

US EPA ARCHIVE DOCUMENT

submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

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 July 14, 1997. Filing a petition for reconsideration by the Administrator of this final rule to conditionally approve the New Jersey I/M SIP, on an interim basis, 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) of the Administrative Procedures Act).

List of Subjects in 40 CFR Part 52

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

Dated: April 28, 1997.

William J. Muszynski,

Deputy Regional Administrator, Region II.

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. 7401–7671q.

Subpart FF—New Jersey

2. Section 52.1580 is added to read as follows:

§ 52.1580 Conditional approval.

(a) The State of New Jersey's March 27, 1996 submittal for an enhanced motor vehicle inspection and maintenance (I/M) program, as amended on November 27, 1996 and April 22, 1997, is conditionally approved based on certain contingencies, for an interim period to last 18 months. If New Jersey fails to start its program by November 15, 1997, the interim approval granted under the provisions of the NHSDA, which EPA believes allows the State to

take full credit in its 15 percent plan for all of the emission reduction credits in its proposal, will convert to a disapproval after a finding letter is sent to the State by EPA. If the State fails to submit to EPA the final modeling demonstrating that its program will meet the relevant enhanced I/M performance standard by February 1, 1998, the conditional approval will automatically convert to a disapproval as explained under Section 110(k) of the Clean Air Act.

(b) In addition to the above condition, the State must correct eight minor, or de minimus, deficiencies related to the CAA requirements for enhanced I/M. The minor deficiencies are listed in EPA's conditional interim final rulemaking on New Jersey's motor vehicle inspection and maintenance program published on May 14, 1997. Although satisfaction of these deficiencies does not affect the conditional interim approval status of the State's rulemaking, these deficiencies must be corrected in the final I/M SIP revision to be submitted at the end of the 18-month interim period.

(c) EPA is also approving this SIP revision under Section 110(k), for its strengthening effect on the plan.

[FR Doc. 97–12628 Filed 5–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[MO 021–1021; FRL–5817–5]

Approval and Promulgation of Implementation Plans and State Operating Permit Programs; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is fully approving the operating permit program submitted by the state of Missouri for the purpose of complying with Federal requirements for an approvable state program to issue operating permits to all major stationary sources and certain other sources.

The EPA is also approving a revision to the Missouri State Implementation Plan (SIP) which updates references and modifies the Missouri intermediate operating permit program. SIP approval of revised state rules ensures that the SIP is current and permits Federal enforceability of the state rules.

DATES: This rule is effective on June 13, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Joshua Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Part 70 Program

The Clean Air Act (Act) and its implementing regulations at 40 CFR Part 70 require that states develop and submit operating permit programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving a complete submittal. The EPA reviews state programs pursuant to section 502 of the Act and the Part 70 regulations, which together outline the criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of 40 CFR Part 70, the EPA may grant the program interim approval for a period of up to two years. If a state does not have an approved program within two years of interim approval, the EPA must establish and implement a Federal operating permits program for that state.

The EPA published a notice of interim approval of the Missouri operating permit program on April 11, 1996. The revisions required by the EPA for full approval of the state's program were discussed fully in that notice and accompanying technical support document. Missouri made the required revisions to its program and submitted that information, along with a request for full approval, to the EPA on August 6, 1996. Consequently, on December 3, 1996, the EPA published a notice proposing full approval. This notice explained the EPA's rationale for finding that Missouri had corrected the deficiencies that were the basis for the interim approval.

B. Section 112(g) and Section 112(l) Programs

In the April 11, 1996, interim approval notice, the EPA approved the state's preconstruction review program for the purpose of implementing the 112(g) requirements. This approval remains in effect. The EPA issued a final 112(g) rule on December 27, 1996. The state has 18 months from the effective date of the rule to adopt an equivalent program.

