 18 months for treated commodities to clear commerce. The EUP will be conducted by Dow AgroSciences entirely in the state of California. The temporary tolerances expire on September 1, 2006. A detailed risk assessment for the proposed use was published in the **Federal Register** on September 5, 2001 (66 FR 46415).

**DATES:** This regulation is effective February 7, 2002. Objections and requests for hearings, identified by docket control number OPP-301166A, must be received by EPA on or before April 8, 2002.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP-301166A in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Dennis McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-6742; and e-mail address: mcneilly.dennis@epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Does this Action Apply to Me?

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

Cat-egories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing

Cat-egories	NAICS	Examples of Potentially Affected Entities
	32532	Pesticide manufacturing

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

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at [http://www.access.gpo.gov/nara/cfr/cfrhtml\\_180/Title\\_40/40cfr180\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html), a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-301166A. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30

a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

## II. Background and Statutory Findings

In the **Federal Register** of September 5, 2001 (66 FR 46415) (FRL-6799-6), EPA issued a proposed rule pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104-170) announcing the filing of a pesticide petition (PP) for tolerance by Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. This proposed rule included a risk assessment of the temporary tolerance petition and EUP by the Agency.

The petition requested that 40 CFR part 180 be amended by establishing temporary tolerances for residues of the insecticide sulfuryl fluoride and its metabolite inorganic fluoride, in or on walnuts and raisins at 2.0 parts per million (ppm) for sulfuryl fluoride in or on walnuts; 0.004 ppm for sulfuryl fluoride in or on raisins; and, 12 ppm for fluoride in or on walnuts. The proposed temporary tolerances were first published in the **Federal Register** on June 15, 2001 (66 FR 32618) (FRL-6788-2) (as the registrant's notice of filing) and once again on September 5, 2001 (66 FR 46415) with a more robust, Agency-written risk assessment for residues of sulfuryl fluoride and the metabolite fluoride in or on walnuts and raisins. These temporary tolerances will expire on September 1, 2006.

The registrant also submitted a request for an exemption from the requirement of a tolerance for fluoride residues in or on raisins resulting from the treatment with the insecticide sulfuryl fluoride under the USEPA's Threshold of Regulation Policy - Deciding Whether a Pesticide with a Food Use Pattern Needs a Tolerance. The Agency did not accept this request for several reasons outlined in the September 5, 2001 proposed rule, the major reason being that current registered uses of the insecticide cryolite on grapes can result in fluoride residues in raisins.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL-5754-7).

Based on these risk assessments presented in the preamble to the proposed rule, (66 FR 46415, September 15, 2001), and taking into account the comments on the proposed rule discussed below, 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 sulfuryl fluoride and inorganic fluoride residues.

## III. Analytical Enforcement Method

Adequate methods of analysis for both sulfuryl fluoride and fluoride anion are available. The methods are considered adequate as tolerance enforcement methods for the purposes of these temporary tolerances during the EUP. For a Section 3 registration, the registrant will need to submit independent laboratory validations for both the proposed sulfuryl fluoride and inorganic fluoride methods. For sulfuryl fluoride, the method consists of blending the sample for 5 minutes in an air-tight Eberbach blending device, equilibrating the sample for 5 minutes and analyzing 30 ml of headspace from the sample container by gas chromatography. For fluoride anion, analysis is done by ion-specific electrodes using a double standard addition procedure. Spike and recovery data submitted with the request show acceptable recovery for both sulfuryl fluoride and inorganic fluoride for raisins and walnuts.

Adequate enforcement methodology is available to enforce the tolerance expression. The methods may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone

number: (703) 305-5229; e-mail address: furlow.calvin@epa.gov.

#### IV. Response to Comments

The Agency received 86 written comments, and two individuals called on the telephone objecting to the proposed tolerances. A few of the comments were submitted by the same individual twice. Most of the comments the Agency received concerning establishment of temporary tolerances for sulfuryl fluoride concern the fluoride tolerances and issues with fluoride exposure/toxicity. No scientific argument or rationale related to sulfuryl fluoride exposure/toxicity was received. A few individuals did state they did not want sulfuryl fluoride used on food at all because it is a poison. A very large number of comments came from organizations that have strong concerns about fluoridation of the water. The debate on water fluoridation has a long history. It is noteworthy, however, that the Centers for Disease Control and Prevention lists fluoridation of the drinking water as one of the ten great public health achievements in the 20th Century. The exposure to fluoride as a result of the proposed tolerances in or on walnuts and raisins is insignificant compared to the exposure to fluoride in drinking water. In addition, tolerances already exist for residues of fluoride in or on raisins at 7 ppm (expressed as Cryolite) as a result of using Cryolite to treat grapes for insect control. The Agency estimates that the proposed use will not significantly increase the dietary levels of fluoride for the public as a result of consuming raisins and/or walnuts treated under an EUP.

There have been numerous independent evaluations of the toxicity of fluoride: U.S. Public Health Service (1991), EPA (1985), National Academy of Science (NAS) (1998) and Agency for Toxic Substances and Disease Registry (ASTDR) (1993, draft report 2001). All of these reviews have indicated that the critical adverse effects, i.e., the endpoints to regulate, from fluoride ingestion are the effects on bone and teeth. In consideration of the proposed temporary tolerances for walnuts and raisins, the Agency used the maximum concentration limit goal (MCLG) of 4.0 ppm (0.114 mg/kg/day) for fluoride as the basis for a maximum allowable exposure to inorganic fluoride (see the Cryolite Reregistration Eligibility Decision, 8/96, EPA-738-R-96-016). This exposure was used as the chronic population adjusted dose for inorganic fluoride in the risk assessment supporting the temporary tolerances. The exposure to fluoride from this use is estimated to be insignificant when

compared to typical exposures from fluoridated water supplies. In addition, fluoridation of water has been endorsed by the U.S. Surgeon General.

Many parties commented on the proposed temporary tolerances associated with the EUP. They included environmental and public interest groups, private citizens, foreign nationals, and the registrant. The comments ranged in specificity. Some commenters prepared detailed arguments based on exposure and or toxicology. Other commenters criticized the Agency for even considering establishing tolerances for fluoride residues on food. These commenters did not seem to be aware that there have been tolerances for fluoride residues in food from cryolite use for many years.

Many of the commenters, presumably prompted by one public interest group as all the letters read the same, requested a time extension to allow additional time for comments on the proposed use. The Agency published details concerning the proposed use in July and again in September 2001. The individual who prompted the letter-writing campaign requesting the time extension, subsequently stated in a telephone conversation that the group would not be providing any new information and that the request for the time extension was so that the Agency would consider the cumulative exposure from fluoride. The Agency already has sufficient information to conduct a risk assessment for sulfuryl fluoride use on walnuts and raisins, including cumulative exposures to fluoride, and therefore no additional time extension for comments was granted.

The comments can be grouped into seven basic areas of concern and each section below contains a summary of the commenters concerns grouped by that general topic.

1. *Issue #1.* Several commenters raised concerns that the Agency had not used all available data in making its safety finding. In particular, one commenter discussed the results of a study published in 1998 that evaluated exposure to inorganic fluoride compounds and suggested that the Agency utilize this information before issuing the EUP for sulfuryl fluoride.

*Agency response to issue #1.* Most of the studies cited in the comment were studies outlined in the Notice of Filing and the Proposed Rule published on June 15, 2001 and September 5, 2001, respectively. The Agency has included all of the results of these studies in its risk assessment for the use of sulfuryl fluoride for post-harvest fumigation of walnuts and raisins. The commenters

raise concerns about the toxicological findings in these studies. The Agency believes that it is important to remember that the objective of the toxicological testing is to define no observed adverse effect levels and lowest observed adverse effect levels for the chemical being evaluated. The Agency has taken all of these studies into account and believes that the toxicological endpoints chosen by the Agency in its risk assessment are sufficiently protective of human health.

The commenters do reference new information not considered as part of the Agency's risk assessment. In particular, one commenter suggested that the Agency incorporate the results of a study entitled "Chronic Administration of Aluminum-Fluoride or Sodium Fluoride to Rats in Drinking Water: Alterations in Neuronal and Cerebrovascular Integrity", published in the publication *Brain Research* in 1998. One of the co-authors of this study is an Agency employee who has indicated that the experiment discussed was designed to explore a specific hypothesis and that the results are not directly applicable to making conclusions about effects of aluminum or fluoride on public health. In addition, the study co-author has indicated that the results of the study do not support a conclusion that aluminum or fluoride selectively damage the brain or that these compounds cause Alzheimer's Disease. Therefore, at this time, the results of this study are not considered significant from the standpoint of establishing the tolerances proposed in the Agency's September 5, 2001, proposed rulemaking.

The other health concerns raised by the commenters have already been addressed by the Agency in other rulemakings or in responses to Members of Congress concerning exposure to fluoride. Included in the docket for this rulemaking is a copy of a letter, dated September 5, 2000, from J. Charles Fox, EPA Assistant Administrator, Office of Water, to Congressman Ken Calvert, Chairman of the Subcommittee on Energy and the Environment, Committee on Science. The Agency believes that this letter addresses the remaining health effects issues raised by the commenters.

2. *Issue #2.* Many commenters expressed concerns about the potential for over exposure to fluoride, specifically to children. Commenters mentioned exposures through dental product use, fluoridated water, and fluoride exposures from the use of other pesticides.

*Agency response to issue #2.* A requirement of the FQPA is that the

Agency consider all non-occupational exposures to a pesticide or substance when establishing new or reassessing tolerances for that pesticide. In conducting its risk assessment, the Agency assumed that all walnuts and raisins grown in the United States would be treated with sulfuryl fluoride, even though the accompanying EUP would significantly limit the use of sulfuryl fluoride to a small fraction of the total U.S. walnut and raisin crops. The Agency believes that its risk assessment accounts for the other concerns raised. The Dietary Exposure Examination Model (DEEM) includes data evaluating the food consumption patterns of children, including their consumption of walnuts and raisins. The risk assessment also includes analysis that neither raisins nor walnuts are typically washed before these foods are eaten. Regarding exposure to fluoride via dental products, the Agency believes that warning labels on these products provide explicit direction on how to significantly limit dietary exposure to fluoride-containing dental products for children. Regarding other exposures, the Agency's risk assessment includes exposures from the ingestion of fluoridated drinking water and fluoride exposures from the use of other pesticides, specifically cryolite. The Agency discussed these considerations at great length in its proposed rule of September 5, 2001.

