

review and approval by the USPS for inclusion in reported volume.

8.2.6 Incentive Program Credits

Approved participants demonstrating an increase in Standard Mail, or Nonprofit Standard Mail, saturation and high density letters and flats volume above their threshold level qualify for a credit to a single designated permit imprint advance deposit account or CAPS account as follows:

a. The total postage paid for Standard Mail, or Nonprofit Standard Mail, letters and flats mailed at saturation and high density prices, recorded during the program is identified for each participant.

b. The total postage paid during the program period is divided by the total number of recorded mailpieces to determine the average price per piece for the program period.

c. Participants receive a credit, based on the percentages of the average price per piece, for the number of mailpieces of incremental volume above their threshold level, recorded during the program period, as follows:

1. Saturation letters and flats: 22 percent for Standard Mail, 8 percent for Nonprofit Standard Mail pieces.

2. High density letters and flats: 13 percent for Standard Mail, 8 percent for Nonprofit Standard Mail pieces.

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400 Commercial Parcels

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430 First-Class Mail

433 Prices and Eligibility

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3.0 Basic Standards for First-Class Mail Parcels

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3.5 Move Update Standards

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3.5.4 Basis for Move Update Assessment Charge

[Revise text of 3.5.4 to read as follows:]

Mailings are subject to a Move Update assessment charge if more than 25 percent of addresses with a change-of-address (COA) are not updated, based on the error rate found in USPS sampling at acceptance during Performance-Based Verification. Specifically, mailings for which the sample contains greater than 25 percent failed COAs out of the total COAs in the sample are subject to additional postage charges as follows:

a. The percentage of the mailing paying the charge is based on the

percentage of failed pieces above 25 percent (%).

b. Each of the assessed pieces is subject to the \$0.07 per piece charge.

c. As an example, if 35% of COAs in the sample are not updated, then the charge is applied to 10% (=35% - 25%) of the total mailing.

d. Mailings for which the sample has five or fewer pieces that were not updated for a COA are not subject to the assessment, regardless of the failure percentage.

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440 Standard Mail

443 Prices and Eligibility

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3.0 Basic Standards for Standard Mail Parcels

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3.5 Move Update Standards

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[Revise title and text of 3.5.4 to read as follows:]

3.5.4 Basis for Move Update Assessment Charges

Mailings are subject to a Move Update assessment charge if more than 25 percent of addresses with a change-of-address (COA) are not updated, based on the error rate found in USPS sampling at acceptance during Performance-Based Verification. Specifically, mailings for which the sample contains greater than 25 percent failed COAs out of the total COAs in the sample are subject to additional postage charges as follows:

a. The percentage of the mailing paying the charge is based on the percentage of failed pieces above 25 percent (%).

b. Each of the assessed pieces is subject to the \$0.07 per piece charge.

c. As an example, if 35% of COAs in the sample are not updated, then the charge is applied to 10% (=35% - 25%) of the total mailing.

d. Mailings for which the sample has five or fewer pieces that were not updated for a COA are not subject to the assessment, regardless of the failure percentage.

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We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes.

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 2010-28412 Filed 11-16-10; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2010-0321, FRL-9212-1]

Approval and Promulgation of Implementation Plans; New York Prevention of Significant Deterioration of Air Quality and Nonattainment New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to grant a partial approval to revisions of the New York State Implementation Plan (SIP) submitted by the New York State Department of Environmental Conservation on March 3, 2009. As a result of this action, New York will implement its own Prevention of Significant Deterioration of Air Quality (PSD) and Nonattainment New Source Review (NNSR) State regulations. These revisions create a new New York State PSD regulation program and modify the existing New York State NNSR regulations in the SIP. These revisions also address changes mandated by the revised Federal New Source Review (NSR) regulations, referred to as the "2002 NSR Reform Rules."

In this action, EPA is taking final action to approve these revisions by issuing a partial approval, with the caveat that EPA is taking no action at this time on the PSD permitting threshold provisions to the extent that those provisions may require permits for sources of greenhouse gas (GHG) emissions that equal or exceed the 100/250 tons per year (tpy) GHG levels but are less than the thresholds identified in EPA's final Tailoring Rule; and the PSD significance level provisions of New York's rule to the extent that those provisions may treat as significant GHG emissions increases that are less than the thresholds identified in the final Tailoring Rule. The PSD applicability thresholds below the Tailoring Rule will be acted on, as necessary, as part of an EPA national rulemaking or in a separate EPA Region 2 rulemaking.

DATES: *Effective Date:* This rule is effective on December 17, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2010-0321. All documents in the docket are listed on the <http://www.regulations.gov> Web site. All docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at

the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 212-637-4249.

