

**§ 52.1174 Control strategy: Ozone.**

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(q) Correction of approved plan—Michigan air quality Administrative Rule, R336.1901 (Rule 901)—Air Contaminant or Water Vapor, has been removed from the approved plan pursuant to section 110(k)(6) of the Clean Air Act (as amended in 1990).

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**ENVIRONMENTAL PROTECTION AGENCY**
**40 CFR Parts 61 and 63**

[FRL-6233-6]

**Approval of the Clean Air Act, Section 112(l), Delegation of Authority to Three Local Air Agencies in Washington; Correction and Clarification**

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

**ACTION:** Direct final rule and delegation of authority; correction and clarification.

**SUMMARY:** This action provides a correction and clarification to a direct final **Federal Register** action published on December 1, 1998 (see 63 FR 66054), that granted Clean Air Act, section 112(l), delegation of authority for three local air agencies in Washington to implement and enforce specific 40 CFR parts 61 and 63 federal National Emission Standards for the Hazardous Air Pollutants (NESHAP) regulations which have been adopted into local law. This action corrects several typographical errors in the EPA Action section of the preamble of the December 1, 1998, direct final rule, and also clarifies the extent of that delegation with respect to Indian country.

**DATES:** This action is effective on February 17, 1999.

**ADDRESSES:** Copies of the requests for delegation and other supporting documentation are available for public inspection at the following location: U.S. Environmental Protection Agency, Region X, Office of Air Quality (OAQ-107), 1200 Sixth Avenue, Seattle, WA, 98101.

**FOR FURTHER INFORMATION CONTACT:** Andrea Wullenweber, US EPA, Region X (OAQ-107), 1200 Sixth Avenue, Seattle, WA, 98101, (206) 553-8760.

**SUPPLEMENTARY INFORMATION:**
**I Administrative Requirements**

Under Executive Order (E.O.) 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is

not a "significant regulatory action" and is therefore, not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), entitled "Protection of Children from Environmental Health Risks and Safety Risks," because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 19, 1999. 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)).

**II Clarification**

On December 1, 1998, EPA promulgated direct final approval of the Washington Department of Ecology (Ecology) request, on behalf of three local air agencies, for program approval and delegation of authority to implement and enforce specific 40 CFR parts 61 and 63 federal NESHAP regulations which have been adopted into local law (as apply to both Part 70 and non-Part 70 sources). The three local air agencies that will be implementing and enforcing these regulations are: the Northwest Air Pollution Authority (NWAPA); the Puget Sound Air Pollution Control Agency (PSAPCA); and the Southwest Air Pollution Control Authority (SWAPCA). In the direct final rule and delegation of authority, an explanation of the applicability of that action to sources and activities located in Indian country was inadvertently omitted. Beginning on page 66054, in the issue of Tuesday, December 1, 1998, make the following correction, in the EPA Action section of the preamble, at the end of the Delegation of Specific Standards subsection. On page 66057, in the second column, after the first paragraph, add the following statement:

"The delegation approved by this rule for NWAPA, PSAPCA, and SWAPCA to implement and enforce NESHAPs does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. Consistent with previous federal program approvals or delegations, EPA will continue to implement the NESHAPs in Indian country because the local air agencies did not adequately demonstrate their authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

The one exception to this limitation is within the boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies, such as PSAPCA, authority over activities on non-trust lands within the 1873 Survey Area. After consulting with the Puyallup Tribe of Indians, EPA's delegation in this rule applies to sources and activities on non-trust lands within the 1873 Survey Area. Therefore, PSAPCA will implement and enforce

the NESHAPs on these non-trust lands within the 1873 Survey Area.”

### III. Correction

In the December 1, 1998, direct final rule and delegation of authority for the three local air pollution control agencies in Washington, there were several minor typographical errors in the EPA Action section of the preamble, in the Delegation of Specific Standards subsection. Beginning on page 66054, in the issue of Tuesday, December 1, 1998, make the following corrections:

On page 66056, in the second column, in the last paragraph, in the eighth line; in the third column, in the first line under the table; and on page 66057, in the first column, in the last paragraph, in the eleventh line, “63.6(I)(1)” should read “63.6(i)(1)”. On page 66056 in footnote number three, in the first line, “112(I)(1) and (3)” should read, “112(i)(1) and (3)”. On page 66057, in the first column, in the last paragraph, in the eighteenth line, “(63.7(e)(2)(I))” should read, “(63.7(e)(2)(i))”.

### List of Subjects

#### 40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl Chloride.

#### 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 1, 1999.

**Chuck Clarke,**

*Regional Administrator, Region X.*

[FR Doc. 99-3526 Filed 2-16-99; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-300789; FRL 6059-7]

RIN 2070-AB78

### Fenbuconazole; Reestablishment of Time-Limited Pesticide Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation extends time-limited tolerances for combined residues of fenbuconazole [alpha-(2-(4-chlorophenyl)-ethyl)-alpha-phenyl-3-

(1H-1,2,4-triazole)-1-propanenitrile] and its metabolites [cis-and trans-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1H,2,4-triazole-1-ylmethyl)-2-3H-furanone] of fenbuconazole in or on stone fruits (except plums and prunes) at 2.0 ppm, pecans at 0.1 ppm and bananas at 0.3 ppm. The Rohm and Haas Company requested these tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170). The tolerances will expire on December 31, 2001.

**DATES:** This regulation is effective February 17, 1999. Objections and requests for hearings must be received by EPA on or before April 19, 1999.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number, [OPP-300789], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. 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 identified by the docket control number, [OPP-300789], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. 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 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300789]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** By mail: Cynthia Giles-Parker, Registration

Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 247, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-7740; e-mail: cynthia.giles-parker@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of December 7, 1998; (63 FR 67476) (FRL 6047-2), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP) for tolerance by The Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106-2399. This notice included a summary of the petition prepared by The Rohm and Haas Company, the registrant. There were no comments received in response to the notice of filing. The petition requested that 40 CFR 180.480 be amended by establishing time-limited tolerances for combined residues of the fungicide fenbuconazole, [alpha-(2-(4-chlorophenyl)-ethyl)-alpha-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile] and its metabolites [cis-and trans-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1H,2,4-triazole-1-ylmethyl)-2-3H-furanone] expressed as fenbuconazole, in or on stone fruits (except plums and prunes), 2.0 ppm; pecans, 0.1 ppm; bananas, 0.3 ppm part per million (ppm). The existing time-limited tolerances expired December 31, 1998. The reestablishment of these time-limited tolerances will expire on December 31, 2001. Time-limited tolerances are being reestablished due to a chemistry data gap for storage stability in other raw agricultural commodities. However, based on apparent storage stability, EPA believes that the existing data support reestablishment of time-limited tolerances to December 31, 2001.

### I. Background and Statutory Findings

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