establishing a precedent for any future 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.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed 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 proposed 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 proposes to approve 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 proposed 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 proposed 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 proposed 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. The proposed rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed 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. The 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.'' This proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: August 24, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 01–22523 Filed 9–6–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE058–1032; FRL–7052–1]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; One-Hour Ozone Attainment Demonstration Plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision submits an analysis and determination that there are no additional reasonably available control measures (RACM) available to advance the area's attainment date after adoption of all Clean Air Act (Act) required measures. On December 16, 1999, EPA proposed to approve, and to disapprove in the alternative, the attainment demonstration State implementation plan (SIP) for the Philadelphia-Wilmington-Trenton severe ozone nonattainment area (the Philadelphia area). Kent and New Castle Counties are part of the Philadelphia area. The intended effect of this action is to propose approval of a reasonably available control measure (RACM) analysis submitted by the State of Delaware. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before October 9, 2001.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services, 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 the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179. Or by e-mail at *cripps.christopher@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

When Did Delaware Submit the RACM Analysis?

On August 3, 2001, the State of Delaware (Delaware) submitted the RACM analysis for the Philadelphia area as a SIP revision.

II. Analysis of the Delaware Submittal

A. What Are the Requirements for Reasonably Available Control Measures (RACM)?

Section 172(c)(1) of the Act requires SIPs to contain reasonably available control measures (RACM) as necessary to provide for attainment. EPA has previously provided guidance interpreting the RACM requirements of section 172(c)(1). (See 57 FR 13498, 13560, April 16, 1992.) In that guidance, EPA indicates that potentially available control measures, which would not advance the attainment date for an area, would not be considered RACM under the Act. EPA concludes that a measure would not be reasonably available if it would not advance attainment. EPA's guidance also indicates that states should consider all potentially available measures to determine whether they are reasonably available for implementation in the area, including whether or not they would advance the attainment date. Further, the guidance calls for states to indicate in their SIP submittals whether measures considered are reasonably available or not, and if so the measures must be adopted as RACM. Finally, EPA indicated that states could reject potential RACM measures either because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, or for various reasons related to local conditions, such as economics or implementation concerns. The EPA also issued a recent memorandum on this topic, ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.'' John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

B. How Does This Submission Address the RACM Requirement?

The analysis submitted by the Delaware on August 3, 2001, as a supplement to its attainment demonstration SIP for the Philadelphia area, addresses the RACM requirement. Delaware has examined a wide variety of potential stationary source and mobile source controls. The stationary/area source controls that were considered were limits on area source categories not covered by a control technique guideline (CTG) (*e.g.,* motor vehicle refinishing, and surface/cleaning degreasing); rule effectiveness improvements; expanding the applicability of CTG limits to sources smaller than those mandated under the CTG); ''beyond RACT'' controls on major stationary sources of nitrogen oxides (NO_X); and other potential measures. The mobile source control measures considered included measures such as the national low emission vehicle program, high occupancy vehicle (HOV) lanes; employer based programs; trip reduction ordinances; bicycle and pedestrian improvements; programs to restrict extended idling of vehicle; early retirement of older motor vehicles; traffic flow improvements; and alternative fuel vehicles. Delaware considered an extensive list of potential control measures and chose measures for implementation which went beyond the Federally mandated controls, which were found to be cost effective and technologically feasible. From the list of measures considered, the rules and measures adopted and submitted by Delaware includes the following:

(1) Delaware has adopted, and EPA has SIP-approved, a rule for vehicle refinishing. The rule includes VOC content limits for motor vehicle refinishing coatings at least equivalent to the Federal requirements and required compliance with this rule in 1996 versus in 1998 as required under the Federal rule.

(2) Delaware has adopted, and EPA has SIP approved, a rule for control of VOC emissions from offset lithographic printing operations.

(3) Delaware has adopted, and EPA has SIP approved, a rule for control of VOC emissions from aerospace coating operations with an applicability threshold well below that required by the applicable CTG.

(4) Delaware has adopted, and EPA has SIP approved, a rule for control of VOC emissions from graphic arts operations (packaging rotogravure, publication rotogravure, or flexographic printing press) with an applicability threshold well below that required by the applicable CTG.

(5) Delaware has adopted, and EPA has SIP approved, a rule for control of VOC emissions from use of organic cleaning solvents that includes requirements that go beyond the applicable CTG for surface cleaning and degreasing.

(6) Delaware has adopted, and EPA has SIP approved, a rule requiring the sale of vehicles under the national low-emission vehicle program.

(7) Delaware has adopted, and EPA has SIP approved, a rule to implement Phase II NO_X controls under the Ozone Transport Commission's (OTC) Memorandum of Understanding (MOU). This rule established a fixed cap on ozone-season NO_X emissions from major point sources of NO_X. The rule grants each source a fixed number of NO_X allowances, applies state-wide, and requires compliance during the ozone season. The implementation of this rule commenced May 1, 1999 in Delaware and reduces NO_X emissions both inside and outside the Philadelphia area.

(8) Delaware has adopted, and EPA has SIP approved, a rule to implement the NO_X SIP call. Delaware's rule requires compliance commencing with the start of the 2003 ozone season.

Other potential measures are not considered to be cost effective or have implementation difficulties due to the intensive and costly effort that would be involved in regulating numerous, small area source categories. These explanations are provided in further detail in the docket for this rulemaking. Delaware concluded that a number of potential transportation control measures were considered feasible, but would not, in aggregate, advance the attainment date.

The attainment demonstration for the Philadelphia area contains modeling using the urban airshed model (UAM) which demonstrates that the Philadelphia area cannot attain solely through reductions in the Philadelphia nonattainment area. The Philadelphia area relies on background reductions of transported ozone to attain the one hour ozone standard. EPA established in the NO_X SIP Call, promulgated on October 27, l998 (63 FR 57356), the appropriate division of control responsibilities between the upwind and downwind States under the Act. In *Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000), the court upheld the NO_X SIP Call on most issues, although a subsequent order of the court delays the implementation date to no later than May 31, 2004. EPA is moving forward to implement those portions of the rule that have been upheld, ensuring that most—if not all—of the emission reductions from the NO_X SIP Call assumed in the one hour ozone NAAQS attainment demonstration for the Philadelphia area will occur. EPA's modeling to determine the region-wide impacts of the NO_X SIP Call clearly shows that regional transport of ozone and its precursors is impacting nonattainment areas several states away, and this analysis was upheld by the court. Also, on January 18, 2000 (65 FR 2674), EPA promulgated a final rule on petitions filed pursuant to section 126 of the Act by eight Northeastern States, that sought to mitigate interstate transport of NO_X emissions from a number of large electric generating units (EGUs) and large industrial boilers and turbines. Because the allocation of responsibility for transport was not made until late

1998 and early 2000, the prohibitions on upwind contributions under section 110(a)(2)(D) and section 126 could not be enforced prior to 2003 or 2004. The implementation of the control measures in states upwind of the Philadelphia area that are needed to eliminate the significant contribution of sources in those states—will not ripen until 2003 or 2004 under the NO_X SIP call or the section 126 petitions.

To demonstrate attainment of the one hour ozone standard, the UAM modeling required the Delaware portion of the Philadelphia area to achieve emissions levels on the order of 104 tons per day of VOC emissions and 138 tons per day of NO_X. The ROP plan for 2005 is projected to get emissions levels down to 96.5 tons per day of VOC emissions and 138 tons per day of NO_X excluding the benefits of the Federal Tier 2/Sulfur rule.[1] This Tier 2/Sulfur program will further reduce emissions in the area staring with the 2004 model year vehicles.[2] Any potential reductions from the remaining potential RACM measures in aggregate are relatively small (as documented in the docket for this rulemaking) compared to the ROP reductions that will be achieved by the 2005 attainment date.

Thus, EPA concludes that no additional measures could advance the attainment date for the Philadelphia area prior to full implementation of all upwind and local controls scheduled for implementation by 2005.

III. Opening of the Public Comment Period

The EPA is opening a comment period for 30 days to take comment on Delaware's August 3, 2001 RACM submittal discussed above. EPA is proposing to approve Delaware's SIP revision for RACM, which was submitted on August 3, 2001, as a supplement to its one hour attainment demonstration for the Philadelphia area. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

[1] The ROP plan does but the attainment modeling does not consider the effects of the Federal Tier 2/Sulfur rule; thus an adjustment to exclude the Federal Tier 2/Sulfur rule effects on the ROP plan projections is necessary to compare the ROP plan projections with the attainment plan modeling.

[2] With the Federal Tier 2/Sulfur rule benefits, the 2005 projections are 95.8 tons per day of VOC emissions and 134.3 tons per day of NO_X.

IV. Proposed Action

EPA is proposing to approve the RACM analysis submitted by the State of Delaware on August 3, 2001 as a supplement to its one hour attainment demonstration for the Philadelphia area. This revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this action, EPA will evaluate those changes and may publish another supplemental notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by Delaware and submitted formally to EPA for incorporation into the SIP.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 proposes to approve 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 proposed 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 proposed 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 proposed rule regarding Delaware's RACM analysis for the Philadelphia area does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

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

Dated: August 31, 2001.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 01–22617 Filed 9–6–01; 8:45 am]

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