

PART 5—MARINE INVESTIGATION REGULATIONS—PERSONNEL ACTION

2. The authority citation for 46 CFR Part 5 continues to read as follows:

Authority: 46 U.S.C. 2103, 7101, 7301, 7701; 49 CFR 1.46.

§ 5.1 [Removed]

3. Remove § 5.1.

§ 5.3 [Amended]

4. In § 5.3 remove the words “and procedures.”

§ 5.11 [Removed]

5. Remove § 5.11.

§ 5.13 [Removed]

6. Remove § 5.13.

§ 5.23 [Removed]

7. Remove § 5.23.

§ 5.25 [Removed]

8. Remove § 5.25.

§ 5.33 [Amended]

9. In § 5.33 remove the words “the charge shall be violation of law or violation of regulation. The specification shall”, and add, in their place, the words “the complaint in any case of violation of law or violation of regulation shall”.

§ 5.35 [Amended]

10. In § 5.35 remove the words “the charge will be” from the first sentence and add, in their place, the words “the complaint will allege”; and in the first and second sentences remove the words “circumstances. The specification” and add, in their place, the words “circumstances and”.

§ 5.53 [Removed]

11. Remove § 5.53.

§ 5.55 [Amended]

12. In the section heading for § 5.55 remove the words “charges and specifications” and add, in their place, the words “a complaint”; and in paragraph (a) remove the words “various charges and specifications” and add, in their place, the words “a complaint”.

§ 5.63 [Removed]

13. Remove § 5.63.

§ 5.65 [Removed]

13a. Remove § 5.65.

§ 5.105 [Amended]

14. In § 5.105(a) remove the words “Prefer charges”, and add, in their place, “Issue complaint”.

15. Revise § 5.107 to read as follows:

§ 5.107 Service of complaints.

(a) When the investigating officer prefers charges, he or she shall prepare and serve a complaint in accordance with 33 CFR part 20.

(b) When the investigating officer serves the complaint, he or she shall also advise the respondent—

(1) Of the nature of suspension and revocation proceedings and their possible results;

(2) Of the right to be represented at the hearing by another person, who may, but need not, be a lawyer;

(3) Of the right to obtain witnesses, records, and other evidence by subpoena; and

(4) That failure or refusal to answer the complaint or to appear at the time, date, and place specified for the hearing may result in a finding of default, which will constitute an admission of the facts alleged in the complaint and the waiver of his or her right to a hearing.

16. Revise § 5.305 to read as follows:

§ 5.305 Quashing a subpoena.

Any person subpoenaed to appear to produce evidence at a hearing may request that the subpoena be quashed or modified using the procedures in 33 CFR 20.609.

17. Revise § 5.501 to read as follows:

§ 5.501 General.

A hearing concerning the suspension or revocation of a merchant mariner's license, certificate of registry, or document is a formal adjudication under the Administrative Procedure Act (APA) [5 U.S.C. 551, *et seq.*]. It is presided over by, and conducted under the exclusive control of, an Administrative Law Judge in accordance with applicable requirements in the APA, the rules in this part, and the rules of administrative practice at 33 CFR part 20. The Judge shall regulate and conduct the hearing so as to bring out all the relevant and material facts and to ensure a fair and impartial hearing.

§§ 5.503 through 5.519 [Removed]

18. Remove §§ 5.503 through 5.519.

§§ 5.523 through 5.565 [Removed]

19. Remove §§ 5.523 through 5.565.

§§ 5.571 through 5.577 [Removed]

20. Remove §§ 5.571 through 5.577.

§§ 5.601 through 5.607 [Removed]

21. Remove and reserve subpart I, consisting of §§ 5.601 through 5.607.

22. Revise § 5.701 to read as follows:

§ 5.701 Appeals in general.

A party may appeal the decision of an Administrative Law Judge under the procedures in subpart J of 33 CFR part

20. A party may appeal only the following issues:

(a) Whether each finding of fact rests on substantial evidence.

(b) Whether each conclusion of law accords with applicable law, precedent, and public policy.

(c) Whether the Judge committed any abuses of discretion.

(d) The Judge's denial of a motion for his or her disqualification.

§§ 5.703 through 5.705 [Removed]

23. Remove §§ 5.703 through 5.705.

§ 5.709 [Removed]

24. Remove § 5.709.

§ 5.711 [Removed]

25. Remove § 5.711.

Dated: March 29, 1998.

P.M. Blayney,

Chief Counsel.

[FR Doc. 98–8830 Filed 4–3–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[DE–031–1011; FRL–5991–4]

Approval and Promulgation of Air Quality Implementation Plans; Delaware—Minor New Source Review and federally Enforceable State Operating Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing limited approval of a State Implementation Plan (SIP) revision submitted by the State of Delaware pursuant to requirements of the Clean Air Act (CAA). This SIP revision amends Delaware's minor New Source Review (NSR) permit program. It also creates a federally Enforceable State Operating Permits Program (FESOPP) which provides a mechanism for the terms and conditions of a permit issued pursuant to Regulation No. 2 to be made “federally enforceable” for purposes of limiting a source's potential to emit (PTE) a regulated air pollutant. EPA is proposing limited approval of changes to the minor NSR program, because while the SIP revision submitted by Delaware strengthens the SIP, it does not fully meet the current Federal requirements for public participation. EPA is proposing full approval of the FESOPP.

DATES: Comments must be received on or before May 6, 1998.

ADDRESSES: Comments may be mailed to Ms. MaryBeth Bray, Engineer, Permit Programs Section, Air Protection Division (3AP11), U.S. 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, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Ms. MaryBeth Bray, (215) 566-2632, at the EPA Region III address.

SUPPLEMENTARY INFORMATION:

I. Background

On June 4, 1997, the State of Delaware submitted a revision of its SIP for Regulation No. 2—PERMITS. This revision amends the State's minor NSR program and creates a FESOPP which provides a mechanism for the terms and conditions of a permit issued pursuant to Regulation No. 2 to be made "federally enforceable" for purposes of limiting a source's PTE a regulated air pollutant.

A. Minor New Source Review

Section 110(a)(2)(C) of the Clean Air Act (CAA) requires every SIP to "include a program for the . . . regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved." EPA's regulations now codified at 40 CFR 51.160–51.164 have since the early 1970s required a NSR program be included in every SIP. This requirement is separate from the requirement also set forth in section 110(a)(2)(C) that a State's SIP have "major" NSR permitting programs under part C for the prevention of significant deterioration of air quality (PSD) and part D for nonattainment area permitting (nonattainment NSR) of title I.

B. Federally Enforceable State Operating Permit Programs

Many stationary source requirements of the CAA apply only to "major" sources. Major sources are those sources whose emissions of air pollutants exceed applicability threshold emissions levels specified in various portions of the CAA. To determine whether a source is major, the CAA

focuses not only on a source's actual emissions, but also on its potential emissions (i.e., "PTE"). Thus, a source that has maintained actual emissions at levels below the major source threshold could still be subject to major source requirements if it has the PTE major amounts of air pollutants. In situations where unrestricted operation of a source would result in a PTE above major source levels, one way such a source may legally avoid program requirements is by accepting federally-enforceable permit conditions which limit its PTE below the applicable major source thresholds. As a result, the source becomes what is commonly referred to as a "synthetic minor" source.

¹Federally-enforceable permit conditions, if violated, are subject to enforcement by EPA and by citizens in addition to the state or local agency. On June 28, 1989, EPA published guidance on the basic requirements for EPA approval of (non-title V) federally enforceable state operating permit programs commonly referred to as FESOPPs. See 54 FR 27274. Permits issued pursuant to such programs may be used to establish federally enforceable limits on a source's potential emissions to create "synthetic minor" sources.

II. Summary of Delaware's SIP Revisions

A. Minor NSR

In order to evaluate the approvability of Delaware's submittal as a SIP revision, the changes from the current SIP-approved version of Regulation No. 2 must meet all applicable requirements (procedural and substantive) of 40 CFR part 51 and the CAA. EPA's requirements for SIP approval applicable to minor NSR permitting programs are established in 40 CFR part 51, subpart I—Review of New Sources and Modifications, §§ 51.160. through 51.164. Other sections of subpart I, applicable only to new sources and modifications which are major, do not apply and are thus not addressed in this

¹ Several other mechanisms for major sources (including major sources of hazardous air pollutants) to become "synthetic minors" and legally avoid major source program requirements exist. For more information, refer to the memorandums entitled "Extension of January 25, 1995 Potential to Emit Transition Policy (August 28, 1996), "Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit" (January 22, 1996), "Options for Limiting the Potential to Emit (PTE) of a Stationary Source under Section 112 and Title V of the Clean Air Act (Act)" (January 25, 1995), and "Approaches to Creating Federally-Enforceable Emissions Limits" (November 3, 1993).

analysis. ²The docket for this rulemaking action contains a Technical Support Document (TSD) prepared by EPA which more fully details the evaluation it performed to determine that Delaware's SIP revision meets the requirements of 40 CFR 51.160–51.164. The TSD is available, upon request, from the EPA Region listed in the **Addresses** section of this document.

Overall, the revised Regulation No. 2 is a strengthening of Delaware's current SIP-approved minor NSR program.

With the exception of certain public participation requirements, as described below, EPA has determined that Delaware's revised Regulation No. 2 fully meets the requirements of 40 CFR 51.160–51.164 for minor NSR programs.

Public Participation—The requirements for public participation of minor NSR programs are set forth in 40 CFR 51.161 (Public Availability of Information). Among the requirements for public participation are the following:

- (a) Availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of the permitting authority's analysis of the effect on air quality;
- (b) A 30-day period for submittal of public comment; and
- (c) A notice by prominent advertisement in the area affected of the location of the source information and the agency's analysis of the effect on air quality.

Section 12.2 of Delaware's Regulation No. 2 requires the Delaware Department of Natural Resources and Environmental Control (Department) to make available in at least one location in the state a public file containing a copy of all materials submitted by the applicant (except those granted confidential treatment). It also requires the Department to place an advertisement in a newspaper of general circulation in the county in which the source is located and in a daily newspaper of general circulation throughout the state. These notices must include:

- (1) The fact that the application has been received and the facility's name and location;
- (2) A brief description of the nature of the application, including the activities and emissions involved; and
- (3) A contact person for the Department, the place where the permit file can be inspected, and procedures to request a hearing.

² Delaware has a separate rule to meet the requirements of subpart I applicable to major sources, namely, Regulation No. 25—"Requirements for Preconstruction Review".

The Department must also send the above information by mail to anyone who has requested to be placed on a mailing list. The Department must hold a public hearing on the application if it receives a meritorious request to do so within 15 days of the public notice, or if the Department deems it to be in the best interest of the State to do so. Within 20 days of a public hearing, the Department must issue a public notice announcing the date, time and location of the hearing. The Department must consider all comments submitted by the applicant and the public in reaching its final determination.

The current SIP-approved version of Regulation No. 2 does not contain any provisions for public participation of minor NSR permits. However, prior to the revision of Regulation No. 2, EPA understands that Delaware followed the public participation provisions of its statute, 7 Del. C., Chapter 60, Section 6004, which is not part of the SIP. The statute provides that the public shall have a minimum of 15 days to request a public hearing, unless Federal law requires a longer time, in which case the longer time shall be stated. However, the revised Regulation No. 2 defers to the statutory minimum 15-day public comment period. Since the current SIP-approved version of Regulation No. 2 does not provide any public participation procedures, the revised Regulation No. 2 is a strengthening of the SIP, even though it does not fully meet the public comment requirements of 40 CFR 51.161 which specify a 30-day public comment period.

On August 31, 1995, EPA proposed revisions to 40 CFR 51.161 to provide that, except for certain specified activities (which would still be required to have a 30-day comment period), states may vary the procedures for, and timing of, public participation in light of the environmental significance of the activity. See 60 FR 45564. EPA is in the process of finalizing this rulemaking action. It is, therefore, possible that Delaware's revised Regulation No. 2, which provides for a minimum 15-day public comment period, would be consistent with EPA's final revisions to 40 CFR 51.161, at least for some types of minor NSR activities.

EPA has determined that the revised Regulation No. 2 overall is a strengthening of the current minor NSR program in Delaware's SIP. The revised Regulation No. 2 meets the criteria of 40 CFR 51.160–51.164, with the exception of the requirements of 40 CFR 51.161(b)(2), which requires a 30-day period for submittal of public comment. As explained above, Delaware's revised Regulation No. 2 strengthens the SIP by

specifying public participation procedures and by providing a minimum 15-day public comment period (i.e., time period provided for the public to request a public hearing). Therefore, EPA believes that Delaware's revised minor NSR regulation warrants limited approval.

Under a limited approval, if EPA's future final rulemaking action for revisions to 40 CFR 51.161 is consistent with Delaware's public participation requirements under Regulation No. 2, the limited approval would convert to a full approval. However, if the final revisions to 40 CFR 51.161 are not consistent, but more stringent than, Delaware's Regulation No. 2, EPA would make a SIP call for Delaware to amend its minor NSR public participation procedures in accordance with EPA's final regulatory changes to 40 CFR 51.161.

B. Federally Enforceable State Operating Permits Program

EPA's Federal enforceability criteria applicable to state operating permit program (non-title V) SIP submittals are discussed in a June 28, 1989 **Federal Register** (54 FR 27274). In the June 28, 1989 notice, EPA amended the definition of "federally enforceable" to clarify that terms and conditions contained in state-issued operating permits are federally enforceable for purposes of limiting a source's PTE, provided that the state's operating permits program is approved into the SIP under section 110 of the CAA as meeting certain conditions, and provided that the permit conforms to the requirements of the approved program. The conditions for EPA approval discussed in the June 28, 1989 notice establish five criteria for approving a state operating permit program. See 54 FR 27274–27286. In summary, the criteria require state programs to:

- (a) Be approved into the SIP;
- (b) Impose legal obligations to conform to the permit limitations;
- (c) Provide for limits that are enforceable as a practical matter;
- (d) Issue permits through a process that provides for review and an opportunity for comment by the public and by EPA; and
- (e) Ensure that there will be no relaxation of otherwise applicable Federal requirements.

