

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO47-1-6946 & CO-001-0020; FRL-5934-1]

Approval and Promulgation of Implementation Plans; Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to procedures described at 54 FR 2214 (January 19,

1989), EPA has recently approved two minor State Implementation Plan (SIP) revisions for the State of Colorado. This document lists the revisions EPA has approved and revises the Code of Federal Regulations to reflect those approvals.

EFFECTIVE DATE: This action is effective December 17, 1997.

ADDRESSES: Copies of the State SIP revision requests and EPA's letter notices of approval are available for public inspection during normal business hours at the following locations: Air Program, Environmental

Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2466; and the Air Pollution Control Division, Colorado Department of Health, 4300 Cherry Creek Drive South, Denver, Colorado 80222-1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8P2-A, at the EPA regional office listed above, (303) 312-6445.

SUPPLEMENTARY INFORMATION: EPA Region VIII has approved the following minor SIP revision requests under section 110(a) of the Clean Air Act:

State	Pollutant	Subject matter	Date of submission	Date of approval
Colorado	PM-10	Aspen Element of the Colorado PM-10 SIP	Mar. 13, 1995	Aug. 21, 1997.
Colorado	PM-10	Pagosa Springs Element of the Colorado PM-10 SIP	Aug. 2, 1996	Aug. 21, 1997.

EPA has determined that these SIP revisions comply with all applicable requirements of the Act and EPA policy and regulations concerning such revisions. Due to the minor nature of these revisions, EPA concluded that conducting notice-and-comment rulemaking prior to approving the revisions would have been "unnecessary and contrary to the public interest" and, hence, was not required by the Administrative Procedures Act, 5 U.S.C. 553(b). Each of these SIP approvals became final and effective on the date of EPA approval as listed in the chart above.

I. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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 economic 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.

SIP approvals under section 110 and subchapter I, part D of the 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 impose any new requirements, I certify that it does not have a significant impact on small entities affected.

Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

C. 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 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 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.

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the 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 February 17, 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 must 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, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 21, 1997.

William P. Yellowtail,
Regional Administrator, Region VIII.

Title 40, chapter I 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 G—Colorado

2. Section 52.332 is amended by redesignating paragraph (b) as paragraph (b)(1), redesignating paragraph (e) as paragraph (e)(1), and adding paragraphs (b)(2) and (e)(2) to read as follows:

§ 52.332 Moderate PM-10 nonattainment area plans.

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(b) * * *

(2) On August 2, 1996, the Governor of Colorado submitted minor revisions to the Pagosa Springs Element of the Colorado PM-10 SIP.

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(e) * * *

(2) On March 13, 1995, the Governor of Colorado submitted minor revisions to the Aspen Element of the Colorado PM-10 SIP.

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[FR Doc. 97-32930 Filed 12-16-97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300585; FRL 5756-4]

RIN 2070-AB78

Ethalfuralin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of ethalfuralin in or on canola seed. This action is in response to EPA allowing issuance of crisis emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on canola in Montana and North Dakota. This regulation establishes a maximum permissible level for residues of ethalfuralin in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on October 31, 1998.

DATES: This regulation is effective December 17, 1997. Objections and requests for hearings must be received by EPA on or before February 17, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300585], 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-300585], 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. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300585]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, 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: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9356; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the herbicide ethalfuralin, in or on canola seed at 0.05 part per million (ppm). This tolerance will expire and is revoked on October 31, 1998. EPA will publish a document in the **Federal Register** to

remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

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

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

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