

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 May 12, 1997.

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

V. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 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. sections 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 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 Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. EPA.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with 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. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or 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 Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 12, 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, Hydrocarbons, Incorporation by reference, Ozone, and Volatile organic compounds.

Dated: November 27, 1996.

Valdas V. Adamkus,
Regional Administrator.

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. 7401-7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(123) to read as follows:

§ 52.720 Identification of plan.

(c) * * *

(123) On May 5, 1995, May 26, 1995, and May 31, 1995, the State of Illinois submitted miscellaneous revisions to its Volatile Organic Material (VOM) Reasonably Available Control Technology (RACT) rules contained in 35 Illinois Administrative Code Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, and Part 219: Organic Material Emission Standards and Limitations for the Metro East Area. These amendments clarify certain applicability provisions, control requirements, and compliance dates contained within these regulations. Also included in these amendments is an exemption for certain polyethylene foam packaging operations from VOM RACT requirements.

(i) *Incorporation by reference.* Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources.

(A) Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, Subpart A: General Provisions, Section 218.106; Subpart T: Pharmaceutical Manufacturing, Section 218.480; Subpart DD: Aerosol Can Filling, Section 218.686; Subpart RR: Miscellaneous Organic Chemical Process, Section 218.966; Subpart TT: Other Emission Units, Section 218.980. Amended at 19 Ill. Reg. 6848; effective May 9, 1995.

(B) Part 219: Organic Material Emission Standards and Limitations for the Metro East Area, Subpart T: Pharmaceutical Manufacturing, Section 219.480; Subpart TT: Other Emission Units, Section 219.980. Amended at 19 Ill. Reg. 6958, effective May 9, 1995.

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40 CFR Part 52

[DE027-1004a, DE020-1004a; FRL-5679-4]

Approval and Promulgation of Air Quality Implementation Plans; State of Delaware: Open Burning and Non-CTG RACT Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision consists of two control measures to reduce volatile organic compound (VOC) emissions. The intended effect of this action is to approve these two control measures which are creditable towards Delaware's 15 Percent Rate of Progress Plan (RPP). This action is being taken under section 110 of the Clean Air Act.

DATES: This action is effective May 12, 1997 unless notice is received on or before April 11, 1997 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 566-2182, at the EPA Region III office, or via e-mail at quinto.rose@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On February 17, 1995, the Delaware Department of Natural Resources & Environmental Control (DNREC) submitted revisions to its State Implementation Plan (SIP) for Delaware. One of those revisions pertains to the 15% Rate of Progress Plan (RPP) for the State of Delaware. The other revision is Delaware Regulation 13—Open Burning, which is one of the control measures to achieve the 15% reduction. Included in this latter revision are definitions pertaining to the open burning regulation, as well as additions and deletions from Delaware Regulation 1, Definitions and Administrative Principles. The definitions are for ceremonial fires, conservation practices, open burning, prescribed burning, rubbish, silviculture, and trade waste. The 15% Rate of Progress Plan, itself, which was submitted on February 17, 1995 is the subject of a separate rulemaking.

On January 20, 1994, Delaware submitted a revision to Regulation 24, section 43, Other Facilities that Emit Volatile Organic Compounds (VOCs). This section number was changed to section 50 on July 28, 1995 (60 FR 38712). A direct final approval was published for the Delaware VOC regulation on May 3, 1995 (60 FR 21707), excluding the Non-Control Technique Guideline (Non-CTG) RACT part: sections 50(a)(5) and 50(b)(3). These sections pertain to control requirements on wood furniture coatings, industrial wastewater, and shipbuilding and repair; and submitting an alternative control plan. This Non-CTG RACT regulation is one of the control measures for the 15% RPP.

Background

Section 182(b)(1) of the Clean Air Act as amended in 1990 (CAAA), requires ozone nonattainment areas with classifications of moderate and above to develop plans to reduce area-wide volatile organic compound (VOC) emissions by 15% from a 1990 baseline. The plans were to be submitted by November 15, 1993 and the reductions were to be achieved within 6 years of enactment or November 15, 1996. The VOC reductions achieved by Delaware Regulation 13—Open Burning and Delaware Regulation 24, Section 50—Non-CTG RACT are creditable toward the 15% plan.

