

require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 75

Education Department, Discretionary grant programs—education, Continuation funding, Grant administration, Incorporation by reference, Reporting and recordkeeping requirements, Performance reports, Unobligated funds.

Dated: January 23, 1997.

Richard W. Riley,
Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary amends Part 75 of Title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for Part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e-3 and 3474, unless otherwise noted.

2. Section 75.217 is amended by revising paragraph (d)(3) to read as follows:

§ 75.217 How the Secretary selects applications for new grants.

* * * * *

(d) * * *

(3) Any other information—

(i) Relevant to a criterion, priority, or other requirement that applies to the selection of applications for new grants;

(ii) Concerning the applicant's performance and use of funds under a previous award under any Department program; and

(iii) Concerning the applicant's failure under any Department program to submit a performance report or its submission of a performance report of unacceptable quality.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 055-4038; FRL-5653-7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of a NO_x RACT Determination for International Paper Company—Hammermill Papers Division—Lockhaven

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires reasonably available control technology (RACT) on International Paper Company—Hammermill Papers Division, a major source of nitrogen oxide (NO_x) emissions. Additionally, it limits the volatile organic compound (VOC) emissions at this facility to no more than 50 tons per year; thereby making this facility a synthetic minor VOC source. The intended effect of this action is to approve a source-specific operating permit for the emission units at International Paper—Hammermill Division—Lockhaven, located in Clinton County, Pennsylvania. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on February 28, 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 Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 566-2180, at the EPA Region III office or via e-mail at stahl.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On April 9, 1996 (61 FR 15709), EPA published a direct final rulemaking notice and the accompanying notice of proposed rulemaking (NPR) (61 FR 15744) for the Commonwealth of Pennsylvania pertaining to the VOC and NO_x RACT

determinations for 21 sources. One of these sources was International Paper Company—Hammermill Papers Division—Lockhaven (IP—Lockhaven), located in Clinton County, Pennsylvania. On June 28, 1996, adverse comments were submitted to EPA by the New York Department of Environmental Conservation (NYDEC) pertaining to the RACT determination for IP—Lockhaven. The formal SIP revision for IP—Lockhaven was submitted by Pennsylvania on April 19, 1995. Pennsylvania Department of Environmental Protection (PADEP) also submitted comments to EPA on the IP—Lockhaven RACT determination.

NYDEC Comments

New York Department of Environmental Conservation commented that while they agreed with EPA's determination that RACT for the two 350 mmBTU/hr coal-fired stoker boilers was the operation and maintenance of the boilers in accordance with manufacturer's specifications and good air pollution control practices, they disagreed with the accompanying emission limit of 0.7 lbs NO_x/mmBTU, averaged over a 30 day period, that was also determined to be RACT for these boilers. NYDEC stated that since the AP-42 emission factor estimates NO_x emissions for this type of unit at 0.56 lbs/mmBTU, the limit of 0.7 lbs/mmBTU was too high. NYDEC concludes that in the absence of supporting data, the AP-42 emission rate should become the SIP emission rate for these boilers.

Pennsylvania Comments

Pennsylvania Department of Environmental Protection submitted comments to EPA on July 16, 1996 stating that the proposed RACT emission limits of 0.7 lbs NO_x/mmBTU for the two boilers at IP—Lockhaven were established based on actual emissions data. The 30 day average CEM data recorded for boiler #1 was 0.61 lbs/mmBTU with the range as 0.52 to 0.67 lbs/mmBTU. The 30 day average CEM data recorded for boiler #2 was 0.58 lbs/mmBTU with the range as 0.53 to 0.60 lbs/mmBTU. Since a year's worth of certified data was not available at the time that DEP issued the permit to IP—Lockhaven (December 1995, OP 18-0005), DEP established the limit of 0.7 lbs/mmBTU to allow a buffer to account for the limited emission data. DEP also states that condition #6 of the IP permit allows the Department to revise the NO_x emission limits based on future CEM data. Furthermore, DEP states that since the permit was issued, the IP boilers have recorded exceedances and were

required to make adjustment to meet the 0.7 lbs/mmBTU permit limit; indicating to DEP that the 0.7 lbs/mmBTU limit is appropriate for these boilers.

