Dated: February 8, 1998.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–4638 Filed 2–23–98; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–5966–4]

Control of Air Pollution; Removal and Modification of Obsolete, Superfluous or Burdensome Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) published a direct final rule and an associated notice of proposed rulemaking of the same title on April 11, 1996 (61 FR 16050, 61 FR 16068). Both actions were to delete or modify certain rules previously promulgated under the Clean Air Act in the Code of Federal Regulations (CFR), 40 CFR parts 51 and 52, clarify their legal status and remove unnecessary, obsolete or burdensome regulations. EPA received adverse comments on the deletion of rules 40 CFR 51.100(o), 40 CFR 51.101, 40 CFR 51.110(g) and 40 CFR 51.213 as published in both the direct final rule and associated notice of proposed rulemaking. In response to those comments, EPA withdrew those sections from the direct final rule on June 14, 1996 (61 FR 30162). In today's action, EPA is finalizing the notice of proposed rulemaking with respect to these sections. Separate from the notice of proposed rulemaking action, EPA is also removing sections 40 CFR 51.103(a)(1) and (a)(2), as they were superseded by the Clean Air Act Amendments of 1990.

DATES: This rule will be in effect on March 26, 1998.

FOR FURTHER INFORMATION CONTACT: Maureen Delaney, Office of Air and Radiation, Office of Policy Analysis and Review (202) 260–7431.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 4, 1995, the President directed all Federal agencies and departments to conduct a comprehensive review of the regulations they administer, to identify those rules that are obsolete or unduly burdensome. EPA conducted a review of such rules, including rules issued under the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*). On June 29, 1995, EPA deleted more than 200 Clean Air Act rules that were no longer legally in effect under the amended Clean Air Act. 60 FR 33915 (June 29, 1995).

On April 11, 1996, EPA simultaneously published a direct final notice of rulemaking and a notice of proposed rulemaking consisting of EPA's second phase of its revision effort. 61 FR 106050 (April 11, 1996). Where EPA determined that a regulation did not add substantial value to what is already contained in the law, or where there are alternative means to accomplish the regulatory end without restricting EPA's ability to respond to factual peculiarities in a timely and appropriate way, EPA determined that the regulation should be deleted. The rulemaking specified that EPA would withdraw any portions of the direct final rule that were the subject of filed adverse or critical comments. EPA received adverse comments on the revisions to 40 CFR 51.100(o), 40 CFR 51.101, 40 CFR 51.110(g) and 40 CFR 51.213 as published in the direct final rule and associated notice of proposed rulemaking within 30 days of publication in the **Federal Register** of the proposed rule and withdrew those portions of the direct final rule on June 14, 1996 (61 FR 30162). This final rule summarizes the comments received on these CFR sections and EPA's responses.

Removal of any rules from the CFR is not intended to affect the status of any civil or criminal actions that were initiated prior to the publication of this rule, or which may be initiated in the future to readdress violations of the rules that occurred when the rules were still legally in effect. Removal of provisions on the ground that they reiterate or are redundant of statutory provisions does not affect any obligation or requirement to comply with such statutory provision.

II. Deletion and Modification of Unnecessary or Burdensome Rules

40 CFR 51.110(g)

Section 51.110(g) states that EPA encourages states, in developing their attainment plans, to identify alternative control strategies and the costs and benefits thereof. EPA proposed to delete this provision and rely on Clean Air Act sections 110(a)(2)(A) and 101(a)(3), as well as *Train* v. *NRDC*, 421 U.S. 60, 78–79 (1975) and *Union Electric Co.* v. *EPA*, 427 U.S. 246, 256–57 (1976), which make clear that a state is free to consider a broad range of factors in constructing its attainment plans.

Commenters suggest that without section 51.110(g) states may be hesitant to submit an implementation plan with provisions outside of the specific requirements of the CFR or Clean Air Act. As stated previously in the notice of proposed rulemaking, EPA agrees with the policies embodied in section 51.110(g). For that reason, EPA has decided to retain the provision in the CFR.

