

(3) Deletion of COMAR 26.11.19.11.B(1), referencing plastic parts coating.

(4) Addition of new COMAR 26.11.19.11.B(1) & (3) through (6) Applicability.

(5) Deletion of COMAR 26.11.19.11.C Emission Standards for Plastic Coating.

(6) Addition of new COMAR 26.11.19.11.C Requirements for Sheet-Fed Letter or Lithographic Printing.

(7) Addition of new COMAR 26.11.19.11.D Requirements for Lithographic Web Printing.

(8) Addition of new COMAR 26.11.19.11.E Requirements for Cleaning Printing Equipment.

(9) Deletion of COMAR 26.11.19.10 title, "Graphic Arts" and addition of new title, "Flexographic and Rotogravure Printing."

(10) Deletion of COMAR 26.11.19.10.A(4), definition for the term "web printing."

(11) Addition of COMAR 26.11.19.01.B(8), definition for the term "web printing."

(ii) Additional Material.

(A) Remainder of July 11, 1995 Maryland State submittal pertaining to COMAR 26.11.19.11 Control of VOC Emissions from Sheet-Fed and Web Lithographic Printing.

(127) Revisions to the Maryland State Implementation Plan submitted on July 11, 1995 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of July 11, 1995 from the Maryland Department of the Environment transmitting additions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) Revision to COMAR 26.11.19.07 Control of VOC Emissions from Paper Coating, adopted by the Secretary of the Environment on May 5, 1995, and effective on June 5, 1995, including the following:

(1) Addition of COMAR 26.11.19.07.A(2-1), definition for the term "plastic parts coating."

(2) Addition of COMAR 26.11.19.07.B(1), referencing paper, fabric and vinyl coating.

(3) Addition of COMAR 26.11.19.07.E Emission Standards for Plastic Coating.

(ii) Additional Material.

(A) Remainder of July 11, 1995 Maryland State submittal pertaining to COMAR 26.11.19.07 Control of VOC Emissions from Paper Coating.

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BILLING CODE 6560-50-U

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL-5883-4]

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

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision establishes and requires Reasonably Available Control Technology (RACT) at stationary sources of nitrogen oxides (NO<sub>x</sub>). The intended effect of this action is to approve regulatory provisions and source specific consent agreements which require major stationary sources of NO<sub>x</sub> to reduce their emissions statewide in accordance with requirements of the Clean Air Act.

**DATES:** This action is effective November 3, 1997, unless adverse or critical comments are submitted and received by October 2, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203-2211. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; as well as the Division of Air and Hazardous Materials, Rhode Island Department of Environmental Management, 291 Promenade Street, Providence, RI 02908-5767.

**FOR FURTHER INFORMATION CONTACT:** Steven A. Rapp, Environmental Engineer, Air Quality Planning Unit (CAQ), U.S. EPA, Region I, JFK Federal Building, Boston, MA 02203-2211; (617) 565-2773; Rapp.Steve@EPAMAIL.EPA.GOV.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Clean Air Act (CAA) requires that States develop Reasonably Available Control Technology (RACT) regulations for all major stationary sources of

nitrogen oxides (NO<sub>x</sub>) in areas which have been classified as "moderate," "serious," "severe," and "extreme" ozone nonattainment areas, and in all areas of the Ozone Transport Region (OTR). EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762; September 17, 1979). This requirement is established by sections 182(b)(2), 182(f), and 184(b) of the CAA.

The CAA NO<sub>x</sub> requirements are further described by EPA in a notice entitled "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," published November 25, 1992 (57 FR 55620). The November 25, 1992 document (i.e., the NO<sub>x</sub> Supplement) should be referred to for more detailed information on NO<sub>x</sub> requirements. Additional guidance memoranda which have been released by EPA, such as those included in the "NO<sub>x</sub> Policy Document for the Clean Air Act of 1990," (EPA-452/R-96-005, March 1996), should also be referred to for more information on NO<sub>x</sub> requirements.

CAA section 182(b)(2) requires States to require implementation of RACT with respect to all major sources of volatile organic compounds (VOC) in moderate ozone nonattainment areas. This RACT requirement also applies to all major sources in ozone nonattainment areas with higher than moderate nonattainment classifications (i.e., serious, severe, and extreme nonattainment areas). See CAA sections 182 (c), (d), and (e). Furthermore, CAA section 182(f) states that, "[t]he plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 302 of this title and subsections (c), (d), and (e) of the section) of oxides of nitrogen." These sections of the CAA, taken together, require the State of Rhode Island, a serious nonattainment area, to submit a NO<sub>x</sub> RACT regulation which covers major sources of NO<sub>x</sub> statewide.

Section 302 of the CAA generally defines "major stationary source" as a facility or source of air pollution which has the potential to emit 100 tons per year or more of air pollution. This definition applies unless another provision of the CAA explicitly defines major stationary source differently. Therefore, for NO<sub>x</sub>, a major source is one with the potential to emit 100 tons per year or more in marginal and

moderate areas, as well as in attainment areas in the OTR. However, for serious nonattainment areas, a major source is defined by section 182(c) as a source that has the potential to emit 50 tons per year or more. The entire State of Rhode Island has been classified as a serious ozone nonattainment area. Therefore, in Rhode Island, a major stationary source of NO<sub>x</sub> is a facility which has a potential to emit 50 tons per year or more of NO<sub>x</sub>.

## II. State Submittal

The Rhode Island Department of Environmental Management (Rhode Island or RI DEM) was notified in a January 23, 1991 letter from Region I that "[t]he CAAAs mandate that within 2 years of enactment, states submit a SIP revision which requires the implementation of RACT and NSR requirements with respect to oxides of nitrogen (NO<sub>x</sub>) for all major stationary sources\* \* \*"

On October 29, 1992, RI DEM submitted a preliminary draft version of Regulation No. 27 to EPA. On November 16, 1992, RI DEM submitted the proposed regulation. A public hearing was held in Providence, Rhode Island on December 16, 1992. Region I provided written comments on the proposed regulation on December 18, 1992. The regulations were filed with the Rhode Island Secretary of State on January 12, 1994, and became effective on February 1, 1994. Rhode Island submitted the adopted Regulation No. 27 as a formal SIP submittal to EPA on May 16, 1994. After reviewing the regulation for completeness, EPA sent Rhode Island a letter on June 14, 1994, stating that Regulation No. 27 had been found to be administratively and technically complete.

Subsequently, on August 30, 1995, RI DEM proposed an amended Regulation No. 27. A public hearing was held on October 5, 1995, and EPA submitted written comments to the public record on that date. On September 17, 1996, RI DEM submitted an amended Regulation No. 27. After reviewing the amended regulation, EPA sent a letter to RI DEM on November 6, 1996, deeming the new submittal administratively and technically complete.

Additionally, a public hearing had been held on October 11, 1995 for the proposed NO<sub>x</sub> RACT consent agreements for Algonquin Gas Transmission Company, Bradford Dyeing Association, Inc., Hoechst Celanese Corporation, Rhode Island Hospital, and the University of Rhode Island. EPA sent written comments on these proposed orders on October 4, 1995. Similarly, on February 1, 1996, a

public hearing was held on the proposed NO<sub>x</sub> RACT consent agreements for Naval Education Training Center and Osram Sylvania Incorporated. EPA sent written comments on those proposed orders on February 2, 1996.

On September 17, 1996, RI DEM submitted miscellaneous NO<sub>x</sub> RACT determinations for Rhode Island Hospital and Osram Sylvania Incorporated, as well as alternative NO<sub>x</sub> RACT determinations for Algonquin Gas Transmission Company, Bradford Dyeing Association, Inc., Hoechst Celanese Corporation, University of Rhode Island, and the Naval Education and Training Center. On November 6, 1996, EPA sent a letter to RI DEM deeming the submittals technically and administratively complete.

## III. Description of Submittal

The following is a description of the changes to the Rhode Island SIP being approved in this action. For a more detailed discussion of Rhode Island's submittals and EPA's proposed action, the reader should refer to the Technical Support Document developed as part of this action. Copies of the Technical Support Document are found at the previously mentioned addresses.

### A. Regulation No. 27

Rhode Island's Regulation No. 27, "Control of Nitrogen Oxides Emissions," is divided into six sections. Section 27.1 defines terms used in the rule. Sections 27.2 covers applicability and exemptions. Applicability is first determined facility-wide and then on a unit-by-unit basis, depending on equipment type. In other words, an individual piece of equipment is subject to the rule if it exceeds a minimum capacity rating and is located at a major source. Rhode Island allows an exemption for sources where actual emissions have not exceeded the major source threshold since 1990. The regulation also exempts emergency generators which are operated less than 500 hours per year from all of its requirements except record keeping.

Section 27.3. describes the requirements of RACT plans. This section describes the information that must be included in such RACT proposals, including specific additional plan requirements for sources conducting seasonal fuel-switching, as well as for miscellaneous source types, i.e., categories not otherwise covered by emission limits in the regulation. This section also requires RI DEM to review the RACT proposals and to issue a final approval or disapproval of the proposed RACT plan. Additionally, this section

describes the process by which RACT plans for miscellaneous source categories will be processed as case-specific SIP revisions.

Section 27.4 establishes emission limits which apply as of May 31, 1995 for utility boilers; industrial, commercial, and institutional boilers (ICI boilers); and internal combustion (IC) engines. This section also requires that RACT be defined by May 31, 1995 for all other sources with the potential to emit 100 tons or more of NO<sub>x</sub> per year but which do not have an emission limitation specifically defined in the regulation, i.e., miscellaneous source categories. However, section 27.4 allows an exemption from these emission limits if the equipment has a permit setting BACT or LAER since November 15, 1992. Similarly, if a new source permit has been issued for combustion turbine facilities since January 6, 1989, IC engines since September 28, 1989, or fluidized bed boilers, since March 11, 1991, the emission limits do not apply.

Furthermore, section 27.4 allows an exemption from the emission limits for utility boilers which committed by October 3, 1994, in an enforceable document, to either shut down by May 31, 1995 or be replaced by December 31, 1996 as part of a repowering project. Additionally, such repowering units must (1) have a permit setting Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER), (2) comply with the alternative RACT requirements, and (3) have the enforceable document and RACT determination submitted to EPA as case-specific SIP-revisions. Section 27.4 also describes the requirements for sources seeking alternative RACT determinations, including the requirement that such determinations be submitted to EPA as case-specific SIP revisions; additionally, alternative RACT determinations be reviewed every three years by RI DEM until the source complies with the otherwise applicable RACT requirements. Finally, section 27.4 describes the requirements for fuel-switching facilities, including a requirement that such RACT plans be submitted to EPA as case-specific SIP revisions.

Section 27.5 describes compliance testing and emission monitoring requirements. These provisions require that compliance be determined by continuous emission monitoring systems (CEMS), emissions testing, and/or by record keeping, depending on the operating capacity and type of equipment. The rule requires that utility boilers and fuel-switching equipment must, and ICI boilers may, install CEMS. Utility boilers are required to

demonstrate compliance based on a 24-hour average concentration. ICI boilers and IC engines are required to demonstrate compliance through three 1-hour stack tests. Initial compliance demonstrations were required by November 30, 1995. Sources without CEMS are required to conduct emission tests annually.

Section 27.6 describes the record keeping and reporting requirements of the regulation. These provisions require sources with CEMS to submit quarterly excess emissions reports. Also, this section requires that fuel usage by each combustion unit subject to RACT be recorded monthly. Oil burning sources must obtain certifications from fuel suppliers of, or must themselves determine, the nitrogen content of the fuel oil. Section 27.6 requires that all fuel supplier certifications or fuel oil analyses be maintained at the source and available for inspection by RI DEM and EPA. In addition, ICI boilers with operating capacities between 1 and 50 MBtu/hr to maintain records verifying that tune-ups have been performed in accordance with Appendix A of the regulation.

Additionally, section 27.6 requires sources subject to emission caps to keep records concerning monthly fuel usage, monthly NO<sub>x</sub> emissions, etc. This section also requires owners of emergency standby engines to provide capacity and fuel information to RI DEM, as well as to install, maintain, and keep records of recorded hours on an elapsed time meter. Such sources also are required to inspect and adjust the timing of engines at least once every three years. Finally, section 27.6 requires that all records be maintained at the source, and be available to EPA and the State, for a minimum of five years.

A public hearing regarding Regulation No. 27 was held in Providence, Rhode Island on December 16, 1992. Region I provided written comments on the proposed regulation on December 18, 1992. The regulations were filed with the Rhode Island Secretary of State on January 12, 1994, and became effective on February 1, 1994. Rhode Island submitted the adopted Regulation No. 27 as a formal SIP submittal to EPA on May 16, 1994. After reviewing the regulation for completeness, EPA sent Rhode Island a letter on June 14, 1994, stating that Regulation No. 27 had been found to be administratively and technically complete.

Subsequently, on August 30, 1995, RI DEM proposed an amended Regulation No. 27 which changed several provisions of the original Regulation No. 27 submitted on May 16, 1994. A public

hearing was held on the draft amended Regulation No. 27 on October 5, 1995, and EPA submitted written comments to the public record on that date. The amended regulation was filed with the Rhode Island Secretary of State on December 27, 1995, and became effective on January 16, 1996. On September 17, 1996, RI DEM submitted the amended Regulation No. 27 to EPA. After reviewing the amended regulation, EPA sent a letter to RI DEM on November 6, 1996, deeming the new submittal administratively and technically complete.

#### *B. Miscellaneous NO<sub>x</sub> RACT—Rhode Island Hospital*

Rhode Island Hospital operates a medical waste incinerator at its Providence facility which is subject to the miscellaneous NO<sub>x</sub> RACT provisions of section 27.4.4. On September 8, 1995, a public notice was published for the proposed miscellaneous NO<sub>x</sub> RACT consent agreement for Rhode Island Hospital in Providence, Rhode Island. EPA submitted written comments to the public record on October 4, 1995 and a public hearing was held on October 11, 1995. Rhode Island issued the consent agreement, file no. 95-14-AP, to Rhode Island Hospital on November 27, 1995, which became effective on that date. Rhode Island submitted the final consent agreement as a SIP submittal to EPA on September 17, 1996. EPA determined the submittal to be administratively and technically complete on November 6, 1996.

#### *C. Miscellaneous NO<sub>x</sub> RACT—Osram Sylvania Inc.*

Osram Sylvania Incorporated (Osram Sylvania) operates two glass melting tanks at its Central Falls facility which are subject to the miscellaneous NO<sub>x</sub> RACT provisions of section 27.4.4. On December 20, 1995, a public notice was published for the proposed miscellaneous NO<sub>x</sub> RACT consent agreement for Osram Sylvania in Central Falls, Rhode Island. A public hearing was held on February 1, 1996, and EPA submitted written comments to the public record on February 2, 1996. On September 4, 1996, RI DEM issued a consent agreement to Osram Sylvania, file no. 96-06-AP, which became effective on that date. The consent agreement also references and includes the requirements of air pollution permit approval no. 1350, issued by RI DEM to Osram Sylvania on May 14, 1996 as a BACT determination for one of the glass melting tanks. On September 17, 1996, Rhode Island submitted an alternative NO<sub>x</sub> RACT determination for Osram

Sylvania, including the consent agreement and the permit approval. On November 6, 1996, EPA deemed the submittal to be administratively and technically complete.

#### *D. Alternative NO<sub>x</sub> RACT—Algonquin Gas Transmission Company*

Algonquin Gas Transmission Company (Algonquin Gas) operates three reciprocating internal combustion engines (Units 1, 2, and 3) at its Burrillville Compressor Station. The NO<sub>x</sub> emission limitation in section 27.4.3 were shown to be technically or economically infeasible for these engines. Therefore, on September 8, 1995, a public notice was published for a proposed alternative NO<sub>x</sub> RACT consent agreement for Algonquin Gas in Burrillville, Rhode Island. EPA submitted written comments to the public record on October 11, 1995, and a public hearing was held on October 12, 1995. On December 5, 1995, RI DEM issued a consent agreement to Algonquin Gas, file no. 95-52-AP, which became effective on that date. On September 17, 1996, Rhode Island submitted an alternative RACT determination for Algonquin Gas to EPA. On November 6, 1996, EPA deemed the submittal to be administratively and technically complete.

#### *E. Alternative NO<sub>x</sub> RACT—Bradford Dyeing Association, Inc.*

Bradford Dyeing Association, Inc. (BDA) operates a back-up boiler (Boiler #1) at its Westerly facility. The ICI boiler limits imposed by section 27.4.2 were shown to be technically or economically infeasible for this boiler. Therefore, on September 8, 1995, a public notice was published for a proposed alternative NO<sub>x</sub> RACT consent agreement for BDA in Westerly, Rhode Island. EPA submitted written comments to the public record on October 11, 1995, and a public hearing was held on October 12, 1995. On November 17, 1995, RI DEM issued a consent agreement to BDA, file no. 95-28-AP, which became effective on that date. On September 17, 1996, Rhode Island submitted an alternative RACT determination for BDA to EPA. On November 6, 1996, EPA deemed the submittal to be administratively and technically complete.

#### *F. Alternative NO<sub>x</sub> RACT—Hoechst Celanese Corporation*

Hoechst Celanese Corporation (Hoechst) operates a back-up boiler (Upper Boiler) at its Coventry facility. The ICI boiler limits of section 27.4.2 were demonstrated to be technically or

economically infeasible for this boiler. Therefore, on September 8, 1995, a public notice was published for a proposed alternative NO<sub>x</sub> RACT consent agreement for Hoechst in Coventry, Rhode Island. EPA submitted written comments to the public record on October 11, 1995, and a public hearing was held on October 12, 1995. On November 20, 1995, RI DEM issued a consent agreement to Hoechst, file no. 95-62-AP, which became effective on that date. On September 17, 1996, Rhode Island submitted an alternative RACT determination to EPA for Hoechst. On November 6, 1996, EPA deemed the submittal to be administratively and technically complete.

#### *G. Alternative NO<sub>x</sub> RACT—University of Rhode Island*

The University of Rhode Island (URI) operates a boiler (Boiler #3) at the Kingston campus. The ICI boiler emissions limits in section 27.4.2 were shown to be technically or economically infeasible for this boiler. Therefore, on September 8, 1995, a public notice was published for a proposed alternative NO<sub>x</sub> RACT consent agreement for URI in Kingston, Rhode Island. EPA submitted written comments to the public record on October 11, 1995, and a public hearing was held on October 12, 1995. On March 12, 1996, RI DEM issued a consent agreement to URI, file no. 95-50-AP, which became effective on that date. On September 17, 1996, Rhode Island submitted an alternative RACT determination for URI to EPA. On November 6, 1996, EPA deemed the submittal to be administratively and technically complete.

#### *H. Alternative NO<sub>x</sub> RACT—Naval Education and Training Center*

The Naval Education and Training Center (NETC) operates four boilers (boilers #1, #2, #3, and #4) in the Coasters Harbor Island Building #86 at its Newport facility. NETC demonstrated that the ICI boiler emission limits of section 27.4.2 are not technically or economically feasible for these boilers. Therefore, on December 20, 1995, a public notice was published for a proposed alternative NO<sub>x</sub> RACT consent agreement for NETC in Newport, Rhode Island. A public hearing was held on February 1, 1996 and on February 2, 1996, EPA submitted written comments to the public record. On March 4, 1996, RI DEM issued a consent agreement to NETC, file no. 96-07-AP, which became effective on that date. On September 17, 1996, Rhode Island submitted an alternative RACT determination for NETC to EPA. On

November 6, 1996, EPA deemed the submittal to be administratively and technically complete.

#### **IV. Issues**

There is one issue associated with this rulemaking. The CAA requires that Rhode Island define and require RACT at all major sources of NO<sub>x</sub>. Regulation No. 27 contains specific emission limits and technology standards for a number of NO<sub>x</sub> emitting equipment categories. Additionally, section 27.4.4 of the regulation requires any stationary source, equipment, or pollution emitting activity that is not covered by one of the explicit emission limits or standards to have RACT defined by the Director of RI DEM by May 31, 1995. These miscellaneous NO<sub>x</sub> RACT determinations must then be approved by EPA as revisions to the SIP.

There are three facilities to which such miscellaneous provisions apply: Osram Sylvania in Coventry; Rhode Island Hospital in Providence; and, New England Treatment Company (NETCO) in Woonsocket. On September 17, 1996, RI DEM submitted the final NO<sub>x</sub> RACT consent agreements for Osram Sylvania and Rhode Island Hospital. To date, however, Rhode Island has not submitted a final RACT consent agreement for the sewage sludge incinerator at NETCO.

Although EPA has not received the final miscellaneous NO<sub>x</sub> RACT determination for NETCO, Regulation No. 27 is fully approvable at this time for several reasons. First, on November 7, 1996, EPA issued a policy memorandum entitled "Approval Options for Generic RACT Rules Submitted to Meet the non-CTG VOC RACT Requirements and Certain NO<sub>x</sub> RACT Requirements,"<sup>2</sup> which applies to Regulation No. 27. Generic RACT provisions are those portions of a regulation where the emission limit or technology standard is not specified in the rule, rather, the determination of a limit is to be made on a case-by-case basis. Under the Act, these case-specific RACT determinations must be submitted to EPA as revisions to a State's SIP. The generic RACT policy allows full approval of a State's NO<sub>x</sub> RACT regulation which contains generic provisions if the NO<sub>x</sub> emissions from the outstanding RACT determinations are not from electric utility sources and an analysis has been completed that demonstrates that the remaining case-specific NO<sub>x</sub> RACT determinations

involve a de minimis level of NO<sub>x</sub> emissions.

In the case of Rhode Island's Regulation No. 27, analysis has shown that the emissions remaining to be covered by the case-specific RACT determinations, i.e., from the NETCO sludge incinerator, constitute less than 4% of Rhode Island's baseyear non-utility NO<sub>x</sub> emissions. Under the generic RACT policy, such emissions can be considered to be de minimis. Additionally, an analysis of the impact of Regulation No. 27 shows that the adopted rule and case-specific RACT determinations achieve an areawide NO<sub>x</sub> reduction from RACT subject sources statewide of almost 60% from a 1990 baseline. EPA's March 16, 1994 policy memorandum entitled "Cost-Effective Nitrogen Oxides Reasonably Available Control Technology (RACT)" contemplates that NO<sub>x</sub> RACT will achieve 30% to 50% reduction in actual emissions from a 1990 baseline. Given these analyses, Regulation No. 27, including the generic provisions, is fully approvable.

It is important to note that approval of this regulation under the generic RACT policy does not exempt any remaining miscellaneous sources from RACT; rather it is a de minimis deferral of the approval of the remaining case-by-case RACT determinations. This means that approval of Regulation No. 27 will not relieve the remaining sources of the obligation to develop, submit and implement RACT level controls. Similarly, approval will not relieve Rhode Island of the obligation to ensure that all sources within the State comply with the NO<sub>x</sub> RACT requirements of the Act by adopting and implementing emission limitations or technology standards. In fact, approval of this regulation will serve to reinforce the requirement for the State to submit any remaining case-specific RACT determinations. Because Regulation No. 27 requires that miscellaneous NO<sub>x</sub> RACT determinations be submitted to EPA for approval as SIP revisions, approval of the regulation will make the requirement to submit remaining NO<sub>x</sub> RACT orders enforceable by EPA, as well as by citizens under Section 304 of the Act.

#### **V. Final Action**

Review of the NO<sub>x</sub> RACT SIP submittals, including Regulation No. 27, the miscellaneous NO<sub>x</sub> RACT consent agreements, and the alternative NO<sub>x</sub> RACT consent agreements, indicates that Rhode Island has sufficiently defined the NO<sub>x</sub> RACT requirements for the State. Therefore, EPA is fully approving Regulation No. 27, as

<sup>2</sup> November 7, 1996 memorandum from Sally Shaver, Director, Air Quality Strategies and Standards Division, Office of Air Quality Planning and Standards, to Air Program Directors, EPA Regional Offices.

amended on December 27, 1995, the miscellaneous NO<sub>x</sub> RACT determinations for Rhode Island Hospital and Osram Sylva Incorporated, as well as the alternative NO<sub>x</sub> RACT determinations for Algonquin Gas Transmission Company, Bradford Dyeing Association, Inc., Hoechst Celanese Corporation, the University of Rhode Island, and the Naval Education and Training Center, into the Rhode Island SIP.

EPA is publishing this action 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 November 3, 1997 unless adverse or critical comments are received by October 2, 1997.

If the EPA receives such comments, this action will be withdrawn before the effective date by simultaneously 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. The 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 November 3, 1997.

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.

## VI. Administrative Requirements

### A. Executive Order 12866

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.

### B. Regulatory Flexibility Act

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 sections 110 and 301, 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 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).

### C. Unfunded Mandates

Under Sections 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 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 requirements. Accordingly, no additional costs to State, local, or tribal

governments, or to the private sector, result from this action.

### D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 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).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 19, 1997.

