

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this final action. In reviewing SIP submissions, EPA's role is to approve or disapprove State choices, based on the criteria of the Clean Air Act. Accordingly, this action merely conditionally approves certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it 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.

K. Congressional Review Act

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).

L. 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 21, 2010. 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 13, 2010.

Judith A. Enck,

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 HH—New York

■ 2. Section 52.1683 is amended by adding new paragraph (k) to read as follows:

52.1683 Control strategy: Ozone.

* * * * *

(k)(1) The September 1, 2006 New York reasonably available control technology (RACT) analysis plan submittal, supplemented on February 8, 2008 and September 16, 2008, which applies to the entire State and to the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT and the Poughkeepsie 8-hour ozone moderate nonattainment areas is conditionally approved.

(2) The moderate area reasonably available control measure (RACM) analysis for the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT 8-hour ozone moderate nonattainment area as presented in the February 8, 2008 "New York SIP for Ozone—Attainment Demonstration for New York Metro Area" submittal is conditionally approved.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-R03-OAR-2010-0431; FRL-9179-1]

Approval of One-Year Extension for Attaining the 1997 8-Hour Ozone Standard in the Baltimore Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to extend the attainment date from June 15, 2010 to June 15, 2011 for the Baltimore nonattainment area, which is classified as moderate for the 1997 8-hour ozone national ambient air quality standard (NAAQS). This extension is based in part on air quality data for the 4th highest daily 8-hour monitored value during the 2009 ozone season. Accordingly, EPA is revising the table in our regulations concerning the 8-hour ozone attainment dates in the State of Maryland. EPA is approving the extension of the attainment date for the Baltimore moderate ozone nonattainment area in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This rule is effective on September 21, 2010 without further notice, unless EPA receives adverse written comment by August 23, 2010. If EPA receives such comments, it 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: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2010-0431. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.*, 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 either electronically through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at Maryland Department of the Environment, 1800 Washington

Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814-2036, or by e-mail at becoat.gregory@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Request for Attainment Date Extension for the Baltimore Nonattainment Area

On March 12, 2010, the State of Maryland requested a one-year attainment date extension for the Baltimore nonattainment area which is classified as moderate for the 1997 8-hour ozone NAAQS. The Baltimore nonattainment area consists of Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties and Baltimore City. Since this area was classified as a moderate ozone nonattainment area, the statutory ozone attainment date, as prescribed by section 181(a) of the CAA, is June 15, 2010. The State of Maryland's request is that the attainment date be extended to June 15, 2011.

II. CAA Requirements and EPA Actions Regarding One-Year Extensions

Section 172(a)(2)(C) of subpart 1 of the CAA provides for EPA to extend the attainment date for an area by one year if the State has complied with all the requirements and commitments pertaining to the area in the applicable implementation plan and no more than a minimal number of exceedances of the NAAQS has occurred in the attainment year. Up to two one-year extensions may be issued for a single nonattainment area. Section 181(a)(5) of subpart 2 contains a similar provision for the ozone NAAQS, but instead of providing for an extension where there has been a "minimal" number of exceedances, it allows an extension only if there is no more than one exceedance of the NAAQS in the year proceeding the extension year. However, the language in section 181(a)(5) reflects the form of the 1-hour ozone NAAQS and not the 1997 8-hour ozone NAAQS. 40 CFR 51.907 sets forth how sections 172(a)(2)(C) and 181(a)(5) apply to an area subject to the 1997 8-hour ozone NAAQS. Under 40 CFR 51.907, an area will meet the requirement of section

172(a)(2)(C)(ii) or 181(a)(5)(B) of the CAA pertaining to one-year extensions of the attainment date if:

(a) For the first one-year extension, the area's 4th highest daily 8-hour average in the attainment year is 0.084 parts per million (ppm) or less,

(b) For the second one-year extension, the area's 4th highest daily 8-hour value, averaged over both the original attainment year and the first extension year, is 0.084 ppm or less.

(c) For purposes of paragraphs (a) and (b) of this section, the area's 4th highest daily 8-hour average shall be from the monitor with the highest 4th highest daily 8-hour average of all the monitors that represent that area.

EPA's review of the actual ozone air quality data in the Air Quality System shows that the 4th highest daily average 8-hour ozone concentrations for the 2009 attainment year ozone season, for all monitors in the Baltimore moderate ozone nonattainment area are measured at 0.084 ppm or less (Table 1), as required by 40 CFR 51.907(a). The monitoring data has been quality controlled and quality assured.

TABLE 1—MONITORING DATA FOR 8-HOUR OZONE IN THE BALTIMORE NONATTAINMENT AREA

Site ID	County/State	Year	4th Max 8-HR (ppm)
24-003-0014	Anne Arundel, MD	2009	0.070
24-005-1007	Baltimore, MD	2009	0.068
24-005-3001	Baltimore, MD	2009	0.071
24-013-0001	Carroll, MD	2009	0.068
24-025-1001	Harford, MD	2009	0.083
24-025-9001	Harford, MD	2009	0.069
24-510-0054	Baltimore (City), MD	2009	0.066

EPA has determined that the requirements for a one-year extension of the attainment date have been fulfilled as follows:

(1) The State of Maryland has complied with all requirements and commitments pertaining to the area in the applicable ozone implementation plan; and

(2) The Baltimore nonattainment area's 4th highest daily 8-hour monitored value during the 2009 ozone season is 0.084 ppm or less.

Therefore, EPA approves Maryland's attainment date extension request for the Baltimore moderate ozone nonattainment area. As a result, the chart in 40 CFR 81.321 entitled "Maryland—Ozone (8-Hour Standard)" is being modified to reflect EPA's approval of Maryland's attainment date extension request.

III. Final Action

EPA is approving the attainment date extension from June 15, 2010 to June 15, 2011 for the Baltimore nonattainment area, which is classified as moderate for the 1997 8-hour ozone NAAQS. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on September 21, 2010 without further notice unless EPA receives adverse comment by August 23, 2010. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a

subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely finds that an area has qualified for a one-year extension of the attainment date of a previously established NAAQS, and imposes no additional requirements. Accordingly, the Administrator certifies

that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duties, it 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). This rule also does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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), because it merely determines that each of two areas has attained a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve establishment of technical standards, and 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by

examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order.

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this direct final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The rulemaking does not affect the level of protection provided to human health or the environment because extending the attainment date does not alter the emission reduction measures that are required to be implemented in the Baltimore Area, which is classified as moderate nonattainment for the 1997 8-hour ozone standard. *See* 69 FR at 23909 (April 30 2004). Additionally, if the Baltimore Area were not granted an extension of its attainment date, EPA’s recourse would be to initiate a reclassification of the Baltimore Area from its current classification of moderate nonattainment to serious nonattainment, pursuant to section 181(b)(2) of the CAA. Because the Baltimore area was formerly a severe nonattainment area under the revoked 1-hour ozone standard (*see*, 56 FR at 56773, November 6, 1991), it is required to continue to implement severe area

requirements pursuant to EPA’s interpretation of “anti-backsliding” provision of section 172(e) of the CAA. *See* 69 FR at 23973, April 30, 2004, *South Coast Air Quality Management District v. EPA*, 472 F.3d 882 (DC Cir. 2006), *modified and rehearing den.*, 489 F.3d 1245 (DC Cir. 2007). The severe area requirements are more stringent than both the moderate and serious area requirements set forth in Title I, Part D, Subpart 2 of the CAA. Therefore, even if EPA were to not grant the attainment date extension and instead move to reclassify the area to serious nonattainment, no additional emission reduction measures would be required to implemented in the Baltimore area through a 181(b)(2) reclassification.

The extension of the attainment deadline for the 1997 8-hour ozone NAAQS does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 6, 2010.

W. C. Early,

Acting Regional Administrator, Region III.

■ 40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

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

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

■ 2. In § 81.321, the table entitled “Maryland—Ozone (8-Hour Standard)” is amended by revising the entry for Baltimore, MD (Anne Arundel County, City of Baltimore, Baltimore County, Carroll County, Harford County, and Howard County) to read as follows:

§ 81.321 Maryland.

* * * * *

MARYLAND—OZONE [8-Hour standard]

Designated Area	Designation ^a		Category/Classification	
	Date ¹	Type	Date ¹	Type
Baltimore, MD:				
Anne Arundel County		Nonattainment		⁴ Subpart 2/Moderate.
City of Baltimore		Nonattainment		⁴ Subpart 2/Moderate.
Baltimore County		Nonattainment		⁴ Subpart 2/Moderate.
Carroll County		Nonattainment		⁴ Subpart 2/Moderate.
Harford County		Nonattainment		⁴ Subpart 2/Moderate.
Howard County		Nonattainment		⁴ Subpart 2/Moderate.
*	*	*	*	*

^a Includes Indian Country located in each county or area, except as otherwise specified.

¹ This date is June 15, 2004, unless otherwise noted.

² Effective April 15, 2008.

³ November 22, 2004.

⁴ Attainment date extended to June 15, 2011.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

EPA-HQ-OPP-2009-0407; FRL-8835-6

Trichoderma Hamatum Isolate 382; 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 the microbial pesticide, *Trichoderma hamatum* isolate 382, in or on all food commodities when applied as a fungicide and used in accordance with good agricultural practices. Interregional Research Project Number 4 (IR-4) of Rutgers University (on behalf of Sellew and Associates, LLC) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Trichoderma hamatum* isolate 382 under the FFDCA.

DATES: This regulation is effective July 23, 2010. Objections and requests for hearings must be received on or before September 21, 2010, 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-2009-0407. 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 Office of Pesticide Programs (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: Ann Sibold, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6502; e-mail address: sibold.ann@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 for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at <http://www.gpoaccess.gov/ecfr>. To access the Harmonized Test Guidelines referenced in this document electronically, please go to <http://www.epa.gov/ocsp> and select "Test Methods and Guidelines."

C. How Can I File an Objection or Hearing Request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation

and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2009-0407 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 21, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA-HQ-OPP-2009-0407 by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- **Mail:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

II. Background and Statutory Findings

In the **Federal Register** of July 22, 2009 (74 FR 36200) (FRL-8425-8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 7E7188) by IR-4, Rutgers University, 500 College Road, East, Suite 201W, Princeton, NJ 08540 (on behalf of Sellew and Associates, LLC, 84 Shadybrook Lane, Carlisle, MA 01741). The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Trichoderma hamatum*