

establishing a precedent for any future request for a revision to any state implementation plan. 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.

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 the 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 today does not include a Federal mandate that may result in estimated costs of \$100 million or more to 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.

Under the Regulatory Flexibility Act, 5 U.S.C. 600, 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, I certify 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 regulatory flexibility analysis would constitute Federal inquiry into the economic

reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds.

Union Electric Co. v. U.S. E.P.A., 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. Section 7410(a)(2).

D. Unfunded Mandates Reform Act of 1995

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 the 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 proposed interim approval action promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Sulfur oxides.

Dated: June 23, 1995.

William A. Waldrop,
Acting Regional Administrator.

Part 52 of chapter I, title 40, *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.

2. Section 52.1770 is amended by adding paragraph (c)(74) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(74) The minor source operating permit programs for the State of North Carolina, Western North Carolina Regional Air Pollution Control Board, and Forsyth County Department of Environmental Affairs submitted by the North Carolina Department of Environment, Health, and Natural Resources on May 31, 1994, June 1, 1994, and September 15, 1994, as part of the North Carolina SIP.

(i) Incorporation by reference.

(A) Regulations 15A NCAC 2Q.0103, 15A NCAC 2Q.0301, 15A NCAC 2Q.0303 through 15A NCAC 2Q.0311 of the North Carolina SIP as adopted by the North Carolina Environmental Management Commission on May 12, 1994 and which became effective on July 1, 1994.

(B) Regulations 15A NCAC 2Q.0103, 15A NCAC 2Q.0301, 15A NCAC 2Q.0303 through 15A NCAC 2Q.0311 of the North Carolina SIP as adopted by reference by the Western North Carolina Regional Air Pollution Control Board (WNCRAPCB) on September 12, 1994 and which were made effective September 12, 1994.

(C) Regulations Subchapter 3Q.0103, Subchapter 3Q.0301, Subchapter 3Q.0303 through Subchapter 3Q.0311 of the Forsyth County portion of the North Carolina SIP as adopted and made effective by the Forsyth County Board of Commissioners on May 23, 1994.

(ii) Other material. None.

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40 CFR Part 52

[DE25-1-6742a; FRL-5223-3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware—"Bulk Gasoline Marine Tank Vessel Loading Facilities"

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 on August 26, 1994. This revision establishes and requires control of volatile organic compound from marine vessel transfer operations. The intended effect of this action is to approve Regulation 24, Section 43, "Bulk Gasoline Marine Tank Vessel Loading Facilities", in accordance with section 183(f). This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This action will become effective September 26, 1995 unless notice is received on or before August 28, 1995 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 Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. 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, 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 the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 597-3164, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: On August 26, 1994, the State of Delaware submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of Regulation 24, "Control of Volatile Organic Compound (VOC) Emissions", by renumbering existing Section 43, "Other Facilities that Emit VOCs", to Section 50 and adding a new Section 43, "Bulk Gasoline Marine Tank Vessel Loading Facilities", effective August 26, 1994.

Background

Pursuant to section 183(f) of the CAA, as amended, EPA is required to promulgate federal regulations for marine vessel loading facilities by November 15, 1992. EPA has not yet promulgated final regulations governing marine vessel loading and unloading facilities. Section 183(f)(4) of the CAA provides that a state's regulations governing emissions from tank vessels, must be at least as stringent as the Federal standards. In the future, if EPA determines that Delaware's regulations are less stringent than the federal regulations, once promulgated, those federal regulations shall preempt the Delaware's regulations and EPA will require Delaware to amend its SIP so that it is at least as stringent as the federal regulations.

VOCs contribute to the production of ground level ozone and smog. This rule was adopted as part of an effort to

achieve the National Ambient Air Quality Standard (NAAQS) for ozone. The following is EPA's evaluation of and action on Section 43 of Regulation 24 for the State of Delaware. Detailed descriptions of the amendments addressed in this document, and EPA's evaluation of the amendments, are contained in the technical support document (TSD) prepared for these rulemaking actions by EPA. Copies of the TSD are available from the EPA Regional office listed in the **ADDRESSES** section of this document.

State Submittal

1. Section 43(a)(1) states that the regulation applies to all loading berths at any bulk marine tank vessel loading facility that delivers gasoline into marine tank vessels (Section (43)(a)(1)).

