prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual 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 annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

There are exceptions for actions that involve source specific regulations and actions that contain the ''good cause'' clause for making the action effective sooner than 60 days.

H. 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).

I. 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 February 16, 1999. 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, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: November 25, 1998.

A. Stanley Meiburg,

Acting, Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *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 PP—South Carolina

2. Section 52.2120, paragraph (e) is added to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(e) EPA-approved South Carolina non-regulatory provisions.

Provision	State effective date	EPA approval date	Comments
Cherokee County Ozone Attainment Demonstration and Ten-year Maintenance Plan.	06/26/98	December 18, 1998.	
Narrative of the ''Emissions Inventory Projections for Cherokee County''.	06/26/98	December 18, 1998.	

[FR Doc. 98–33471 Filed 12–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[TN 183–1–9824a; FRL–6204–4]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the Sections 111(d)/129 State Plan for Nashville/Davidson County submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on December 24, 1996, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Waste Combustors (MWCs) with capacity to combust more than 250 tons per day of municipal solid waste (MSW). *See* 40 CFR part 60, subpart Cb. EPA is also approving the Section 111(d) State Plan for Nashville/Davidson County submitted on December 24, 1996, for implementing and enforcing the EG applicable to existing MSW landfills. *See* 40 CFR part 60, subpart Cc.

DATES: This direct final rule is effective on February 16, 1999 without further notice, unless EPA receives significant, material, and adverse comment by January 19, 1999. If EPA receives adverse comment, we 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: You should address comments on this action to Steven M. Scofield at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of documents related to this action are available for the public to review during normal business hours at the locations below. If you would like to review these documents, please make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file TN 183–1–9824a. The Region 4 office may have additional documents not available at the other locations.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Steven M. Scofield, 404/562–9034.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 9th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554

Bureau of Environmental Health Services, Metropolitan Health Department, Nashville and Davidson County, 311—23rd Avenue, North, Nashville, Tennessee 37203. 615/340–5653

FOR FURTHER INFORMATION CONTACT: Scott Davis at 404/562–9127 or Steven M. Scofield at 404/562–9034.

SUPPLEMENTARY INFORMATION:

MWCs

I. Background

On December 19, 1995, pursuant to sections 111 and 129 of the Clean Air Act (Act), EPA promulgated new source performance standards (NSPS) applicable to new MWCs and EG applicable to existing MWCs. The NSPS and EG are codified at 40 CFR part 60, subparts Eb and Cb, respectively. *See* 60 FR 65387. Subparts Cb and Eb regulate the following: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subparts Cb and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons per day of MSW (small MWCs), consistent with their opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F.3d 1395 (D.C. Cir. 1996), *as amended*, 108 F.3d 1454 (D.C. Cir. 1997). As a result, subparts Eb and Cb apply only to MWC units with individual capacity to combust more than 250 tons per day of MSW (large MWC units).

Under section 129 of the Act, emission guidelines are not federally enforceable. Section 129(b)(2) of the Act requires states to submit to EPA for approval State Plans that implement and enforce the emission guidelines. State Plans must be at least as protective as the emission guidelines, and become federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. EPA originally promulgated the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules. *See* 60 FR 65414.

This action approves the State Plan submitted by the State of Tennessee for the Nashville and Davidson County Metropolitan Health Department (MHD) to implement and enforce subpart Cb, as it applies to large MWC units only.

II. Discussion

The Tennessee Department of Environment and Conservation submitted correspondence on May 21, 1997, certifying there are no MWCs under the direct jurisdiction of the State of Tennessee. The State submitted to EPA on December 24, 1996, the following in their 111(d)/129 State Plan for implementing and enforcing the emission guidelines for existing MWCs under their direct jurisdiction in the State of Tennessee: Legal Authority; Enforceable Mechanism; Inventory of MWC Plants/Units; MWC Emission Inventory; Emission Limits; Compliance Schedule; Testing, Monitoring, Recordkeeping and Reporting Requirements; Demonstration That the Public Had Adequate Notice and Opportunity to Submit Written Comments; Submittal of Progress Reports to EPA; and applicable Tennessee statutes, Metropolitan Nashville and Davidson County Government statutes, and MHD agency regulations. The State submitted its plan before the Court of Appeals vacated subpart Cb as it applies to small MWC units. Thus, the MHD plan covers both large and small MWC units. As a result of the *Davis* decision and subsequent vacatur order, there are no emission guidelines promulgated under sections 111 and 129 that apply to small MWC units. Accordingly, EPA's review and approval of the MHD plan for MWCs addresses only those parts of the MHD plan which affect large MWC units. Small units are not subject to the requirements of the federal rule and not part of this approval. Until EPA again promulgates emission guidelines for small MWC units, EPA has no authority under section 129(b)(2) of the Act to review and approve State Plans applying state rules to small MWC units.

