

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. 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 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective May 16, 2003.

K. 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 June 16, 2003. 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 5, 2003.

Alexis Strauss,

Acting 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 D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(94)(i)(G) to read as follows:

§ 52.120 Identification of plan.

* * * * *
 (c) * * *
 (94) * * *
 (i) * * *
 (G) Rule 331, revised on April 7, 1999.
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Subpart F—California

■ 3. Section 52.220 is amended by adding paragraph (c)(277)(i)(C)(3) to read as follows:

§ 52.220 Identification of plan.

* * * * *
 (c) * * *
 (277) * * *
 (i) * * *
 (C) * * *
 (3) Rule 8–16, adopted on March 7, 1979 and amended on September 15, 1998.
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[DC–T5–2003–01a; FRL–7483–6]

Clean Air Act Approval of Operating Permits Program Revision; District of Columbia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the District of Columbia's Clean Air Act title V operating permit program, pertaining to requirements for public notification of permit actions. In a notice of deficiency (NOD) published in the **Federal Register** on December 21, 2001, EPA notified the District of Columbia of EPA's finding that the District's provisions for providing public notification of permitting actions did not fully comply with the requirements of the Clean Air Act (CAA) and its implementing regulations. Direct final approval of this program revision resolves the deficiency identified in the NOD and the District of Columbia maintains final full approval of the Clean Air Act title V operating permits program.

EFFECTIVE DATE: This rule is effective on June 2, 2003 without further notice, unless EPA receives adverse written comment by May 16, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Kristeen Gaffney, Acting Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and District of Columbia Department of Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Paresh R. Pandya, U.S. Environmental Protection Agency, Region III (3AP11), 1650 Arch Street, Philadelphia, PA 19103 at (215) 814–2167, or by e-mail at pandya.perry@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The EPA granted final interim approval of the District of Columbia's operating permit program on August 7, 1995 (60 FR 40101). The District amended its operating permit program to address deficiencies identified in the interim approval action. The EPA proposed full approval of the District of Columbia's operating permit program in the **Federal Register** on October 16,

2001 (66 FR 52538). Adverse comments were received and EPA withdrew that approval. A final rulemaking action was published in the **Federal Register** on December 4, 2001 (66 FR 62954) which summarized the adverse comments, provided EPA's responses, and promulgated final full approval of the District of Columbia's operating permit program. Subsequently, in reevaluating the commenter's concerns, EPA agreed that the commenter had identified a deficiency in the District of Columbia's title V operating permit program relating to the District of Columbia's public notification requirements. The EPA published a notice of deficiency (NOD) in the **Federal Register** (pursuant to 40 CFR 70.4(i) and 70.10(b)) on December 21, 2001 (66 FR 65947) to notify the District of Columbia and the public that EPA found a deficiency in the District of Columbia's title V operating permit program. The deficiency relates to the District of Columbia's regulatory authority to provide public notification of permit actions.

II. Description of Action

The EPA's regulations at 40 CFR 70.7(h) and 70.7(d)(3)(i) provide that public notice shall be provided for all permit proceedings, except those qualifying as administrative permit amendments or minor permit modifications. Such public notification shall be provided by a number of means, including "by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice; to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public." See, 40 CFR 70.7(h)(1). EPA's regulations at 40 CFR 70.4(b)(16) require that State part 70 program submittals contain provisions requiring the permitting authority to implement the requirements of 40 CFR 70.7. The District of Columbia's operating permit program regulations at 20 DCMR 303.10 required that public notice of draft initial permits, significant modifications and permit renewals be published in the District of Columbia Register and that copies of such notice be sent to persons on a permit mailing list. However, the regulations did not expressly require that "other means" be employed if necessary to assure adequate public notice. Because the District of Columbia's operating permit program regulations did not require the District to provide public notice by other means if necessary to assure adequate notice to

the affected public, the District of Columbia's operating permit program did not fully comply with the requirements of the Clean Air Act and 40 CFR part 70.

Title V provides for the approval of State programs for the issuance of operating permits that incorporate the applicable requirements of the Clean Air Act. To receive title V program approval, a State permitting authority must submit a program to EPA that meets certain minimum criteria, and EPA must disapprove a program that fails, or withdraw an approved program that subsequently fails, to meet these criteria. These criteria include requirements for proper public participation procedures (40 CFR 70.7(h)).

The EPA's title V implementing regulations at 40 CFR 70.4 and 70.10(b) and (c) provide that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70 and the permitting authority fails to take corrective action. A list of potential bases for program withdrawal is provided at 40 CFR 70.10(c)(1)(i), and includes the case where the permitting authority's legal authority does not meet the requirements of 40 CFR part 70.

III. Final Action

On April 4, 2003, the District of Columbia submitted revisions to 20 DCMR 303.10(a)(1)(B) which require that a notice be published in the District of Columbia Register and using any "other means" necessary to assure adequate notice to the affected public of the application, the preliminary determination, the location of the public file and the procedures for submitting written comments and requesting a hearing. With this amendment to 20 DCMR 303.10(a)(1)(B), the District of Columbia has adequately resolved the deficiency EPA identified in its December 21, 2001 notice of deficiency and maintains final full approval of the Clean Air Act title V operating permits program.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the operating permit program revisions if adverse comments are filed relevant to the issues discussed in this action. This rule will be effective on June 2, 2003 without further notice unless EPA receives adverse comments

by May 16, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the

Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state operating permit program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove an operating permits program submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program submission, to use VCS in place of an operating permit program submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. 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).

C. 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 June 16, 2003. 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 approving revisions to the District of Columbia operating permit program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

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

Dated: April 9, 2003.

James W. Newsom,
Acting Regional Administrator, Region III.

■ Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

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

■ 2. Appendix A to part 70 is amended by adding paragraph (c) in the entry for the District of Columbia to read as follows:

Appendix A to part 70—Approval Status of State and Local Operating Permits Programs

* * * * *
District of Columbia
* * * * *

(c) The District of Columbia Department of Health submitted program amendments on April 4, 2003. The rule amendments contained in the April 4, 2003 submittal adequately addressed the deficiency identified in the Notice of Deficiency effective on December 13, 2001. The District of Columbia hereby maintains final full approval effective on June 2, 2003.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2003-0126; FRL-7302-6]

Pesticides; Minimal Risk Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: This final rule reorganizes certain existing tolerance exemptions. All of these chemical substances were reviewed as part of the tolerance reassessment process required under the Food Quality Protection Act of 1996 (FQPA). As a result of that review, certain chemical substances are now

classified as "minimal risk," and are therefore being shifted to the section of 40 CFR part 180 that holds minimal risk chemicals. The Agency is merely moving certain tolerance exemptions from one section of the Code of Federal Regulations to another. No existing tolerance exemptions are lost or expanded and no new tolerance exemptions are added as a result of this action.

DATES: This final rule is effective on April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703-305-6304; fax number: 703-305-0599; e-mail address: *boyle.kathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you formulate or market pesticide products. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)
- Antimicrobial pesticides (NAICS 32561)

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 this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies Of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2003-0126. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI)