§ 52.920 Identification of plan.

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(c) * * *

(72) Modifications to the existing basic I/M program in Jefferson County to implement an anti-tampering check, pressure testing of the evaporative control system, and testing of commuter vehicles submitted by the Commonwealth of Kentucky on November 12, 1993.

(i) Incorporation by reference. Regulation 8.01 and 8.02, adopted on February 17, 1993, and Regulation 8.03 adopted on February 17, 1993.

(ii) Other material. None.

* * *

[FR Doc. 95–18513 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[NC–062–1–6430a; NC–068–1–6632a; NC–067–1–6633a; FRL–5254–6]

Approval and Promulgation of Implementation Plans; State: Approval of Revisions to the State of North Carolina's State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the North Carolina State Implementation Plan (SIP) to allow the State and two local air pollution control agencies to issue Federally enforceable state operating permits (FESOP) and Federally enforceable local operating permits (FELOP). On May 31, 1994, the State of North Carolina through the Department of Environment, Health, and Natural Resources (DEHNR) submitted a SIP revision fulfilling the requirements necessary to issue FESOP. On June 1, 1994, the Forsyth County Department of Environmental Affairs (FCDEA) through the DEHNR submitted a SIP revision fulfilling the requirements necessary to allow Forsyth County to issue FELOP. On September 15, 1994, the Western North Carolina Regional Air Pollution Control Branch (WNCRAPCB) through the DEHNR submitted a SIP revision fulfilling the requirements necessary to allow the Western Carolina to issue FELOP. These submittals conform with the requirements necessary for a state or local agency's minor source operating permit program to become Federally enforceable. In order to extend the Federal enforceability of state and local operating permits to hazardous air pollutants (HAP), EPA is also proposing approval of the North Carolina, Forsyth County, and Western Carolina FESOP and FELOP regulations pursuant to section 112 of the Act.

DATES: This action will be effective by September 26, 1995 unless notice is received by August 28, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES:

Written comments should be addressed to Scott Miller at the EPA Regional office listed below.

Copies of the material submitted by North Carolina may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

North Carolina Department of Health, Environment, and Natural Resources, Air Quality Section, P.O. Box 29535, Raleigh, North Carolina 27626.

Forsyth County Environmental Affairs Department, Air Quality Section, 537 North Spruce Street, Winston-Salem, North Carolina 27101.

Western North Carolina Regional Air Pollution Control Agency, Buncombe County Courthouse, 60 Court Plaza, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365.The telephone number is 404/347–3555 extension 4153. Reference file numbers NC–068–1–6632; NC–067–1–6633; NC–062–1–6430.

SUPPLEMENTARY INFORMATION: On May 31, 1994, June 1, 1994, and September 15, 1994, the State of North Carolina, the FCDEA, and the WNCRAPCB, respectively, through the DEHNR submitted SIP revisions designed to allow the three agencies to issue operating permits which are Federally enforceable pursuant to EPA requirements as specified in a **Federal Register** notice, ''Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules.'' (See 54 FR 22274, June 28, 1989). These voluntary SIP revisions allow EPA and citizens to enforce terms and conditions of state-issued and local-issued minor source operating permits. In addition, operating permits that are issued under a state or local agency's minor source operating permit program that is approved into the SIP may provide Federally enforceable limits to an air pollution source's potential to emit. Limiting of a source's potential to emit through Federally enforceable operating permits can affect a source's applicability to Federal regulations such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants and Federal air toxics requirements mandated under section 112 of the Clean Air Act as amended in 1990 (CAA).

In the aforementioned June 28, 1989, **Federal Register** document, EPA listed five criteria necessary to allow a state or local agency's operating permit program to become Federally enforceable and, therefore, approvable into the SIP.

The first criteria for a state or local agency's operating permit program to become Federally enforceable is that the FESOP or FELOP program must be approved into the SIP. On May 31, 1994, June 1, 1994, and September 15, 1994, the State of North Carolina, the FCDEA, and the WNCRAPCB, respectively, through the DEHNR submitted SIP revisions designed to meet the five criteria for Federal enforceability. This action will approve these regulations into the North Carolina SIP, thereby, meeting the first criteria for Federal enforceability.

The second criteria for a state's operating permit program to become Federally enforceable is that the regulations approved into the SIP impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits. North Carolina Regulation 15A NCAC 2Q.0306(b) addresses this requirement by outlining specific measures that the State may take in the event of the ''failure of the owner or operator of a source permitted pursuant to this Rule to adhere to the terms and limitations of the permit.'' These measures include an enforcement action, permit termination, revocation, and reissuance as well as a denial of permit renewal application. Both the FCDEA and the WNCRAPCB operating permit programs meet this requirement by a verbatim incorporation of the State's Regulation 15A NCAC 2Q.0306(b) into their regulations.

