

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.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 256-66 (1976).

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the 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, the 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 the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today 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 Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 22, 1996. 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.

Dated: February 2, 1996.

Michelle D. Jordan,

Acting Regional Administrator.

For the reasons stated in the preamble, 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. 7401-7671q.

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraph (c)(103) to read as follows:

§ 52.1170 Identification of Plan.

* * * * *

(c) * * *

(103) On August 26, 1994 Michigan submitted a site-specific SIP revision in the form of a consent order for incorporation into the federally enforceable ozone SIP. This consent order determines Reasonably Available Control Technology (RACT) specifically for the Enamalum Corporation Novi, Michigan facility for the emission of volatile organic compounds (VOCs).

(i) Incorporation by reference. The following Michigan Stipulation for Entry of Final Order By Consent.

(A) State of Michigan, Department of Natural Resources, Stipulation for Entry of Final Order By Consent No. 6-1994 which was adopted by the State on June 27, 1994.

[FR Doc. 96-3788 Filed 2-20-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[MN28-02-7253; FRL-5402-2]

Approval and Promulgation of Implementation Plans (Minnesota)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is approving a year-round oxygenated fuels program as a revision to Minnesota's State Implementation Plan (SIP) for carbon monoxide (CO). The use of oxygenated fuels can reduce emissions of CO from vehicles, thereby reducing the threat to human health posed by CO, which can contribute to heart and lung disease and reduce the concentration of oxygen in the blood stream. Minnesota already has an approved SIP which requires the use of oxygenated fuels during the winter; the extension of the oxygenated fuels program beyond the winter months will serve as the contingency measure required for nonattainment plans under section 172(c)(9) of the Clean Air Act (the Act). USEPA's action is based upon a SIP revision request which was submitted by the State to satisfy the requirements of the Act.

DATES: This final rule is effective on March 22, 1996.

ADDRESSES: Copies of the SIP revision request, public comments on the rulemaking, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Alexis Cain at (312) 886-7018 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AT-18J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Alexis Cain, Air Toxics and Radiation Branch, Regulation Development Section (AT-18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-7018.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On November 12, 1993, the Commissioner of the Minnesota Pollution Control Agency submitted elements of a contingency measure for the carbon monoxide nonattainment area in the Twin-Cities area of the State. This area includes the following counties which comprise the CO control area: Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Washington, and Wright.¹ The State's

¹ St. Louis County (in the Duluth-Superior, Wisconsin MSA) was redesignated to attainment for carbon monoxide on April 14, 1994. The maintenance plan contains a "park and ride" measure to reduce vehicle miles traveled in the event maintenance cannot be assured. If the first choice measure (park and ride) does not succeed in reducing the CO concentrations the State will

CO contingency plan consists of an expansion of the State's existing wintertime oxygenated gasoline program to a year-round program beginning on October 31, 1995. The program requires gasoline sold in the control area of the Twin Cities to contain no less than 2.0 percent oxygen and average 2.7 percent oxygen during the control period. On January 25, 1994, the USEPA issued a letter stating that the submittal was complete except for two items: the public hearing process and a report of the results of a study regarding the year-round use of ethanol as the oxygenate and its effect on summer-time ozone concentrations. The results of the public hearing process were received in a letter from the Commissioner of the MPCA on January 26, 1994, and contained the required information demonstrating that the public process was carried out. The letter included a report prepared by an environmental consultant regarding the year-round use of ethanol in the State. USEPA requested this report because of the potential for increased evaporative emissions of hydrocarbons resulting from splash blending ethanol in gasoline. The emission of hydrocarbons during summertime conditions results in the formation of tropospheric ambient ozone.

The State submittal was submitted to satisfy the provisions under section 172(c)(9) of the Clean Air Act (Act), which requires contingency measures in moderate CO nonattainment areas with design values of 12.7 parts per million or less. These contingency measures must be implemented in the event the area fails to attain the national standard by December 31, 1995. Contingency measures, once triggered, are to take effect automatically, without further rulemaking action by the State or the Administrator. States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions.

A proposed rulemaking was published in the June 1, 1995 Federal Register (60 FR 28557), which proposed approval of the CO contingency SIP, but raised invited public comment on three issues: potential increases in ozone concentrations as a result of the use of oxygenated fuels in the summer months; potential problems in enforcing the program in the event that a possible future increase in the price of ethanol (which is the oxygenate in use in Minnesota) gives fuel retailers and/or blenders an incentive not to comply

consider the implementation of an oxygenated gasoline program.

with the program, and the need to define an endpoint for reporting purposes in the oxygenate program.

II. Public Comment/USEPA Response

USEPA received comments on the proposed rulemaking from KOCH Refining and the Minnesota Department of Agriculture.

KOCH Refining Comments and USEPA Response

KOCH requested that the USEPA disapprove the proposed contingency measure because:

- (1) There is no need for summertime CO reductions, based on current and historical summertime CO ambient monitoring;
- (2) The lack of an end point for reporting purposes will lead to unnecessary regulatory complications;
- (3) There is great potential for increases in ambient ozone concentrations due to use of year-round oxygenated fuel; and
- (4) There is great potential for adverse impacts in price and availability of gasoline in the event of reduction or curtailment of federal or state subsidies for ethanol production and blending.

Comment 1: There is no need for summer time CO reductions, based on current and historical summertime CO ambient monitoring.

While there has not been a violation of the CO air quality standard since 1991, several of the exceedances which contributed to violations between 1987 and 1991 were registered outside of the current four-month program period. Moreover, the most recent exceedance of the standard occurred during the summer of 1995. Therefore, the USEPA believes that the extension of the program beyond the winter months, which seems to have been effective in reducing ambient CO concentrations, will be useful in providing a margin of protection against exceedances outside of the current program period.

Comment 2: The lack of an end point for reporting purposes will lead to unnecessary regulatory complications.

In the proposal action, USEPA noted that while the oxygenated gasoline program requires reports to be submitted by registered blenders of oxygenated fuels at the end of the control period, the end of the control period has not been defined for the year-round program. The State has been made aware of this minor technical problem, and is exploring means to correct it. The USEPA believes that this problem can be resolved without difficulty, and that it is not an adequate reason to delay final rulemaking.

Comment 3: There is great potential for increases in ambient ozone concentrations due to use of year-round oxygenated fuel.

The addition of ethanol to gasoline raises the vapor pressure of the mixture to a level higher than that of either of the two components. The USEPA allows a one pound per square inch (psi) waiver for gasolines containing up to 10 volume percent ethanol. So, for example, the vapor pressure of gasoline sold during summer months is limited to nine psi. However, a gasoline blend of 10 volume percent ethanol may have a vapor pressure of 10 psi. This increase in vapor pressure may lead to higher evaporative emissions of volatile organic compounds (VOCs), which are precursors of ozone, potentially increasing the formation of ozone.

While the use of oxygenated fuels during the summer (the ozone season) may lead to increases in ambient ozone concentrations, the USEPA has no basis for disapproving the CO contingency SIP request since there is no information available that indicates that it will lead to violations of the ozone NAAQS. Section 110(l) of the Act prohibits USEPA from approving a SIP if it would interfere with any applicable requirement concerning attainment or reasonable further progress, or any other applicable requirement of the Act. Since Minnesota has no nonattainment areas for ozone, reasonable further progress is not an issue; the only concern is whether use of oxygenated fuels jeopardizes the attainment status of the Twin Cities.

KOCH argues that a possible tightening of the ozone NAAQS could make it more difficult to avoid a violation. However, USEPA cannot base its current rulemaking on speculation about future changes in the standard. Koch also argues that the possibility of hotter summers in the future, which would be more conducive to ozone formation, makes it risky to implement the oxygenated fuels program during the summer. However, USEPA concludes that there is no available evidence that use of oxygenated fuels will lead to violation of the standard in the Twin Cities. Air quality data show no exceedances or violations of the ozone standard in the last four years, with the last exceedance recorded in 1990. Moreover, there is some dispute over the extent to which ethanol will increase ozone formation. A study contracted by MPCA (discussed below) found that ethanol might slightly reduce ozone formation; while USEPA disputes this study's methodology and still believes that some ozone increases are possible as a result of the oxygenated

fuels program, the magnitude of these increase in the Twin Cities cannot be determined. Furthermore, ethanol blends are already in use year-round in Minnesota, with 50 percent or greater market penetration during the past 3 ozone seasons, without causing an exceedance of the ozone standard. An increase from more than 50 percent use of ethanol blends to nearly 100 percent is not likely to lead to a significant increase in ozone.