The approval of the MHD plan is based on finding that: (1) the MHD provided adequate public notice of public hearings for the proposed rulemaking which allows the MHD to implement and enforce the EG for large MWCs, and (2) the MHD also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

In Appendix 1 of the plan, the MHD cites the following references for the legal authority: State of Tennessee Codes Annotated 68–201–115, ''Local Pollution Control Programs,'' 10–7–503, ''Records Open to Public Inspection-Exceptions,'' and 10–7–504, ''Inspection of Records;'' Metropolitan Code of Laws, Article 10, ''Public Health and Hospitals,'' Chapter 1, ''Public Health'' of the Charter of the Metropolitan Government, Chapter 10.56, Air Pollution Control,'' Section 10.56.090, ''Board-Powers and Duties,'' Section 10.56.150, ''Nuisance Declared-Injunctive Relief,'' Section 10.56.290, ''Measurement and Reporting of Emissions,'' Section 2.36 ''Health Department,'' and Section 2.36.130 ''Records and Proceedings-Public Inspection Authorized When.'' These statutes and regulations are approved as being at least as protective as the federal requirements for existing large MWC units.

In Appendix 2 of the plan, the MHD cites all emission standards and limitations for the major pollutant categories related to the designated sites and facilities. These standards and limitations in the MHD Pollution Control Division's Regulation No. 12, ''Regulation for Control of Municipal Waste Combustors,'' are approved as being at least as protective as the federal requirements contained in subpart Cb for existing large MWC units.

The State submitted compliance schedules and legally enforceable increments of progress for each large MWC under their direct jurisdiction in the State of Tennessee. This portion of the plan has been reviewed and approved as being at least as protective as federal requirements for existing large MWC units.

The State submitted an emission inventory of all designated pollutants for each large MWC under their direct jurisdiction in the State of Tennessee. This portion of the plan has been reviewed and approved as meeting the federal requirements for existing large MWC units.

The MHD plan includes its legal authority to require owners and operators of designated facilities to maintain records and report to their agency the nature and amount of emissions and any other information that may be necessary to enable their agency to judge the compliance status of the facilities. The MHD also cites its legal authority to provide for periodic inspection and testing and provisions for making reports of MWC emissions data, correlated with emission standards

that apply, available to the general public. The State submitted MHD's Regulation No. 12 to support the requirements of monitoring, recordkeeping, reporting, and compliance assurance. These MHD rules have been reviewed and approved as being at least as protective as federal requirements for existing large MWC units.

As stated on page 5 of the plan, the MHD will provide progress reports of plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR 60, subpart B. This portion of the plan has been reviewed and approved as meeting the federal requirement for State Plan reporting.

MSW Landfills

I. Background

Under section 111(d) of the Act, EPA has established procedures whereby states submit plans to control certain existing sources of ''designated pollutants.'' Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not ''criteria pollutants'' (i.e., pollutants for which National Ambient Air Quality Standards (NAAQS) are set pursuant to sections 108 and 109 of the Act) or hazardous air pollutants (HAPs) regulated under section 112 of the Act. As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, which states must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a NSPS that controls a designated pollutant, EPA establishes EG in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the ''designated facility'' as defined at 40 CFR 60.21(b)). Thus, a state, local, or tribal agency's section 111(d) plan for a designated facility must comply with the EG for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, EPA published EG for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759). *See* 61 FR 9905–9944. The pollutants regulated by the NSPS and EG are MSW landfill emissions, which contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. VOC emissions can contribute to ozone formation which can result in adverse effects to human health and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. To determine whether control is required, nonmethane organic compounds (NMOCs) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.32c) for which construction, reconstruction or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), states were required to either: (1) submit a plan for the control of the designated pollutant to which the EG applies; or (2) submit a negative declaration if there were no designated facilities in the state within nine months after publication of the EG (by December 12, 1996).

EPA has been involved in litigation over the requirements of the MSW landfill EG and NSPS since the summer of 1996. On November 13, 1997, EPA issued a notice of proposed settlement in *National Solid Wastes Management Association* v. *Browner, et al.* No. 96–1152 (D.C. Cir), in accordance with section 113(g) of the Act. *See* 62 FR 60898. It is important to note that the proposed settlement does not vacate or void the existing MSW landfill EG or NSPS. Accordingly, the currently promulgated MSW landfill EG was used as a basis by EPA for review of section 111(d) plan submittals.