FOR FURTHER INFORMATION CONTACT:

Frank Jon, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4085; e-mail address: jon.frank@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, references to “EPA,” “we,” “us,” or “our,” are intended to mean the Environmental Protection Agency. The supplementary information is arranged as follows:

- I. What is being addressed by this document?
- II. What sections of New York’s rules are we approving in this action?
- III. What are EPA’s responses to comments to EPA’s proposal?
- IV. What action is EPA taking?
- V. Statutory and Executive Order Reviews

I. What is being addressed by this document?

On March 3, 2009, the State of New York, through the New York State Department of Environmental Conservation (NYSDEC), submitted to EPA Region 2 revisions to the New York State Implementation Plan (SIP). The submittal consists of revisions to three regulations that are already part of the New York SIP. The affected regulations are: 6 New York Code of Rules and Regulations (NYCRR) Part 231, New Source Review for New and Modified Facilities; 6 NYCRR Part 200, General Provisions; and 6 NYCRR Part 201, Permits and Certificates. The revisions were made to create a new New York State PSD regulation program and to update the existing New York State nonattainment regulations consistent with changes to the Federal NSR regulations published on December 31, 2002 (67 FR 80186). In today’s action, EPA is taking final action to approve those revisions by issuing a partial approval, as proposed (see 75 FR 43892 (July 27, 2010)), with the caveat that EPA is taking no action at this time on (1) the PSD permitting threshold provisions to the extent that those provisions may require permits for sources of greenhouse gas (GHG) emissions that equal or exceed the 100/250 tons per year (tpy) GHG levels but are less than the thresholds identified in EPA’s final Tailoring Rule at 75 FR 31514, 31606 (June 3, 2010); and (2) the PSD significance level provisions of New York’s rule to the extent that those provisions may treat as significant GHG

emissions increases that are less than the thresholds identified in the final Tailoring Rule. *Id.* We are taking this action, in part, because in its August 11, 2010 letter to EPA, New York State confirmed to us that they have authority to regulate greenhouse gases without any additional rulemaking or other administrative action. For PSD applicability thresholds below the Tailoring Rule, EPA is still reviewing New York’s ability to limit the permitting to sources equal to and above the Tailoring Rule thresholds. Action on this issue will be forthcoming, as necessary, as part of an EPA national action or in a separate EPA Region 2 action.

II. What sections of New York’s rules are we approving in this action?

With respect to 6 NYCRR Part 200, EPA is taking final action to approve into the New York SIP only sections 200.1 and 200.9, Table 1 (Part 231 references), as effective March 5, 2009. EPA is not taking final action on the revisions to section 200.10 since they include only references to Federal standards and requirements and are therefore already Federally enforceable standards and requirements.

With respect to 6 NYCRR Part 201, EPA is taking final action to approve into the New York SIP only those revisions to subpart 201-2, effective March 5, 2009, submitted by NYSDEC specifically for implementation of the Part 231 NSR permitting program. Specifically, EPA is approving the definition of “Major stationary source or major source or major facility” that is contained in subpart 201-2.1(b)(21).

With respect to 6 NYCRR Part 231, EPA is taking final action to approve all of Part 231 into the New York SIP except certain revisions to Part 231 that may be applicable to GHG emissions, effective March 5, 2009, specifically, (1) the PSD permitting threshold provisions to the extent that those provisions may require permits for sources of greenhouse gas (GHG) emissions that equal or exceed the 100/250 tons per year (tpy) GHG levels but are less than the thresholds identified in EPA’s final Tailoring Rule at 75 FR 31514, 31606 (June 3, 2010); and (2) the PSD significance level provisions of New York’s rule to the extent that those provisions may treat as significant GHG emissions increases that are less than the thresholds identified in the final Tailoring Rule. Note that by this final action, EPA is removing and reserving 40 CFR 52.1689 which had incorporated the Federal PSD regulations at 40 CFR 52.21 into New York’s applicable implementation plan.

III. What are EPA’s responses to comments to EPA’s proposal?

EPA received only one comment on this proposal. The commenter congratulates the agency on the policy decision it has made. The commenter also states that when EPA promulgated the NSR Reform Rule, it indicated that it would not approve State plans that did not include the “reforms,” and stated that it would issue a Federal Implementation Plan imposing the reforms on any State that did not adopt them. By contrast, the commenter notes that the proposed rule would approve New York’s program, even though it diverges in important respects from the NSR Reform package. The commenter further notes that EPA does so on the grounds that the New York program is more stringent than Federal requirements. The commenter indicates that this is quite a change from the position of the previous Administration. The commenter further states that he does not know if EPA has previously taken the position it does here. If not, the commenter urges EPA to provide discussion of the rationales for this change in stance. Otherwise, the commenter warns, the change might well be struck down by the courts as unexplained, and therefore arbitrary and capricious.

Response

Except in specific cases of preemption unrelated to this action, the Clean Air Act does not preclude States from adopting or enforcing a more stringent regulation than Federal requirements. 42 U.S.C. 7416. New York State has adopted the reforms of EPA’s 2002 NSR reform rules. In general, the New York State revisions to the rule are similar to the Federal NSR Reform Rules except for a few specific provisions. EPA is required to approve State SIP revisions that are at least as stringent as the Federal rules even if they contain provisions that differ in minor ways. These specific provisions, addressed in New York’s Revised Regulatory Impact Statement and discussed in detail in our proposal (see 75 FR 43892, (July 27, 2010), retain and, in fact, may exceed the environmental benefits of the NSR program.