40 CFR 51.101 Stipulations

Section 51.101 states that nothing in part 51 should be construed to encourage states: to adopt implementation plans that do not protect the environment; to adopt plans that do not take into consideration cost-effectiveness and social and economic impact; to limit appropriate techniques for estimating air quality or demonstrating adequacy of control strategies; and otherwise to limit state flexibility to adopt appropriate control strategies or to attain and maintain air quality better than that required by a national standard. EPA proposed to delete this provision and rely on Clean Air Act sections 110(a)(2)(A) and 101(a)(3), as well as *Train* v. *NRDC*, 421 U.S. 60, 78–79 (1975) and *Union Electric Co.* v. *EPA*, 427 U.S. 246, 256–57 (1976), which make clear that a state is free to consider a broad range of factors in constructing its attainment plans.

Commenters suggested that section 51.101 should remain in the CFR because the flexibility available to States may not be clear if this section were removed. As stated previously in the notice of proposed rulemaking, EPA agrees with the policies embodied in section 51.101. For that reason, EPA has decided to retain the provision in the CFR.

40 CFR 51.100(o)

Section 51.100(o) defines reasonably available control technology (''RACT'') for the purpose of implementing secondary national ambient air quality standards (''NAAQS''). This definition is only used in the establishment of secondary NAAQS attainment dates and in the evaluation of State requests for extensions of state implementation plan submittals for secondary NAAQS.

Section 51.110(c) requires plans to provide for the attainment of a secondary standard within a reasonable time after the date of the Administrator's approval of the plan, and for maintenance of the standard after it has been attained.

Under the Clean Air Act of 1977, the test for approval of the attainment date in a SIP implementing a secondary

NAAQS was contained in section 110(a)(2)(A)(ii). This required that the SIP attain the secondary NAAQS within a ''reasonable time.'' Under the CAA of 1990, this was changed. The new test for approval of a secondary NAAQS attainment date is contained in section 172(a)(2)(B) and requires attainment ''as expeditiously as practicable after the date such area was designated nonattainment.''

As a result of this statutory change, EPA proposed to delete section 51.110(c) from the CFR to eliminate any possible confusion regarding the appropriate tests for approval of a secondary NAAQS attainment date. Because the sole purpose of the section 51.100(o) definition of RACT was to aid in EPA's evaluation of the approvability of secondary NAAQS attainment dates or requests for extension of SIP submittal dates and the 1990 Amendments changed the test governing the evaluation of secondary NAAQS attainment dates, EPA stated that it believed the definition was no longer necessary and proposed deletion. The EPA then stated its belief that evaluation of the approvability of the expeditiousness of attainment dates for secondary nonattainment areas requires a case-by-case analysis of the nature and extent of the problem. The EPA stated that it did not believe that the availability and effectiveness of RACT should be a determinative factor in implementing secondary NAAQS. In addition, EPA maintained that the deletion of section 51.100(o) would eliminate potential confusion, since for other purposes the Agency generally interprets the statute's RACT requirements consistently with the definition of RACT contained in a December 9, 1976, memorandum from R. Strelow to Regional Administrators, Regions I–X, entitled ''Guidance to Determining Acceptability of SIP Regulations in Nonattainment Areas.''

Commenters suggest that the definition of RACT in section 51.100(o) is the only regulatory definition that states that the availability and effectiveness of RACT should be a determinative factor in implementing secondary NAAQS. EPA does not agree that RACT as defined in section 51.100(o) should be the determinative factor in setting attainment dates for the secondary NAAQS under the new statutory test for setting those dates. However, EPA sees no compelling need to delete the definition of RACT for purposes of guiding the decisions under 40 CFR 51.341 on whether to grant extensions for submitting SIPs to attain the secondary NAAQS. For these reasons, section 51.100(o) will remain in the CFR, but for this latter purpose only. The reference to section 51.110(c)(2) will be deleted since that section has previously been deleted from the CFR.

40 CFR 51.103(a)(1), (a)(2)

Sections 51.103(a)(1) and (a)(2) require that a state make an official implementation plan submission to EPA for any primary national ambient air quality standard or secondary standard, or revision, within nine months after promulgation of such standard or revision.

Prior to the Clean Air Act Amendments of 1990, section 110(a)(1) required submission of state implementation plans within nine months after promulgation of a national primary ambient air quality standard. The Amendments of 1990 changed section 110(a)(1) to give states ''3 years (or such shorter period as the Administrator may prescribe)'' from promulgation. At this time, EPA sees no basis for retaining the nine month deadline, absent a new finding that nine months is reasonable for all purposes. Accordingly, EPA is removing the last sentence in section 51.103 and is deleting sections 51.103(a)(1) and (a)(2). EPA has determined that there is no need to promulgate another regulation stating the three year deadline since a regulation would not add substantial value to what is already contained in the law. EPA is relying on the ''good cause'' exception to the notice requirements of the Administrative Procedure Act (section 553(b)(3)(B)) because EPA believes it is unnecessary to provide an opportunity for comment since the deletion merely implements the changes Congress enacted in 1990.

40 CFR 51.213 Transportation Control Measure

Section 51.213(a) provides that plans must contain procedures for obtaining and maintaining data on actual emissions reductions achieved as a result of implementation of transportation control measures. Section 51.213(b) provides that, for measures based on traffic flow changes or reductions in vehicle use, data must include observed changes in vehicle miles traveled and average speeds. Section 51.213(c) requires data to be kept so as to facilitate comparison of the planned and actual efficacy of transportation control measures.

Section 51.213(a–c) are generally addressed in section III, SIP requirements, of the General Preamble for Title I of the 1990 CAA. The procedural elements of the SIP submittals are specifically required by sections 182 and 187 of the CAA. The requirements are incorporated in Agency regulation and guidance on each required SIP submittal that is related to transportation control. For example, guidance documents such as ''Transportation Control Measure: State Implementation Plan Guidance (September 1990), ''Section 187 VMT Forecasting and Tracking Guidance'' (January 1992), and ''Transportation Control Measure Information Documents'' (March 1992), discuss the same requirements that are set forth in section 51.213. Therefore, EPA believed this section was redundant of other EPA guidance regarding transportation control measures, and proposed to delete it from the CFR.

Commenters suggest that even though guidance documents provide more detail than the rules implementing its provisions, rules, as opposed to guidance, are binding. EPA agrees that a binding rule on this subject would be useful, and section 51.213 will remain in the CFR.

III. Final Action

EPA determines that the above-referenced rules should be deleted or modified at this time. This action will become effective March 26, 1998.

IV. Analyses Under E.O. 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, and the Paperwork Reduction Act

Because the withdrawal of these rules from the CFR merely withdraws obsolete, duplicative, or superfluous requirements, this action is not a ''significant'' regulatory action within the meaning of Executive Order 12866.

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. Today's determination does not create any new requirements, but deletes or modifies existing requirements which are obsolete, duplicative, superfluous, unnecessary, or otherwise unduly burdensome. I therefore certify that it does not have any significant impact on any small entities affected.

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State,

local, or tribal governments in the aggregate.

EPA's final action here does not impose upon the states any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. No additional costs to State, local, or tribal governments, or to the private sector, result from this action, which deletes or eases the indicated requirements. Thus, EPA has determined that this final action does not include a 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.

Finally, since EPA here is merely removing or revising superfluous requirements, their deletion from the CFR does not affect requirements under the Paperwork Reduction Act.

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 April 27, 1998.

V. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added 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 Controller General of the General Accounting Office prior to the publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 51

Environmental protection, Air pollution control.

Dated: February 6, 1998.

Carol M. Browner,

Administrator.

Part 51, Chapter I, Title 40 of Code of Federal Regulations is amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671 *et seq.*

Subpart F—Procedural Requirements

2. Section 51.100(o) (3) is revised to read as follows:

§ 51.100 Definitions.

* * * * *

(o) * * *

(3) Alternative means of providing for attainment and maintenance of such standard. (This provision defines RACT for the purposes of § 51.341(b) only.)

* * * * *

§ 51.103 [Amended]

3. Section 51.103 is amended by removing the last sentence in paragraph (a), and removing paragraphs (a)(1) and (a)(2).

[FR Doc. 98–3884 Filed 2–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5969–7]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Notice of Acceptability.

SUMMARY: This document expands the list of acceptable substitutes for ozone-depleting substances (ODS) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program.

EFFECTIVE DATE: February 24, 1998.

ADDRESSES: Information relevant to this document is contained in Air Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Telephone: (202) 260–7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Carol Weisner at (202) 564–9193 or fax (202) 565–2095, U.S. EPA, Stratospheric Protection Division, 401 M Street, S.W., Mail Code 6205J, Washington, D.C. 20460; EPA Stratospheric Ozone Protection Hotline at (800) 296–1996; EPA World Wide Web Site (http://www.epa.gov/ozone/title6/snap).

SUPPLEMENTARY INFORMATION:

I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.
- *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional 6 months.
- *90-day Notification*—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or *existing* chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.
- *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.
- *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the Final Rulemaking (FRM) (59 FR