The TSD prepared by EPA for this rulemaking action describes each of the criteria for approval of a state's program for the issuance of federally enforceable operating permits for purposes of limiting a source's PTE and how

Delaware's SIP submittal satisfies those criteria.

The revised Regulation No. 2 establishes a process whereby sources can voluntarily seek to identify terms and conditions of an operating permit as federally-enforceable. EPA interprets this to mean that limits on PTE would be recognized for purposes of avoiding the applicability of major source requirements. Such terms and conditions would be specifically designated as "federally enforceable" within each permit. Regulation No. 2 establishes a separate public participation process, including a 30-day public comment period, for sources that opt to make terms and conditions federally-enforceable.

As explained above, Regulation No. 2 also implements Delaware's minor NSR program, as required under the CAA and 40 CFR 51.160–51.164. In this proposed rulemaking notice, EPA is also taking action on revisions to Delaware's minor NSR program. Since construction permits under Regulation No. 2 are converted into operating permits after the source completes construction, any permit terms designed to meet minor NSR requirements are transferred to a Regulation No. 2 operating permit. Because Regulation No. 2 operating permits become the permits in which the minor NSR applicable requirements reside, EPA considers the terms and conditions of Regulation No. 2 operating permits to be federally-enforceable (as well as Regulation No. 2 construction permits). In other words, EPA views Delaware's minor NSR program as being comprised of Regulation No. 2 as a whole—including both construction and operating permits issued under Regulation No. 2. However, although Regulation No. 2 operating permits are considered federally-enforceable, EPA currently does not recognize PTE limits contained in those permits as legitimate limits for sources wishing to avoid major source applicability, because the existing SIP-approved version of Regulation No. 2 does not meet EPA's minimum criteria for establishing PTE limits, including practical enforceability and public participation. (See 54 FR 27274; June 28, 1989). Today's action proposes to approve the revised Regulation No. 2 because it now does meet EPA's criteria for establishing federally enforceable PTE limits, so that EPA will recognize a source's limits on PTE for avoiding major source applicability, so long as the individual permit issued under the approved program meets those same requirements. EPA reserves the right to deem any individual permit as not

"federally enforceable" for purposes of limiting PTE (and, thus, avoiding major source requirements) if a permit contains terms and conditions which are not quantifiable or practically enforceable in accordance with the revised version of Regulation No. 2 proposed for SIP approval and the June 28, 1989 criteria.

EPA has determined that the Federal enforceability "opt-in" process established in revised Regulation No. 2 (whereby sources can request to have certain permit terms and conditions be designated as federally enforceable for purposes of limiting PTE) fully meets the requirements of EPA's June 28, 1989 criteria for federally enforceable state operating permits programs. EPA proposes full approval of the Regulation No. 2 provisions as meeting the June 28, 1989 criteria for a FESOPP.

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.

III. Proposed Action

EPA is proposing limited approval of revisions to the Delaware minor NSR program submitted on June 4, 1997, because the revised Regulation No. 2 strengthens the SIP, but does not fully meet the current requirements for public participation of minor NSR programs under 40 CFR 51.161. EPA is proposing full approval of the provisions of Regulation No. 2 establishing a FESOPP which provides a mechanism for sources to request that certain terms and conditions of Regulation No. 2 permits be designated as federally-enforceable for purposes of limiting the PTE regulated air pollutants. Final action by EPA to approve Delaware's FESOPP would confer Federal enforceability status, and EPA would recognize limits on PTE for sources to avoid major source requirements, to existing permits which are issued in accordance with the revised Regulation No. 2 and the June 28, 1989 criteria, including permits which have been issued prior to EPA's final action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state 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.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. 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 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 sections 110 and 301, and subchapter I, part D of the CAA 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, EPA 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 CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

C. 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 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 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 requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Regional Administrator's decision to approve or disapprove this revision to Delaware Regulation 2 will be based on whether it meets the requirements of section 110(a)(2)(a)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, New source review, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7671q.

Dated: March 25, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 98-8960 Filed 4-3-98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR 372

[OPPTS-400128; FRL-5783-1]

Emergency Planning and Community Right-to-Know; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: EPA will hold a public meeting regarding the Agency's proposal to add dioxins and dioxin-like compounds to the list of chemicals for which reporting is required under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), specifically to discuss potential impact on small entities. This meeting will also cover aspects of ongoing considerations by the Agency of two issues related to listing of dioxins and dioxin-like compounds: possible listing of other persistent bioaccumulative toxic (PBTs) chemicals under section 313 of EPCRA and possible lowering of EPCRA section 313 reporting thresholds for persistent bioaccumulative chemicals.

DATES: The meeting will take place on Friday, May 1, 1998, from 9 a.m. to 5 p.m. The meeting will continue until all registered participants have spoken.