

not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard. It does not alter the relationship or the distribution of power and responsibilities established in the CAA. This action also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a State rule implementing a Federal standard.

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. EPA guidance<sup>1</sup> states that EPA is to assess whether minority or low-income populations face risk or a rate of exposure to hazards that is significant and that "appreciably exceed[s] or is likely to appreciably exceed the risk or rate to the general population or to the appropriate comparison group." (EPA, 1998) Because this rule merely approves a state rule implementing the Federal standard established by CAMR, EPA lacks the discretionary authority to modify today's regulatory decision on the basis of environmental justice considerations. However, EPA has already considered the impact of CAMR, including this Federal standard, on minority and low-income populations. In the context of EPA's CAMR published in the **Federal Register** on May 18, 2005, in accordance with Executive Order 12898, the Agency has considered whether CAMR may have disproportionate negative impacts on minority or low income populations and determined it would not.

In reviewing State Plan submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State Plan for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State Plan submission, to use

VCS in place of a State Plan submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *February 25, 2008*. 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 Part 62

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Mercury, Reporting and recordkeeping.

Dated: December 14, 2007.

**John B. Askew,**

*Regional Administrator, Region 7.*

■ Chapter I, title 40 of the 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, *et seq.*

#### Subpart Q—Iowa

■ 2. Subpart Q is amended by adding an undesignated center heading and § 62.3918 to read as follows:

#### Mercury Emissions From Coal-Fired Electric Steam Generating Units

##### § 62.3918 Identification of Plan.

(a) *Identification of plan.* Section 111(d) plan and associated State regulations as adopted in the Iowa Administrative Bulletin on June 7, 2006, page 1811 and associated amendments on February 28, 2007, page 1157.

(b) *Identification of sources.* The plan applies to all new and existing mercury budget units meeting the applicability requirements in Iowa's State rule 567–34.301.

(c) *Effective date.* The effective date for the portion of the plan applicable to mercury budget units as described in Iowa State rule 567–34.301 is January 25, 2008.

[FR Doc. E7–24962 Filed 12–21–07; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 89

[EPA–HQ–OAR–2007–0652; FRL–8509–9]

RIN 2060–A037

#### Partial Removal of Direct Final Rule and Revision of the Nonroad Diesel Technical Amendments and Tier 3 Technical Relief Provision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; partial removal; revision.

**SUMMARY:** Because EPA received adverse comment, we are making a partial withdrawal and revision of the direct final rule for "Nonroad Diesel Technical Amendments and Tier 3 Technical Relief Provision" published on September 18, 2007.

**DATES:** This rule and partial withdrawal are effective December 26, 2007.

#### FOR FURTHER INFORMATION CONTACT:

Zuimdie Guerra, Assessment and Standards Division, Office of Transportation and Air Quality, 2000 Traverwood Drive, Ann Arbor, MI, 48105; *telephone number:* (734) 214–4387; *fax number:* (734) 214–4050; *e-mail address:* guerra.zuimdie@epa.gov.

#### SUPPLEMENTARY INFORMATION:

On September 18, 2007 EPA published a direct final rule for "Nonroad Diesel Technical Amendments and Tier 3 Technical Relief Provision" (72 FR

<sup>1</sup> U.S. Environmental Protection Agency, 1998. Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses. Office of Federal Activities, Washington, DC, April, 1998.

53118). We stated in that direct final rule that if we received adverse comment by October 18, 2007, we would publish a timely withdrawal in the **Federal Register**. EPA subsequently received adverse comments to Tier 3 technical relief provision in 40 CFR 89.102(i) through (m). Although we were not able to accomplish this action prior to the effective date of the direct final rule, we are now, in light of the adverse comment, withdrawing the direct final rule's revisions to 40 CFR 89.102 paragraphs (i) through (m). The other provisions of the direct final rule are not affected by this partial withdrawal and are incorporated into the **Federal Register** as of the effective date of November 18, 2007 direct final action.

Concurrent with the direct final rule, we published a separate notice of proposed rulemaking, to provide for the contingency of adverse comments on the DFR. (72 FR 53294). We are now issuing a final rule based on the notice of proposed rulemaking and on comments received. Notice and an opportunity for additional comment on the withdrawal of the direct final rule is unnecessary, within the meaning of 5 U.S.C. 553(b)(B). EPA has a legal obligation to withdraw those portions of the direct final rule that were subject to adverse comments<sup>[j1]</sup>. In addition, by its terms, the direct final rule would become effective only in the absence of adverse comment.

<sup>[j2]</sup> In today's final rule, EPA is adopting the technical relief provisions originally proposed as 40 CFR 89.102 paragraphs (i) through (m), including a variety of modifications to address the comments received. The main comment EPA received was to correct an inappropriate cross-reference in the rule language, and this final rule corrects this inadvertent drafting error as the commenter properly suggested. We made the changes the commenter properly suggested. The provision on technical relief is now found in paragraph (i) exclusively.

We responded to comments that did not require changes to the rule in a memo to the docket. One concern of the commenter was that manufacturers may ask for more relief than is needed. The rule is clear that the Agency is not obligated to provide any amount of technical relief if the Agency is not convinced of the need for it. The other concern of the commenter was that manufacturers that use the Tier 3 technical relief may request additional relief for Tier 4 equipment. Manufacturers are aware of this provision in advance of Tier 4 so manufacturers should be able to

reconcile their Tier 3 and Tier 4 relief needs.

#### List of Subjects in 40 CFR Part 89

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: December 17, 2007.

**Stephen L. Johnson,**  
*Administrator.*

■ For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

#### **PART 89—CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD COMPRESSION-IGNITION ENGINES**

■ 1. The authority citation for part 89 is continues to read as follows:

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

#### **Subpart B—[Amended]**

■ 2. Section 89.102 is amended by revising paragraph (i) and removing paragraphs (j) through (m).

The revision reads as follows:

#### **§ 89.102 Effective dates, optional inclusion, flexibility for equipment manufacturers.**

\* \* \* \* \*

(i) *Additional exemptions for technical or engineering hardship.* You may request additional engine allowances under paragraph (d)(1) of this section for 56–560 kW power categories or, if you are a small equipment manufacturer, under paragraph (d)(2) of this section for engines at or above 37 and below 75 kW. However, you may use these extra allowances only for those equipment models for which you, or an affiliated company, do not also produce the engine. After considering the circumstances, we may permit you to introduce into U.S. commerce equipment with such engines that do not comply with Tier 3 emission standards, as follows:

(1) We may approve additional exemptions if extreme and unusual circumstances that are clearly outside your control and that could not have been avoided with reasonable discretion have resulted in technical or engineering problems that prevent you from meeting the requirements of this part. You must show that you exercised prudent planning and have taken all reasonable steps to minimize the scope of your request for additional allowances.

(2) To apply for exemptions under this paragraph (i), send the Designated Compliance Officer and the Designated Enforcement Officer a written request as soon as possible before you are in violation. In your request, include the following information:

(i) Describe your process for designing equipment.

(ii) Describe how you normally work cooperatively or concurrently with your engine supplier to design products.

(iii) Describe the engineering or technical problems causing you to request the exemption and explain why you have not been able to solve them. Describe the extreme and unusual circumstances that led to these problems and explain how they were unavoidable.

(iv) Describe any information or products you received from your engine supplier related to equipment design—such as written specifications, performance data, or prototype engines—and when you received it.

(v) Compare the design processes of the equipment model for which you need additional exemptions and that for other models for which you do not need additional exemptions. Explain the technical differences that justify your request.

(vi) Describe your efforts to find and use other compliant engines, or otherwise explain why none is available.

(vii) Describe the steps you have taken to minimize the scope of your request.

(viii) Include other relevant information. You must give us other relevant information if we ask for it.

(ix) Estimate the increased percent of production you need for each equipment model covered by your request, as described in paragraph (i)(3) of this section. Estimate the increased number of allowances you need for each equipment model covered by your request, as described in paragraph (i)(4) of this section.

(3) We may approve your request to increase the allowances under paragraph (d)(1) of this section, subject to the following limitations:

(i) The additional allowances will not exceed 50 percent for each power category.

(ii) You must use up the allowances under paragraph (d)(1) of this section before using any additional allowance under this paragraph (i).

(iii) Any allowances we approve under this paragraph (i)(3) expire 24 months after the provisions of this section start for a given power category. You may use these allowances only for the specific equipment models covered by your request.

(4) We may approve your request to increase the allowances for the 37–75 kW power category under paragraph (d)(2) of this section, subject to the following limitations:

(i) You are eligible for additional allowances under this paragraph (i)(4) only if you are a small equipment manufacturer and you do not use the provisions of paragraph (i)(3) of this section to obtain additional allowances for the 37–75 kW power category.

(ii) You must use up all the available allowances for the 37–75 kW power category under paragraph (d)(2) of this section in a given year before using any additional allowances under this paragraph (i)(4).