The Minnesota Pollution Control Agency submitted a contractor's report which suggested that the use of ethanol would not cause violations of the ozone standard.² The USEPA reviewed the report and found that it was flawed in a number of areas including: uncertainty on how to take into account VOC reactivity; incorrect speciation profiles; inability to replicate exhaust VOC benefit of the ethanol blends; lack of evidence to support the contention of an enrichment benefit for ethanol, and the use of excessively high highway speeds in the modelling. Despite USEPA's criticism of this study, no new information was submitted by the consultant or the State. The USEPA's comments on this report remain unchanged. However, KOCH did not provide any additional studies which demonstrate that there will be ozone violations as a result of summertime ethanol use.

Comment 4: There is great potential for adverse impacts in price and availability of gasoline in the event of reduction or curtailment of federal or state subsidies for ethanol production and blending.

Koch expressed concern that federal codification of this existing program will reduce the State's ability to respond flexibly to price increases and disruptions in availability. KOCH believes that a hypothetical reduction or elimination of federal and State ethanol subsidies, which amount to as high as 89 cents per gallon of pure ethanol, will not lead to "cheating" as suggested in the USEPA proposal. Instead, Koch is concerned that limited oxygenate availability would lead to a tight supply of blended specification gasoline and price increases. Koch expects the potential for shortages to increase in 1997 when the oxygenated gasoline program area is expected to be expanded to cover the entire State.

The State does not expect or anticipate a change in the subsidy program associated with the use of ethanol. If there is a change in State

and/or Federal subsidies, the USEPA believes the state does have the flexibility to discontinue the measure, assuming that no violation of the CO NAAQS occur. The USEPA would retain the contingency measure as a Section 172(c) requirement, however, which the State would need to implement if the area fails to attain the CO standard by the attainment date. If the area fails to attain and the State shuts the program off, the USEPA has the authority to require the implementation or continued operation of the program. If the area is in attainment (through a redesignation process) and the State wishes to eliminate the program as even a contingency measure, the State would need to identify a substitute contingency program.

Minnesota Department of Agriculture Comments and USEPA Response

The Minnesota Department of Agriculture objected to statements in the proposed rulemaking that the year-round use of ethanol could lead to increased ozone pollution. The Department of Agriculture argues that air quality studies have shown that increased ozone will not result.

As stated above, USEPA does not believe that this issue has been resolved conclusively. While it is possible to make a case that increased ozone concentrations may result from summertime use of oxygenated gasoline, it cannot be shown that violations of the NAAQS will result. Thus, USEPA is approving the program.

III. Rulemaking Action

The USEPA is approving the Minnesota year-round oxygenated fuels program as the CO contingency measure required for nonattainment plans under section 172(c)(9) of the Clean Air Act.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 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 a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

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

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 April 22, 1996. 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).)

Note—Incorporation by reference of the State Implementation Plan for the State of Minnesota was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: November 6, 1995.

David A. Ullrich,

Acting Regional Administrator.

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 Y—[Amended]

2. Section 52.1220 is amended by adding paragraph (c)(43) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(43) On November 12, 1993, the State of Minnesota submitted a contingency plan to control the emissions of carbon monoxide from mobile sources by use of oxygenated gasoline on a year-round basis. The submittal of this program satisfies the provisions under section 172(c)(9) and 172(b) of the Clean Air Act as amended.

²Systems Applications International, Ozone Impact of Year-Round Oxy-Fuel Program in Minnesota, San Rafael, CA, January 10, 1994.

(i) Incorporation by reference.

(A) Laws of Minnesota for 1992, Chapter 575, section 29(b), enacted by the legislature and signed into law on April 29, 1992.