In the April 11, 1996, **Federal Register** notice, the EPA granted full approval of the state's program under section 112(l)(5) and 40 CFR Part 63.91. It also ratified prior delegations to Missouri for implementation of certain national emission standards for hazardous air pollutants for which Missouri had requested and received delegation prior to approval of the state's section 112(l) program. This approval gives the state the authority to implement section 112 standards as promulgated without changes for both Part 70 and non-Part 70 sources. The EPA is reaffirming this approval.

C. SIP Program

In the December 3, 1996, notice, the EPA also proposed to approve revisions to the state SIP submitted pursuant to section 110 of the Act. These revisions update references in rule 10 CSR 10-6.020, and modify the insignificant activities provisions in rule 10 CSR 10-6.065 with regard to the state's intermediate operating permit program in subsection 4(G). The provisions of this subsection apply to Missouri's basic and intermediate operating permit programs. The EPA is approving the revisions to this subsection only to the extent that they apply to the intermediate program. The Missouri basic operating permit program is not a Federally approved program, and the EPA is not taking action on the revisions as they relate to that program.

II. Final Action and Implementation

A. Part 70 Program

No comments were received during the public comment period on the proposed approval of the state's revisions relating to the Part 70 program. Consequently, the EPA is now taking final action to grant full approval of the Missouri Part 70 operating permit program. This approval extends to relevant portions of the following Missouri rules: 10 CSR 10-6.020, Definitions and Common Reference Tables; 10 CSR 10-6.065, Operating permits; and 10 CSR 10-6.110, Submission of Emission Data, Emission Fees and Process Information.

B. SIP Program

No comments were received during the public comment period on the proposed approval of the SIP revisions relating to rules 10 CSR 10-6.020 and 10 CSR 10-6.065. Therefore, the EPA is granting final approval of these revisions to Missouri's SIP. The EPA is approving the revisions to section 4(G) of rule 10 CSR 10-6.065 as they relate to the intermediate operating permit

program, which was approved by the EPA on September 25, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

III. Administrative Requirements

A. Docket

Copies of the Missouri submittal and other information relied upon for the final approval are contained in the docket maintained at the EPA Region VII office. The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed

or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted 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 General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

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 July 14, 1997. 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

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide,

Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: April 2, 1997.

Dennis Grams,

Regional Administrator.

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. 7401–7671q.

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(96) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(96) A revision to the Missouri SIP submitted by the Missouri Department of Natural Resources on August 6, 1996, pertaining to its intermediate operating permit program. The EPA is not approving provisions of the rules which pertain to the basic operating permit program.

(i) Incorporation by reference.

(A) Regulations 10 CSR 10–6.020, Definitions and Common Reference Tables, effective June 30, 1996; and 10 CSR 10–6.065, Operating Permits, effective June 30, 1996, except sections (4)(A), (4)(B), and (4)(H).

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 741, et seq.

2. Appendix A to part 70 is amended by adding paragraph (b) to the entry for Missouri to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Missouri

(a) * * *

(b) The Missouri Department of Natural Resources program submitted on January 13, 1995; August 14, 1995; September 19, 1995; October 16, 1995; and August 6, 1996.

Full approval effective June 13, 1997.

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[FR Doc. 97–12631 Filed 5–13–97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300485; FRL–5716–1]

RIN 2070–AB78]

Cymoxanil; Pesticide Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of the fungicide cymoxanil in or on the raw agricultural commodity potatoes in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of cymoxanil on potatoes in the states of Alabama, California, Colorado, Delaware, Florida, Idaho, Indiana, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Virginia, Washington and Wisconsin. This tolerance will expire and is revoked on March 15, 1999.

DATES: This regulation becomes effective May 14, 1997. Objections and requests for hearings must be received by EPA on or before July 14, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300485], 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–300485], must also be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), 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. 1132, CM #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 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300485]. 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: Libby Pemberton, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA, (703) 308–8326, e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the fungicide cymoxanil on potatoes at 0.05 parts per million (ppm). This tolerance will expire and be revoked by EPA on March 15, 1999. After March 15, 1999, EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 CFR 58135, November 13, 1996)(FRL–5572–9).

New Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide