



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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Item: 6117

OFFICE OF  
PREVENTION, PESTICIDES AND  
TOXIC SUBSTANCES

8/24/98

**PESTICIDE REGISTRATION (PR) NOTICE 98-8**

**NOTICE TO MANUFACTURERS, FORMULATORS, PRODUCERS  
AND REGISTRANTS OF PESTICIDE PRODUCTS**

**ATTENTION:** Persons Responsible for Registration of Pesticide Products

**SUBJECT:** Waiver of Fees Associated with Tolerance Objections

This notice clarifies EPA's policy with respect to waivers of fees associated with filing objections to tolerance actions under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**I. BACKGROUND**

Section 408(m) of the FFDCA gives EPA broad authority to require the payment of fees in connection with the performance of the Agency's responsibilities with regard to pesticide residues under section 408. The statute specifically authorizes EPA to require that fees be paid for the "acceptance for filing of objections" to final tolerance rulemaking actions [Section 408(m)(1)(C)]. Section 408 gives affected parties the right to file objections and request an adjudicatory hearing in response to various final actions on tolerances or tolerance petitions. EPA is also authorized to waive any fee requirement "when in the judgment of the Administrator such a waiver or refund is equitable and not contrary to the purposes of this subsection."

As authorized by the statute, EPA's regulations require that an objection be accompanied by a filing fee of \$3,275 [40 CFR § 180.33(I)]. These regulations further provide EPA with broad discretion to waive the requirement for fees, including the fees for objections. A person seeking a waiver or refund of any fee is required to submit such request in writing to EPA. Such request must be accompanied by a fee of \$1,650 except that this fee is not required of any person who has no financial interest in the action. These fee regulations were first promulgated by FDA and transferred to EPA when FDA's authority under section 408 was delegated to EPA.

In EPA's nearly 30-year history of administering the section 408 pesticide tolerance authority, objections to tolerance actions have rarely been filed and thus objection fees rarely submitted. On those few occasions that fees have been submitted, they generally have been waived or refunded by EPA under its discretionary authority. These waivers or refunds have been routinely granted where the objector does not have a financial interest in the matter.

An objector to a recent tolerance action criticized EPA's tolerance fees regulations as they pertain to objections, claiming that they imposed a barrier to public participation in the tolerance rulemaking process for parties that did not have a financial interest in the tolerance action. The objector was especially concerned with "the current mandate to pay the [objection fee] and then seek a refund."

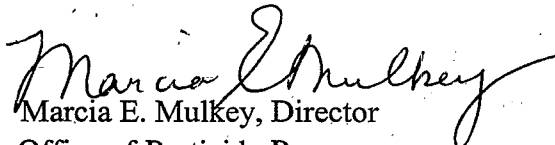
## **II. CLARIFICATION OF TOLERANCE FEES REGULATIONS**

EPA's tolerance fees regulations require that objections "shall be accompanied by a fee of \$3,275." The regulations, however, also provide a procedure to request that EPA "waive or refund part or all of any fee imposed by this section" [40 CFR § 180.33(m)]. EPA does not construe these provisions as requiring objectors who believe they are entitled to a waiver of fees to file the specified fee with the objections and thereafter seek a refund. Rather, such a person may file a written request for a waiver of the objection fee with the objection. A fee of \$1,600 must accompany the waiver request unless the objector has no financial interest in the matter objected to. If EPA later determines that a fee waiver is inappropriate, that determination will not affect the timeliness of the filing of the objections; however, further action on the objections will not proceed until the fee has been paid. Failure to pay the fee following denial of a waiver would be grounds for denial of the objections.

EPA believes this clarification of its tolerance fees regulations should alleviate any concern that EPA's regulations stand as a barrier to public participation in tolerance rulemaking.

## **III. FOR FURTHER INFORMATION**

For further information, contact Jim Tompkins at 703-305-5697 or at [tompkins.jim@epa.gov](mailto:tompkins.jim@epa.gov).

  
Marcia E. Mulkey, Director  
Office of Pesticide Programs