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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE046-1022a; FRL-6547-9]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Regulation Number 37—NO_x Budget Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking a direct final rule to approve a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision implements Phase II of the Ozone Transport Commission's (OTC) September 27, 1994 Memorandum of Understanding (MOU) which describes a regional nitrogen oxides (NO_x) cap and trade program that will significantly reduce NO_x emissions generated within the ozone transport region. The intended effect of this action is to approve the Delaware Regulation Number 37, NO_x Budget Program.

DATES: This rule is effective on May 8, 2000, without further notice, unless EPA receives adverse written comment by April 10, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the *Federal Register* and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Delaware Department of Natural Resources & Environmental Control, Richardson & Robins Building, 89 Kings Highway, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On December 20, 1999, the Delaware Department of Natural Resources and

Environmental Control (DNREC) submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of Delaware Regulation Number 37, NO_x Budget Program.

I. Background

The Ozone Transport Commission (OTC) adopted a Memorandum of Understanding (MOU) on September 27, 1994, committing the signatory states to the development of a two phase region-wide reduction in NO_x emissions by 1999 and by 2003, respectively. As reasonably available control technology (RACT) to reduce NO_x emissions was required to be implemented by May of 1995, the MOU refers to the NO_x reductions to be achieved by 1999 as Phase II; and the NO_x reductions to be achieved by 2003 as Phase III. The OTC states include Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, the northern counties of Virginia, and the District of Columbia. All OTC member states and the District of Columbia, with the exception of the Commonwealth of Virginia, signed the September 27, 1994 MOU. The OTC MOU requires reductions of NO_x emissions, during the ozone season, from utility and large industrial combustion facilities within the Ozone Transport Region (OTR) in order to further the effort to achieve the health-based National Ambient Air Quality Standard (NAAQS) for ozone.

In the MOU, the OTC states agreed to propose regulations for the control of NO_x emissions in accordance with the following guidelines:

1. The level of NO_x required would be established from a 1990 baseline emissions level.

2. The reduction would vary by location, or zone, and would be implemented in two phases utilizing a region wide trading program.

3. The reduction would be determined based on the less stringent of each of the following:

a. By May 1, 1999, the affected facilities in the inner zone shall reduce their rate of NO_x emissions by 65% from baseline, or emit NO_x at a rate no greater than 0.20 pound per million Btu. (This is referred to as a Phase II requirement).

b. By May 1, 1999, the affected facilities in the outer zone shall reduce their rate of NO_x emissions by 55% from baseline, or shall emit NO_x at a rate no greater than 0.20 pounds per million Btu. (This is referred to as a Phase II requirement).

c. By May 1, 2003, the affected facilities in the inner and outer zone shall reduce their rate of NO_x emissions

by 75% from baseline, or shall emit NO_x at a rate of no greater than 0.15 pounds per million Btu. (This is referred to as a Phase III requirement).

d. By May 1, 2003, the affected facilities in the Northern zone shall reduce their rate of NO_x emissions by 55% from baseline, or shall emit NO_x at a rate no greater than 0.20 pounds per million Btu. (This is referred to as a Phase III requirement).

A task force of representatives from the OTC states, organized through the Northeast States for Coordinated Air Use Management (NESCAUM) and the Mid-Atlantic Regional Air Management Association (MARAMA), were charged with the task of developing a model rule to implement the program defined by the OTC MOU. During 1995 and 1996, the NESCAUM/MARAMA NO_x Budget Task Force worked with EPA and developed a model rule as a template for OTC states to adopt their own rules to implement the OTC MOU. The model rule was issued May 1, 1996. The model rule was developed for the OTC states to implement the Phase II reduction called for in the MOU to be achieved by May 1, 1999. The model rule does not include the implementation of Phase III.

II. Summary of SIP Revision

Delaware's Regulation Number 37 is based solely and completely upon the "NESCAUM/MARAMA NO_x Budget Rule" issued in May 1, 1996. The model rule was developed by the states in the Ozone Transport Region (OTR) using the EPA's economic incentive rules (67 FR 16690) which were published on April 7, 1994, as the general regulatory framework.

The Delaware NO_x Budget Program establishes NO_x emission allowances for each ozone season which falls between May 1, 1999 and September 30, 2002. This program identifies the budgeted sources and identifies the number of allowances each budgeted source is allocated.

The Delaware NO_x Budget Program is divided into twenty sections: (1) General Provisions—purpose and scope of the program; (2) Applicability—any owner or operator of a budget source where the source is located in the State of Delaware; (3) Definitions—defines terms used in the program; (4) Allowance Allocation—the total number of NO_x allowances (tons) which Delaware has been allotted from the regional program to divide among the sources subject to the program during the 1999–2002 ozone seasons; (5) Permits—requirements for revisions and amendments; (6) Establishment of Compliance Accounts; (7) Establishment of General Accounts; (8) Opt-in

Provisions; (9) New Budget Source Provisions; (10) NO_x Allowance Tracking System (NATS); (11) Allowance Transfer—requirements and procedures to notify the NATS Administrator; (12) Allowance Banking—procedures and limitations for banking unused allowances from one year to another; (13) Emission Monitoring—monitored by either a continuous emission monitoring system (CEMS) or equivalent that is approved by the state and EPA; (14) Recordkeeping—records to be retained for a minimum of five years; (15) Emissions Reporting—quarterly in an electronic format (EDR); (16) End-of-Season Reconciliation—how compliance will be determined at the end of each ozone season; (17) Compliance Certification—annual compliance certification requirements for budget units; (18) Failure to Meet Compliance Requirements; (19) Program Audit; and (20) Program Fees. Two appendices are included in this regulation: Appendix A—where budgeted sources and their NO_x allowance allocations are identified; and Appendix B—final OTC NO_x baseline inventory of the budgeted sources.

EPA is publishing this direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the “Proposed Rules” section of today’s **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This direct final rule will be effective on May 8, 2000, without further notice unless EPA receives adverse comment by April 10, 2000. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. A more detailed description of the state submittal, the model rule and EPA’s evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. Interested parties may request a copy of this TSD from the EPA Regional Office listed in the **ADDRESSES** section of this document.

III. Final Action

EPA is approving Delaware’s December 20, 1999 request to revise its SIP to include Regulation Number 37, NO_x Budget Program.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget (OMB). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to

eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 2000. Filing a petition for reconsideration by the Administrator of this final rule approving Delaware’s Regulation Number 37—NO_x Budget Program, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 24, 2000.

Bradley M. Campbell,
Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

Subpart I—Delaware

in paragraph (c) is revised to read as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In section 52.420, the entry for Regulation 37 in the “EPA Approved Regulations in the Delaware SIP” table

§ 52.420 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/Subject	State effective date	EPA approval date	Additional information
* * *				
Regulation 37			NO _x Budget Program	
Section 1	General Provisions	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
Section 2	Applicability	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
Section 3	Definitions	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
Section 4	Allowance Allocation	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
Section 5	Permits	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
Section 6	Establishment of Compliance Accounts	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
Section 7	Establishment of General Accounts	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
Section 8	Opt In Provisions	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
Section 9	New Budget Source Provisions	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
Section 10	NO _x Allowance Tracking System (NATS) ..	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
Section 11	Allowance Transfer	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
Section 12	Allowance Banking	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
Section 13	Emission Monitoring	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
Section 14	Recordkeeping	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
Section 15	Emissions Reporting	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
Section 16	End-of-Season Reconciliation	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
Section 17	Compliance Certification	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
Section 18	Failure to Meet Compliance Requirements	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
Section 19	Program Audit	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
Section 20	Program Fees	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
Appendix A	NO _x Budget Program—Budget Sources & Allowances.	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
Appendix B	NO _x Budget Program—Final OTC NO _x Base-line Inventory.	12/11/99	3/9/00 [Insert <i>Federal Register</i> cite].	
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[CC Docket No. 99-168; DA 00-450]

Service Rules for the 746-764 and 776-794 MHz Bands; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects two errors that were contained in a document published in the January 20, 2000, *Federal Register*, establishing service rules governing the initial assignment of license, by competitive bidding, and the subsequent regulatory treatment of commercial services to be provided on the 746-764 and 776-794 MHz Bands.

DATES: Effective on March 9, 2000.

FOR FURTHER INFORMATION CONTACT: Jane Phillips, 202-418-1310.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a synopsis of the First Report and Order (synopsis) (FR Doc. 00-1332) in the *Federal Register* of January 20, 2000, (65 FR 3139) establishing service rules governing the initial assignment of license, by competitive bidding, and the subsequent regulatory treatment of commercial services to be provided on the 746-764 and 776-794 MHz Bands. Both in the text of the synopsis and in § 27.13(b) of the Commission’s implementing regulation, the specific date as of which a license issued for the 747-762 MHz and 777-792 MHz bands will terminate was erroneously identified as January 1, 2014. The correct date is January 1, 2015. Additionally, in § 27.66(b), the date as of which a fixed service common carrier’s application for voluntary discontinuance, reduction, or impairment of service will be automatically granted, absent

opposition, is amended from “30” to “31” days.

Correction of Publication

In rule FR Doc. 00-1332, 65 FR 3139, January 20, 2000, make the following corrections. In the text of the supplementary information wherever the date January 1, 2014, appears, correct it to read January 1, 2015. On page 3146, in the second column, § 27.13 (b) is amended by correcting “January 1, 2014,” to “January 1, 2015.” Additionally, on page 3149, in the second column, § 27.66(b) is amended by correcting “30 days” to read “31 days.”

Dated: March 3, 2000.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00-5678 Filed 3-8-00; 8:45 am]

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