

C. 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.

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 1, 1997.

Michael V. Peyton,

Acting Regional Administrator.

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. 7401-7671q.

Subpart II—North Carolina

2. Section 52.1770, is amended by adding paragraph (c)(94) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(94) The miscellaneous revisions to the North Carolina State Implementation Plan, which were submitted on August 16, 1996.

(i) Incorporation by reference. Regulations 15A NCAC 2D. 0101 Definitions, .0501 Compliance with Emission Control Standards, .0516 Sulfur Dioxide Emissions Combustion Sources, .0518 Miscellaneous Volatile Organic Compounds Emissions, .0519 Control of Nitrogen Dioxide and Nitrogen Oxides Emissions, .0520 Control and Prohibition of Open Burning, .0521 Control of Visible Emissions, .0531 sources in Nonattainment Areas, .0535 Excess Emissions Reporting and Malfunctions, .0601 Purpose and Scope, .0604 Sources Covered by Implementation Plan Requirements, .0608 Program Schedule, .0804 Airport Facilities, .0805 Parking Facilities, .0901 Definitions, .0902 Applicability, .0917 Automobile and Light-Duty Truck Manufacturing, .0918 Can Coating, .0919 Coil Coating, .0920 Paper Coating, .0921 Fabric and Vinyl Coating, .0922 Metal Furniture Coating, .0923 Surface Coating of Large Appliances, .0924 Magnet Wire Coating, .0926 Bulk Gasoline Plants, .0927 Bulk Gasoline Terminals, .0928 Gasoline Service Stations Stage 1, .0929 Petroleum Refinery Sources, .0934 Coating of miscellaneous Metal Parts and Products, .0935 Factory Surface Coating of Flat Wood Paneling, .0937 Manufacture of Pneumatic Rubber Tires, .0951 Miscellaneous Volatile Organic

Compound Emissions, .0953 Vapor Return Piping for Stage II Vapor Recovery, .0954 Stage II Vapor Recovery, .1901, Purpose, Scope, and Impermissible Open Burning, .1902 Definitions, .1903 Permissible Open Burning Without a Permit, .1904 Air Curtain Burners, 15A NCAC 2Q .0103 Definitions, .0109 Compliance Schedule for Previously Exempted Activities, .0207 Annual Emissions Reporting, and .0311 permitting of Facilities at Multiple Temporary Sites effective on July 1, 1996.

(ii) Other material. None.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[VT-014-01-1216(a); A-1-FRL-5860-2]

Approval and Promulgation of Air Quality Implementation Plans; Vermont; Approval of PM₁₀ State Implementation Plan (SIP) Revisions and Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Vermont on December 10, 1990. These revisions were submitted in response to EPA's promulgation of new ambient air quality standards which changed the total suspended particulate (TSP) standard to the particulate matter (PM₁₀) standard. The intended effect of this action is to approve the submittal by Vermont which establishes a National Ambient Air Quality Standards (NAAQS) for PM₁₀ and other minor revisions. This action is being taken in accordance with section 110 of the Clean Air Act.

DATES: This action is effective September 30, 1997 unless EPA receives adverse or critical comments by September 2, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S.

Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., (LE-131), Washington, D.C. 20460; and the Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, VT 05676.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Butensky, (617) 565-3583.

SUPPLEMENTARY INFORMATION:

I. Summary of SIP Revision

On December 10, 1990, the State of Vermont submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of changes to Vermont's Air Quality Rules.

Background

On July 1, 1987 (52 FR 24634) EPA promulgated revised NAAQS for particulate matter which are based upon the measurement of particles having a mean aerodynamic diameter of 10 microns or less (PM₁₀). The revised standards replace TSP with PM₁₀ as the standard for ambient air quality. States were required to make revisions to their SIPs to reflect this change. EPA expects the State's current air pollution control requirements are sufficient to attain and maintain the PM₁₀ standards. In this case the State need only submit revisions to its current SIP which adopt the new PM₁₀ standard and make other minor adjustments.

Vermont Submittal

On December 10, 1990, Vermont submitted their formal SIP revision. This SIP submittal revises Chapter 5 of the Vermont Code of Administrative Rules which refer to ambient air quality standards. Vermont's submittal adopts the NAAQS for PM₁₀ as the criteria pollutant for particulate matter for primary and secondary air quality standards and deletes the now obsolete TSP NAAQS. This change is consistent with and encouraged by the final rulemaking of July 1, 1987 (52 FR 24682).

Review of the Vermont Submittal

EPA reviewed the Vermont submittal to determine if it meets the requirements of the Clean Air Act, EPA regulations, and applicable policies. The submittal meets the requirements found in the July 1, 1987 **Federal Register** (52 FR 24672), and EPA policy contained in the *PM₁₀ SIP Development Guideline* (EPA-450/2-86-001), dated June 1987, with a supplement dated July 1988.

The State of Vermont held a public hearing on these proposed changes on

August 15, 1990. In addition, more general air quality public hearings were conducted on August 16 and November 11, 1988. There were no public comments. On November 1, 1990 these amendments were approved and received final adoption by the Agency of Natural Resources. Vermont's submittal clearly defines PM₁₀ and sets primary and secondary NAAQS for PM₁₀ defined in accordance with Appendix K of 40 CFR Part 50. The PM₁₀ standard has been incorporated into Section 5 of the Vermont air quality implementation Plan.

Changes in Vermont's Rules

Vermont's SIP revisions define primary and secondary standards for particulate matter, consisting of PM₁₀, measured at an annual arithmetic mean of 50 ug/m³, and a maximum average 24 hour concentration of 150 ug/m³, which may be exceeded on a number of days equal or less than an average of one per year as determined in accordance with Appendix K of 40 CFR part 50.

