

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 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 Federal 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 the 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 October 14, 1997. 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, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping

requirements, Volatile organic compounds.

Dated: August 1, 1997.

Felicia Marcus,
Regional Administrator.

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 F—California

2. Section 52.222 is being amended by adding paragraph (b)(2) to read as follows:

§ 52.222 Negative declarations.

* * * * *

(b) * * *

(2) San Joaquin Valley Unified Air Pollution Control District.

(i) Nitric and Adipic Acid Manufacturing Plants, Cement Manufacturing Plants, Asphalt Batch Plants, Iron and Steel Manufacturing Plants, and Driers were submitted on October 17, 1994 and adopted on September 14, 1994.

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[FR Doc. 97-21694 Filed 8-14-97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO-028-1028; FRL-5875-7]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final notice of the Herculaneum, Missouri, nonattainment area's failure to attain the National Ambient Air Quality Standard (NAAQS) for lead.

SUMMARY: Pursuant to the Clean Air Act (CAA or the Act), the EPA has notified the state of Missouri that the Doe Run-Herculaneum nonattainment area failed to attain the NAAQS for lead (Pb) by June 30, 1995, as required under the provisions of the Act and the Missouri State Implementation Plan (SIP). This notification is based on the EPA's review of monitored air quality data for compliance with the NAAQS for lead. This notice is issued pursuant to the EPA's obligations under sections 179(c)

(1) and (2) of the CAA, which require the EPA to make a determination of an area's attainment status following an applicable attainment date, and publish a notice in the **Federal Register** indicating that such a determination has been made. Pursuant to section 179(d)(1) of the CAA, Missouri is required to submit a SIP revision, meeting the applicable provisions of the Act within one year of today's finding.

DATES: This action is effective on September 15, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Royan W. Teter at (913) 551-7609.

SUPPLEMENTARY INFORMATION:

I. Background

The EPA designated the area in the vicinity of the Doe Run Company's primary lead smelter in Herculaneum, Missouri, nonattainment with respect to the NAAQS for lead on November 6, 1991 (56 FR 56694). This designation became effective on January 6, 1992. Missouri initially submitted a SIP revision addressing the nonattainment designation in July 1993. Supplements were submitted in March and November 1994. The EPA approved Missouri's revised SIP on May 5, 1995 (60 FR 22274), establishing June 30, 1995, as the date by which the area was to have attained the NAAQS for lead. Ambient air monitoring data, as shown below, indicate that violations of the lead NAAQS have continued to occur in each calendar quarter subsequent to the attainment date. On March 5, 1997, the EPA published a proposed notice of failure to attain the NAAQS for the Herculaneum, Missouri, nonattainment area (62 FR 10001). The proposed notice detailed the responsibilities of the EPA and the state of Missouri under the CAA and provided the public with an opportunity to comment on the Agency's determination that the Herculaneum area has failed to attain the standard.

Lead Ambient Air Quality Data—Vicinity Of The DOE Run Primary Smelter

Calendar Quarterly Values

(Micrograms of lead per cubic meter of air (µg/m³))

HI—VOL MONITOR LOCATIONS

Date	Dunklin 29-099-0014	Dunklin 29-099-0005	Golf Course 29-099-0008	North 29-099-0009	Ursaline 29-099-0010	Rutz 29-099-0011	Div. Manager 29-099-0013	Broad Street 29-099-0015
	S	H	H	H	H	H	H	H
1995:								
3rd	1.4	1.2	0.3	0.3	0.2	1.0	1.2	4.1
4th	1.9	1.7	0.4	0.8	0.1	1.6	1.3	6.3
1996:								
1st	2.3	1.9	0.3	0.4	0.1	1.4	.8	2.3
2nd	1.6	1.2	0.5	0.1	0.2	2.4	0.8	5.7
3rd	0.8	0.6	0.1	0.2	0.3	0.7	0.5	4.0
4th	1.7	1.8	0.1	0.5	0.3	1.4	0.9	1.6

Notes:

¹ (S) = State monitor, (H) = Asarco monitor.

² Italicized Quarterly Air Quality Values exceed the National Ambient Air Quality Standard (NAAQS) for lead; the NAAQS for lead is 1.5 µg/m³ and is the arithmetic mean of a series of daily (24-hour) values from hi-vol monitors measuring particulate matter, within a 3-month (calendar quarter) period.

II. Response To Comments

The EPA received 334 letters regarding the Doe Run Company and its Herculaneum, Missouri, operations. Those submitting comments included 25 businesses, 108 members of The Doe Run Company's mining and milling division, and 201 other Doe Run employees. None of the comments pertained specifically to the EPA's determination that the Herculaneum nonattainment area failed to attain the NAAQS for lead by the prescribed date, as discussed in the March 5, 1997, proposed action. Nevertheless, the EPA believes it is appropriate to outline the major themes discussed by those who submitted comments and provide a response.