The third criteria necessary for a state or local agency's operating permit program to be Federally enforceable is that the operating permit program require that all emissions limitations, controls, and other requirements imposed by such permits will be at least

as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise ''Federally enforceable'' (e.g. standards established under sections 111 and 112 of the Act). North Carolina Regulation 15A NCAC 2Q.0306(c) requires that all emissions limitations, controls, and other requirements imposed by a permit issued pursuant to this Rule shall be at least as stringent as any other applicable requirement as defined under Rule .0103 (effective date of July 1, 1994). The definition of applicable requirement found in 15A NCAC 2Q.0103 includes among other things requirements in the North Carolina SIP. In addition, Regulation 15A NCAC 2Q.0306(c) requires that the permit shall not waive or make less stringent any limitation or requirement contained in applicable requirement. Both the FCDEA and the WNCRAPCB operating permit programs meet this requirement by a verbatim incorporation of the State's Regulation 15A NCAC 2Q.0306(b) into their regulations. Therefore, the third criteria for Federal enforceability is met.

The fourth criteria for a state or local agency to be able to issue FESOP or FELOP is that limitations, controls, and requirements in the operating permits are quantifiable, and otherwise enforceable as a practical matter. While a determination of what is practically enforceable will generally differ based on process type and emissions, North Carolina Regulation 15A NCAC 2Q.0306(d) requires that ''Emissions limitations, controls, and requirements contained in permits issued pursuant to the Rule shall be permanent, quantifiable, and otherwise enforceable as a practical matter.'' Both the FCDEA and the WNCRAPCB operating permit programs meet this requirement by a verbatim incorporation of the State's Regulation 15A NCAC 2Q.0306(b) into their regulations. Therefore, the fourth criteria for Federal enforceability is met.

The fifth criteria for a state or local agency to be able to issue FESOP or FELOP is to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be Federally enforceable. This process also must provide for an opportunity for public comment on the permit applications prior to issuance of the final permit. North Carolina Regulation 15A NCAC 2Q.0306(a)(5) requires that any source which wishes to limit its potential to emit via a permit for PSD/NSR or title V purposes must go through an opportunity for public comment as well as public hearing. In addition, Regulation 15A NCAC 2Q.0306(a)(12) allows any owner or operator who requests that a draft permit go to public notice with an opportunity to request a public hearing to do so. EPA notes that any permit which has not gone through an opportunity for public comment and EPA review in the North Carolina, the FCDEA and the WNCRAPCB FESOP or FELOP programs will not be Federally enforceable. North Carolina Regulation 15A NCAC 2Q.0307(d) requires that there will be at least a 30 day public and EPA comment period prior to permit issuance. North Carolina Regulation 15A NCAC 2Q.0307(g) provides that the Director will send a copy of each draft permit when it sends EPA the notice of request for public comment for that permit. Finally, Regulation 15A NCAC 2Q.0307(g) provides that the State will send a copy of each final permit after the permit is issued. Both the FCDEA and the WNCRAPCB operating permit programs meet this requirement by a verbatim incorporation of the State's Regulations 15A NCAC 2Q.0306(a)(5), 15A NCAC 2Q.0306(a)(12), 15A NCAC 2Q.0307(d), 15A NCAC 2Q.0307(g) into their regulations. Therefore, the fifth criteria for Federal enforceability is met.

On June 28, 1989 (54 FR 27274), EPA published criteria for approving and incorporating into the SIP regulatory programs for the issuance of FESOP and FELOP. Permits issued pursuant to an operating permit program approved into the SIP as meeting these criteria may be considered Federally enforceable. EPA has encouraged states and local agencies to develop such FESOP and FELOP programs in conjunction with title V operating permits programs to enable sources to limit their potential to emit to below the title V applicability thresholds. (See the guidance document entitled, ''Limitation of Potential to Emit with Respect to Title V Applicability Thresholds,'' dated September 18, 1992, from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards (OAQPS), Office of Air and Radiation, U.S. EPA.) On November 3, 1993, the EPA announced in a guidance document entitled, ''Approaches to Creating Federally Enforceable Emissions Limits,'' signed by John S. Seitz, Director, OAQPS, that this mechanism could be extended to create Federally enforceable limits for emissions of HAP if the program were approved pursuant to section 112(l) of the Act.

In addition to requesting approval into the SIP, North Carolina, the FCDEA and the WNCRAPCB have also requested approval of their FESOP and FELOP programs under section 112(l) of the Act for the purpose of creating Federally enforceable limitations on the potential to emit of HAP. Approval under section 112(l) is necessary because the proposed SIP approval discussed above only extends to the control of criteria pollutants. Federally enforceable limits on criteria pollutants (i.e., VOC's or PM–10) may have the incidental effect of limiting certain HAP listed pursuant to section 112(b).[1] However, section 112 of the Act provides the underlying authority for controlling all HAP emissions.

EPA believes that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989, **Federal Register** document, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989, document does not address HAP because it was written prior to the 1990 amendments to section 112 not because it establishes requirements unique to criteria pollutants. Hence, the following five criteria are applicable to FESOP and FELOP approvals under section 112(l): (1) The program must be submitted to and approved by the EPA; (2) the program must impose a legal obligation on the operating permit holders to comply with the terms and conditions of the permit, and permits that do not conform with the June 28, 1989, criteria or the EPA's underlying regulations shall be deemed not Federally enforceable; (3) the program must contain terms and conditions that are at least as stringent as any requirements contained in the SIP, enforceable under the SIP, or any section 112 or other CAA requirement, and may not allow for the waiver of any CAA requirement; (4) permits issued under the program must contain conditions that are permanent, quantifiable, and enforceable as a practical matter; and (5) permits that are intended to be Federally enforceable must be issued subject to public participation and must be provided to the EPA in proposed form on a timely basis.

In addition to meeting the criteria in the June 28, 1989, document, a FESOP or FELOP program that addresses HAP must meet the statutory criteria for

[1] The EPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below section 112 major source levels.

approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

EPA plans to codify the approval criteria for programs limiting potential to emit of HAP, such as FESOP programs, through amendments to Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the Act. (See 58 FR 62262, November 26, 1993.) EPA also anticipates given that these regulatory criteria, as they apply to FESOP programs, will mirror those set forth in the June 28, 1989, document. EPA currently anticipates that since FESOP programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will have been approved as meeting these criteria, further approval actions for those programs will not be necessary.

EPA has authority under section 112(l) to approve programs to limit potential to emit of HAP directly under section 112(l) prior to this revision to Subpart E. Section 112(l)(5) requires EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This could be read to suggest that the ''guidance'' referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address every possible instance of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the severe timing problems posed by impending deadlines set forth in ''maximum achievable control technology'' (MACT) emission standards under section 112 and for submittal of title V permit applications, it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue.

Therefore, EPA is approving the North Carolina, Forsyth County, and the Western North Carolina minor source operating permit program now to allow these agencies to begin issuing FESOP and FELOP as soon as possible.

EPA believes that the North Carolina, Forsyth County, and the Western North Carolina FESOP and FELOP programs meet the approval criteria specified in the June 28, 1989, **Federal Register** document and in section 112(l)(5) of the Act. As discussed previously in this notice, the North Carolina, Forsyth County, and Western Carolina minor source operating permit programs meet the five criteria necessary for Federal enforceability.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes that the North Carolina, Forsyth County, and Western Carolina minor source operating permit programs contain adequate authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989, document is met, that is, because the program does not allow for the waiver of any section 112 requirement. Sources that become minor through a permit issued pursuant to this program would still be required to meet section 112 requirements applicable to non-major sources.

Regarding the requirement for adequate resources, EPA believes that North Carolina, Forsyth County, and Western Carolina have demonstrated that each agency can provide for adequate resources to support the FESOP and FELOP program. EPA expects that since North Carolina, Forsyth County, and Western Carolina have administered a minor source operating permit program for several years resources will continue to be adequate to administer the FESOP or FELOP program. EPA will monitor the implementation of each Agency's FESOP or FELOP to ensure that adequate resources are in fact available. EPA also believes that the North Carolina, Forsyth County, and Western Carolina FESOP or FELOP provide for an expeditious schedule for assuring compliance with section 112 requirements. This program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in any of these programs would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate Federally enforceable limit by the relevant deadline. Finally, EPA believes it is consistent with the intent of section 112 and the Act for states to provide a mechanism through which sources may avoid classification as a major source by obtaining a Federally enforceable limit on potential to emit.

With the addition of these provisions, the North Carolina, Forsyth County, and Western Carolina minor source operating permit program satisfies all the requirements listed in the June 28, 1989, **Federal Register** document. Therefore, EPA is approving this revision to the State of North Carolina's SIP allowing the State and local agency to issue FESOP and FELOP.

Final Action

In this action, EPA is approving the North Carolina, Western Carolina, and Forsyth County minor source operating permit program into the North Carolina SIP to allow the State and local agencies to issue FESOP and FELOP. EPA is publishing this action without prior proposal because the EPA 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 September 26, 1995.

EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. EPA has determined that this action conforms with those requirements.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action 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 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) of the CAA, 42 U.S.C. 7607 (b)(2).)

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or

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.

[FR Doc. 95–18525 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

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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).