

from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under Addressee.

#### Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this temporary final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This final rule will not effect a taking of private property or otherwise have taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This final rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13405, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

#### Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under the authority of Sec. 311, Pub. L. 105-383.

2. Add temporary section 165.T01-078 to read as follows:

#### § 165.T01-079 Safety Zone: Salvage of Sunken Fishing Vessel CAPE FEAR, Buzzards Bay, MA.

(a) *Location.* The following area constitutes a safety zone: All waters within a five-hundred (500)-yard radius of the site of the sunken fishing vessel CAPE FEAR (O.N. D655734) in the entrance to Buzzards Bay at approximate position 41°-23' N, 071°-01' W during oil-pollution abatement and

salvage. After the vessel is salvaged and brought to the surface, a temporary moving safety zone will immediately be established on all waters extending 1,000 yards ahead and astern, and 500 yards on either side, of the fishing vessel CAPE FEAR until it is towed into and safety moored in the port of Fairhaven, MA.

(b) *Effective date:* This rule is effective from 6:00 a.m. on Tuesday, June 08, 1999, until 11:59 p.m. on Wednesday, June 30, 1999.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the COTP Providence.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. Among these personnel are commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in § 165.23 of this part apply.

Dated: June 3, 1999.

**Peter A. Popko,**

*Captain, U.S. Coast Guard, Captain of the Port.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[DE011-1020; FRL-6357-7]

#### Approval and Promulgation of Air Quality Implementation Plans; Delaware; Reasonably Available Control Technology Requirements for Nitrogen Oxides

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

**ACTION:** Final rule.

**SUMMARY:** EPA is granting conditional limited approval of a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision establishes and requires all major sources of nitrogen oxides (NO<sub>x</sub>) to implement reasonably available control technology (RACT). This revision was submitted to comply with the NO<sub>x</sub> requirements of the Clean Air Act. The intended effect of this action is to grant conditional limited approval of Delaware's NO<sub>x</sub> RACT Regulation.

**EFFECTIVE DATE:** This final rule is effective on July 16, 1999.

**ADDRESSES:** Copies of the documents relevant to this action are available 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; and Delaware Department of Natural Resources and Environmental Control, Richardson & Robins, 89 Kings Highway, Dover, Delaware 19901.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On March 22, 1999 (64 FR 13753), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed conditional limited approval of Delaware's Regulation No. 12, CONTROL OF NITROGEN OXIDE EMISSIONS (NO<sub>x</sub> RACT Regulation). The formal SIP revision was submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on January 11, 1993 and amended on January 20, 1994.

A description of Delaware's SIP revision and EPA's rationale for granting it conditional limited approval were provided in the NPR and shall not be restated here. No public comments were received on the NPR.

##### Terms of Conditional Approval

EPA is conditionally approving Delaware's NO<sub>x</sub> RACT regulation based upon DNREC's commitment to submit all the source-specific RACT determinations made under Section 5 of Regulation No. 12. To fulfill the condition of this approval, DNREC must, by no later than July 17, 2000 of Regulation No. 12, certify that it has submitted all required case-by-case NO<sub>x</sub> RACT determinations for all currently known subject sources. Once EPA has determined that DNREC has met this condition, EPA shall remove the conditional nature of its approval and Regulation No. 12 will, at that time, retain limited approval status. Should DNREC fail to meet the condition as specified above, the final conditional limited approval of the Delaware NO<sub>x</sub> RACT regulation SIP revision shall convert to a disapproval.

##### Terms of Limited Approval

Conversion of the Delaware NO<sub>x</sub> RACT Regulation to full approval will occur when EPA has approved all of the case-by-case RACT determinations submitted by DNREC in fulfillment of the conditional approval described above.

As indicated previously, other specific requirements of and the rationale for EPA's proposed actions are explained in the NPR and will not be restated here. Further details are contained in the TSD, which is available upon request, from the EPA Regional office listed in the ADDRESSES section of this document.

## II. Final Action

EPA is granting conditional limited approval to Delaware Regulation No. 12 imposing RACT on major sources of NO<sub>x</sub>, submitted on January 11, 1993 and January 20, 1994, as a revision to the Delaware SIP.

## III. Administrative Requirements

### A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

### B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

### C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If

the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

### D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

### E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because conditional and limited approvals of SIP submittals under

sections 110 and 301, 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, EPA 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 Clean Air Act, 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).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

### F. 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 annual 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 annual 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 requirements. Accordingly, no

additional costs to State, local, or tribal governments, or to the private sector, result from this action.

**G. Submission to Congress and the Comptroller General**

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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**H. Petitions for Judicial Review**

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to Delaware's NO<sub>x</sub> RACT regulation, must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. 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, Intergovernmental

relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: May 27, 1999.

**W. Michael McCabe,**

*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 *et seq.*

**Subpart I—Delaware**

2. In § 52.420, the table in paragraph (c) is amended by adding in numerical order a new entry for "Regulation 12" to read as follows:

**§ 52.420 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED REGULATIONS IN THE DELAWARE SIP**

State citation	Title subject	State effective date	EPA approval date	Comments
*	*	*	*	*
<b>Regulation 12—Control of Nitrogen Oxide Emissions</b>				
Section 1 .....	Applicability .....	11/24/93	June 16, 1999 [Federal Register cite]	Limited approval.
Section 2 .....	Definitions .....	11/24/93	June 16, 1999 [Federal Register cite]	Limited approval.
Section 3 .....	Standards .....	11/24/93	June 16, 1999 [Federal Register cite]	Limited approval.
Section 4 .....	Exemptions .....	11/24/93	June 16, 1999 [Federal Register cite]	Limited approval.
Section 5 .....	Alternative and Equivalent RACT Determinations.	11/24/93	June 16, 1999 [Federal Register cite]	Limited approval.
Section 6 .....	RACT Proposals .....	11/24/93	June 16, 1999 [Federal Register cite]	Limited approval.
Section 7 .....	Compliance Certification, Record Keeping, and Reporting Requirements.	11/24/93	June 16, 1999 [Federal Register cite]	Limited approval.
*	*	*	*	*

\* \* \* \* \*  
3. Section 52.424 is amended by adding paragraph (d) to read as follows:

**§ 52.424 Conditional approval.**

\* \* \* \* \*  
(d) Revisions to the Delaware State Implementation Plan, Regulation No. 12, pertaining to NO<sub>x</sub> RACT requirements on major sources submitted on January 11, 1993 and amended on January 20, 1994 by the Delaware Department of Natural Resources and Environmental Control, is conditionally approved. Delaware must meet the following condition by no later than July 17, 2000, in accordance with criteria defined in the EPA Memorandum dated November 7, 1996 from the Director of the Air Quality Strategies and Standards

Division of the Office of Air Planning and Standards, entitled "Approval Options for Generic RACT Rules Submitted to Meet the Non-CTG VOC RACT Requirement and Certain NO<sub>x</sub> RACT Requirements." This memorandum is available, upon request, at the office of the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

This condition is:

(1) The DNREC must certify, in writing, that it has submitted, as SIP revisions, RACT determinations for all sources subject to source-specific NO<sub>x</sub> RACT requirements.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP-300859; FRL-6080-9]

**RIN 2070-AB78**

**Sethoxydim; Pesticide Tolerance**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for combined residues of sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on asparagus, carrot, cranberry, horseradish, peppermint tops and spearmint tops. The Interregional