G. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the APA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA submitted, by the effective date of this rule, 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. This rule is not a ''major rule'' as defined by APA § 804(2), as amended.

As noted above, EPA is issuing this action as rulemaking. There is a question as to whether this action is a rule of ''particular applicability'', under section 804(3)(A) of APA as amended by SBREFA—and thus exempt from the congressional submission requirements—because this rule applies only to named states. In this case, EPA has decided to err on the side of submitting this rule to Congress, but will continue to consider this issue of the scope of the exemption for rules of ''particular applicability''.

H. Paperwork Reduction Act

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

I. Judicial Review

Under CAA Section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the District of Columbia within 60 days of July 10, 1996.

Dated: July 3, 1996.

Mary D. Nichols,

Assistant Administrator.

[FR Doc. 96–17545 Filed 7–9–96; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 63

[AD–FRL–5531–3]

Approval of State Programs and Delegation of Federal Authorities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action revises the ''Approval of State Programs and Delegation of Federal Authorities'' (subpart E). The amendments are being made to clarify regulatory text, reduce administrative burden and provide more flexibility to States using this rulemaking. Additionally, today's action does not have any environmental impact. As a result, the Agency does not anticipate receiving adverse comments. Consequently, the amendments are being issued as a direct final rule.

DATES: The direct final rule will be effective August 19, 1996 unless significant, adverse comments are received by August 9, 1996. If significant, timely adverse comments are received on the direct final rule, the direct final rule will be withdrawn.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–96–09, Room M–1500, U.S. EPA, 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert Wood at (919) 541–5272 or Ms. Sheila Q. Milliken at (919) 541–2625, Integrated Implementation Group, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this action are State, local, or tribal governments that voluntarily implement Clean Air Act (Act) section 112 rules, emission standards, or requirements. This action does not regulate emission sources directly. Regulated categories and entities include:

Category	Examples of regulated entities
State, local, tribal governments.	State, local, or tribal governments that voluntarily request approval of rules or programs to be implemented in place of Act section 112 rules, emission standards or requirements or voluntarily request delegation of unchanged section 112 rules.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. The existing procedures and criteria for requesting and receiving approval of these State, local, or tribal government rules or programs or voluntarily requesting delegation of unchanged section 112 rules are in sections 63.90 through 63.95 of this subpart.

On November 26, 1993 (58 FR 62262), the EPA promulgated in the Federal Register guidance relating to the approval of State programs and delegation of Federal authorities under the authority of section 112(l) of the Act. Section 112(l)(2) of the Act requires the EPA to publish guidance useful to States in developing programs for implementing and enforcing emission standards and other requirements for hazardous air pollutants (HAP). The use of delegation under section 112(l) is voluntary on the part of the States. The regulations were promulgated as subpart E in 40 CFR part 63.

Today's action modifies the subpart E final regulation to improve clarity of administrative procedures and eliminate unnecessary and, in some cases, impractical requirements imposed on the States. Today's changes do not significantly modify the requirements of the regulation. The revisions are discussed in the order in which they appear in the subpart E regulation. If timely significant adverse comments are received on any amendment of this direct final rule, that amendment of the direct final rule will be withdrawn and all such comments will be addressed in a subsequent final rule based on the proposed rule contained in the proposed rules section of this Federal Register that addresses issues in this direct final rule. If no timely significant adverse comments are received on this direct final rule, then the direct final rule will become effective August 19, 1996 and no further action is contemplated on the parallel proposal published today.

Preamble Outline

The following outline is provided to aid in locating information in this preamble.

I. Description of Changes
- A. Approval of State Mechanism to Receive Delegation of Existing and Future Unchanged Federal Section 112 Standards and Requirements
- B. Deletion of 6-month Reporting Requirement
- C. Additional Language Regarding Implementation of Chemical Safety Hazard Investigation Board Requirement
- D. Approval of State Rules and Programs Designed to Limit Potential to Emit (PTE)

II. Unfunded Mandates Reform Act

III. Administrative
- A. Paperwork Reduction Act
- B. Executive Order 12866 Review
- C. Regulatory Flexibility Act
- D. Submission to Congress and the General Accounting Office

I. Description of Changes

A. Approval of State Mechanism to Receive Delegation of Existing and Future Unchanged Federal Section 112 Standards and Requirements

Section 63.91 of the subpart E rule establishes a process for straight delegation of individual maximum achievable control technology (MACT) standards after they are promulgated, but it does not include a process for approving a program for delegation of all future MACT standards through a single, advance program approval. State and local agencies have asked for a more streamlined method for taking delegation of future and existing unchanged Federal section 112 standards and requirements.

The EPA agrees with the merit of a program that will allow State and local agencies to receive upfront approval of the mechanism with which they would take delegation of existing and future unchanged Federal section 112 standards. Such a program would eliminate the need for State and local agencies to submit individual requests for delegation of unchanged Federal section 112 standards on a rule-by-rule basis. Regional Offices would benefit by receiving early identification of States' intentions for receiving delegation. State and local agencies would have minimal administrative burden in submitting their requests for approval.

