ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL163–1a; FRL–6119–2]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (U.S. EPA).

ACTION: Direct Final Rule.

SUMMARY: On August 21, 1995, U.S. EPA promulgated a site-specific volatile organic material (VOM) rule for Riverside Laboratories, Inc.'s (Riverside) Kane County facility. The rule consisted primarily of a compliance date extension for Riverside through December 31, 1996, after which time Riverside is required to meet the applicable requirements of the Chicago-area Federal Implementation Plan (FIP). On October 10, 1997, the State of Illinois requested that U.S. EPA approve a change in regulatory status for Riverside, based on Riverside's current compliance with the applicable State Implementation Plan (SIP) rule. For the reasons discussed below, U.S. EPA is today approving the State plan as applying to Riverside.

U.S. EPA is taking this action as a ''direct final'' rulemaking; the rationale for this approach is set forth below. Elsewhere in this **Federal Register**, U.S. EPA is proposing this action and soliciting comment. If adverse written comments or a request for a public hearing are received, U.S. EPA will withdraw the direct final rule and it will not take effect. U.S. EPA will address the comments received in a new final rule. If no adverse written comments are received, no further rulemaking will occur on this requested SIP revision.

DATES: This final rule is effective August 31, 1998 unless written adverse comments or a request for a public hearing are received by July 31, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public the rule will not take effect.

ADDRESSES: Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

A public hearing may be requested, to be held in Chicago, Illinois. Requests for a hearing should be submitted to J. Elmer Bortzer. Interested persons may call Steven Rosenthal at (312) 886–6062 to see if a hearing will be held and the date and location of the hearing. Any hearing will be strictly limited to the subject matter of this action, the scope of which is discussed below.

Copies of the SIP revision request are available for inspection at the following address: (It is recommended that you telephone Steven Rosenthal at (312) 886–6052, before visiting the Region 5 office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Air Programs Branch (AR-18J) at (312) 886–6052.

SUPPLEMENTARY INFORMATION:

I. Background

On June 29, 1990, U.S. EPA promulgated a FIP which contained Reasonably Available Control Technology (RACT) regulations for stationary sources of Volatile Organic Compounds (VOC) located in six northeastern Illinois (Chicago area) counties: Cook, DuPage, Kane, Lake, McHenry, and Will.[1] Included in U.S. EPA's rules was a requirement that paper coating sources be subject to 40 CFR 52.741(e)(1)(C), which requires that a source achieves either a coating limit of 2.9 pounds of VOC per gallon of coating or an 81 percent reduction in emissions. On August 30, 1990, Riverside filed a petition for review of the FIP in the United States Court of Appeals for the Seventh Circuit, *Riverside Laboratories, Inc.*, v. *U.S. EPA*, Case No. 90–2886. On August 20, 1991, Riverside filed a petition for reconsideration (amended on September 5, 1991) with U.S. EPA, in which it contended that its economic status prevented the federal rules from being RACT for its facility. Based on the information provided, U.S. EPA agreed to reconsider the RACT rules for Riverside. U.S. EPA also agreed to issue an administrative stay of the applicable FIP rules, pending reconsideration. See 57 FR 27935 (June 23, 1992).

On September 9, 1994, U.S. EPA approved a number of Illinois volatile organic material (VOM)[2] RACT rules, adopted as 35 Ill. Admin. Code Part 218. 59 FR 46562. These rules established State VOM RACT requirements for surface coating operations in the Chicago and Metro-East St. Louis ozone nonattainment areas, and replaced a large section of the Chicago FIP. These regulations include 35 Ill. Admin. Code § 218.204, which contains a RACT rule for paper coating operations that is identical to the applicable FIP rule of 2.9 lbs./gal. (40 CFR 52.741(e)(1)(C)). They also contain the Applicability section, at 35 Ill. Admin. Code § 218.203. Under Section 218.103(a)(2), the effectiveness of the Part 218 rules is stayed as to any source which appealed the FIP and received a stay of the effectiveness of the FIP pending reconsideration. The rule further provides that:

> When USEPA has published in the Federal Register final action to revise or affirm the provisions of the FIP specifically applicable to such individual source or category of sources or such stay is otherwise terminated, the Board shall take corresponding action and the Agency shall submit such action to USEPA for approval. Until such time as USEPA approves the corresponding amendment to this Part, the FIP rule shall remain the applicable implementation plan for that source. * * *

On August 21, 1995, U.S. EPA promulgated a site-specific rule for Riverside (60 FR 43388). This rule consists of a compliance date extension for Riverside through December 31, 1996. During the period of the compliance date extension Riverside was required to, among other things, decrease the use of VOC-containing material. Starting on January 1, 1997, Riverside's polyester paper coating lines were required to meet the applicable FIP requirements in 40 CFR 52.741(e)(1), (e)(2), and (e)(6). In this rulemaking, U.S. EPA also terminated the stay of the FIP.

On February 13, 1996, U.S. EPA approved a revision to the Illinois RACT rules for paper coating operations at 35 Ill. Admin. Code 218.204(c), which further reduced the applicable VOM pounds-per-gallon limitation to 2.3 lbs./gal. 61 FR 5511.