2. Section 43(c)(1) requires each loading berth at any bulk marine tank vessel loading facility to be equipped with a vapor collection system that is designed to collect all VOC vapors displaced from marine tank vessels during loading, ballasting, or housekeeping.

3. Section 43(c)(2) requires that each vapor collection system be designed to prevent any VOC vapors collected at one loading berth from passing to another loading berth.

4. Section 43(c)(3) requires each loading berth at any bulk marine tank vessel loading facility to reduce total VOC emissions by 98 weight-percent using a combustion device, and 95 weight-percent using a vapor recovery device.

5. Section 43(c)(9) requires that the loading of gasoline marine tank vessels be restricted to the use of submerged fill.

6. Section 43(c)(6) limits loading of gasoline to marine tank vessels whose vapor collection system is connected to the vapor collection system of the bulk gasoline marine tank loading facility.

7. Section 43(c)(7) ensures that the maximum normal operating pressure of the marine tank vessel vapor collection equipment must not exceed 0.8 times the set relief pressure of the pressure-vacuum vents in the vessel compartment.

8. Section 43(c)(8) requires each loading berth that loads gasoline into marine tank vessels, be inspected for total organic compound liquid and vapor leaks during product transfer operations. Each detection of a leak must be tagged and recorded and the source of the leak repaired within 15 days. A first attempt at repair must be made no later than 5 calendar days after the leak is detected.

EPA's Evaluation

The regulations listed above are approvable as SIP revisions because they conform to EPA guidance and comply with the requirements of the CAA.

As required by 40 CFR 51.102, the State of Delaware has certified that a public hearing with regard to these revisions was held in Delaware on April 13, 1994.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 26, 1995, unless, by August 28, 1995, 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 September 26, 1995.

Final Action

EPA is approving Regulation 24, "Control of VOC Emissions", renumbering the existing Section 43, "Other Facilities that Emit VOCs", to Section 50 and adding a new Section 43, "Bulk Gasoline Marine Tank Vessel Loading Facilities", as a revision to the Delaware SIP. The State of Delaware submitted these amendments to EPA as a SIP revision on August 26, 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).

Under sections 202, 203, and 205, of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 182 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

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 Delaware's regulation on Bulk Gasoline Marine Tank Vessel Loading Facilities, must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 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: April 13, 1995.

W.T. Wisniewski,
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 paragraph (c)(53) to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

(53) Revisions to the Delaware Regulations on the control of volatile organic compound emissions from marine vessel transfer operations submitted on August 26, 1994 by the Delaware Department of Natural Resources & Environmental Control:

(i) Incorporation by reference.

(A) Letter of August 26, 1994 from the Delaware Department of Natural Resources & Environmental Control transmitting Regulation 24, "Control of Volatile Organic Compound Emissions", by renumbering existing Section 43, "Other Facilities that Emit Volatile Organic Compounds," to Section 50 and adding a new Section 43, "Bulk Gasoline Marine Tank Vessel Loading Facilities".

(B) Administrative changes to Section 50: renumbering existing Section 43 to Section 50, and Section 50(a)(1): renumbering 42 to 43; and the new Section 43, effective August 26, 1994.

(ii) Additional material.

(A) Remainder of August 26, 1994 State submittal pertaining to Regulation 24 referenced in paragraph (c)(53)(i) of this section.

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40 CFR Part 52

[TN-146-1-7039a; FRL-5226-1]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to the Nashville-Davidson County Construction and Operation Permit Regulations for Minor Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Nashville-Davidson County portion of the Tennessee State Implementation Plan (SIP) to allow Nashville-Davidson County to issue Federally enforceable local operating permits (FELOP). On November 16, 1994, Nashville-Davidson County through the Tennessee Department of Environment and Conservation (TDEC) submitted a SIP revision fulfilling the requirements necessary for a FELOP program to become Federally enforceable. In order to extend the Federal enforceability of the Nashville-Davidson County FELOP program to hazardous air pollutants (HAP), EPA is also approving the County's FELOP program pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA) so that the County may issue FELOP for HAP.

DATES: This final rule will be effective September 26, 1995 unless adverse or critical comments are received by August 28, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Gracy R. Danois, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Air and Radiation Docket and Information Center (Air Docket 6102),