

burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

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 January 13, 2004. 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 16, 2003.

Debra Jordan,

Acting Regional Administrator, Region IX.

■ 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 F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(294)(i)(A)(5) and (c)(316)(i)(C) to read as follows:

§ 52.220 Identification of plan.

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(c) * * *
 (294) * * *
 (i) * * *
 (A) * * *
 (5) Rule 4605 adopted on December 19, 1991 and amended on December 20, 2001.

* * * * *

(316) * * *
 (i) * * *

(C) San Diego County Air Pollution Control District.

(1) Rule 67.3 adopted on May 9, 1979 and amended on April 9, 2003.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE067-1041a; FRL-7586-2]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Revisions to Stage I and Stage II Vapor Recovery at Gasoline Dispensing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Delaware State Implementation Plan (SIP). The revisions allow existing gasoline dispensing facilities to continue using installed vapor recovery equipment and require new gasoline dispensing facilities to be equipped with the most recently approved system. EPA is proposing to approve these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on January 13, 2004 without further notice, unless EPA receives adverse written comment by December 15, 2003. 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: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit

comments, please follow the detailed instructions described in Part III of the Supplementary Information section. 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, 1301 Constitution Avenue, NW., Room B108, 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: Catherine L. Magliocchetti, at (215) 814-2174, or by e-mail at *magliocchetti.catherine@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On April 12, 2002, 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 revisions to the State's regulations pertaining to the Control of Volatile Organic Compound Emissions, in particular, Stage I and Stage II vapor recovery at gasoline dispensing stations. The SIP revision went to public hearing on September 24, 2001 and became effective on January 11, 2002.

II. Summary of SIP Revision

The 1990 Clean Air Act Amendments (CAAA) required states to develop regulations requiring owners or operators of certain gasoline dispensing facilities to install systems for recovery of gasoline vapor emissions. These requirements are also known as Stage I and Stage II Vapor Recovery and are required in areas classified as moderate and above ozone nonattainment. Stage I is the control of gasoline vapors when dispensing gasoline from tankers into gasoline storage tanks. Stage II is the control of gasoline vapors when dispensing gasoline into vehicle fuel tanks from the gasoline storage tanks.

The DNREC adopted definitions pertaining to the Control of Volatile Organic Compound Emissions (under Regulation 24, section 2), Stage I regulations (under Regulation 24, section 26) and Stage II regulations (under Regulation 24, section 36) on January 11, 1993 which became immediately effective. These regulations were submitted to EPA as a SIP revision on January 11, 1993. The definitions

and the Stage I regulations were approved as a final rule by EPA on May 3, 1995 (60 FR 21707), and the Stage II regulations were approved as a final rule by EPA on June 10, 1994 (59 FR 29956).

The revisions to Regulation 24, sections 2, 26, and 36, submitted to EPA and the subject of this rulemaking establish:

(a) The requirements for using improved vapor recovery adaptors and connections,

(b) the requirements for annual vapor recovery testing; and,

(c) the minimum requirements applicable to compliance testing companies that perform compliance testing in the State of Delaware. These revisions also adopt by reference, the California Air Resources Board (CARB) executive orders for approved Stage II Vapor Recovery Systems.

EPA has reviewed the revisions to Regulation 24, sections 2, 26, and 36 and has determined that the revisions continue to meet the CAAA requirements for states to have approved Stage I and Stage II Vapor Recovery Systems. In addition, the revisions, in general, strengthen the SIP by providing additional clarification of certain provisions, requiring that records be maintained onsite and by incorporating by reference appropriate test methods for vapor recovery systems.