**John P. DeVillars,**

*Regional Administrator, Region I.*

Part 52 of 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 OO—Rhode Island

2. Section 52.2070 is amended by adding paragraphs (c)(48) and (c)(49) to read as follows:

### § 52.2070 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(48) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on September 17, 1996, which define and impose reasonably available control technology (RACT) to control nitrogen oxides emissions at major stationary sources in Rhode Island.

(i) Incorporation by reference.

(A) Letter from the Rhode Island Department of Environmental Management, dated September 17, 1996, submitting revisions to the Rhode Island State Implementation Plan.

(B) Regulation number 27, "Control of Nitrogen Oxide Emissions," as adopted on December 27, 1995, effective January 16, 1996.

(C) An administrative consent agreement between Rhode Island Department of Environmental Management and Rhode Island Hospital, file no. 95-14-AP, effective on November 27, 1995.

(D) An administrative consent agreement between Rhode Island Department of Environmental Management and Ostram Sylvania Incorporated, file no. 96-06-AP, effective on September 4, 1996.

(E) An air pollution permit approval, no. 1350, for Ostram Sylvania Incorporated issued by the Rhode Island Department of Environmental Management on May 14, 1996 and effective on that date.

(49) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on September 17, 1996, which define and impose alternative reasonably available control technology (RACT) requirements to control nitrogen oxides emissions at certain major stationary sources in Rhode Island.

(i) Incorporation by reference.

(A) Letter from the Rhode Island Department of Environmental Management dated September 17, 1996, submitting revisions to the Rhode Island State Implementation Plan.

(B) An administrative consent agreement between Rhode Island Department of Environmental Management and Algonquin Gas Transmission Company, file no. 95-52-AP, effective on December 5, 1995.

(C) An administrative consent agreement between Rhode Island Department of Environmental

Management and Bradford Dyeing Association, Inc., file no. 95-28-AP, effective on November 17, 1995.

(D) An administrative consent agreement between Rhode Island Department of Environmental Management and Hoechst Celanese Corporation, file no. 95-62-AP, effective on November 20, 1995.

(E) An administrative consent agreement between Rhode Island Department of Environmental Management and University of Rhode Island, file no. 95-50-AP, effective on March 12, 1996.

(F) An administrative consent agreement between Rhode Island Department of Environmental Management and the Naval Education and Training Center in Newport, file no. 96-07-AP, effective on March 4, 1996.

3. In § 52.2081, Table 52.2081 is amended by adding new state citations by date for "Regulation No. 27," to read as follows:

\* \* \* \* \*

**§ 52.2081 EPA-approved EPA Rhode Island state regulations.**

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TABLE 52.2081.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	FR citation	52.2070	Comments/unapproved sections
No. 27 .....	Control of Nitrogen Oxide Emissions.	12/27/95	Sept. 2, 1997	[Insert FR citation from published date].	(c)(48)	Adds NO <sub>x</sub> RACT regulations.
.....	.....	11/27/95	Sept. 2, 1997	[Insert FR citation from published date].	(c)(48)	NO <sub>x</sub> RACT for Rhode Island Hospital under 27.4.4.
.....	.....	9/4/96	Sept. 2, 1997	[Insert FR citation from published date].	(c)(48)	NO <sub>x</sub> RACT for Ostram Sylvania Incorporated under 27.4.4.
.....	.....	12/5/95	Sept. 2, 1997	[Insert FR citation from published date].	(c)(49)	Alternative NO <sub>x</sub> RACT for Algonquin Gas Transmission Company under 27.4.8.
.....	.....	11/17/95	Sept. 2, 1997	[Insert FR citation from published date].	(c)(49)	Alternative NO <sub>x</sub> RACT for Bradford Dyeing Association, Inc. under 27.4.8.
.....	.....	11/20/95	Sept. 2, 1997	[Insert FR citation from published date].	(c)(49)	Alternative NO <sub>x</sub> RACT for Hoechst Celanese Corporation under 27.4.8.
.....	.....	3/12/96	Sept. 2, 1997	[Insert FR citation from published date].	(c)(49)	Alternative NO <sub>x</sub> RACT for University of Rhode Island under 27.4.8.
.....	.....	3/4/96	Sept. 2, 1997	[Insert FR citation from published date].	(c)(49)	Alternative NO <sub>x</sub> RACT for Naval Education and Training Center under 27.4.8.
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