EPA Response to Comments

The AP-42 emission factors are generally used where there is no other available data. These factors come from the EPA document "Compilation of Air Pollution Emission Factors" (AP-42) now in its fifth edition (January 1995). These emission factors represent an estimate of expected emissions and are compiled by EPA for a variety of industrial sources and cover NO_x as well as other pollutants. The two boilers whose RACT determinations are at issue here are coal-fired stoker boilers and the AP-42 emission factor is given as 13.7 lbs NO_x/ton of coal burned. In order to convert this emission factor to units compatible with the proposed RACT emission limits (lbs NO_x/mmBTU), the heating value of the coal used needs to be known or estimated. Generally the heating value of coal varies from 12,500 BTU to 13,500 BTU per ton of coal. Using the lower end of this range is the more environmentally conservative part of this range, producing a slightly higher estimate of emissions. The heating value of 12,500 BTU/ton coal is also more realistic for this part of the country. Therefore, the conversion of the 13.7 lbs NO_x/ton coal emission factor is as follows:

$$13.7 \text{ lbs NO}_x/\text{ton coal} \times 1 \text{ ton coal}/2000 \text{ lbs} \times \text{lb coal}/12,500 \text{ BTU} \times 10^6 = 0.55 \text{ lbs NO}_x/\text{mmBTU}$$

This is approximately the 0.56 lbs NO_x/mmBTU emission factor that NYDEC cites as the AP-42 emission factor for the boilers at IP—Lockhaven.

EPA believes that RACT for the two 350 mmBTU/hr stoker boilers at IP—Lockhaven should not require the installation of add-on emission controls. NYDEC agrees with this assessment. Consequently, the RACT emission limit would reflect emissions achievable without controls. International Paper—Lockhaven has been required to operate and maintain continuous emission monitors (CEMs) to monitor NO_x at these two boilers since 1994. Using the CEM data available for these boilers, beginning with the first quarter in 1994 through the second quarter in 1996, the NO_x emissions from boiler #1, on a quarterly average, were 0.74 lbs/mmBTU, 0.66 lbs/mmBTU, 0.59 lbs/mmBTU, 0.61 lbs/mmBTU, 0.63 lbs/mmBTU, 0.64 lbs/mmBTU, 0.60 lbs/mmBTU, 0.54 lbs/mmBTU, 0.54 lbs/mmBTU, and 0.53 lbs/mmBTU. The NO_x CEM data for boiler #2, beginning with the first quarter in 1994 through

the second quarter in 1996, were 0.57 lbs/mmBTU, 0.58 lbs/mmBTU, 0.63 lbs/mmBTU, 0.66 lbs/mmBTU, 0.70 lbs/mmBTU, 0.72 lbs/mmBTU, 0.67 lbs/mmBTU, 0.60 lbs/mmBTU, 0.60 lbs/mmBTU, and 0.641 lbs/mmBTU. These data are quarterly averages. CEM data for both running 30 day averages and daily averages are available for each of the two IP boilers. The running 30 day averages in the period first quarter 1994 through the second quarter 1996 range from a low of 0.515 lbs/mmBTU to a high of 0.70 lbs/mmBTU for boiler #1 and from a low of 0.529 lbs/mmBTU to a high of 0.779 lbs/mmBTU for boiler #2. The daily averages in the same period range from 0.32 lbs/mmBTU to 0.76 lbs/mmBTU for boiler #1 and from 0.47 lbs/mmBTU to 0.82 lbs/mmBTU for boiler #2. The longer the averaging period, the easier it is to comply with the same numerical emission limit. For example, a 0.7 lbs/mmBTU limit on a quarterly average is a less stringent emission limitation (easier for a source to comply with) than a 0.7 lbs/mmBTU limit on a 30 day rolling average, which is less stringent than complying with a 0.7 lbs/mmBTU limit on a daily average. The proposed RACT emission limit for each of the two 350 mmBTU/hr boilers at IP—Lockhaven is 0.7 lbs NO_x/mmBTU on a 30 day rolling average.

EPA's concern with setting a RACT emission limitation for International Paper is that the limitation should be stringent enough to require that IP operate the boilers to minimize NO_x emissions. However, since RACT in this case has been determined to be no add-on emission controls, the RACT emission limitation should not be so stringent as to make it impossible for IP to meet the limit with its current operation, provided it is operated in accordance with good air pollution control practices. Therefore, after considering all the submitted comments and the CEM data for the two 350 mmBTU/hr stoker boilers, EPA believes that the emission limitation of 0.7 lbs NO_x/mmBTU, together with the other conditions in the IP—Lockhaven operating permit (OP 18-0005), constitute RACT for these emission units.

