department or agency that provided Federal Financial assistance funds to the recipient, except as provided in paragraph (f)(2) of this section.

(2) HUD may provide by program notice that:

(i) Reports are not required to be sent to HUD if HUD is not the cognizant agency for the recipient and if the report meets all the following conditions: an unqualified opinion was expressed on the financial statements; the report identified no material instances of noncompliance; the report identified no reportable condition or material weakness in internal controls; the report contains no schedule of findings and questioned costs applicable to a HUD program; the report identified no potential illegal act which could result in a criminal prosecution; and the report contained no uncorrected significant finding from a prior audit; and

(ii) Reports are required to be sent to HUD in all cases where HUD is the cognizant agency; however in those cases where a report meets the conditions specified in paragraph (f)(2) of this section, the report shall be accompanied by a transmittal letter indicating that such conditions have been met.

(3) Subrecipients shall submit copies to recipients that provided them Federal assistance funds.

(4) The reports shall be sent within 30 days after completion of the audit, but no later than one year after the end of the audit period, unless a longer period is agreed to with the cognizant agency.

(5) If no report is required to be submitted as provided in paragraph (f)(2)(i) of this section, the recipient must notify the appropriate HUD office in writing that the report met the conditions set forth in paragraph (f)(2) of this section; indicate the report date, fiscal year audited, and identifying information on the independent auditor; and attach a copy of the Schedule of Federal Financial Assistance.

* * * * *

PART 45—NON-FEDERAL AUDIT REQUIREMENTS FOR INSTITUTIONS OF HIGHER EDUCATION AND OTHER NONPROFIT INSTITUTIONS

3. The authority citation for part 45 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

4. Section 45.4 is revised to read as follows:

§ 45.4 Submission of reports.

(a) Except for the organizations subject to the requirements set forth in § 45.1(c), the report shall be due within 30 days after the completion of the audit, but the audit should be completed and the report submitted not later than 13 months after the end of the recipient's fiscal year unless a longer period is agreed to with the cognizant or oversight agency.

(b)(1) HUD may provide by program notice that:

(i) Reports are not required to be sent to HUD if HUD is not the cognizant agency for the recipient and if the report meets all the following conditions: an unqualified opinion was expressed on the financial statements; the report identified no material instances of noncompliance; the report identified no reportable condition of material weakness in internal controls; the report contains no schedule of findings and questions applicable to a HUD program; the report identified no potential illegal act which could result in criminal prosecution; and the report contained no uncorrected significant finding from a prior audit; and

(ii) Reports are required to be sent to HUD in all cases where HUD is the cognizant agency; however in those cases where a report meets the conditions specified in paragraph (b)(1) of this section, the report shall be accompanied by a transmittal letter indicating that such conditions have been met.

(2) If no report is required to be submitted as provided in paragraph (b)(1)(i) of this section, the recipient must notify the appropriate HUD office in writing that report met the conditions set forth in paragraph (b)(1) of this section; indicate the report date, fiscal year audited, and identifying information on the independent auditor; and attach a copy of the Schedule of Federal Financial Assistance.

Dated: March 16, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–7331 Filed 3–23–95; 8:45 am]

BILLING CODE 4210–32–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC 13–1–6552a; FRL–5177–7]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Disapproval of New Source Review Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is disapproving a State Implementation Plan (SIP) revision submitted by the District of Columbia pertaining to the regulation of major new and major modified sources in the District of Columbia. The intended effect of this action is to disapprove the District of Columbia regulations because they do not meet the requirements of the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

DATES: This action will become effective May 23, 1995 unless adverse comments are received on or before April 24, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs (3AT00), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the District of Columbia Department of Consumer and Regulatory Affairs, 2100 Martin Luther King Ave, SE., Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address.

SUPPLEMENTARY INFORMATION: On June 21, 1985 and October 22, 1993, the District of Columbia submitted a formal revision to its State Implementation Plan (SIP). Only the portions of those submittals pertaining to the permitting of new sources is being addressed in this rulemaking. The SIP submittal being addressed consists of District of Columbia Municipal Regulations (DCMR) Title 20, Sections 199 (definitions—only those pertaining to the permitting of new sources), 200, 201, 202 and 204 (permitting), and 299 (reference to the applicability of definitions in Section 199).

