

should do so at this time. If no such comments are received, the public is advised that this action will be effective on July 3, 1995.

Final Action

EPA is approving sections 1 to 9, inclusive, 13 to 35, inclusive, 37 to 42, inclusive, parts of 43, and appendices A to H of Delaware Regulation 24 as a revision to the Delaware SIP. The State of Delaware submitted these amendments to EPA as a SIP revision on January 11, 1993 and January 20, 1994.

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.

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 CAA 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 CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 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 an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action approving twenty-nine VOC RACT regulations for Delaware must be filed in the United States Court of Appeals for the appropriate circuit by July 3, 1995. 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 27, 1995.

Stanley L. Laskowski,
Acting Regional Administrator, Region III.

40 CFR part 52, subpart I of chapter I, title 40 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)(46) and (c)(51) to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

(46) Revisions to the Delaware State Implementation Plan submitted on January 11, 1993 by the Delaware Department of Natural Resources & Environmental Control:

(i) Incorporation by reference. (A) Letter of January 11, 1993 from the Delaware Department of Natural Resources & Environmental Control transmitting Regulation 24—"Control of Volatile Organic Compound Emissions", effective January 11, 1993.

(B) Regulation 24—"Control of Volatile Organic Compound Emissions", Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 42, and Appendices A, B, C, D, E, F, G, & H.

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(51) 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 dated January 20, 1994, from the Delaware DNREC transmitting an amendment to Regulation 24, "Control of Volatile Organic Compound Emissions", Section 43—"Other Facilities that Emit VOCs", effective November 24, 1993.

(B) Amendment to Regulation 24, "Control of VOC Emissions", Section 43—"Other Facilities that Emit VOCs", Sections 43(a)(1), 43(a)(2), 43(a)(3), 43(a)(4), 43(b)(1), 43(b)(2), 43(c), 43(d), 43(e), and 43(f).

(ii) Additional Material. (A) Remainder of January 11, 1993 and January 20, 1994 State submittal pertaining to Regulation 24 referenced in paragraphs (c)(46)(i) and (c)(51)(i) of this section.

(iii) Additional Information. (A) These rules supersede paragraph (c)(44)(i)(C) of this section.

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40 CFR Part 52

[KY-80-1-6943; FRL-5200-8]

Control Strategy: Ozone (O₃); Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving an exemption request from the oxides of nitrogen (NO_x) reasonably available control technology (RACT) requirement of the Clean Air Act as amended in 1990 (CAA) for the Kentucky portion of the Huntington-Ashland, moderate ozone (O₃) nonattainment area. The exemption request, submitted by the Commonwealth of Kentucky through the Department of Environmental Protection, is based upon the most recent three years of ambient air monitoring data, which demonstrate that additional reductions of NO_x would not contribute to the attainment of the National Ambient Air Quality Standard (NAAQS) for O₃ in the area. The CAA requires states with designated nonattainment areas of the NAAQS for O₃, and classified as moderate nonattainment or above, to adopt RACT rules for major stationary sources of NO_x. The CAA provides further that the NO_x requirements do not apply to these areas outside an O₃ transport region if EPA determines that additional reductions of NO_x would not