Non-CTG RACT

Section 50 of Delaware Air Regulation 24 is entitled, Other Facilities that Emit Volatile Organic Compounds. This section is also called the Non-CTG RACT regulation since it applies to any facility that emits VOCs and is not otherwise subject to any other federally approved RACT regulation of the Delaware SIP that was developed pursuant to a CTG. The CAAA requires the implementation of RACT for all major stationary sources of VOCs not otherwise covered by a CTG. For severe nonattainment areas including Kent and New Castle Counties, the CAAA defines a major stationary source as any stationary source, or group of sources located within a contiguous area and under common control, that emits or has the potential to emit at least 25 tons per year (tpy) of VOCs. Prior to the passage of the CAAA, non-CTG RACT was required in New Castle county for stationary sources for which there was not a CTG, and which had the potential to emit 100 tpy or more of VOCs from all non-CTG processes. There was no requirement for non-CTG RACT in Kent County prior to the CAAA. Therefore, all VOC emissions reductions from non-

CTG RACT in Kent County are creditable toward the 15% reduction requirement. However, reductions from non-CTG RACT in New Castle County are only creditable for sources that emit or have the potential to emit between 25 and 100 tpy of VOCs from processes not covered by a CTG. Delaware adopted its non-CTG RACT regulation in January 1993. Any facility located in Kent or New Castle County is subject to the regulation if it has sources not regulated by a CTG that as a group have the potential to emit VOC emissions of 25 tons or more per year. The regulation requires overall VOC emission reduction from affected sources at a facility of at least 81 percent by weight. This reduction can be achieved through the use of capture and control techniques or other methods as appropriate. Facilities may also comply with section 50 by submitting an alternative plan. These alternative plans must be approved by EPA as source-specific SIP revisions.

Open Burning

A revision to Delaware Air Regulation 13—Open Burning, was adopted in the autumn of 1994. New regulatory requirements prohibit open burning and prescribed burning in Kent and New Castle Counties during the peak ozone season, June 1 through August 31. Regulatory requirements also prohibit the disposal of refuse by open burning, open burning in the conduct of a salvage operation, and open burning of fallen leaves.

EPA's review of this material indicates that the two control measures mentioned are approvable, and their reductions creditable toward the 15% RPP. EPA is approving the Delaware SIP revisions for the two control measures for the 15% RPP: Open Burning and Non-CTG RACT, which were submitted on February 17, 1995 and January 20, 1994, respectively.

EPA has determined that the submittals made by the State of Delaware satisfy the relevant requirements of the CAAA. EPA's detailed review of Delaware's Open Burning and Non-CTG Regulations are contained in a Technical Support Document (TSD) which is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

EPA is approving these SIP revisions without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revisions should

adverse or critical comments be filed. This action will become effective May 12, 1997 unless, by April 11, 1997, adverse or critical comments are received.

If 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. 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 May 12, 1997.

Final Action

EPA is approving the Delaware Regulation 13—Open Burning and Regulation 24—sections 50(a)(5) and 50(b)(3)—Non-CTG RACT.

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.

Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. 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 CAAA, 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 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 Federal 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 CAAA, petitions for judicial review of this action to approve revisions to the Delaware SIP must be filed in the United States Court of Appeals for the appropriate circuit by May 12, 1997. Filing a petition for reconsideration by the Administrator of this 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 regarding the Delaware Open Burning and Non-CTG RACT SIP revisions may not be challenged later in proceedings to enforce its requirements. (See section (b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: January 10, 1997.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52 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 I—Delaware

2. Section 52.420 is amended by adding paragraphs (c)(48) and (c)(49) to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

(48) Revisions to the Delaware State Implementation Plan submitted on January 20, 1994 by the Delaware Department of Natural Resources & Environmental Control:

(i) Incorporation by reference.

(A) Letter of January 20, 1994 from the Delaware Department of Natural Resources & Environmental Control transmitting Regulation 24—Control of Volatile Organic Compound Emissions—Sections 50(a)(5) and 50(b)(3), effective November 24, 1993.

(B) Regulation 24—Control of Volatile Organic Compound Emissions, Section 50—Other Facilities that Emit Volatile Organic Compounds—Sections 50(a)(5) and 50(b)(3)—Non-CTG RACT, effective November 24, 1993.

(ii) Additional material.

(A) Remainder of January 20, 1994 State submittal pertaining to Regulation 24, sections 50(a)(5) and 50(b)(30) referenced in paragraph (c)(48)(i) of this section.

(49) Revisions to the Delaware State Implementation Plan submitted on February 17, 1995 by the Delaware Department of Natural Resources & Environmental Control:

(i) Incorporation by reference.

(A) Letter of February 17, 1995 from the Delaware Department of Natural Resources & Environmental Control transmitting Regulation 13—Open Burning, effective February 8, 1995.