This action approves the section 111(d) plan submitted by the State of Tennessee for the Nashville and Davidson County, Tennessee, MHD to implement and enforce subpart Cc.

II. Discussion

The State submitted to EPA on December 24, 1996, the following in their section 111(d) plan for implementing and enforcing the emission guidelines for existing MSW landfills in Nashville and Davidson County, Tennessee: Legal Authority; Enforceable Mechanism; Inventory of MSW Landfills; MSW Landfill Emission Inventory; Emission Limits; Compliance Schedule; Testing, Monitoring, Recordkeeping and Reporting Requirements; Demonstration That the Public Had Adequate Notice and Opportunity to Submit Written Comments; Submittal of Progress Reports to EPA; and applicable Tennessee statutes, Metropolitan Nashville and Davidson County Government statutes, and MHD agency regulations.

The approval of the MHD plan is based on finding that: (1) the MHD provided adequate public notice of public hearings for the proposed rulemaking which allows the MHD to implement and enforce the EG for MSW landfills; and (2) the MHD also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

In Appendix 1 of the plan, the MHD cites the following references for the legal authority: State of Tennessee Codes Annotated 68–201–115, ''Local Pollution Control Programs,'' 10–7–503, ''Records Open to Public Inspection-Exceptions,'' and 10–7–504, ''Inspection of Records;'' Metropolitan Code of Laws, Article 10, ''Public Health and Hospitals,'' Chapter 1, ''Public Health'' of the Charter of the Metropolitan Government, Chapter 10.56, ''Air Pollution Control,'' Section 10.56.090, ''Board-Powers and Duties,'' Section 10.56.150, ''Nuisance Declared-Injunctive Relief,'' Section 10.56.290, ''Measurement and Reporting of Emissions,'' Section 2.36 ''Health Department,'' and Section 2.36.130 ''Records and Proceedings-Public Inspection Authorized When.'' These statutes and regulations are approved as being at least as protective as the federal requirements for existing MSW landfills.

In Appendix 2 of the plan, the MHD cites all emission standards and limitations for the major pollutant categories related to the designated sites and facilities. These standards and limitations in the MHD Pollution Control Division's Regulation No. 16, ''Regulation for Control of Municipal Waste Landfills,'' are approved as being at least as protective as the federal requirements contained in subpart Cc for existing MSW landfills.

The MHD adopted compliance schedules in Regulation No. 16 for each existing MSW landfill to be in compliance within 12 months of the effective date of their implementing regulation (November 12, 1996). All other compliance times for affected MSW landfills in Regulation No. 12 comply with the compliance timelines of the EG. This portion of the plan has been reviewed and approved as being at

least as protective as federal requirements for existing MSW landfills.

The State submitted an emission inventory of all designated pollutants for each MSW landfill in Nashville and Davidson County, Tennessee. This portion of the plan has been reviewed and approved as meeting the federal requirements for existing MSW landfills.

The MHD plan includes its legal authority to require owners and operators of designated facilities to maintain records and report to their agency the nature and amount of emissions and any other information that may be necessary to enable their agency to judge the compliance status of the facilities. The MHD also cites its legal authority to provide for periodic inspection and testing and provisions for making reports of MSW landfill emissions data, correlated with emission standards that apply, available to the general public. The State submitted MHD's Regulation No. 16 to support the requirements of monitoring, recordkeeping, reporting, and compliance assurance. These MHD rules have been reviewed and approved as being at least as protective as federal requirements for existing MSW landfills.

As stated on page 2 of the plan, the MHD will provide progress reports of plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR 60, subpart B. This portion of the plan has been reviewed and approved as meeting the federal requirement for plan reporting.

Consequently, EPA finds that the MHD plan meets all of the requirements applicable to such plans in 40 CFR part 60, subparts B and Cc. The MHD did not, however, submit evidence of authority to regulate existing MSW landfills in Indian Country. Therefore, EPA is not approving this plan as it relates to those sources.

Final Action

EPA is approving the Sections 111(d)/129 State Plan for Nashville/Davidson County submitted by the State of Tennessee for implementing and enforcing the EG applicable to existing MWCs with capacity to combust more than 250 tons per day of MSW. EPA is also approving the Section 111(d) State Plan for Nashville/Davidson County for implementing and enforcing the EG applicable to existing MSW landfills, except for those existing MSW landfills located in Indian Country. MSW landfills located in other Tennessee counties will be addressed in separate rulemaking. As provided by 40 CFR 60.28(c), any revisions to the State plan or associated regulations will not be considered part of the applicable plan until submitted by the State in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective February 16, 1999 without further notice unless the Agency receives relevant adverse comments by January 19, 1999.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Only parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 16, 1999 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that

significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. 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).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 16, 1999. 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 62

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

Dated: July 30, 1998.

Winston A. Smith,

Acting Regional Administrator, Region 4.

Part 62 of chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart RR—Tennessee

2. Subpart RR is amended by adding a new § 62.10626 and a new undesignated center heading to read as follows: Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan).

§ 62.10626 Identification of plan.

(a) Identification of plan. Tennessee Designated Facility Plan (Section 111(d) plan).

(b) The plan was officially submitted as follows:

(1) Metropolitan Nashville and Davidson County Tennessee's Implementation Plan For Municipal Waste Combustors, submitted on December 24, 1996, by the State of Tennessee Department of Environment and Conservation.

(2) Metropolitan Nashville and Davidson County Tennessee's Plan For Implementing the Municipal Solid Waste Landfill Emission Guidelines, submitted on December 24, 1996, by the State of Tennessee Department of Environment and Conservation.

(c) Designated facilities. The plan applies to existing facilities in the following categories of sources:

(1) Existing municipal waste combustors.

(2) Existing municipal solid waste landfills.

3. Subpart RR is amended by adding a new § 62.10627 and a new undesignated center heading to read as follows:

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Municipal Waste Combustors With the Capacity To combust Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.10627 Identification of sources.

The plan applies to existing facilities with a municipal waste combustor (MWC) unit capacity greater than 250 tons per day of municipal solid waste (MSW) at the following MWC sites:

(a) Nashville Thermal Transfer Corporation, Nashville, Tennessee.

4. Subpart RR is amended by adding a new § 62.10628 and a new undesignated center heading to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.10628 Identification of sources.

The plan applies to existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

[FR Doc. 98–33481 Filed 12–17–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300750; FRL–6040–5]

RIN 2070–AB78

Harpin; Temporary/Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a temporary/time-limited tolerance exemption for residues of the biological pesticide Harpin in or on all food commodities when applied for the broad spectrum control of various bacterial, fungal, and viral plant diseases. EDEN Bioscience Corporation submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) requesting the temporary/time-limited tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of Harpin. The tolerance exemption will expire on October 31, 2000.

DATES: This regulation is effective December 18, 1998. Objections and requests for hearings must be received by EPA on or before February 16, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300750], 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) 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–300750], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (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 5.1/6.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300750]. 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: Diana M. Horne, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 9th fl., Crystal Mall 2 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308–8367, e-mail: Horne.Diana@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 23, 1998 (63 FR 50903) (FRL–6026–1), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e) announcing the filing of a pesticide tolerance petition (PP 8F4975 and subsequently changed to 9G5043). This notice included 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 FQPA of 1996. The petition requested that 40 CFR part 180 be amended by establishing a temporary/time-limited tolerance exemption for residues of Harpin.

Two comments were received urging the issuance of the Experimental Use Permit (69834–EUP–1) and temporary tolerance exemption for Harpin protein. An additional commenter raised questions regarding whether adequate field testing has been done to justify the acreage requested in the EUP; the nature of Harpin protein and the inert ingredients used in the formulation; the nature, if any, of consequences to beneficial microflora and potential impacts on the development of pathogen resistance; and whether degradation data support the contention that residues are expected to be negligible. The Agency has received summaries on a subset of approximately 200 field trials conducted by the registrant on a broad range of crops in the United States, Mexico, and the Peoples Republic of China. Harpin proteins are generally heat stable, glycine-rich and, in nature, elicit defense mechanisms within the host plant. While specific inert ingredients utilized in pesticide formulations are considered confidential business information (CBI), those used in Harpin formulations are food grade materials, or contained in lists of inert ingredients cleared for food use by the Agency. Regarding the mechanism of action of Harpin protein on plant disease organisms, evidence has been presented which suggests no direct antimicrobial activity. Instead, the protein has been described in the published literature as inducing systemic acquired immunity, a coordinated cascade of defense reactions, within the host plant. Thus, Harpin has extremely limited potential for direct toxicity to pathogens or beneficial microorganisms, or for the development of pathogen resistance. Finally, environmental fate studies submitted in support of this temporary tolerance exemption indicate that the protein is UV-labile, and subject to degradation by proteases produced by ubiquitous microflora on leaf surfaces and in water. Degradation studies indicate a half-life of less than 48 hours where Harpin was applied at 30–40 times the proposed field rate. Moreover, using current detection methodology, the active ingredient was undetectable immediately following foliar application at standard rates.

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 exemption is ''safe.'' Section 408(c)(2)(A)(ii) defines