

Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 8, 2001.

**David A. Ullrich,**

*Acting Regional Administrator, Region 5.*

For the reasons stated in the preamble, part 52, 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 et seq.

#### **Subpart O—Illinois**

2. Section 52.726 is amended by adding paragraph (z) to read as follows:

#### **§ 52.726 Control strategy: Ozone.**

\* \* \* \* \*

(z) Negative declaration—Industrial cleaning solvents category. On December 23, 1999, the State of Illinois certified to the satisfaction of the United States Environmental Protection Agency that no major sources categorized as part of the industrial cleaning solvents category are located in the Chicago ozone nonattainment area. The Chicago ozone nonattainment area includes Cook County, DuPage County, Aux Sable and Goose Lake Townships in Grundy County, Kane County, Oswego Township in Kendall County, Lake County, McHenry County and Will County.

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#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 52**

[DE043-1030a; FRL-6941-3]

#### **Approval and Promulgation of Air Quality Implementation Plans; Delaware; Revisions to New Source Review**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to convert its conditional approval of Delaware's revised New Source Review (NSR) regulations to a full approval and to incorporate those revised regulations into the Delaware State Implementation Plan (SIP). Delaware submitted the revised regulations as a SIP revision to satisfy

conditions imposed by EPA in its conditional approval of the NSR program published in the **Federal Register** on April 3, 1998. EPA is converting its conditional approval to a full approval as Delaware's revised regulations satisfy those conditions. This action is being taken in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on April 9, 2001 without further notice, unless EPA receives adverse written comment by March 9, 2001. 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 Makeba Morris, Chief, Permits and Technology Assessment Branch, Mailcode 3AP11, 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; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Linda Miller, (215) 814-2068, or by e-mail at [miller.linda@epa.gov](mailto:miller.linda@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On April 30, 1999, the Delaware Department of Natural Resources and Environmental Control submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of amended New Source Review (NSR) regulations found in Delaware Regulation 25, Requirements for Preconstruction Review. Regulation 25, sections 1 and 2, affect major new or modified stationary sources in nonattainment areas. The SIP Revision was submitted to meet the requirements imposed by EPA in its conditional approval of Delaware's NSR program published on April 3, 1998 (64 FR 16433-16535). The conditional approval required that certain deficiencies be corrected and clarifications made to Delaware's NSR program. Delaware's April 30, 1999 submittal satisfies the requirements of

the April 3, 1998 conditional approval. This rulemaking will convert the conditional approval of Delaware's NSR program to a full approval and incorporate Delaware's revised NSR regulations into the Delaware SIP.

#### **Summary of SIP Revision**

The SIP submission includes revisions to the Delaware Regulations Governing the Control of Air Pollution, Regulation 25—REQUIREMENTS FOR PRECONSTRUCTION REVIEW. Brief descriptions of the deficiencies noted in EPA's April 3, 1998 conditional approval and how they have been corrected or resolved are provided below:

1. *Deficiency:* EPA stated that Delaware's regulations did not provide special modification procedures found in the Clean Air Act (CAA) Section 182(c)(7). Under federal regulations, a source that makes a single modification at a unit which is greater than 100 tons per year can choose to make an 130% emission decrease at the same source (rather than off site). The source can then choose to follow different procedures for determining control technology requirements.

*Clarification:* Upon further review and discussion with Delaware, EPA determined that the Delaware regulations are not deficient in this regard. Delaware has retained the "dual definition" of major stationary source. As this definition of stationary source is both the source and the individual unit, the special rule for modifications would be less stringent than the existing Delaware regulations.

2. *Deficiency:* EPA stated that public participation procedures must be consistent with Federal regulations (as found in 40 CFR 51.161). The Delaware regulations did not specify that the public participation procedures found in another section of the Delaware regulations must be used in issuing nonattainment NSR permits.

*Correction:* New provisions have been added to the Delaware regulations at Delaware Regulation 25.2.4.D.2. The revised regulation requires the appropriate 30 day public comment period for nonattainment area NSR permits.

3. *Deficiency:* EPA stated that Delaware regulations did not contain a provision consistent with federal regulations (40 CFR 51.165 (a)(3)(ii)(A)). This federal requirement states that where a regulatory emission limitation (referred to as the allowable rate) is higher than is physically possible at a particular source (referred to as the potential of the source), credit for any emission reductions (emission offsets)

will be given only for reductions below the potential of the source.

*Correction:* Provision 25–2.5 B has been added to Delaware law. The Delaware regulation is now consistent with the federal regulation and ensures that emission credit is not given for emissions which a source would not have the potential to emit.

4. *Deficiency:* EPA stated that Delaware's regulations did not have necessary safeguards for granting emission offset credit for fuel switching, as found in federal regulations at 40 CFR 51.165 (a)(3)(ii)(B). If a source has the ability to revert to a more polluting fuel, a federally enforceable requirement to maintain lower emission levels is necessary.

*Correction:* The needed restrictive language has been added to Delaware Regulations at 25–2.4C.2 and 2.5 A. The Delaware regulations ensure that all emission reductions happen before emission credit can be used elsewhere. They further require that emission reductions be federally enforceable such that a source which chooses to switch fuels and generate emission credits must have an enforceable permit or agreement to restrict emissions.

5. *Deficiency:* EPA stated that Delaware's regulations did not include appropriate safeguards for granting emission reduction credits. Specifically, requirements that all emission offset reductions are federally enforceable, restrictions on granting emission offset credits for sources which previously shut down or curtailed production, and prohibition from granting emission offset credits for emission reductions required by other requirements of the Clean Air Act.

*Correction:* New provisions have been added to Delaware Regulation 25–2.5 (paragraphs A, C, D and E) and 2.4. These new provisions ensure that all offset credits meet federal requirements.

6. *Deficiency:* EPA stated that Delaware regulations did not restrict where offsetting emission reductions occurred. Federal regulations require that emission offsets are used only in areas which have been classified as the same or higher nonattainment classification.

*Correction:* The Delaware Regulations were revised to add 25–2.5E. This provision requires that emission offsets must be generated in an area with the same or higher air quality classification.

EPA is publishing this rule to convert its conditional approval of Delaware's NSR program to a full approval 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 rule will be effective on April 9, 2001 without further notice unless EPA receives adverse comment by March 9, 2001. 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 converting its conditional approval of Delaware's NSR program to a full approval. Any parties interested in commenting must do so at this time.

## II. Final Action

EPA is taking direct final action to convert its conditional approval of Delaware's revised New Source Review (NSR) regulations to a full approval and to incorporate those regulations into the Delaware State Implementation Plan (SIP). These regulations define the requirements for the nonattainment New Source Review program in Delaware. This action will also remove the conditional approval provision found at 40 CFR 52.424(c).

## III. 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. 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. 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 Clean Air Act. 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 Clean Air Act. 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 Clean Air Act, petitions for judicial review of this action converting EPA’s conditional approval of revisions to the Delaware SIP for NSR to a full approval must be filed in the United States Court of Appeals for the appropriate circuit by April 9, 2001. 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, Nitrogen dioxide, VOCs, Ozone.

Dated: January 17, 2001.

**Bradley M. Campbell,**  
*Regional Administrator, Region III.*

40 CFR part 52 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 et seq.

**Subpart I—Delaware**

2. In § 52.420, the table in paragraph (c) is amended by revising entries 1 and 2 under Regulation 25 to read as follows:

**§ 52.420 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	*
<b>Regulation 25 Requirements for preconstruction review.</b>				
Section 1 .....	General provisions .....	1/1/93 (as revised 5/11/99).	[2/7/01 and FR cite]	Excluding § 1.2, 1.6, 1.9(L), 1.9(M), 1.9(N), 1.9(O) which relate to Prevention of Significant Deterioration.
Section 2 .....	Emission offset provisions.	1/1/93 (as revised 5/11/99).	[2/7/01 and FR cite].	
*	*	*	*	*

3. In § 52.424, paragraph (c) is removed and reserved.  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 721**

[OPPTS-50638A; FRL-6769-7]

RIN 2070-AB27

**Significant New Uses of Certain Chemical Substances; Delay of Effective Date**

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

**ACTION:** Final Rule; Delay of Effective Date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled “Regulatory Review Plan,” published in the **Federal Register** on January 24, 2001 (66 FR 7701), this action temporarily delays for 60 days the effective date of the rule entitled

“Significant New Uses of Certain Chemical Substances; Direct Final Rule,” published in the **Federal Register** on December 26, 2000 (65 FR 81386) (FRL-6592-8). That rule concerns EPA’s promulgation of significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 40 chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA.

**DATES:** The new effective date of the Significant New Uses of Certain Chemical Substances; Direct Final Rule, amending 40 CFR part 721 published in the **Federal Register** on December 26, 2000 at 65 FR 81386 (FRL-6592-8), from February 26, 2001, to a new effective date of April 27, 2001.

**FOR FURTHER INFORMATION CONTACT:** James Alwood, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260-1857; e-mail address: alwood.jim@epa.gov.

**SUPPLEMENTARY INFORMATION:** To the extent that 5 U.S.C. 553 applies to this

action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, the Agency’s implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Agency officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President’s memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this rule immediately effective upon publication.