(iii) Base your request only on equipment you produce with engines at or above 37 kW and below 75 kW. You may use any additional allowances only for equipment you produce with engines at or above 37 kW and below 75 kW.

(iv) Any allowances we approve under this paragraph (i)(4) expire 24 months after the provisions of this section start for this power category. These additional allowances are not subject to the annual limits specified in paragraph (d)(2) of this section. You may use these allowances only for the specific equipment models covered by your request.

(v) The total allowances under paragraph (d)(2) of this section for the 37–75 kW power category will not exceed 700 units. The total allowances under this paragraph (i)(4) follow the requirements under paragraph (d)(2) of this section for the 37–75 kW power category and will not exceed 200 units. Therefore, the total maximum allowances for the 37–75 kW power category will not exceed 900 units.

(5) For purposes of this paragraph (i), small equipment manufacturer means an equipment manufacturer that had annual U.S.-directed production volume of equipment using nonroad diesel engines between 37 and 75 kW of no more than 3,000 units in 2002 and all earlier calendar years, and has 750 or fewer employees (500 or fewer employees for nonroad equipment manufacturers that produce no construction equipment or industrial trucks). For manufacturers owned by a parent company, the production limit applies to the production of the parent company and all its subsidiaries and the employee limit applies to the total number of employees of the parent company and all its subsidiaries.

(6) The following provisions for adjusted flexibilities for Tier 4 engines apply to equipment manufacturers that are granted additional exemptions for technical or engineering hardship:

(i) If you use the additional allowance under this paragraph (i) you shall forfeit percent of production flexibility plus technical or engineering hardship exemptions available for Tier 4 engines in the amounts shown in Table 1 of this section.

(ii) Table 1 of this section shows the percent of production flexibility and technical or engineering hardship exemptions that you must forfeit for Tier 4 engines. The amount of Tier 4 flexibility forfeited by each equipment manufacturer depends on the percent of production flexibility used for Tier 2 engines and the technical or engineering hardship exemptions granted for Tier 3 engines in the proportions shown in Table 1. For example, if you used 45 percent of your production flexibility for Tier 2 engines, you must forfeit 2 percent of your production flexibility for Tier 4 engines for every 1 percent of technical or engineering hardship flexibility granted for Tier 3 engines. In addition you must also forfeit 1 percent of any technical or engineering hardship exemptions available for Tier 4 engines for every 1 percent technical or engineering hardship exemptions available for Tier 3 engines. If you use the Tier 3 technical or engineering hardship allowances for 5 percent of your equipment in each of two different years, you have used a total allowance of 10 percent. Therefore you must forfeit a total of 20 percent of production flexibility for Tier 4 engines plus 10 percent of any technical or engineering hardship exemptions available for Tier 4 engines.

(iii) Because the Tier 3 and Tier 4 rules have different power category ranges, the availability of technical relief will be further adjusted based on the sales volume by power category. Table 2 of this section shows the applicable power categories for Tier 3 and Tier 4. The Tier 3 power categories of 37kW to 75kW and 75kW to 130kW correspond to the Tier 4 power category of 56kW to 130kW. For the Tier 3 equipment in the 37 to 75kW category, you must only use the sales volume for equipment that uses engines with a rated power greater than 56kW. For example, if you have a Tier 3 piece of equipment that uses a 40 kW engine, the sales of the equipment are counted in the Tier 4 power category of 19kW to 56kW. If you have a Tier 3 piece of equipment that uses a 60kW engine, the sales of the equipment are counted in the Tier 4 power category of 56kW to 130kW. The Tier 3 power categories of 130kW to 225kW, 225kW to 450kW and 450kW to 560kW correspond to the Tier 4 power category of 130kW to 560kW. You will need to sum the sales of the Tier 3 power categories that correspond to the Tier 4 power category during each calendar year in which Tier 3 technical relief is used. The sum of all the Tier 3 units that are produced and exempted by the technical relief divided by the sum of all the Tier 3 units sold in the corresponding Tier 4 power category will determine the percentage of Tier 4 flexibility affected. For example, if you produce 50 units using Tier 3 technical relief in the range of 130kW to 225kW, and you produce 50 units using Tier 3 technical relief in the range of 225 to 450kW, and no units are produced in the 450kW to 560kW range, and your overall sales volume for the power ranges of 130kW to 560kW in Tier 3 is 400 units, the amount of Tier 3 technical relief used is 100/400 or 25 percent. Because you forfeit 1 percent of your Tier 4 technical relief for every 1 percent of Tier 3 technical relief used, then you will lose 25 percent of your Tier 4 technical relief in the 130kW to 560kW power range category. If you used 45 percent of your production flexibility for Tier 2 engines, you must forfeit 2 percent of production flexibility for Tier 4 engines for every 1 percent of Tier 3 technical relief. Therefore, you will forfeit 50 percent of your Tier 4 production allowance in the 130kW to 560kW power range category.

