

not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Order 13175, entitled "Consultation and Coordination With Indian Tribal Governments" (65 FR 67249, November 6, 2000), 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." Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the regulation. EPA has concluded that this rule may have tribal implications. EPA's action fulfills a requirement to publish a notice announcing partial delegation of administrative authority to the Nez Perce Tribe and noting the partial delegation in the CFR. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

This action also does not have Federalism implications because it does not 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This technical amendment merely notes that partial delegation of administrative authority to the Nez Perce Tribe is in effect. 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.

This action does not involve technical standards; 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 November 15, 2005. 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 49

Administrative practice and procedure, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 7, 2005.

**Julie M. Hagensen,**

*Acting Regional Administrator, Region 10.*

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 49—[Amended]

■ 1. The authority citation for part 49 continues to read as follows:

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

#### Subpart M—[Amended]

■ 2. Section 49.10410 is amended by adding a note to the end of the section to read as follows:

#### § 49.10410 Federally-promulgated regulations and Federal implementation plans.

\* \* \* \* \*

Note to § 49.10410: EPA entered into a Partial Delegation of Administrative Authority Agreement with the Nez Perce Tribe on June 27, 2005 for the rules listed in paragraphs (b), (i), (j), (k), (l) and (n) of this section.

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[R03-OAR-2005-DE-0001; FRL-7970-4]

#### Approval and Promulgation of Air Quality Implementation Plans; Delaware; Withdrawal of Direct Final Rule

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

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to adverse comments, EPA is withdrawing the direct final rule to approve Delaware's State Implementation Plan (SIP) revision. The SIP revision pertains to the modifications to the ambient air quality standards for ozone and fine particulate matter. In the direct final rule published on July 18, 2005 (70 FR 41146), we stated that if we received adverse comments by August 17, 2005, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments. EPA will address the comments received in a subsequent final action based upon the proposed action also published on July 18, 2005 (70 FR 41166). EPA will not institute a second comment period on this action.

**DATES:** The direct final rule is withdrawn as of September 16, 2005.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182, or by e-mail at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov).

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

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 6, 2005.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

■ Accordingly, the added entry for Delaware's Regulation 1, Section 2, and revised entries for Regulation 3, Sections 1, 6, and 11 in 40 CFR 52.420(c) published at 70 FR 41147 are withdrawn as of September 16, 2005.

[FR Doc. 05-18565 Filed 9-15-05; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-2003-0129; FRL-7719-9]

#### Fluoxastrobin; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for combined residues of fluoxastrobin, (1E)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methylxime, and its Z isomer, (1Z)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methylxime, in or on leaf petioles subgroup 4B; peanut; peanut, hay; peanut, refined oil; tomato, paste; vegetable, fruiting, group 8; and vegetable, tuberous and corm, subgroup 1C. This regulation also establishes tolerances for the indirect or inadvertent combined residues of fluoxastrobin and its Z isomer, in or on alfalfa, forage; alfalfa, hay; cotton, gin byproducts; grain, cereal, forage, fodder and straw, group 16; grass, forage; grass, hay; and vegetable, foliage of legume, group 7. This regulation additionally establishes tolerances for the combined residues of fluoxastrobin, its Z isomer, and its phenoxy-hydroxypyrimidine metabolite, 6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinol, expressed as fluoxastrobin, in or on cattle, fat; cattle, meat; cattle, meat byproducts; goat, fat; goat, meat; goat, meat byproducts; horse, fat; horse, meat; horse, meat byproducts; milk; milk, fat; sheep, fat; sheep, meat; and sheep, meat byproducts. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective September 16, 2005. Objections and

requests for hearings must be received on or before November 15, 2005.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP-2003-0129. 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, 1801 S. Bell St., Arlington, VA. 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.

#### FOR FURTHER INFORMATION CONTACT:

Tony Kish, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9443; e-mail address: [kish.tony@epa.gov](mailto:kish.tony@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), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

In addition to using EDOCKET (<http://www.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 Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm/>.

##### II. Background and Statutory Findings

In the **Federal Register** of April 23, 2003 (68 FR 19991) (FRL-7303-1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3F6556) by Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, North Carolina 27709. The petition requests that 40 CFR 180.609 be amended by establishing tolerances for the combined residues of the fungicide fluoxastrobin, (1E)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methylxime, in or on the raw agricultural commodities (RACs) alfalfa, forage at 0.05 parts per million (ppm); alfalfa, hay at 1.0 ppm; cotton, gin byproducts at 0.02 ppm; grain, cereal, forage at 0.10 ppm; grain, cereal, hay at 0.10 ppm; grain, cereal, stover at 0.10 ppm; grass, cereal, straw at 0.10 ppm; grass, forage at 0.10 ppm; grass, hay at 0.50 ppm; legume, forage at 0.05 ppm; legume, hay at 0.05 ppm; legume, seed at 0.01 ppm; peanut at 0.01 ppm; peanut, hay at 20 ppm; peanut, refined oil at 0.10 ppm; tomato, paste at 2.0 ppm; vegetable, foliage of legume, group 7 at 0.05 ppm; vegetable, fruiting, group at 1.0 ppm; vegetable, leafy, petioles, except brassica, subgroup at 5.0 ppm; and vegetable, tuberous and corm, subgroup at 0.01 ppm. The petition also requests that 40 CFR 180.609 be amended by establishing tolerances for