3. *Issue #3.* One commenter expressed concern that the U.S. Food and Drug Administration (FDA) has not approved the use of sulfuryl fluoride on walnuts and raisins.

*Agency response to issue #3.* Both FDA and EPA share authority for implementation of the FFDCA. However, in establishing tolerances for pesticide residues on food, Congress explicitly delegated this authority to EPA. FDA does not approve or evaluate pesticide uses. FDA does have responsibility for monitoring the levels of pesticides residues in the food supply, however.

4. *Issue #4.* A commenter raised concern that the proposed tolerance did not include a discussion of the economic impacts of the proposed tolerances. In particular, the commenter discussed a recent ruling by the European Community regarding fluoride residues in wine grapes.

*Agency response to issue #4.* The FQPA of 1996 does not allow the Agency to consider the economic impacts of its decisions when establishing tolerances for pesticide residues. In this specific case, however, the commenter raises issues associated

with wine grapes that are not the subject of this rulemaking.

5. *Issue #5.* Many commenters expressed concerns about drinking water being treated with fluoride.

*Agency response to issue #5.* The Agency has evaluated these concerns as part of its prior rulemakings setting the standard for the level of fluoride in drinking water. The Agency's Office of Water has taken these concerns into account. Furthermore, the Surgeon General has also evaluated the Agency's drinking water standard and has determined that the level of fluoride allowed in drinking water is safe. In addition, the Agency's risk assessment for sulfuryl fluoride includes exposures of fluoride resulting from the consumption of treated drinking water and it, too, concludes that the level of exposure is safe.

6. *Issue #6.* The registrant raised concerns about the need for a developmental neurotoxicity study to evaluate certain effects associated with exposure to sulfuryl fluoride.

*Agency response to issue #6.* The Agency has determined that this study is not needed to evaluate potential risks associated with the proposed EUP. However, as a requirement for unconditional registration of this product under the Federal Insecticide, Fungicide, and Rodenticide Act, the Agency believes that the developmental neurotoxicity study is warranted. The Agency is requiring this study because of the observation of treatment-related neurotoxic lesions in rats, mice, dogs and rabbits.

## V. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP-301166A 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 on or before April 8, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information 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.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260-4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact

James Tompkins by phone at (703) 305-5697, by e-mail at [tompkins.jim@epa.gov](mailto:tompkins.jim@epa.gov), or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP-301166A, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: [opp-docket@epa.gov](mailto:opp-docket@epa.gov). Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

#### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

#### **VI. Regulatory Assessment Requirements**

This final rule establishes a tolerance under FFDCA section 408(d) 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 rule has been exempted from review under Executive Order 12866 due to its lack of significance, this 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 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.*, 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 under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), 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. 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 final 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 FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this 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 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 rule.

#### **VII. 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 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: January 29, 2002.

**Peter Caulkins,**

*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), 346(a) and 371.

2. Section 180.145 is amended by adding paragraph (a)(3) to read as follows:

**§ 180.145 Fluoride compounds; tolerances for residues.**

(a) \* \* \*

(3) Temporary tolerances are established for residues of fluoride resulting from the post-harvest treatment with sulfuryl fluoride. The tolerances are measured and expressed as ppm of fluoride. Total residues of fluoride in or on raisins from the use of cryolite on grapes, addressed in paragraph (a)(1) of this section, or sulfuryl fluoride on raisins shall not exceed the tolerance list in the following table.

Commodity	Parts per million	Expiration/Revocation Date
Raisins .....	30.0	9/1/06
Walnuts .....	12.0	9/1/06

\* \* \* \* \*

3. Section 180.575 is added to read as follows:

**§ 180.575 Sulfuryl fluoride; tolerances for residues.**

(a) *General.* Temporary tolerances are established for residues of sulfuryl

fluoride from the post-harvest treatment with sulfuryl fluoride on the following food commodities.

Commodity	Parts per million	Expiration/Revocation Date
Raisins .....	0.004	9/1/06
Walnuts .....	2.0	9/1/06

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

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

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

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[PP-301215; FRL-6820-9]

RIN 2070-AB78

**Bentazon; Pesticide Tolerance**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances with regional registration for combined residues of bentazon in or on clover, forage and clover, hay. The Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

**DATES:** This regulation is effective February 7, 2002. Objections and requests for hearings, identified by docket control number OPP-301215,

must be received by EPA on or before April 8, 2002.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP-301215 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305-7610; and e-mail address: jackson.sidney@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

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

Cat-egories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production

Cat-egories	NAICS	Examples of Potentially Affected Entities
	112 311 32532	Animal production Food manufacturing Pesticide manufacturing

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

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations", "Regulations and Proposed Rules," and then look up