The District of Columbia (the District) is part of the Washington D.C. ozone nonattainment area, which includes portions of Maryland and Virginia. Washington D.C. is a nonattainment area classified as serious for ozone and moderate for carbon monoxide and, as such, is required to implement certain requirements including those pertaining to the permitting of major new and major modified sources. The Clean Air Act required that areas such as the District submit adopted regulations applying to the permitting of these major sources by no later than November 15, 1992. In addition, section 184 of the Clean Air Act requires that

areas located in the ozone transport region, of which the District is a part, submit a new source review program applicable to major new and major modified sources. The Act defines major sources in serious ozone nonattainment areas as those with the potential to emit greater than or equal to 50 tons per year of VOC or NOx emissions. Therefore, although section 184 requires that areas in the ozone transport region (OTR) define major sources as those with the potential to emit greater than or equal to 50 TPY VOC or 100 TPY NOx emissions, the more stringent major source threshold of 50 TPY for serious ozone nonattainment areas supersedes the OTR requirement. The Act requires that moderate carbon monoxide (CO) nonattainment areas, such as the District, control its new CO sources with potential emissions greater than or equal to 100 TPY and its major modified sources where potential emissions were increasing by greater than 40 TPY. On July 6, 1993, EPA made a finding that the District failed to submit the required new source review regulations and started the 18 month sanctions clock under section 179 of the Act. On October 22, 1993, the District submitted the required regulations, which were subsequently determined by EPA to be complete and stopped the sanctions clock.

Summary of SIP Revision

The District of Columbia submittals include more than the required construction permitting program for major new and major modified sources required under section 182 of the Act. Sections 200, 201, 202, and 204 of the DCMR regulations apply to both major and minor sources and to sources wishing to obtain construction or operating permits. Section 299 is an administrative section stating that the definitions in Section 199 apply to Chapter 2. Section 199 contains the definitions applicable to all of the District's regulations. Those definitions contained in Section 199 that apply to the permitting program, and which are the subject of this rulemaking action, are: actual emissions, allowable emissions, begin actual construction, commence, complete, emissions unit, federally enforceable, major modification, major stationary source, modification, necessary preconstruction approvals or permits, net emissions increase, new source, potential to emit, shutdown, significant, and stationary source.

The DC regulations at Sections 200, 201, 202, and 204 include a number of deficiencies that make the submittal unapprovable. The two most significant flaws are the lack of public notice and comment requirements for proposed new sources, and the existence of a provision in the regulation that would allow the Mayor to grant temporary permits on a month by month basis, allowing circumvention of the entire NSR regulation. The requirement for providing public notice and comment on all major new source and major modified source permits is contained in 40 CFR part 51. The District's regulation does not provide such required public notice and comment. These two flaws alone are so significant as to warrant disapproval of the District's 1985 and 1993 NSR SIP submittals. The other deficiencies include the lack of clarity in requiring consistency of emission offsets with the RFP baseline, the determination of the amount of emission offsets required (separate summation of VOC and NO_X emissions for offset purposes), location of emission offsets, timing of the enforceability of the emission offsets, creditability of emission offsets relative to other Clean Air Act requirements, the definition of stationary source as it pertains to nonroad engines, a provision that allows circumvention of the offset requirement (Section 204.9), and the de minimis provisions of section 182(c)(6).

The District's regulations at Section 200.11 also include an exemption for fuel-burning equipment, which has a capacity of 5 million or less BTU per hour (mmBTU/hr) of heat input and, which uses for fuel only gaseous fuels or distillate oils. This exemption is not approvable because the Act, as amended in 1990, requires that states with ozone nonattainment areas control major sources of nitrogen oxides (NO_X) as well as volatile organic compounds (VOCs). In the District, a major source of VOC or NO_X is defined as that which has the potential to emit 50 tons per year or more. Fuel burning equipment are sources of NO_X emissions and while an individual piece of equipment with a capacity of 5 mmBTU/hr heat input would likely not generate emissions greater than 50 TPY potential emissions, a group of such sources at a single facility could generate emissions over the major source size threshold. If the District wishes to exempt any group of NO_X sources that would be considered major, it must apply for and receive a waiver under section 182(f) of the Act. EPA's guidance on the criteria for approval of NO_X exemptions under section 182(f) is contained in EPA documents including, ''Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f)'', December 1993 and subsequent memoranda. The District has not made a petition under section 182(f) but even if it had, EPA could not approve the exclusion of major NO_X sources from RACT requirements until approval of such petition under section 182(f) were granted.

Several citations to the Clean Air Act in Section 204 of the DCMR regulation are incorrect. Any updated references to the Act, as amended in 1990, should reflect the appropriate provisions pertaining to new source permitting program requirements in sections 172, 173, and other relevant sections of the Act.

The District regulations applicable to major new and major modified sources also do not contain the de minimis and special modification provisions of sections 182(c) (6), (7) and (8) of the Act. These provisions apply to sources locating in serious and severe ozone nonattainment areas. Section 182(c)(6) is a de minimis provision that requires that a source undergoing modifications determine whether those modifications are major by summing its net emission increases over a 5-year consecutive period, including the calendar year in which the increase occurred. If the sum of the emission increases exceeds 25 TPY over that period, the modification is considered major. Sections 182(c) (7) and (8) apply to such sources that have exceeded the 25 ton threshold but wish to avoid the otherwise applicable new source review requirements. Section 182(c)(7) would allow sources with potential emissions of less than 100 TPY to obtain 1.3 to 1 internal offsets to avoid new source review, or else to install best available control technology (BACT) instead of LAER technology. Section 182(c)(8) would allow sources with potential emissions of more than 100 TPY to obtain 1.3 to 1 internal offsets in order to avoid the installation of LAER technology. The District must adopt a regulation that reflects the requirements of section 182(c)(6) but may choose not to adopt the provisions in sections 182(c) (7) and (8). The consequence of simply adopting the de minimis provisions of section 182(c)(6) but not (c)(7) or (c)(8) is that the overall effect would be to make the District requirements more stringent than the Act. Since the Act allows for state regulations to be more stringent, this would be acceptable to EPA.

The District regulations pertaining to major new and major modified sources also do not clearly require that VOC and NO_X emissions are to be summed separately to determine applicability and the required amount of emission offsets. In addition, emission offsets are not explicitly required to be federally

enforceable prior to permit issuance. The District must, at a minimum, require that VOC and NO_X emission offsets be obtained for the same pollutant and that these emission offsets be made federally enforceable prior to permit issuance. The separate summation of VOC and NO_X emissions for offset purposes is a required clarification. If the District elects not to require the separate summation of VOC and NO_X emissions for applicability purposes and does not permit the netting of emissions in order to determine NSR applicability, this would be more stringent than the federal requirements and would be considered acceptable to EPA. If, however, the District chooses to allow netting, a separate summation of VOC and NO_X emissions for both applicability and offset purposes is required. In addition, Section 204.9 of the District's regulation appears to provide sources with the ability to circumvent the offset requirements in Section 204.4. The District must delete this provision.

The District regulation is not limited to a major new or major modified source construction permit program. The applicability of the District regulation (Chapter 2) includes major source operating permits and minor source construction and operating permits. This raises additional issues that do not pertain to the required submittal under section 182 or 184 of the Act. Submittal of a major source operating permit program or a minor source construction and operating permit program is not a requirement under section 182 or 184 of the Act. Therefore, lack or disapproval of such submittals will not result in sanctions under section 179 pertaining to failure to submit or adopt regulations required under section 182 or 184. Likewise, the District's submittal of a major source operating permit program or a minor source construction or operating permit does not fulfill the District's requirement to submit a NSR program under sections 182 and 184 of the Act. It is not and was not the District's intent to submit the Section 200–299 regulation to meet the requirements of title V of the Act pertaining to major source operating permit programs. In fact, the District has subsequently submitted a title V operating permit program for EPA approval. The submittal being acted on today is being judged as to whether it meets the requirements of sections 182 and 184 of title I of the Act, pertaining to a major new and major modified source construction permitting program, not title V requirements. The title V submittal is *not* the subject of today's rulemaking action. The effect of this rulemaking action will be to disapprove, also, the District regulation as it pertains to a major source operating permit program as the program submitted by the District does not meet the requirements of sections 182 and 184 of the Act. EPA cannot approve a title V operating permit program in lieu of a new source review (major new and major modified source construction) program. EPA, however, encourages the submittal of a minor source operating permit program, separate from the major source construction permit program, which would establish federally enforceable conditions for those sources that wish to remain minor sources.

The effect of this rulemaking action will be to disapprove, also, the District regulation as it pertains to minor source construction and operating permits because it does not meet the requirements of Part D of Subchapter I of the Act. Submittal of a minor source construction or operating permit program does not correct the deficiencies in the major source construction permit program, required under Part D of the Act. The submittal addressed in this rulemaking contains provisions pertaining to major and minor source construction permits and major and minor source operating permits that are inextricably intertwined. Since the District regulation does not meet Part D requirements, pertaining to a major source construction permitting program, EPA is proposing to disapprove the entire submittal as it pertains to permitting.

While the District may choose to modify and submit a minor source operating permit program (subject to the criteria in the June 28, 1989 **Federal Register** notice) for approval into the SIP, such a submittal is not required under section 182 or 184 of the Act and the lack of submittal or lack of corrections to this operating permit program is not considered a deficiency under section 182 or 184 of the Act. Any subsequent submittal that the District makes to correct the deficiencies in the major source construction permit program, which is a required submittal under sections 182 and 184 of the Act, must clearly delineate the program requirements applicable to major new or major modified sources applying for construction permits versus permitting requirements that may be applicable to minor sources or sources applying for operating permits.

The requirements for a new source review construction permitting program are contained in 40 CFR parts 51 and 52 and the Clean Air Act and are summarized in the accompanying technical support document. Any subsequent submittal that the District makes must meet the requirements of the Act and 40 CFR parts 51 and 52 in order to be approved into the District SIP. EPA is in the process of updating 40 CFR parts 51 and 52 to reflect the current requirements in the 1990 Clean Air Act Amendments. Any future NSR submittals from the District will be judged against the federal requirements in existence at the time of the submittal.

EPA is disapproving this SIP revision without prior proposal because the District's regulations contain such significant flaws that the Agency views this as a clear-cut decision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to disapprove the SIP revision should adverse or critical comments be filed. This action will be effective May 23, 1995 unless, by April 24, 1995, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. 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 May 23, 1995.

Final Action

EPA is disapproving the District of Columbia Municipal Regulations title 20, sections 200, 201, 202, 204 and 299 and the associated definitions in section 199, pertaining to the permitting of sources. The accompanying technical support document more fully explains the rationale for EPA's action.

EPA is disapproving the District's permitting regulation because it contains deficiencies that do not meet the requirements of section 182(a)(2)(C) of the CAA, and, as such, the rule does not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides

two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, 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, 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.

EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to the disapproval of the District of Columbia Municipal Regulations Title 20, Sections 200, 201, 202, 204, 299 and associated definitions in Section 199, must be filed in the United States Court of Appeals for the appropriate circuit by May 23, 1995. 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, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 17, 1995.

Stanley Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52 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 J—District of Columbia

2. Section 52.472 is amended by adding paragraph (f) to read as follows:

§ 52.472 Approval status.

* * * * *

(f) Disapproval of revisions to the District of Columbia State Implementation Plan, District of Columbia Municipal Regulations (DCMR) Title 20, Sections 200, 201, 202, 204 and 299, pertaining to permitting of sources, and associated definitions in Section 199 submitted on June 21, 1985 and October 22, 1993 by the Mayor of the District of Columbia (1985 submittal) and by the Administrator of the District of Columbia Environmental Regulation Administration (1993 submittal). The disapproved regulations include those applicable to major new and major modified sources wishing to locate in the District. A new source review program for such major sources is required under sections 182 and 184 of the Clean Air Act. There are many deficiencies in the DCMR permitting regulations. Some of these deficiencies are the lack of public notice and comment procedures for new and modified sources applying for construction permits, the existence of a provision that allows the Mayor to grant indefinite 1-month temporary permits to those sources whose permits he/she determines have been delayed because of his/her office, the inclusion of a major source operating permit program, the inclusion of a minor source operating permit program that does not meet Part D requirements of the Act, the exemption of certain fuel burning (nitrogen oxide emitting) sources, incorrect citations of the Clean Air Act, a provision that allows circumvention of the offset requirement, and the lack of the de minimis special modification provisions required in serious and severe ozone nonattainment areas (section 182(c)(6) of the Clean Air Act).

[FR Doc. 95–7243 Filed 3–23–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 4F4318/R2118; FRL–4943–9]

RIN 2070–AB78

Beauveria Bassiana Strain GHA; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of *Beauveria bassiana* Strain GHA in or on alfalfa, corn, cotton, potatoes, rapeseed, safflower, small grain crops, soybeans, sugarbeets, sunflower, rangeland, improved pastures, and in meat, milk, or other animal products from livestock grazed on treated rangeland or improved pastures when applied to growing crops in accordance with good agricultural practices. Mycotech Corp. requested this exemption.

EFFECTIVE DATE: March 10, 1995.

ADDRESSES: Written objections, identified by the document control number, [PP 4F4318/R2118], 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 document control 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