The IP—Lockhaven operating permit also contains a provision applicable to the 165 mmBTU/hr boiler that requires it to have ceased operations by May 31, 1995. EPA agrees that RACT for this boiler is its shutdown by no later than May 31, 1995. Furthermore, the IP—Lockhaven operating permit contains a provision that restricts its VOC emissions to less than 50 tons per year so as to avoid the major source VOC RACT requirement. A source may agree

to federally enforceable requirements to limit its potential emissions and become a synthetic minor source for that pollutant. Additional information about the emission units and RACT requirements at this facility is available in the technical support document that was made available with the April 9, 1996 Federal Register notice.

Final Action

EPA has considered the comments submitted by NYDEC and PADEP and other relevant information and has decided to approve the operating permit, OP 18-0005, for International Paper Company—Hammermill Division—Lockhaven as RACT and incorporate it as a revision to the Pennsylvania SIP. Pursuant to section 182(b)(2) and 182(f) of the Clean Air Act, EPA is determining that the requirements in OP 18-0005 constitute RACT for the applicable emission units at the IP—Lockhaven facility.

The Agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

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.

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.

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 CAA, 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).

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 proposed/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.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action pertaining to the NO_x RACT approval for International Paper Company—Hammermill Division—Lockhaven (Clinton County) must be filed in the United States Court of Appeals for the appropriate circuit by March 31, 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 7, 1996.
Stanley L. Laskowski,
Acting Regional Administrator, Region III.

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 NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(115) to read as follows:

§ 52.2020 Identification of plan.

* * * * *
(c) * * *

(115) Revisions to the Pennsylvania Regulations, Chapter 129.91 pertaining to VOC and NO_x RACT, submitted on January 6, 1995 by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) One letter dated January 6, 1995 from the Pennsylvania Department of Environmental Protection transmitting source specific VOC and/or NO_x RACT determinations in the form of plan approvals or operating permits for International Paper Company—Hammermill Papers Division—Lockhaven.

(B) Operating permit (OP):

(I) International Paper Company—Hammermill Papers Division—Lockhaven—OP 18-0005, effective December 27, 1994, except the expiration date of the operating permit.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, and 22

[DA 96-459]

Elimination of the Review Board

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In light of the many demands currently imposed on the Commission concerning nonhearing matters, the Commission has concluded that the proper dispatch of its business and the public interest will be best served by expanding the authority delegated to the General Counsel regarding hearing matters. These amendments change the Commission's Rules to reflect the elimination of the Review Board. These amendments also incorporate nonsubstantive, editorial changes in the Rules to reflect current circumstances.

EFFECTIVE DATE: January 29, 1997.

FOR FURTHER INFORMATION CONTACT: Office of Public Affairs, (202) 418-0500.

SUPPLEMENTARY INFORMATION:

[Adopted: April 29, 1996; Released: April 30, 1996]

1. By its Order, FCC 96-4, released January 23, 1996, the Commission eliminated the Review Board, effective April 24, 1996, and delegated authority to the Managing Director to make conforming rule modifications. In accordance with the Commission's action, this Order makes necessary changes, together with other nonsubstantive, editorial revisions, in Parts 0, 1, 19 and 22 of the Commission's Rules.

2. Authority for the adoption of the amendments adopted herein is contained in Sections 4(i), 4(j), 5(b), 5(c), and 303(r) of the Communications Act of 1934, as amended. 47 U.S.C. §§ 154(i), 154(j), 155(b), 155(c) and 303(r). Because these amendments pertain to agency organization, practice and procedure, the notice and comment and effective date provisions of the Administrative Procedure Act, 5 U.S.C. §§ 553(b)(A) and 553(d), are inapplicable.

3. Accordingly, it is ordered, That, pursuant to the authority delegated by the Commission's Order, FCC 96-4, released January 23, 1996, and 47 CFR § 0.231(b), and effective upon publication in the Federal Register, Parts 0, 1, and 22 of the Rules and Regulations ARE AMENDED as set forth below.