215.32 Destinations

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* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–28650 Filed 11–3–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0189; FRL–6466–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP) proposed in the **Federal Register** on March 17, 1999. This final action will incorporate this rule into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule controls VOC emissions from adhesive and sealant products. Thus, EPA is finalizing a simultaneous limited approval and limited disapproval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because this revision, while strengthening the SIP, also does not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This action is effective on December 6, 1999.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office, [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office, [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP is Bay Area Air Quality Management District, BAAQMD, Rule 8–51, Adhesive and Sealant Products. This rule was submitted by the California Air Resources Board, CARB, to EPA on June 23, 1998.

II. Background

On March 17, 1998 in 64 FR 13143, EPA proposed granting limited approval and limited disapproval of BAAQMD Rule 8–51, Adhesive and Sealant Products into the California SIP. Rule 8–51 was adopted by the BAAQMD on January 7, 1998. This rule was submitted by the CARB to EPA on June 23, 1998. This rule was submitted in response to EPA's 1988 SIP Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for this rule and nonattainment area is provided in the proposed rule (PR) cited above.

EPA has evaluated the rule for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the PR. EPA is finalizing the limited approval of this rule in order to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies. The rule contains inadequate recordkeeping, director's discretion, and unsubstantiated deviations from RACT level controls. A detailed discussion of the rule provisions and evaluation have been provided in the PR and in the February 1999 technical support document (TSD) available at EPA's Region IX office.

III. Response to Public Comments

A 30-day public comment period was provided in 64 FR 13143. EPA received one comment letter on the PR from the BAAQMD. The comments have been evaluated by EPA and a summary of the comments and EPA's responses are set forth below.

Comment: The BAAQMD commented that no clear guidance on recordkeeping intervals exists for rules like Rule 8–51 which specify product VOC limits. The BAAQMD argues that, although section 113(b) of the CAA establishes a daily penalty limit of $25,000 and might serve as a rationale for a daily recordkeeping requirement, no regulatory language compels daily recordkeeping. BAAQMD asserts that monthly recordkeeping as required by Section 501 is sufficient. Furthermore, BAAQMD emphasized that daily recordkeeping is burdensome for small businesses and does not enhance enforceability.

Response: Rule 8–51 was evaluated against the CAA and the documents cited in the TSD. The EPA's recordkeeping policies have been further interpreted and clarified in other EPA rulemakings and communications, including a June 19, 1996 guidance document on recordkeeping which was distributed to all air districts in Region IX including the BAAQMD (Rule Development Recordkeeping Policy, under June 27, 1996 cover letter from Daniel Meer). The June 19, 1996

guidance document states that ''if a source uses only compliant materials, recordkeeping on a less frequent basis than daily may be acceptable.'' Records kept on a less frequent basis than daily are not acceptable when noncompliant materials are used. Daily records are the rule and monthly records are the exception to that rule. Requiring daily records does not impose any additional burden; rather, allowing monthly records provides relief for sources that use only compliant materials. On a practical level, we expect most sources will take advantage of this relief because compliant materials are widely available. EPA's recordkeeping requirements may allow flexibility for sources that operate in compliance with prohibitory rules, however, rules that allow additional flexibility must sufficiently deter sources that operate in a deliberately noncompliant manner by designating significant monetary penalties. EPA maintains that daily records are necessary for enforcement purposes whenever noncompliant materials are used.

Comment: BAAQMD contends that section 501.4 which allows for alternate recordkeeping plans was previously approved into the SIP in a similar rule. BAAQMD believed that it had addressed all approvability issues concerning this provision. The District indicated that rule revisions consume valuable time and limited resources and are less justifiable when little or no emissions reductions will result.

Response: Each EPA action on State submitted SIP revisions clearly notes that nothing in that particular 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 is considered independently in light of specific technical, economic, and environmental factors. Therefore, approval of certain language in one rule does not justify or necessitate the approval of similar language in another rule. Section 501.4 currently fails to indicate what constitutes an acceptable reporting period and allows the Executive Officer to approve changes to the reporting period without submitting a SIP revision. This violates the requirement in section 110 of the CAA that SIPs must be enforceable. Minimally, section 501.4 should require monthly records for sources using only compliant coatings and daily records for sources using any noncompliant coatings. Furthermore, any violation of rule standards should constitute a violation for each day of the reporting period. Modification of this provision will not impose an undue burden on the District since other areas of the rule already need to be modified as discussed in this rulemaking.

Comment: BAAQMD acknowledges that several VOC content limits contained in Rule 8–51 exceed the limits contained in the State of California's guidance document and attribute this to the fluidity of that document. BAAQMD contends that all deviations from the state's guidance were substantiated in an equivalency determination using the best available data. BAAQMD asserts that a source-by-source accounting of emissions is impossible since Rule 8–51 regulates thousands of sources in many industrial categories. BAAQMD indicates that they will revise Rule 8–51 to be consistent with the state's guidance document for deviations (a) and (d) through (i) as identified in the TSD. With regard to deviation (b), BAAQMD states that the 540 g/L limit complies with the state's guidance document and that a 250 g/L limit represents best available retrofit control technology (BARCT) which is more stringent than federal RACT. To justify deviation (c), BAAQMD provided additional information to indicate that the 100 g/L limit for retreading large tires is technologically infeasible because chlorinated solvents are regulated in BAAQMD as hazardous air pollutants. Other districts comply with the 100 g/L limit by allowing the use of certain chlorinated solvents. Furthermore, BAAQMD commented that the costs to abate emissions from large tire retreading were economically infeasible. BAAQMD asserted that the 480 g/L limit identified in the TSD as deviation (j) was included in the rule to accommodate a product that functions to both bond and seal polyvinyl chloride (PVC). BAAQMD asserts that the product should be allowed to meet the 480 g/L limit, instead of the 420 g/L limit which applies to other sealants, in order to account for the product's ability to bond PVC. The manufacturer had two customers in 1997, both outside the BAAQMD, and sold their product in containers with a capacity less than 16 ounces. BAAQMD states that it will adopt a small container exemption allowed by the state's guidance document during the next revision to Rule 8–51 to address deviation (j).

Response: EPA appreciates the difficulty of regulating and characterizing the emissions from this varied source category. BAAQMD committed to remedying deviations (a) and (d) through (i) and should proceed with those rule corrections in a timely manner to avoid the sanctions described above. With regard to deviation (b), EPA agrees with BAAQMD that the 250 g/L limit is BARCT and is not required to meet federal RACT requirements. The additional information provided in relation to deviation (c) adequately justifies this exemption for retreading large tires. BAAQMD should also correct the deficiency identified as deviation (j) as promised possibly by adopting a small container exemption. However, EPA questions the need to revise the rule to accommodate a product that BAAQMD indicates is not sold in the District.

III. EPA Action

EPA is finalizing a limited approval and a limited disapproval of the above-referenced rule. The limited approval of this rule is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rule strengthens the SIP. However, the rule does not meet the section 182(a)(2)(A) CAA requirement because of the rule deficiencies which are discussed above. Thus, in order to strengthen the SIP, EPA is granting limited approval of this rule under sections 110(k)(3) and 301(a) of the CAA. This action approves the rule into the SIP as a federally enforceable rule.

At the same time, EPA is finalizing the limited disapproval of this rule because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rule does not fully meet the requirements of Part D of the Act. As stated in the PR, upon the effective date of this final rule, the 18 month clock for sanctions and the 24 month FIP clock will begin. Sections 179(a) and 110(c). If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the effective date of the final rule, either the highway sanction or the offset sanction will be imposed at the 18 month mark. It should be noted that the rule covered by this final rulemaking has been adopted by the BAAQMD and is currently in effect in the BAAQMD. EPA's limited disapproval action will not prevent the BAAQMD or EPA from enforcing this rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, 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 EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual 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 pre-existing 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.

G. Submission to Congress and the Comptroller General

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).

H. 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 January 3, 2000. 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 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Dated: October 20, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

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 F—California

2. Section 52.220 is amended by adding paragraph (c)(256)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(256) * * *

(i) * * *

(A) * * *

(*2*) Rule 8–51, adopted on November 18, 1992 and amended on January 7, 1998.

* * * * *

[FR Doc. 99–28723 Filed 11–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300945; FRL–6391–5]

RIN 2070–AB78

Glufosinate Ammonium; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-mono ammonium salt) and metabolite(s) (3-methylphosphinico-propionic acid and 2-acetamido-4-methylphosphinico-butanoic acid), expressed as 2-amino-4-(hydroxymethylphosphinyl) butanoic acid equivalents in or on almond hulls; apples; bananas; cattle fat, meat and meat-byproducts; eggs; goat fat, meat, and meat-by-products; grapes, hog fat, meat, and meat-by-products; horse fat, meat, and meat-by-products; milk; potatoes, potato chips and granules/flakes; poultry fat, meat, and meat-by-products; sheep fat, meat, and meat-by-products; transgenic aspirated grain fractions, transgenic corn, field, forage; transgenic corn, field, grain; transgenic corn, field, stover; transgenic soybean hulls, transgenic soybeans, and tree nuts group. AgrEvo USA Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. This regulation also corrects the existing regulation for time-limited tolerances for transgenic canola and sweet corn commodities.

DATES: This regulation is effective November 4, 1999. Objections and requests for hearings, identified by docket control number OPP–300945, must be received by EPA on or before January 3, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300945 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–6224 and e-mail address: miller.joanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

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 the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300945. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall ι2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of October 8, l997, (62 FR 52544) (FRL– 5746–9) and July 14, l999 (64 FR 37973) (FRL–6085–5), EPA issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d) as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) for tolerance by AgrEvo USA Company, Little Falls