(B) Regulation 13—Open Burning, effective February 8, 1995.

(C) Administrative changes to Regulation 1, Definitions and Administrative Principles: addition of the following definitions: “ceremonial fires”, “conservation practices”, “prescribed burning”, and “silviculture”; and revision to the following definitions: “open burning”, “rubbish”, and “trade waste” adopted February 8, 1995.

(ii) Additional material.

(A) Remainder of the February 17, 1995 State submittal pertaining to Regulation 13—Opening Burning referenced in paragraph (c)(49)(i) of this section.

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BILLING CODE 6560-50-P

40 CFR Part 52

[VA021-5015; FRL-5697-9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Rule Pertaining to VOC RACT Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to amendments to Virginia’s reasonably available control technology (RACT) requirements for major stationary sources of volatile organic compounds (VOCs) located in the Richmond moderate ozone nonattainment area and the Northern Virginia portion of the Metropolitan Washington D.C. serious ozone nonattainment area. The intended effect of this action is to approve the submitted amendments to Virginia’s major source VOC RACT requirements because they strengthen Virginia’s SIP.

This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on April 11, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, (215) 566-2092.

SUPPLEMENTARY INFORMATION:

I. Background Information

A formal SIP revision was submitted by Virginia on November 6, 1992 amending its VOC RACT regulation applicable to non-CTG sources. Non-CTG sources are those major stationary sources or categories of stationary sources of VOC that are not otherwise subject to RACT by a SIP-approved regulation developed pursuant to a control technique guideline (CTG) document.

On September 27, 1995, EPA published a direct final approval of the SIP revision (60 FR 49767). The intended effect of this action was to approve the amendments Virginia submitted for its major source VOC RACT requirements because those amendments strengthened the SIP and satisfied the “RACT Catch-Up” requirements of section 182 (a)(2)(A) of the Clean Air Act (the Act). EPA issued the direct final rulemaking without prior proposal because the Agency viewed it as noncontroversial and anticipated no adverse public comments. The final approval was published in the Federal Register with a provision for a 30 day comment period (60 FR 49767). Concurrently, a notice of proposed rulemaking (NPR) pertaining to the same amendments to Virginia’s VOC RACT requirements was also published in the Federal Register on September 27, 1995 (60 FR 49813). EPA announced that the final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of publication of the final rule. Since EPA received one adverse comment regarding the direct final rule during the prescribed comment period, the final rule converted to a proposal, and on

December 8, 1995 (60 FR 62990), EPA withdrew its otherwise effective date.

Today’s final rulemaking action addresses the comment received during the public comment period and announces EPA’s final action on this SIP revision. Other specific requirements of VOC RACT “Catch-Ups” and the rationale for EPA’s action were explained in the rulemaking notices published on September 27, 1995 and will not be restated here.

II. Public Comment and EPA’s Response

One letter of comment was submitted on the action taken by EPA on September 27, 1995. The letter was submitted on behalf of the Bear Island Paper Company on October 26, 1995. The following discussion summarizes and responds to the comments received.

Comment: The commenter stated that EPA should not approve the revision to Virginia’s SIP because the regulation does not address circumstances where, despite the best efforts of Virginia and the subject source, the compliance deadline cannot be met because an appropriate RACT level cannot be determined within a timely fashion. The commenter suggests that the SIP revision be rewritten to set forth a new compliance deadline or, alternatively, set forth a mechanism for establishing a new deadline. The commenter argues that these provisions are warranted because EPA has not issued the relevant guidance documents required by section 183 of the CAA. The commenter asserts that Virginia has not been able to rely on EPA guidance in determining RACT for many sources.

EPA Response: EPA disagrees with the commenter’s remarks. The Commonwealth of Virginia chose the appropriate deadline of May 31, 1995, for compliance of all Non-CTG sources subject to RACT. The May 31, 1995 deadline for compliance with RACT was established in the CAA section 182(b)(2). Section 182(b)(2) requires states to submit SIP revisions requiring RACT on major stationary sources of VOCs that “provide for the implementation of the required measures as expeditiously as practicable but no later than May 31, 1995.” Sources wishing to receive an extension of the RACT compliance deadline have the ability to request a compliance date extension from the Commonwealth of Virginia. In those instances where a source can clearly demonstrate the need for a compliance date extension from a SIP regulation’s deadline, and the Commonwealth of Virginia determines such a compliance date extension is justifiable, the Commonwealth may