The EPA established policy for such a process for sources subject to part 70 permitting through a memorandum entitled, ''Straight Delegations Issues Concerning Sections 111 and 112 Requirements and Title V,'' dated December 10, 1993, from John Seitz, Director, Office of Air Quality Planning and Standards, U.S. EPA. A similar program for sources not subject to part 70 is detailed in the revised enabling guidance for subpart E (''Interim Enabling Guidance for the Implementation of 40 CFR part 63, subpart E,'' dated November 1993, EPA–453/R–93–040). The EPA intends to codify the policy described in the memorandum and guidance in this direct final rulemaking. Therefore, EPA is making the necessary revisions to the subpart E rule to include a process of approving State mechanisms for receiving delegation of existing and future unchanged Federal section 112 standards and requirements consistent with its current policy. Submittals previously approved before today's action will not be affected. Revisions are being made to sections 63.90 and 63.91 which specifically indicate that States can request upfront EPA approval of the State's mechanism for taking delegation of future unchanged Federal section 112 standards and requirements.

B. Deletion of 6-Month Reporting Requirement

The subpart E rule currently contains a provision which requires 6-month reporting by sources of all required monitoring or testing for the State rule which replaces a Federal rule (§ 63.93(b)(4)(iv)). This requirement was originally placed in the subpart E rule to be consistent with requirements in the part 70 operating permit rule at 40 CFR part 70, § 70.6(a)(3)(iii)(A).

State and local agencies believe that the 6-month reporting requirement for regulated sources is duplicative of reporting requirements already included in individual MACT standards and the title V permit program regulations. They feel that this requirement is unnecessary and creates paperwork with little or no benefit.

An example of where this requirement could adversely affect a source is in the case where the MACT rule only requires yearly reporting. If a State wanted to substitute their rule for the Federal MACT rule, the source would be required to report every 6 months due to the existing subpart E requirement. Area sources do not trigger the 6-month reporting requirement of title V, and thus, should only be required to report yearly. Nonetheless, subpart E currently mandates 6-month reporting. Consequently, it imposes, an unnecessary additional burden on sources in States with delegated air toxics programs.

In this scenario, the EPA feels that there would be no value added in increasing the reporting requirement to a mandatory minimum of 6-months because EPA has already determined the frequency of reporting necessary to assure compliance in each MACT standard or in the General Provisions. In addition, since section 112(l) is voluntary, the 6-month reporting provision imposes an increased burden on sources whose States submit equivalent State rules or programs for EPA approval, and discourages States from accepting delegation of the Federal rule.

The EPA agrees that this requirement is not necessary as a general requirement and is revising section 63.93 by deleting § 63.93(b)(4)(iv).

C. Additional Language Regarding Implementation of Chemical Safety and Hazard Investigation Board Requirement

Section 112(r)(7)(B)(iii) requires coordination with the Chemical Safety and Hazard Investigation Board (CSHIB) on accident investigations. For consistency, the subpart E rule (section 63.95 (b)(4)(i)) reiterates this requirement. State and local agencies believe this language should be deleted because the CSHIB has not yet been established. Continued inclusion of this provision imposes a meaningless requirement. It should be noted, however, that the CSHIB may be convened at some later date. The EPA agrees that it is appropriate that the requirement not take effect until the CSHIB is convened. Consequently, section 63.95(b)(4)(i) is being revised to add the sentence, ''This requirement will not take effect until the Chemical Safety and Hazard Investigation Board is convened.''

D. Approval of State Rules and Programs Designed to Limit Potential to Emit (PTE)

Currently, a number of States are submitting, for EPA approval into the State Implementation Plan, rules and programs such as prohibitory rules and federally enforceable State operating permit programs (FESOP). There are a few hazardous air pollutants (for example methylene chloride) which are not regulated by the criteria pollutant program. Accordingly, when a State seeks Federal approval of these rules and programs, as they relate to such pollutants, the EPA approval will be given pursuant to section 112(l) of the Act.

The current subpart E rule does not expressly provide for approval of programs designed to limit sources' potential to emit hazardous air pollutants. As explained in various recent notices approving PTE programs for section 112 purposes, EPA believes the authority exists under section 112(l) of the statute to approve PTE programs. Promulgation of a rule expressly providing for such approvals is consistent with this statutory authority. Thus, the EPA is today revising subpart E to clarify that it may be used to approve State PTE programs for section 112 purposes, in order to ensure that an unintended ''gap'' does not exist for pollutants such as methylene chloride.

The EPA notes that it is currently reexamining its policy on PTE for the section 112, title V, and new source review programs. One possible outcome of this reexamination is that PTE limits will no longer have to be federally enforceable. However, EPA believes that today's revision to subpart E is neutral with respect to this issue. The revision to subpart E merely clarifies that the rule may be used as a pathway for approval of State PTE programs. It does not in and of itself establish a

requirement that limits on PTE must be issued pursuant to a program approved by EPA. In other words, today's revision clarifies that subpart E may be used to approve a PTE program that a State chooses to submit, without addressing whether or why a State would make this choice.

II. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year.

Today's rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or tribal governments or the private sector. The UMRA generally excludes from the definition of ''Federal intergovernmental mandate'' duties that arise from participation in a voluntary Federal program. The EPA has also determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

III. Administrative

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated subpart E rulemaking were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (with an OMB approval control number 2060–0264) may be obtained from the Regulatory Information Division (2136), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, or by calling (202) 260–2740.

Today's changes to the rulemaking may slightly reduce the information collection burden estimates made previously. Since the expected reduction will not be significant, the ICR has not been revised.

B. Executive Order 12866 Review

The subpart E rulemaking, promulgated on November 26, 1993 was considered a ''significant regulatory action'' under Executive Order 12866 (58 FR 5173, dated October 4, 1993) and submitted to OMB for review. According to the Executive Order, a ''significant regulatory action is one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, of State, local or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Today's action is not considered a ''significant regulatory action'' within the meaning of this Executive Order. The amendments issued today clarify the rule and change certain administrative requirements to increase the flexibility to States in terms of gaining approval of their respective State programs. Therefore, the EPA concludes these amendments do not need to undergo OMB review.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. This rule will not increase, and is likely to reduce, regulatory burdens on small businesses. EPA has determined that this rule will have no adverse effect on small businesses.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 63

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

Dated: June 26, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.90 is amended by adding a sentence after the third sentence and a sentence at the end of the introductory text to read as follows:

§ 63.90 Program overview.

* * * In this process, States may seek approval of a State mechanism for receiving delegation of existing and future unchanged Federal section 112 standards. * * * This subpart also establishes procedures for the approval of State rules or programs to establish limitations on the potential to emit pollutants listed in or pursuant to section 112(b) of the Act.

* * * * *

2. Section 63.91 is amended by revising paragraph (a) introductory text to read as follows:

§ 63.91 Criteria common to all approval options.

(a) Approval process. To obtain approval under this subpart of a rule or program that is different from the Federal rule, the criteria of this section and the criteria of either § 63.92, § 63.93 or § 63.94 must be met. For approval of State programs to implement and enforce Federal section 112 rules as promulgated without changes (except for accidental release programs), only the criteria of this section must be met. This includes State requests for upfront approval of their mechanism for taking delegation of future unchanged Federal section 112 standards and requirements as well as approval to implement and enforce unchanged Federal section 112 standards and requirements on a rule-by rule basis. For approval of State rules or programs to implement and enforce the Federal accidental release prevention program as promulgated without

changes, the requirements of this section and section § 63.95 must be met. In the case of accidental release prevention programs which differ from the Federal accidental release prevention program, the requirements of this section, § 63.95, and either § 63.92 or § 63.93 must be met. The Administrator may, under the authority of Section 112(l) and this subpart, also approve a State program designed to establish limits on the potential to emit of pollutants listed pursuant to Section 112(b) of the Clean Air Act. For a State's initial request for approval of any rule or program under this subpart, and except as otherwise specified under § 63.92, § 63.93, or § 63.94 for a State's subsequent requests for approval, the approval process will be the following:

* * * * *

§ 63.93 [Amended]

3. Section 63.93 is amended by removing paragraph (b)(4)(iv).

4. Section 63.95 is amended by revising paragraph (b)(4)(i) to read as follows:

§ 63.95 Additional approval criteria for accidental release prevention programs.

* * * * *

(b) * * *

(4) * * *

(i) The Chemical Safety and Hazard Investigation Board, particularly during accident investigation. This requirement will not take effect until the Chemical Safety and Hazard Investigation Board is convened; and

* * * * *

[FR Doc. 96–17323 Filed 7–9–96; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 180

[OPP–300414A; FRL–5381–4]

RIN 2070–AB78

Triphenyltin Hydroxide; Tolerance Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final tolerance rule for triphenyltin hydroxide. All domestic registrations of triphenyltin hydroxide for use on carrots, peanuts and peanut hulls have been cancelled and EPA is revoking these tolerances.

EFFECTIVE DATES: This regulation is effective August 9, 1996.

ADDRESSES: Written objections and hearing requests, identified by the docket number, [OPP–300414A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket number and 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 copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to:opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and data in electronic form must be identified by the docket number [OPP–300414A]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: Jude Andreasen, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone: (703) 308–8016; e-mail: andreasen.jude@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 6, 1996 (61 FR 8901)(FRL–5347–7), EPA issued a proposed rule that gave notice that EPA intended to revoke tolerances for triphenyltin hydroxide on carrots, peanuts and peanut hulls. There were no comments or requests for referral to an advisory committee received in response to the proposed rule. The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances are not needed to protect the public health. Therefore, the tolerances are being removed as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number OPP–300414A (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.