TABLE 1 OF § 89.102.—ADJUSTMENTS TO TIER 4 FLEXIBILITIES

Percent of use Tier 2 production flexibility	Percent of forfeit Tier 4 production flexibility	Percent of forfeit Tier 4 tech./eng. exemption
Greater than 0% and up to 20%	0	1
Greater than 20% and up to 40% .....	1	1
Greater than 40% and up to 60% .....	2	1
Greater than 60% and up to 80% .....	3	1

TABLE 2 OF § 89.102.—COR-RESPONDING TIER 3 AND TIER 4 POWER CATEGORIES

Tier 3 power categories	Tier 4 power categories
37≤kW<75*	19≤kW<56
37≤kW<75**, 75≤kW<130 ....	56≤kW<130
130≤kW<225, 225≤kW<450, 450≤kW<560.	130≤kW≤560

\* Applies only to use of engines rated between 37kW and 56kW by small volume equipment manufacturers.

\*\* Includes only equipment that uses engines with a rated power greater than 56kw.

(iv) Manufacturers using allowances under this paragraph (i) must comply with the notification and reporting requirements specified in paragraph (i)(7) of this section.

(7) Notification and reporting. You must notify us of your intent to use the technical relief provisions of this paragraph (i) and send us an annual report to verify that you are not exceeding the allowances, as follows:

(i) Before the first year you intend to use the provisions of this section, send the Designated Compliance Officer and the Designated Enforcement Officer a written notice of your intent, including:

(A) Your company's name and address, and your parent company's name and address, if applicable.

(B) Whom to contact for more information.

(C) The calendar years in which you expect to use the exemption provisions of this section.

(D) The name and address of the company that produces the engines you will be using for the equipment exempted under this section.

(E) Your best estimate of the number of units in each power category you will produce under this section and whether you intend to comply under paragraph (d)(1) or (d)(2) of this section.

(F) The number of units in each power category you have sold in previous calendar years under paragraph (d) of this section.

(ii) For each year that you use the provisions of this section, send the Designated Compliance Officer and the Designated Enforcement Officer a written report by March 31 of the following year. Include in your report the total number of engines you sold in the preceding year for each power category, based on actual U.S.-directed production information. Also identify the percentages of U.S.-directed production that correspond to the number of units in each power category and the cumulative numbers and percentages of units for all the units you

have sold under this section for each power category. You may omit the percentage figures if you include in the report a statement that you will not be using the percent-of-production allowances in paragraph (d) of this section.

(8) *Recordkeeping.* Keep the following records of all equipment with exempted engines you produce under this paragraph (i) for at least five full years after the final year in which allowances are available for each power category:

(i) The model number, serial number, and the date of manufacture for each engine and piece of equipment.

(ii) The maximum power of each engine.

(iii) The total number or percentage of equipment with exempted engines, as described in paragraph (d) of this section and all documentation supporting your calculation.

(iv) The notifications and reports we require under paragraph (i)(7) of this section.

(9) *Equipment Labeling.* Any engine produced under this paragraph (i) must meet the labeling requirements of 40 CFR 89.110, but add the following statement instead of the compliance statement in 40 CFR 89.110 (b)(10): THIS ENGINE MEETS U.S. EPA EMISSION STANDARDS UNDER 40 CFR 89.102. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN FOR THE EQUIPMENT FLEXIBILITY PROVISIONS OF 40 CFR 89.102 MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(10) *Enforcement.* Producing more exempted engines or equipment than we allow under this paragraph (i) or installing engines that do not meet the applicable Tier 1 emission standards described in § 89.112 violates the prohibitions in § 89.1003(a)(1). You must give us the records we require under this paragraph (i) if we ask for them (see § 89.1003(a)(2)).

[FR Doc. E7-24976 Filed 12-21-07; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2007-0309; FRL-8342-8]

**Ettoxazole; Pesticide Tolerance**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of ettoxazole in or

on cherry; hop, dried cones; and vegetable, cucurbit subgroup 9A. The Interregional Research Project No. 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective December 26, 2007. Objections and requests for hearings must be received on or before February 25, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-0309. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Sidney Jackson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7610; e-mail address: [jackson.sidney@epa.gov](mailto:jackson.sidney@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are