On October 10, 1997, the Illinois Environmental Protection Agency (IEPA) submitted a request to U.S. EPA that it change the regulatory status for Riverside to recognize the applicability of Illinois' SIP, as federally approved on February 13, 1996. In its letter, IEPA states that, as a matter of State law, Riverside is subject to the 2.3 pounds VOC per gallon limit in 35 Ill. Administrative Code 218.204(c). For that reason, IEPA has requested that the Board not be required to conduct further rulemaking. The State intends its October 10, 1997, request to fulfill the ''corresponding action'' condition of

[1] A definition of RACT is cited in a General Preamble-Supplement on CTGs, published at 44 FR at 53761 (September 17, 1979). RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

[2] VOM, as defined by the State of Illinois, is identical to VOC, as defined by U.S. EPA.

Section 218.103(a)(2). U.S. EPA agrees that it is not necessary to require Illinois to conduct additional rulemaking, since the regulations are already in the SIP and Riverside does not contest their applicability (See Riverside's March 26, 1998, letter regarding rule applicability.).

II. Applicability

As a result of this action, the approved State of Illinois regulations, including the emission limits in 35 Ill. Admin. Code 218.204(c) and the associated control requirements, test methods and recordkeeping requirements in Part 218 and the associated definitions in Part 211 shall become the federally approved regulations applicable to Riverside on August 31, 1998. The site-specific rule applicable to Riverside promulgated by U.S. EPA on August 21, 1995, remains in effect and is enforceable after August 31, 1998 for the period before August 31, 1998.

III. Final Action

At the time U.S. EPA approved Ill. Admin. Code Part 218, the Agency determined that the generally applicable rules, along with the appropriate test methods, recordkeeping requirements and definitions, met the applicable statutory requirements for RACT. U.S. EPA also has concluded that the provisions of Ill. Admin. Code 218.204(c) constitute RACT for Riverside's Kane County paper coating operations. They are thus reasonable replacements for the FIP rule that was promulgated by U.S. EPA on June 29, 1990, and the site-specific compliance date extension promulgated for Riverside by U.S. EPA on August 21, 1995.

The U.S. EPA is publishing this action without prior proposal because U.S. EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, U.S. EPA is proposing this action should adverse comments be filed or a request for a hearing be received. This action will become effective without further notice unless the U.S. EPA receives relevant adverse comments or a request for a hearing on the parallel proposed rule (published in the proposed rules section of this **Federal Register**) by July 31, 1998. Should the U.S. EPA receive such comments or a request for a hearing, it will withdraw this final rule and publish a document informing the public that this action did not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on August 31, 1998.

Nothing in this action should be construed as permitting, 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.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, U.S. EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, U.S. EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action (SIP approval and a supersession of the FIP under section 110) does not create any new requirements, but simply approves 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 Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids U.S. EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, U.S. EPA must undertake various actions in association with 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 the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. 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 August 31, 1998. 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)).

E. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 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 Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. section 804(3). U.S. EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 25, 1998.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, 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 *et seq.*

Subpart O—Illinois

2. Section 52.726 is amended by adding paragraph (s) to read as follows:

§ 52.726 Control strategy: Ozone.

* * * * *

(s) On October 10, 1997, Illinois submitted a site-specific revision to the State Implementation Plan, in the form of a letter from Bharat Mathur, Chief, Bureau of Air, Illinois Environmental Protection Agency. This October 10, 1997, letter requests a change in regulatory status for Riverside Laboratories, Inc.'s Kane County facility, to reflect that the Federal site-specific rule for Riverside (40 CFR 52.741(e)(10)) has been superseded by the State of Illinois regulations, including the emission limits in 35 Illinois Administrative Code 218.204(c) and the associated control requirements, test methods and recordkeeping requirements in Part 218 and the associated definitions in Part 211. These State regulations shall become the federally approved regulations applicable to Riverside on August 31, 1998. The site-specific rule, applicable to Riverside, promulgated by the Environmental Protection Agency on August 21, 1995 (40 CFR 52.741(e)(10)), remains in effect and is enforceable after August 31, 1998 for the period before August 31, 1998.

[FR Doc. 98–17517 Filed 6–30–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300673; FRL–5795–8]

RIN 2070–AB78

Sodium Chlorate; Extension of Exemption from Requirement of a Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited exemption from the requirement of a tolerance for residues of the *desiccant* sodium chlorate in or on wheat for an additional one and one-half-year period, to January 31, 2000. This action is in response to EPA's granting of an emergency exemption connection with a crisis exemption declared by the state of Mississippi under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on wheat. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective July 1, 1998. Objections and requests for hearings must be received by EPA, on or before August 31, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300673], 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–300673], 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. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, 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. 272, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308–9364; e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of December 3, 1997 (62 FR 63858) (FRL–5754–1), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited exemption from the requirement of a tolerance for the residues of sodium chlorate in or on wheat, with an expiration date of July 31, 1998. EPA established the exemption from the requirement of a tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of sodium chlorate on wheat for this year growing season due to continued heavy rains resulting in the need for a harvest aid to desiccate winter weeds which developed in the thin stands of an already dimished wheat crop. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of sodium chlorate as a desiccant on wheat.

EPA assessed the potential risks presented by residues of sodium chlorate in or on wheat. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of December 3, 1997 (62 FR 63858). Based on that data and information considered, the Agency reaffirms that extension of the time-limited exemption from the requirement of a tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited exemption from the requirement of a tolerance is extended for an additional one and one-half-year period. Although this exemption from the requirement of a tolerance will expire and is revoked on January 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide in or on wheat after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the exemptionfrom a requirement of a tolerance. EPA will take action to revoke this exemption from the requirement of a tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance