

(Delete 292.212 and 292.213; renumber current 292.214 through 292.217 as new 292.212 through 292.215.)

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### 293 International Surface Air Lift (ISAL) Service

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### 293.7 Postage

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(Delete 293.75; renumber current 293.76 as new 293.75.)

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Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04-23997 Filed 11-2-04; 8:45 am]

BILLING CODE 7710-12-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R07-OAR-2004-IA-0004; FRL-7833-7]

### Approval and Promulgation of Implementation Plans; State of Iowa

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is announcing it is approving a revision to the Iowa State Implementation Plan (SIP) for the purpose of revising open burning rules. This revision includes a provision that allows the Iowa Department of Natural Resources (IDNR) to require the submittal of additional information when a variance from open burning rules is requested, reemphasizes the state's obligation to protect the National Ambient Air Quality Standards (NAAQS) with regard to open burning, clarifies National Emissions Standards for Hazardous Air Pollutants (NESHAP) guidance for disaster rubbish, updates guidance for training fires, and provides clarification to the existing open burning rules covering agricultural structures.

**DATES:** This direct final rule will be effective January 3, 2005, without further notice, unless EPA receives adverse comment by December 3, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R07-OAR-2004-IA-0004, by one of the following methods:

1. **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. **Agency Web site:** <http://docket.epa.gov/rmepub/>. RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search;" then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. **E-mail:** [hamilton.heather@epa.gov](mailto:hamilton.heather@epa.gov).

4. **Mail:** Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

5. **Hand Delivery or Courier.** Deliver your comments to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

**Instructions:** Direct your comments to RME ID No. R07-OAR-2004-IA-0004. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA RME Web site and the Federal [regulations.gov](http://www.regulations.gov) Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the RME

index at <http://docket.epa.gov/rmepub/>. 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 in RME or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

### FOR FURTHER INFORMATION CONTACT:

Heather Hamilton at (913) 551-7039, or by e-mail at [hamilton.heather@epa.gov](mailto:hamilton.heather@epa.gov).

### SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is being addressed in this document?

Have the requirements for approval of a SIP revision been met?

What action is EPA taking?

### What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

### What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

### What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

### What Is Being Addressed in This Document?

EPA is approving a revision to the SIP for the State of Iowa for the purpose of revising open burning rules. This revision includes a provision that allows IDNR to require the submittal of additional information when a variance from open burning rules is requested, reemphasizes the state's obligation to protect the NAAQS with regard to open burning, clarifies NESHAP guidance for disaster rubbish, and updates guidance for training fires.

It should be noted that Iowa Administrative Code (IAC) 567–23.2(3), paragraph "g" subparagraph (2) was not

submitted for approval due to concerns raised by EPA with respect to protection of the NAAQS for particulate matter and carbon monoxide.

Information with regard to variances is identified in the Iowa SIP; however, the state of Iowa found it necessary to add a provision that clarifies that IDNR may require additional information when a variance from the open burning rules is requested. This rulemaking will add the language that states the submittal of adequate documentation to IDNR may be required to allow the director to assess whether granting the variance will hinder attainment, or maintenance of the NAAQS (IAC 567–23.2(2)). EPA notes that this variance provision is not a mechanism to amend the Federally-approved SIP and that any variance must be approved by EPA in order to change the underlying SIP requirement for any source.

IAC 567–23.2(3)a, adds clarification for open burning of disaster rubbish and adds the reference for the standards for demolition and renovation in accordance with the asbestos (NESHAP).

This revision will rescind the paragraph pertaining to training fires and will add a revised paragraph that updates the definition (IAC 567–23.2(3)g(1)). The new definition indicates that a training fire is set for the purpose of conducting bona fide training of public or industrial employees in fire fighting methods. The revision requires that the following conditions be met: The training fire is conducted on a building that is structurally intact; the fire does not include the controlled burning of a demolished building; proper notification must be completed and delivered at least ten working days before action commences; notification must be made in accordance with the asbestos NESHAP; asbestos-containing materials shall be removed prior to the training fire; proper notification and testing of asphalt roofing materials is required, and rubber tires are not to be burned during a training fire.

Finally, this rulemaking will revise the open burning rules pertaining to agricultural structures by adding the condition that burning is to be conducted in accordance with the NESHAP for the standard for demolition and renovation. This revision is found in IAC 23.2(3)i. For the purposes of NESHAP, the definition of agricultural structures excludes a single residential structure on the premises having four or fewer dwelling units, which have been used only for residential purposes.

The revision will make the Iowa SIP consistent with 40 CFR Part 52.

### Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

### What Action Is EPA Taking?

EPA is revising the SIP for the State of Iowa for the purpose of revising open burning rules. This revision which was adopted November 17, 2003, and became effective January 14, 2004, includes a provision that clarifies that IDNR may require additional information when a variance from open burning rules is requested, reemphasizes the state's obligation to protect the NAAQS with regard to open burning, clarifies NESHAP guidance for disaster rubbish, updates guidance for training fires, and provides clarification to the existing open burning rules covering agricultural structures. We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

### 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 approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. 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 approves pre-existing requirements under state law and does not impose

any additional enforceable duty beyond that required by state law, 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 tribal implications because it will 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). This action also does not have Federalism implications because it does 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, 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, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP 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 SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP 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 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 January 3, 2005. 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, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 26, 2004.

**James B. Gulliford**,  
Regional Administrator, Region 7.

■ 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 Q—Iowa

■ 2. In § 52.820 the table in paragraph (c) is amended by revising the entry for 567-23.2 under Chapter 23 to read as follows:

#### § 52.820 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

#### EPA-APPROVED IOWA REGULATIONS

Iowa citation date	Title	State effective date	EPA approval	Explanation
<b>Iowa Department of Natural Resources, Environmental Protection Commission (567)</b>				
* * *	* * *	* * *	* * *	* * *
<b>Chapter 23—Emission Standards for Contaminants</b>				
* * *	* * *	* * *	* * *	* * *
567-23.2 .....	Open Burning .....	1/14/04	11/03/04 [insert FR page number where the document begins].	Subrule 23.2(3)g(2) was not submitted for approval. Variances from open burning rule 23.2(2) are subject to EPA approval.
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[FR Doc. 04-24532 Filed 11-2-04; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180**

[OPP-2004-0215; FRL-7684-4]

**Bacillus Pumilus Strain QST 2808; 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 *Bacillus pumilus* strain QST 2808 in or on food commodities when applied/used in accordance with label directions. AgraQuest, Inc 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), requesting an exemption from the requirement of a tolerance. Notification that EPA had received the petition was published on May 5, 2004 (69 FR 25092) (FRL-7354-4). This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus pumilus* strain QST2808.

**DATES:** This regulation is effective November 3, 2004. Objections and requests for hearings must be received on or before January 3, 2005.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under docket identification (ID) number OPP-2004-0215. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. 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 in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Barbara Mandula, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-7378; e-mail address: [mandula.barbara@epa.gov](mailto:mandula.barbara@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/Agriculture (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions. 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 Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

**II. Background and Statutory Findings**

In the **Federal Register** of May 5, 2004 (69 FR 25092) (FRL-7354-4), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 4F6926) by AgraQuest, Inc, 1530 Drew Avenue,

Davis, CA 95616. This notice included a summary of the petition prepared by the petitioner AgraQuest, Inc. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing a permanent exemption from the requirement of a tolerance for residues of *Bacillus pumilus* strain QST 2808. EPA previously had granted the petitioner a temporary exemption from the requirement of a tolerance for residues of *Bacillus pumilus* strain QST 2808, which was published on June 18, 2003 (68 FR 36476)(FRL-7301-1). That temporary exemption is set to expire June 30, 2006.

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) of the FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .” Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider “available information concerning the cumulative effects of a particular pesticide’s residues” and “other substances that have a common mechanism of toxicity.”

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

**III. Toxicological Profile**

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other