[FR Doc. 96-3789 Filed 2-20-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 180

[OPP-300411; FRL-4995-9]

RIN 2070-AC78

Acrylate Polymers/copolymers; Exemptions From The Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This document establishes a generic exemption from the requirement of a tolerance for acrylate polymers and copolymers when used as inert ingredient in pesticide formulations applied on raw agricultural commodities. This tolerance exemption covers the acrylate polymers/copolymers which are intrinsically safe and already listed in the TSCA inventory or will meet the polymer tolerance exemption from requirements of premanufacturing notification. Polymers that are exempted can be used as dispensers, resins, fibers, and beads, as long as the fibers, beads and resins particle sizes are greater than 10 microns and insoluble in water. Polymers with high molecular weights (3,000 to 100,000 daltons) are generally not readily absorbed through the intact skin or intact gastrointestinal (GI) tract. Polymers with particle size greater than 10 microns are generally not readily absorbed by respiration. Chemicals not absorbed through the skin, GI tract, and respiratory system are generally incapable of eliciting a toxic response. This exemption pertains to the acrylate polymers/copolymers used as inert ingredient for sprayable and dispenser pesticide formulations that are used on food crops. Any acrylate polymers/copolymers used for encapsulating material must be cleared as an inert ingredient when used in pesticide formulations that are applied on food crops.

EFFECTIVE DATE: This regulation becomes effective February 21, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP OPP-300411], 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 forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP-300411]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Freshteh Toghrol, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 5th Floor, Crystal Station 1, 2800 Crystal Drive, Arlington, VA 22202; (703) 308-7014, e-mail: toghrol.freshteh@epamail.epa.gov

SUPPLEMENTARY INFORMATION: In the November 15, 1995 Federal Register (PF-631; FRL-4971-5) EPA issued a notice of filing PP 5E4524 at the request of Russel Cook Associates, REDA Bldg., Suit 217, 401 S.E. Dewey, Bartlesville, OK 74005, on behalf of Biosys, by establishing an generic exemption from the requirement of a food tolerance for acrylate polymers and copolymers which fit the Toxic Substances Control Act (TSCA) definition of polymers which are intrinsically safe. This tolerance exemption covers the acrylate

polymers/copolymers that are already listed in the TSCA inventory or will meet the polymer tolerance exemption under 40 CFR 723.250 as amended on March 29, 1995.

I. Background

Inert ingredients are substances, other than the active ingredient, which are intentionally included in a pesticide product as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients: solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers, copolymers, and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" does not imply lack of toxicity; the ingredient may or may not be chemically active.

For the purposes of this exemption, acrylate polymers/copolymers used as inert ingredients in an end-use formulations must meet the definition for a polymer as given in 40 CFR 723.250 (b), are not automatically excluded by 40 CFR 723.250 (d), and meet the tolerance exemption criteria 40 CFR 723.250 (e)(1), 40 CFR 723.250 (e)(2) or 40 CFR 723.250(e)(3). Therefore, acrylate polymers and copolymers that are already listed in the TSCA inventory or will meet the polymer tolerance exemption under 40 CFR 723.250 as amended on March 29, 1995 are covered by this exemption.

The Agency believes that the acrylate polymers/copolymers meeting the criteria noted above and outlined as follows will present minimal, if any risk to human health when used as inert ingredients in pesticide formulations applied to growing raw agricultural commodities.

1. The acrylate polymer/copolymers minimum molecular weight may range from 3,000 to greater than 100,000 daltons as are established under 40 CFR 180.1112 and 40 CFR 180.1001(c). Substances with high molecular weights (greater than 3,000 daltons to 100,000 daltons) are generally not readily absorbed through intact skin or intact gastrointestinal (GI) tract, respectively. Chemicals not absorbed through the skin or GI tract are generally incapable of eliciting a toxic response.

2. These acrylate polymers/copolymers can be used as dispensers, fiber, resin, and beads, as long as the fiber, bead and resin sizes are well over 10 microns and are insoluble in water. Acrylate polymers/copolymers of high molecular weight with well over 10