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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2008-0479; FRL-8775-5]

Determination of Attainment of the One-Hour Ozone Standard for the Southern New Jersey Portion of the Philadelphia Metropolitan Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the one-hour ozone nonattainment area in Southern New Jersey, that is, the New Jersey portion of the Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD area, attained the one-hour ozone standard, is not subject to the imposition of penalty fees under section 185 of the Clean Air Act and does not need to implement contingency measures. Areas that EPA classified as severe ozone nonattainment areas for the one-hour National Ambient Air Quality Standard and did not attain the Standard by the applicable attainment date of November 15, 2005 may be subject to these penalty fees. However, since the air quality in the Philadelphia-Wilmington-Trenton area attained the ozone standard as of November 15, 2005, this area will not need to implement this fee program. This is not a redesignation of attainment for this area, only a fulfillment of a Clean Air Act obligation to determine if an area attained the ozone standard by its applicable attainment date.

DATES: *Effective Date:* This rule is effective on May 8, 2009.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R02-OAR-2008-0479. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, 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 either electronically through <http://www.regulations.gov> or in hard copy at the Air Programs Branch, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor,

New York, New York 10007-1866. To make your visit as productive as possible, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Robert F. Kelly, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007-1866, telephone number (212) 637-4249, fax number (212) 637-3901, e-mail kelly.bob@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA has determined that the New Jersey portion of the Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD one-hour ozone nonattainment area (the "Philadelphia metropolitan" nonattainment area) attained the one-hour ozone National Ambient Air Quality Standard (NAAQS) by its attainment date, November 15, 2005. (The Philadelphia metropolitan nonattainment area consists of the following counties: Cecil County, Maryland; Kent and New Castle Counties in Delaware; Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem Counties in New Jersey; and, Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania.) As a result, EPA finds that this area is not subject to the imposition of the section 185 penalty fees and does not need to implement contingency measures. In a separate final rule at 73 FR 43360, EPA's Region 3 office found that the balance of the Philadelphia metropolitan nonattainment area attained the one-hour ozone NAAQS by its applicable attainment date and is not subject to the imposition of section 185 penalty fees. Other specific requirements of the determination and the rationale for EPA's proposed action are explained in the Proposed Rulemaking published on July 23, 2008 (73 FR 42727). The proposal was based on three years of complete, quality-assured ambient air quality monitoring data for 2003 through 2005 ozone seasons. This determination of attainment is not a redesignation to attainment for this area. Persons seeking more information on this action should access EPA's docket for this action at <http://www.regulations.gov>, docket number EPA-R02-OAR-2008-0479. EPA received no comments on the proposed action.

II. Final Action

Based upon EPA's review of the air quality data for the 3-year period 2003 to 2005, EPA has determined that the New Jersey portion of the Philadelphia metropolitan area has attained the 1-hour ozone NAAQS by the applicable attainment date of November 15, 2005. EPA also has determined that this area is not subject to the imposition of the section 185 penalty fees. In addition, because the area has attained the one-hour ozone NAAQS by the applicable attainment date, the area is not subject to the requirement to implement contingency measures for failure to attain the one-hour ozone NAAQS by its attainment date. Since the area has met its attainment deadline, even if the area subsequently lapses into nonattainment, it would not be required to implement the contingency measures for failure to attain the one-hour ozone NAAQS by its attainment date.

III. Statutory and Executive Order Reviews

This final action determines that an area has attained a previously-established NAAQS based on an objective review of measured air quality data. Accordingly, this action merely affirms that state actions are meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because New Jersey's State Implementation Plans are not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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 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 June 8, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Volatile organic compounds.

Dated: February 12, 2009.

George Pavlou,

Acting Regional Administrator, Region 2.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart FF—New Jersey

■ 2. Section 52.1582 is amended by adding new paragraph (l) to read as follows:

§ 52.1582 Control strategy and regulations: Ozone.

* * * * *

(l) *Attainment determination.* EPA has determined that the Philadelphia-Wilmington-Trenton severe 1-hour ozone nonattainment area attained the 1-hour ozone NAAQS by the applicable attainment date of November 15, 2005. In New Jersey, this area includes the counties of Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem. EPA also has determined that the Philadelphia-Wilmington-Trenton severe 1-hour ozone nonattainment area is not subject to the imposition of the section 185 penalty fees. In addition, the requirements of section 172(c)(9) (contingency measures) do not apply to the area.

[FR Doc. E9-7683 Filed 4-7-09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2008-0762; FRL-8408-7]

Bacillus subtilis MBI 600; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of a tolerance for residues of the biofungicide, *Bacillus subtilis* MBI 600, in or on all food commodities, including residues resulting from post-harvest uses, when applied/used in accordance with good agricultural practices. Becker Underwood, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an amendment to expand the existing exemption from the requirement of a

tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus subtilis* MBI 600 in or on all food commodities.

DATES: This regulation is effective April 8, 2009. Objections and requests for hearings must be received on or before June 8, 2009, 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-2008-0762. All documents in the docket are listed in the docket index available at <http://www.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: Denise Greenway, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8263; e-mail address: greenway.denise@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 not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide