

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia which consists of a Consent Order for PPG Industries, Inc., which will continue to achieve and maintain the national ambient air quality standards (NAAQS) for sulfur dioxide (SO₂) in Marshall County, West Virginia. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal 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 action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule.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. Any parties interested in commenting on this action should do so at this time. **DATES:** Comments must be received in writing by May 28, 2004.

ADDRESSES: Submit your comments, identified by WV064-6033 by one of the following methods:

A. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *E-mail:* morris.makeba@epa.gov.

C. *Mail:* Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. WV064-6033. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The federal [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the

body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304-2943.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814-2034, or Denis Lohman, (215) 814-2192, or by e-mail at wentworth.ellen@epa.gov, or lohman.denny@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, approving the SIP revision addressing SO₂ in Marshall County, West Virginia, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: April 13, 2004.

Richard J. Kampf,

Acting Regional Administrator, Region III.

[FR Doc. 04-9579 Filed 4-27-04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2004-0091; FRL-6773-2]

Fenpyroximate; Time-Limited Pesticide Tolerance Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the extension of time-limited tolerances for the combined residues of fenpyroximate benzoic acid, 4-[[[(E)-(1,3-dimethyl-5-

phenoxy-1H-pyrazol-4-yl)methylene]amino]oxy]methyl]-, 1,1-dimethylethyl ester] and its z-isomer benzoic acid, 4-[[[(Z)-(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl)methylene]amino]oxy]methyl]-, 1,1-dimethylethyl ester)] in or on wine grapes and hops under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: Comments must be received on or before June 28, 2004.

ADDRESSES: Submit your comments, identified by Docket ID No. OPP-2004-0091, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

Agency Website: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

Mail: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Mailcode: (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Hand Delivery: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP-2004-0091. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OPP-2004-0091. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA EDOCKET and the federal [regulations.gov](http://www.regulations.gov) websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you

provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Melody Banks, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305-5413; fax number: (703) 305-6596; e-mail address: banks.melody@epa.gov.
SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 28522)

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 this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When submitting comments, remember to:

- i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns, and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

C. How Can I Access Copies of this Document and Other Related Information?

In addition to using EDOCKET (<http://epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr>. To access the OPPTS Harmonized Guideline referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm>.

II. Background

In the **Federal Register** of February 18, 1999 (64 FR 8090) (FRL-6059-9), EPA issued a notice of filing under section 408(d)(3) of the FFDCFA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5E4435) by Nichino America, Inc., 4550 New Linden Hill Road, Wilmington, DE 19808. The petition requested that 40 CFR 180.566 be amended by establishing an import tolerance for residues of the insecticide fenpyroximate and its z-isomer, in or on grapes and hops (green and dried) at 1 parts per million (ppm) and hops at 10 ppm. The notice included a summary of the petition prepared by Nichino America, Inc., the registrant. There were no comments received in response to the notice of filing. On April 10, 2001 (66 FR 18561) (FRL-6773-2), EPA issued a final rule under section 408(d)(3) of the FFDCFA, 21 U.S.C. 346a(d)(3), announcing the establishment of time-limited pesticide tolerances in conjunction to the original pesticide petition (PP 5E4435).

This tolerance was time-limited because the Agency lacked data on product chemistry for OPPTS Harmonized Guideline 830.6313, additional validation of analytical methods for plants, (multiresidue testing and specificity), storage stability studies for grapes and grape juice, additional grape field trials in Chile, and additional information on uses of fenpyroximate in Mexico. That data has been submitted, and the Agency has subsequently determined that the independent lab validation method submitted by Nichino America, Inc. needs further clarification. Nichino America, Inc. was requested to resubmit this data. All other required data identified by the Agency prior to the publication on April 10, 2001, of the Final Rule have been submitted to the Agency.

III. Proposal

EPA is proposing to extend the dates of expiration for the time-limited tolerances for residues of the insecticide fenpyroximate and its z-isomer, in or on grapes and hops (green and dried) at 1 ppm and hops at 10 ppm, from April 14, 2004, to December 31, 2009, to provide Nichino America, Inc. additional time to develop and resubmit additional information for an acceptable independent laboratory validation method. Previously, the Agency reviewed all available data, and concluded that these import tolerances meet the safety standard under FFDCA section 408(b)(2)(A)(ii). The basis for that conclusion is explained in the final rule promulgating the time-limited tolerances. The Agency has subsequently reviewed a complete toxicology data base for fenpyroximate and its z-isomer for the affected import tolerances, and determined that upon acceptable review of the recently submitted independent lab validation method, that these import tolerances may become permanent.

IV. Statutory and Executive Order Reviews

This proposed rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed 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 proposed 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). A regulatory flexibility analysis of this proposed rule under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) is not required since this action will not have a significant economic impact on a substantial number of small entities. Establishing pesticide tolerances has a positive economic impact on small entities because a pesticide tolerance allows the pesticide to be used in the production of food. 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 proposed 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 section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed 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 proposed 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 proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 19, 2004.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Section 180.566 is amended by revising the table in paragraph (a) to read as follows:

§ 180.566 Fenpyroximate; tolerances for residues.

(a) * * *

| Commodity | Parts per million | Expiration/revocation date |
|--------------------------|-------------------|----------------------------|
| Grape, wine ¹ | 1.0 | 12/31/09 |
| Hop ¹ | 10 | 12/31/09 |

¹There are no U.S. registrations on hop and wine grape.

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