Redesignation of TSP Nonattainment Area

EPA's final rulemaking of July 1, 1987 (52 FR 24682) promulgating the PM₁₀ standard encouraged states to request the redesignation of TSP nonattainment areas as unclassifiable for TSP at the time they submit their PM₁₀ SIP revisions. This is permissible because TSP is no longer the indicator for the particulate matter NAAQS. An area designation (i.e., unclassifiable) must be maintained until the PM₁₀ increment takes effect because section 163 PSD increments depend on the existence of section 107 designations (another action published in the **Federal Register** in the near future addresses PM₁₀ increments in Vermont). Vermont has requested that the following areas of secondary nonattainment be reclassified from nonattainment to unclassifiable for TSP. The entire State of Vermont was originally classified as Group III; therefore it is permissible to redesignate these areas as unclassifiable for TSP:

- Champlain Valley Air Management Area: Essex Town (includes Essex Junction), Burlington City, South Burlington City, Winooski City
- Central Vermont Air Management area: Barre City

In addition, the chart contained at 40 CFR 81.346 must be changed to reflect this action; such occurs later in this document.

This action also approves two minor changes in the Vermont SIP. The definition of "ambient air" is added, and the definition of "ambient air space" is removed. In addition, other

minor wording changes in chapter 5 are also being approved by today's action. Since these changes are insignificant it is not necessary to further discuss these revisions. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action is effective September 30, 1997 unless adverse or critical comments are received by September 2, 1997.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 30, 1997.

II. Final Action

EPA is approving revisions to Vermont's regulations contained in chapter 5 of their state regulations.

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

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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

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 impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a 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).

C. 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 the 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.

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 September 30, 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).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects

40 CFR Part 81

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: July 7, 1997.

John P. DeVillars,

Regional Administrator, Region I.

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 UU—Vermont

2. Section 52.2370 is amended by adding paragraph (c)(23) to read as follows:

§ 52.2370 Identification of plan.

* * * * *

(c) * * *

(23) Revisions to the State Implementation Plan submitted by the Vermont Air Pollution Control Division in November, 1990, establishing a PM₁₀ standard.

(i) Incorporation by reference.

(A) Letter from the Vermont Air Pollution Control Division dated December 10, 1990 submitting a revision to the Vermont State Implementation Plan.

(B) Section 5 of the Vermont air quality State Implementation Plan, dated November, 1990.

3. In § 52.2381, the Table is amended by removing the existing entries for Sections 5-304 and 5-305 and adding new entries in their place to read as follows:

§ 52.2381 EPA—approved Vermont state regulations.

* * * * *

TABLE 52.2381—EPA-APPROVED REGULATIONS

[Vermont SIP regulations 1972 to present]

State citation, title and subject	Date adopted by State	Date approved by EPA	Federal Register citation	Section 52.2370	Comments and unapproved sections
	*	*	*	*	*
Section 5-304: PM ₁₀ Primary Standards.	November 1990.	August 1, 1997.	August 1, 1997.	(c)(23)	Removal of the TSP standard and establishment of the PM ₁₀ standard.
Section 5-305: PM ₁₀ Secondary Standards.	November 1990.	August 1, 1997.	August 1, 1997.	(c)(23)	Removal of the TSP standard and establishment of the PM ₁₀ standard.
	*	*	*	*	*

PART 81—[AMENDED]**Subpart C—Section 107 Attainment Status Designations****§ 81.346 Vermont.**

4. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7407, 7501–7515, 7601.

5. Section 81.346 is amended by revising the table “Vermont-TSP” to read as follows:

VERMONT—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standard
Champlain Valley Air Management Area: Essex Town (includes Essex Junction), Burlington City, South Burlington City, Winooski City			X	
Central Vermont Air Management area: Barre City			X	
Remainder of State				X

* * * * *

[FR Doc. 97–19644 Filed 7–31–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 180****[OPP–300524; FRL–5734–7]****RIN 2070–AB78****Copper Octanoate; Tolerance Exemption**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for the fungicide copper octanoate (CAS Reg. No. 20543–04–8, PC Code 23306) when used in accordance with good agricultural practice as an active ingredient in pesticide formulations applied to growing crops. The petitioner, W. Neudorff GmbH KG requested this tolerance exemption under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170) in pesticide petition 6F4734.

DATES: This regulation is effective August 1, 1997. Objections and requests for hearings must be received by EPA on or before September 30, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300524], 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–300524], 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 also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300524]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–305–7740, e-mail: giles-parker.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 15, 1997 (62 FR 2154)(FRL–5580–4), EPA, issued a notice pursuant to section 408(d) of the

Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346(a)(d) announcing the filing of a pesticide petition (PP) 6F4734 proposing to amend the 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for copper octanoate in or on all raw agricultural commodities when applied to growing crops. This notice included a summary of the petition prepared by W. Neudorff GmbHKG (“Neudorff”), the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001(b)(1) be amended by adding copper octanoate to the list of copper compounds which are exempt from the requirement of a tolerance.

I. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of Copper Octanoate and to make a determination, consistent with section 408(b)(2), for an exemption from tolerance requirements for Copper Octanoate. EPA’s assessment of the data associated with establishing the tolerance exemption follows.

A. Product and Residue Chemistry

1. *Product chemistry.* Copper octanoate, is a copper salt of a fatty acid. Copper octanoate is biodegraded first by water hydrolysis into the copper ion and fatty acid components, and then the fatty acids are further degraded by two carbon units at a time until they eventually degrade to water and CO₂.

2. *Magnitude of the residue anticipated at the time of harvest and method used to determine the residue.* No residues are expected at the time of harvest on crops treated with copper