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Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to 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 proposed/promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended 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 section 804(2) of the APA as amended.

Petitions for Judicial Review

Under section 307(b)(1) of the CAAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 15, 1996. Filing a petition for reconsideration by the Administrator of this 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 regarding the Richmond-Petersburg, Norfolk-Virginia Beach and Smyth County, Virginia ozone Emission Inventories 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, Carbon Monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 21, 1996.

W. Michael McCabe,
Regional Administrator, Region III.

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. 7401-7671q.

Subpart VV—Virginia

2. Section 52.2425 is amended by revising the section heading; by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.2425 1990 Base Year Emission Inventory.

* * * * *

(b) EPA approves as a revision to the Virginia State Implementation Plan the 1990 base year emission inventories for the Richmond-Petersburg, Norfolk-Virginia Beach, and Smyth County ozone nonattainment areas submitted by the Director, Virginia Department of Environmental Quality on November 11, 1992, November 18, 1992, November 1, 1993, and December 15, 1994. These submittals consist of the 1990 base year point, area, non-road mobile, biogenic and on-road mobile source emission inventories in each area for the following pollutants: volatile organic compounds (VOC), carbon monoxide (CO), and oxides of nitrogen (NO_x).

[FR Doc. 96-23260 Filed 9-13-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[VA041-5005a; FRL-5603-5]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia—1990 Base Year Emission Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: EPA is approving a revision to the Virginia State Implementation Plan (SIP) which pertains to the 1990 base year ozone emission inventory for the Northern Virginia nonattainment area. This area was classified by EPA as serious for ozone. The SIP was submitted by the Commonwealth of Virginia Department of Environmental Quality (VDEQ) for the purpose of establishing the 1990 baseline emissions contributing to ozone nonattainment problems in Northern Virginia. This action is being taken under section 110 of the Clean Air Act.

DATES: This action is effective November 15, 1996, unless notice is received on or before October 16, 1996, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to David Arnold, Section Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 566-2182, at the EPA Region III office, or via e-mail at quinto.rose@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION:

Background

Under the 1990 Clean Air Act Amendments (CAAA), states have the responsibility to inventory emissions contributing to NAAQS nonattainment,

to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. The CAAA requires ozone nonattainment areas designated as moderate, serious, severe, and extreme to submit a plan within three years of 1990 to reduce VOC emissions by 15 percent within six years after 1990 (15% plan). The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the 1990 base year inventory to exclude biogenic emissions and to exclude certain emission reductions not creditable towards the 15% plan. The 1990 base year emissions inventory is the primary inventory from which the periodic inventory, the Reasonable Further Progress (RFP) projection inventory, and the modeling inventory are derived. Further information on these inventories and their purpose can be found in the "Emission Inventory Requirements for Ozone State Implementation Plans," Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991. The 1990 base year inventory may also serve as part of statewide inventories for purposes of regional modeling in transport areas. The 1990 base year inventory plays an important role in modeling demonstrations for areas classified as moderate and above that are located outside transport regions.

The air quality planning requirements for marginal to extreme ozone nonattainment areas are set out in section 182(a)-(e) of Title I of the CAAA. EPA has issued a General Preamble describing EPA's preliminary views on how EPA intends to review SIP revisions submitted under Title I of the CAAA, including requirements for the preparation of the 1990 base year inventory [see 57 FR 13502; April 16, 1992 and 57 FR 18070; April 28, 1992]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's proposal and the supporting rationale. In today's rulemaking action on the Northern Virginia ozone 1990 base year emissions inventory, EPA is applying its interpretations taking into consideration the specific factual issues presented.

Those states containing ozone nonattainment areas classified as marginal to extreme are required under section 182(a)(1) of the CAAA to submit a final, comprehensive, accurate, and current inventory of actual ozone

season, weekday emissions from all sources within 2 years of enactment (November 15, 1992). This inventory is for calendar year 1990 and is denoted as the 1990 base year inventory. It includes both anthropogenic and biogenic sources of volatile organic compound (VOC), nitrogen oxides (NO_x), and carbon monoxide (CO). The inventory is to address actual VOC, NO_x, and CO emissions for the area during the peak ozone season, which is generally comprised of the summer months. All stationary point and area sources, as well as highway mobile sources within the nonattainment area, are to be included in the compilation. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16, 1992).

Criteria for Inventory Approval

There are general and specific components of an acceptable emission inventory. In general, the state must meet the minimum requirements for reporting each source category. Specifically, the source requirements are detailed below.

The Levels I and II review process is used to determine that all components of the base year inventory are present. The review also evaluates the level of supporting documentation provided by the state and assesses whether the emissions were developed according to current EPA guidance. The data quality is also evaluated.

The Level III review process is outlined here and consists of 10 points that the inventory must include. For a base year emission inventory to be acceptable it must pass all of the following acceptance criteria:

1. An approved Inventory Preparation Plan (IPP) must be provided and the Quality Assurance (QA) program contained in the IPP must be performed and its implementation documented.
2. Adequate documentation must be provided that enables the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory.
3. The point source inventory must be complete.
4. Point source emissions must be prepared or calculated according to the current EPA guidance.
5. The area source inventory must be complete.
6. The area source emissions must be prepared or calculated according to the current EPA guidance.
7. Biogenic emissions must be prepared according to current EPA guidance or another approved technique.

8. The method (e.g., HPMS or a network transportation planning model) used to develop VMT estimates must follow EPA guidance, which is detailed in the document, "Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources", Environmental Protection Agency, Office of Mobile Sources and Office of Air Quality Planning and Standards, Ann Arbor, Michigan, and Research Triangle Park, North Carolina, December 1992. The VMT development methods must be adequately described and documented in the inventory report.

9. The MOBILE model (or EMFAC model for California only) must be correctly used to produce emission factors for each of the vehicle classes.

10. Non-road mobile emissions must be prepared according to current EPA guidance for all of the source categories.

The base year emission inventory is approvable if it passes Levels I, II, and III of the review process. Detailed Levels I and II review procedures can be found in the following document: "Quality Review Guidelines for 1990 Base Year Emission Inventories", Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, July 27, 1992. Level III review procedures are specified in a memorandum from David Mobley and G. T. Helms to the Regions "1990 O₃/CO SIP Emission Inventory Level III Acceptance Criteria", October 7, 1992 and revised in a memorandum from John Seitz to the Regional Air Directors dated June 24, 1993.

State Submittal

On November 30, 1992, the Commonwealth of Virginia submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of 1990 base year emission inventories for Northern Virginia ozone nonattainment areas composed of Arlington County, Alexandria City, Fairfax County, Fairfax City, Loudon County, Falls Church City, Prince William County, Stafford County, Manassas City, and Manassas Park City. A revised version of the inventory was submitted to EPA on November 1, 1993 and again on April 3, 1995.

The SIP revisions were reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete on April 14, 1993 for the November 30, 1992 submittal, and June 5, 1995 for the April 3, 1995 submittal.

EPA Analysis

Based on EPA's level III review findings, Virginia has satisfied all of EPA's requirements for providing a comprehensive, accurate, and current inventory of actual emissions in the ozone nonattainment areas. A summary of EPA's level III findings is given below:

1. The Inventory Preparation Plan (IPP) and Quality Assurance (QA) program was approved by EPA and implemented on August 27, 1992.
2. The documentation was adequate for all emission types (stationary point, area, non-road mobile, on-road mobile and biogenic sources) for the reviewer to

determine the estimation procedures and data sources used to develop the inventory.

3. The point source inventory was found to be complete.
4. The point source emissions were estimated according to EPA guidance.
5. The area source inventory was found to be complete.
6. The area source emissions were estimated according to EPA guidance.
7. The biogenic source emissions were estimated using the Biogenic Emission Inventory System (PC-BEIS) in accordance with EPA guidance.
8. The method used to develop vehicle miles traveled (VMT) estimates

was adequately described and documented.

9. The mobile model was used correctly.

10. The non-road mobile emission estimates were correctly prepared in accordance with EPA guidance.

Thus, EPA has determined that Virginia's submittal meets the essential reporting and documentation requirements for an Emission Inventory.

A summary of the emission inventories broken down by point, area, biogenic, on-road, and non-road mobile sources are presented in the table below.

NORTHERN VIRGINIA OZONE SEASON EMISSIONS IN TONS PER DAY

NAA	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
VOC	75.966	8.277	111.76	28.49	147.38	371.873
NO _x	84.319	64.853	113.63	33.42	N/A	296.222
CO	49.559	3.609	909.13	364.98	N/A	1308.438

EPA has determined that the submittal made by the Commonwealth of Virginia satisfies the relevant requirements of the CAAA. EPA's detailed review of Virginia's Emission Inventories is contained in a Technical Support Document (TSD) which is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

EPA is approving this SIP revision 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 become effective November 15, 1996, unless, within 30 days of publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice 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. 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 15, 1996.

Final Action

EPA is approving revisions to the Virginia SIP to include 1990 Emission Inventories for the Northern Virginia ozone nonattainment areas. The inventories consist of point, area, non-road mobile, biogenics and on-road mobile source emissions for VOC, NO_x and CO. This revision was submitted to EPA by the Commonwealth of Virginia on November 30, 1992, as amended on November 1, 1993 and April 3, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision of any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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.

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 economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAAA 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 Regional 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 CAAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAAA forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state,

local, or tribal governments in the aggregate; or to 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 proposed/promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended 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 section 804(2) of the APA as amended.

Petitions for Judicial Review

Under section 307(b)(1) of the CAAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 15, 1996. Filing a petition for reconsideration by the Administrator of this 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 regarding the Northern Virginia ozone Emission Inventory 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, Carbon Monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, and SIP requirements.

Dated: August 21, 1996.
W. Michael McCabe,
Regional Administrator, Region III.

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. 7401-7671q.

Subpart VV—Virginia

2. Section 52.2425 is amended by adding paragraph (c) to read as follows:

§ 52.2425 1990 Base Year Emission Inventory.

* * * * *

(c) EPA approves as a revision to the Virginia State Implementation Plan the 1990 base year emission inventories for the Northern Virginia ozone nonattainment areas submitted by the Director, Virginia Department Environmental Quality, on November 30, 1992, November 1, 1993, and April 3, 1995. These submittals consist of the 1990 base year point, area, non-road mobile, biogenic and on-road mobile source emission inventories in each area for the following pollutants: volatile organic compounds (VOC), carbon monoxide (CO), and oxides of nitrogen (NO_x).

[FR Doc. 96-23262 Filed 9-13-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 261

[SW-FRL-5608-9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting a petition submitted by Bekaert Steel Corporation (Bekaert) of Rogers, Arkansas, to exclude from hazardous waste control (or delist) certain solid wastes generated at its facility. This action responds to Bekaert's petition to delist these wastes under those regulations that allow any person to petition the Administrator to modify or revoke any provision of certain hazardous waste regulations of the Code of Federal Regulations, and specifically provide generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis

from the hazardous waste lists. After careful analysis, EPA has concluded that the petitioned waste is not hazardous waste when disposed of in Subtitle D landfills. This exclusion applies only to wastewater treatment sludge generated from electroplating operations at Bekaert's Rogers, Arkansas, facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in Subtitle D landfills.

EFFECTIVE DATE: September 16, 1996.

ADDRESSES: The public docket for this final rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Library of the 12th floor from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665-6444 for appointments. The reference number for this docket is "F-96-ARDEL-BEKAERT" The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of \$0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general and technical information concerning this notice, contact David Vogler, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, (214) 665-7428.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations; and § 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the