Comments: All commentors expressed support for the Doe Run Company and encouraged the EPA to work cooperatively with the Company to address the air quality issues within the nonattainment area. Three distinct

rationales were presented. One group of commentors cited the Company's success in reducing toxic chemical releases to the environment while participating in the EPA's 33/50 Program. Another group of commentors cited recent expenditures totaling \$900,000 as evidence of the Company's desire to fulfill the corporate philosophy to "Make it better tomorrow than it is today." A third group acknowledged Doe Run as an important contributor to the economies of the state and the nation, and expressed concern over any actions that the EPA might take that could place the company at an economic disadvantage and jeopardize the company's survival.

Response: The EPA will work cooperatively with the Doe Run Company and the Missouri Department of Natural Resources to develop a SIP that meets the requirements of the CAA. The EPA is an active participant in discussions related to the development

of an appropriate emissions control strategy. Recent discussions have yielded positive results. Some data collection activities are already underway and a framework has been developed for future activities. These activities will facilitate a better understanding of the sources of emissions that are contributing to violations of the NAAQS.

The Doe Run Company's success in the 33/50 Program and its latest efforts to reduce lead emissions from the Herculaneum smelter are commendable actions; however, ambient lead concentrations in the vicinity of the smelter remain above the levels which are protective of public health and welfare. As such, the EPA is mandated by the CAA to publish a notice in the **Federal Register**, indicating the area's failure to attain the standard. The Act then requires that within one year, Missouri revise its SIP to address the violations of the air quality standard.

One group of commentors expressed concerns that the EPA's actions may jeopardize the economic future of the Doe Run Company. While cost will be a factor in determining the final control plan, it is important to understand that the EPA's determination regarding the Herculaneum area's failure to attain the NAAQS for lead involves only a factual finding based on air quality measurements. This determination does not impose any specific requirements or limitations on the Doe Run Company. Any such requirements will be specified in Missouri's SIP.

III. Final action

Today's action finalizes the EPA's determination that the Herculaneum, Missouri, nonattainment area did not attain the NAAQS for lead by June 30, 1990, as prescribed by CAA and Missouri's SIP. This action invokes section 179(d) of the CAA which, under the circumstances, requires Missouri to submit a SIP revision meeting the implementation and nonattainment plan provisions of the Act, and any additional measures which may be reasonably prescribed in order to bring the area into attainment with the NAAQS. This SIP revision must be submitted within one year of today's action.

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

IV. Administrative Requirements

A. Executive Order (EO) 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), the EPA is required to determine whether regulatory actions are significant and therefore should be subject to the Office of Management and Budget review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities."

The Agency has determined that today's action does not result in any of the effects identified in 3(f). Under sections 179(c) and 179(c)(2), a determination that an area has failed to attain the NAAQS for lead and the call for revision of the relevant SIP are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in-and-of-themselves, impose any new requirements on any sectors of the economy.

B. Regulatory Flexibility

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

As previously discussed, a determination that an area has failed to attain the lead NAAQS and its associated SIP call, do not in-and-of-themselves create any new requirements. Therefore, I certify that today's final action does not have a significant impact on small entities.

C. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, the EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to state, local or tribal governments in the aggregate.

The EPA believes, as discussed above, that its determination that the Herculaneum, Missouri, area has failed to attain the NAAQS for lead is a factual determination based upon air quality considerations and must occur by operation of law and, hence, does not impose any Federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

D. Small Business Regulatory Fairness Act (SBREFA)

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory

Enforcement Fairness Act of 1996, the 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 14, 1997. 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, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: August 4, 1997.

Michael J. Sanderson,

Acting Regional Administrator.

[FR Doc. 97-21702 Filed 8-14-97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300530; FRL-5738-3]

RIN 2070-AB78

Replicase Protein of Potato Leaf Roll Virus and the Genetic Material Necessary for Its production; 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 the biological pesticide Replicase Proteins of Potato Leaf Roll Virus and the genetic material

necessary for its production in or on all raw agricultural commodities. Monsanto Company submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act as amended by the Food Quality Protection Act of 1996

requesting the tolerance exemption.

This regulation eliminates the need to establish a maximum permissible level for residues of Replicase Proteins of Potato Leaf Roll Virus and the genetic material necessary for its production.

DATES: This regulation is effective August 15, 1997. Objections and requests for hearings must be received by EPA on or before October 14, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP-300530], 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-300530], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), 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 be submitted electronically 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-300530]. 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.

FOR FURTHER INFORMATION CONTACT: By mail: Linda Hollis, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7501W),

Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

Office location, telephone number, and e-mail: Rm. 5th fl., CS#1 2800 Crystal Drive, Arlington, VA 22202, (703) 308-8733, e-mail:

hollis.linda@epamail.epa.gov

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 25, 1997 (62 FR 34283-34286)(FRL-5723-2), EPA issued a notice pursuant to section 408(d), of the Federal Food Drug & Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), announcing the filing of a pesticide tolerance petition by Monsanto Corporation, St. Louis, MO. The notice contained a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with the Food Quality Protection Act (FQPA) of 1996. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the biological pest control agent Replicase Protein of Potato Leaf Roll Virus and the genetic material necessary for its production in or on all raw agricultural commodities.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The data submitted in the petition and other material have been evaluated. The toxicology data requirements in support of this exemption from the requirement of a tolerance were satisfied via data waivers from the open scientific literature.

I. Risk Assessment and Statutory Findings

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for 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(c)(2)(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(c)(2)(B) 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