IV. What action is EPA taking?

EPA is taking a final action to grant a partial approval to revisions to the New York State Implementation Plan (SIP) submitted by the New York State Department of Environmental Conservation on March 3, 2009.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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 action 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. 804(2).

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 January 18, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 29, 2010.

George Pavlou,

Acting Regional Administrator, Region 2.

■ 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 HH—New York

■ 2. Section 52.1670 is amended by adding new paragraph (c)(115) to read as follows:

§ 52.1670 Identification of plan.

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(c) * * *
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(115) On March 3, 2009, the New York State Department of Environmental Conservation (NYSDEC), submitted to EPA proposed revisions to the State Implementation Plan concerning Prevention of Significant Deterioration (PSD) and nonattainment new source review.

(i) Incorporation by reference:

(A) Letter dated March 3, 2009, from Assistant Commissioner J. Jared Snyder, NYSDEC, to George Pavlou, Acting Regional Administrator, EPA Region 2, submitting the revisions for Title 6 of the New York Code of Rules and Regulations, Part 200, "General Provisions," sections 200.1 and 200.9, Table 1 (Part 231 references); Subpart 201-2.1(b)(21); and Part 231, which identifies an effective date of March 5, 2009.

(B) Title 6 of the New York Code of Rules and Regulations, Part 200, "General Provisions," sections 200.1 and 200.9, Table 1 (Part 231 references), with an effective date of March 5, 2009, Subpart 201-2.1(b)(21), definition of "Major stationary source or major source or major facility," with an effective date of March 5, 2009, and Part 231, "New Source Review for New and Modified Facilities," with an effective date of March 5, 2009.

■ 3. Section 52.1679, is amended by revising the table entries under Title 6, for Part 200 and Part 231, and adding new entry Subpart 201-2.1(b)(21) following Part 201, "Permits and certificates" in numerical order to read as follows:

§ 52.1679 EPA-approved New York State regulations.

| New York State regulation | State effective date | Latest EPA approval date | Comments |
|--|----------------------|--------------------------------------|--|
| Title 6 | | | |
| Part 200, General Provisions, Section 200.1. | 3/5/09 | 11/17/10, [Insert FR page citation]. | The word odor is removed from the Subpart 200.1(d) definition of "air contaminant or air pollutant." |

| New York State regulation | State effective date | Latest EPA approval date | Comments |
|--|----------------------|--------------------------------------|---|
| | | | Redesignation of non-attainment areas to attainment areas (200.1(av)) does not relieve a source from compliance with previously applicable requirements as per letter of Nov. 13, 1981 from H. Hovey, NYSDEC. |
| | | | Changes in definitions are acceptable to EPA unless a previously approved definition is necessary for implementation of an existing SIP regulation. |
| | | | EPA is including the definition of "Federally enforceable" with the understanding that (1) the definition applies to provisions of a Title V permit that are correctly identified as Federally enforceable, and (2) a source accepts operating limits and conditions to lower its potential to emit to become a minor source, not to "avoid" applicable requirements. |
| Section 200.9, Table 1 (Part 231 references). | 3/5/09 | 11/17/10, [Insert FR page citation]. | EPA is approving reference documents that are not already Federally enforceable. |
| Sections 200.6, 200.7 and 200.9. | 2/25/00 | 4/22/08, 73 FR 21548 | EPA is approving reference documents that are not already Federally enforceable. |
| * * * | | | |
| Subpart 201-2.1(b)(21), Definitions. | 3/5/09 | 11/17/10, [Insert FR page citation]. | EPA is including the definition of "Major stationary source or major source or major facility" with the understanding that the definition applies only to provisions of Part 231. |
| * * * | | | |
| Part 231, New Source Review for New and Modified Facilities. | 3/5/09 | 11/17/10, [Insert FR page citation]. | Partial approval; no action taken on provisions that may require PSD permits for sources of greenhouse gas (GHG) emissions with emissions below the thresholds identified in EPA's final PSD and Title V GHG Tailoring Rule at 75 FR 31514, 31606 (June 3, 2010). |
| * * * | | | |

§ 52.1689 [Reserved]

■ 4. Section 52.1689 is removed and reserved.

[FR Doc. 2010-28964 Filed 11-16-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2009-0812; FRL-8851-7]

Acequinocyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of acequinocyl in or on bean, edible podded; hop, dried cones; okra and vegetable, fruiting, group 8. The Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective November 17, 2010. Objections and requests for hearings must be received on or before January 18, 2011, and must be filed in accordance with the instructions provided in 40 CFR part

178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2009-0812. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington,

DC 20460-0001; telephone number: (703) 305-7610; e-mail address: jackson.sidney@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide 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