III. Final Action

EPA is approving the revisions to Delaware's regulations that control VOC emissions, in particular those regulations related to Stage I and Stage II vapor recovery systems, submitted to EPA on April 12, 2002. EPA is publishing this 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 rule will be effective on January 13, 2004 without further notice unless EPA receives adverse comment by December 15, 2003. 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. Please note that if EPA receives adverse comment on an

amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, DE067-1041, in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to morris.makeba@epa.gov, attention DE067-1041. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to <http://www.regulations.gov>, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which

means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please

consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

IV. Statutory and Executive Order Reviews

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. 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 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 (Pub. L. 104–4). This rule also does not have tribal implications because it will 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). This action also does not have Federalism implications because it does 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). This action 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 “Protection of Children from Environmental Health Risks and Safety Risks” (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. 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, Revisions to Delaware’s Stage I and Stage II vapor recovery regulations, must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2004. 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 5, 2003.

James W. Newsom,

Acting 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 the entries under Regulation 24 for sections 2, 26 and 36 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	Explanation
Regulation 24				Control of Volatile Organic Compound Emissions
Section 2	Definitions	January 11, 2002	November 14, 2003, [Federal Register page citation].	
Section 26	Gasoline Dispensing Facility Stage I Vapor Recovery.	January 11, 2002	November 14, 2003, [Federal Register page citation].	
Section 36	Stage II Vapor Recovery ..	January 11, 2002	November 14, 2003, [Federal Register page citation].	

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX-154-1-7590; FRL-7585-8]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Regulations for Permits by Rule, Control of Air Pollution by Permits for New Construction or Modification, and Federal Operating Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action to approve revisions of the Texas State Implementation Plan (SIP). The plan revisions include changes that Texas adopted to address deficiencies that were identified on January 7, 2002, and other changes adopted by Texas to regulations that include provisions for Permits by Rule (PBR) and Standard Permits. This includes revisions that the Texas Commission on Environmental Quality (TCEQ) submitted to EPA on April 29, 1994; August 17, 1994; September 20, 1995; April 19, 1996; May 21, 1997; July 22, 1998; October 25, 1999; January 3, 2000; September 11, 2000; July 25, 2001; and December 9, 2002. This action is being taken under section 110 of the Federal Clean Air Act (the Act, or CAA).

EFFECTIVE DATE: This rule is effective on December 15, 2003.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should schedule an appointment with the appropriate office, if possible, two working days in advance of the visit.

Environmental Protection Agency, Region 6, Air Permits Section (6PD-R), 1445 Ross Avenue, Dallas, Texas 75202-2733.

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Stanley M. Spruiell of the Air Permits Section at (214) 665-7212, or spruiell.stanley@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” or “our” means EPA.

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I. What Is Being Addressed in This Document?

In today’s action we are approving into the Texas SIP revisions to Chapter 106—Permits by Rule, Chapter 116—

Control of Air Pollution by Permits for New Construction or Modification, and Chapter 122—Federal Operating Permits. Some of these revisions were made to correct certain deficiencies identified by EPA in a Notice of Deficiency (NOD) for Texas’ Title V Operating Permit Program. The EPA issued the NOD on January 7, 2002 (67 FR 732), under its authority at 40 CFR 70.10(b). The NOD was based upon EPA’s finding that several State requirements for the Title V operating permits program did not meet the minimum Federal requirements of 40 CFR part 70 and the Act. Texas adopted rule revisions to address the potential to emit (PTE) requirements identified in the January 7, 2002, NOD. Texas submitted parts of these and other rule changes as revisions to its SIP on December 9, 2002, including revisions to section 106.6—Registration of Emissions, section 116.115—General and Special Conditions, section 116.611—Registration to Use a Standard Permit, and section 122.122—Potential to Emit.

The December 9, 2002, submittal also includes revisions to Texas’ Title V Operating Permits Program. We will address these and other regulations which revise Texas’ Operating Permits Program, in a separate **Federal Register** action.

The December 9, 2002, SIP submittal includes revisions to Texas’ regulations for PBR and Texas’ regulations for Standard Permits. The EPA is also approving earlier SIP submittals which include the adoption of Texas’ programs for PBR and Standard Permits under Chapter 106—Permits by Rule; Chapter 116, Subchapter F—Standard Permits,