

consistent with past practice (for example, 61 FR 36294), the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). The EPA believes that because of the limited time provided to make findings of failure to submit and findings of incompleteness regarding SIP submissions or elements of SIP submission requirements, Congress did not intend such findings to be subject to notice-and-comment rulemaking. Notice and comment are unnecessary because no significant EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs or elements of SIP submissions required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert agency resources from the critical substantive review of complete SIPs. See 58 FR 51270, 51272 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

#### *B. Executive Order 12866 (Regulatory Planning and Review)*

This action is exempt from OMB review under Executive Order 12866.

#### *C. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact on small entities of any rule subject to the notice-and-comment rulemaking requirements. Because this action is exempt from such requirements, as described under (A) above, it is not subject to the RFA.

#### *D. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative

that achieves the objectives of the rule. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's document contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or tribal governments or the private sector. The various CAA provisions discussed in this document require the States to submit SIPs. This document merely provides a finding that the States have not met those requirements. This document does not, by itself, require any particular action by any State, local, or tribal government, or by the private sector. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

#### *E. Submission to Congress and the General Accounting Office*

Under section 801(a)(1)(A) of the APA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA submitted, by the effective date of this rule, 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. This rule is not a "major rule" as defined by APA section 804(2), as amended. The EPA is issuing this action as a rulemaking. There is a question as to whether this action is a rule of "particular applicability" under [[Page 81369]] section 804(3)(A) of the APA as amended by SBREFA, and thus exempt from the congressional submission requirements, because this rule applies only to named States. In this case, EPA has decided to err on the side of submitting this rule to Congress, but will continue to consider this issue of the scope of the exemption for rules of "particular applicability."

#### *F. Paperwork Reduction Act*

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### *G. Judicial Review*

Under CAA section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the District of Columbia within 60 days of July 23, 2002.

#### **List of Subjects**

##### *40 CFR Part 51*

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

##### *40 CFR Part 52*

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

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

Dated: July 16, 2002.

**Abraham Ferdas,**

*Acting Regional Administrator, Region III.*

[FR Doc. 02-18581 Filed 7-22-02; 8:45 am]

**BILLING CODE 6560-50-P**

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[NH-047-7173a; A-1-FRL-7243-2]**

#### **Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; VOC RACT Order and Regulation**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

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**SUMMARY:** EPA is approving State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. These revisions establish requirements for sources of volatile organic compounds (VOC). The intended effect of this action is to approve a VOC regulation for the New Hampshire portion of the eastern Massachusetts serious ozone nonattainment area and to approve a VOC order for Anheuser-Busch into the New Hampshire SIP. EPA is taking this action in accordance with the Clean Air Act.

**DATES:** This direct final rule will be effective September 23, 2002, unless EPA receives relevant adverse comments by August 22, 2002. If EPA receives relevant adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114-2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room M-1500, 401 M Street, (Mail Code 6102), S.W., Washington, D.C.; and Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095.

**FOR FURTHER INFORMATION CONTACT:** Anne Arnold, (617) 918-1047.

**SUPPLEMENTARY INFORMATION:** This section is organized as follows:

- What Action Is EPA Taking?
- What Are the Relevant Clean Air Act Requirements?
- What Are the Items New Hampshire Submitted?
- Why Is EPA Approving New Hampshire's Submittals?
- What Is the Process for EPA to Approve These SIP Revisions?

#### **What Action Is EPA Taking?**

EPA is approving New Hampshire's VOC reasonably available control technology (RACT) order for Anheuser-Busch. EPA is also approving New Hampshire's Env-A 1204.27 VOC RACT rule for the New Hampshire portion of the Boston-Worcester-Lawrence (Eastern Massachusetts) serious ozone nonattainment area.

#### **What Are the Relevant Clean Air Act Requirements?**

Sections 182(b)(2) and 184(b) of the Clean Air Act (CAA) contain the requirements relevant to today's action. 42 U.S.C. 7511a(b)(2) and 7511c. Section 182(b)(2) requires states to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for

sources covered by an existing Control Techniques Guideline (CTG)—i.e., a CTG issued prior to the enactment of the 1990 amendments to the CAA; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG, i.e., non-CTG sources.

Pursuant to the CAA Amendments of 1990, portions of New Hampshire were classified as marginal and serious nonattainment areas for ozone. See 56 FR 56694 (November 6, 1991). These serious areas were, thus, subject to the section 182(b)(2) RACT requirement.

In addition, New Hampshire is located in the Northeast Ozone Transport Region (OTR). The entire state is, therefore, subject to section 184(b) of the CAA. Section 184(b) requires that RACT be implemented in the entire state for all VOC sources covered by a CTG issued before or after the enactment of the CAA Amendments of 1990 and for all major VOC sources (defined as 50 tons per year for sources in the OTR).

Today's action specifically deals with the CAA requirement in sections 182(b)(2)(C) and 184(b)(2) to implement RACT at all major VOC sources not already subject to a CTG.

#### **What Are the Items New Hampshire Submitted?**

New Hampshire submitted a RACT regulation for major VOC sources, a letter regarding New Filcas of America, and an order for Anheuser-Busch.

New Hampshire's VOC RACT regulation, Env-A 1204.27, "Applicability Criteria and Compliance Options for Miscellaneous and Multicategory Stationary VOC Sources," requires RACT for non-CTG sources that emit 50 tons of VOC or more per year. Env-A 1204.27(d) establishes five options for measuring and enforcing RACT. Options 1 through 4 identify specific levels of emissions or emissions reductions that constitute RACT. Control option 5 describes a process by which RACT can be defined, but does not specifically define RACT as required by the CAA. EPA cannot approve this portion of the rule as meeting sections 182(b)(2) and 184(b)(2) until New Hampshire defines, and EPA approves, RACT for all of those sources which comply with the regulation through control option 5. Therefore, EPA previously granted a limited approval of Env-A 1204.27. See 63 FR 11600 (March 10, 1998). EPA's rulemaking noted that to receive full approval, New Hampshire needed to define RACT for the following sources: Harvard Industries, New Filcas of America, Sturm Ruger, and Anheuser-Busch.

New Hampshire's letter regarding New Filcas of America states that the company's Nashua facility has been shut down since January of 1998 and the company has moved its operations to North Carolina. The letter also states that an inspection by the New Hampshire Department of Environmental Services (DES) staff was conducted on August 30, 2001 to verify that the facility has been shut down. Therefore, DES does not need to establish VOC RACT for this facility.

The order issued to Anheuser-Busch requires the implementation of various process loss reduction activities including the development of information management systems, enhanced training for equipment operators, and integration of state-of-the-art packaging equipment improvements to reduce malt beverage production emissions.

As noted above, New Hampshire has adequately addressed Anheuser-Busch and New Filcas of America. Thus, DES has addressed RACT for all of the applicable sources in the New Hampshire portion of the eastern Massachusetts serious ozone nonattainment area. The state has not yet, however, submitted VOC RACT determinations for Harvard Industries and Sturm Ruger. New Hampshire will need to address these facilities in order for Env-A 1204.27 to be fully approvable statewide.

#### **Why Is EPA Approving New Hampshire's Submittals?**

EPA has evaluated the Anheuser-Busch order and has found that it is generally consistent with EPA guidance. EPA agrees with DES's assessment that add-on pollution controls are not economically reasonable to control the ethanol emissions from the beer production and bottling processes at the Anheuser-Busch facility. Therefore, DES's order requires Anheuser-Busch to use enumerated state-of-the-art packaging equipment, or replacement equipment that improves on the performance of the existing equipment, which will minimize product losses and VOC emissions. Therefore, EPA is approving this order as RACT. EPA has also evaluated New Hampshire's Env-A 1204.27 and has found that this regulation is generally consistent with EPA guidance, with the exception of the control option 5 issue discussed above. Since New Hampshire has, however, adequately addressed all of the non-CTG major VOC sources in the New Hampshire portion of the eastern Massachusetts serious ozone nonattainment area to which this option applies, EPA is approving Env-A

1204.27 as meeting the CAA requirements for this area.

The specific requirements of the Anheuser-Busch order and New Hampshire's Env-A 1204.27 regulation and EPA's evaluation of these requirements are detailed in a memorandum dated May 20, 2002, entitled "Technical Support Document—New Hampshire—VOC RACT Order and Regulation" (TSD). Copies of the TSD are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

### What Is the Process for EPA To Approve These SIP Revisions?

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should EPA receive relevant adverse comments. This action will be effective September 23, 2002 without further notice unless the EPA receives relevant adverse comments by August 22, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. EPA will then address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If EPA receives no such comments, the public is advised that this rule will be effective on September 23, 2002 and EPA will take no further action on the proposed rule. 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.

### II. Final Action

EPA is approving New Hampshire's VOC RACT order for Anheuser-Busch. EPA is also approving New Hampshire's Env-A 1204.27 VOC RACT rule for the New Hampshire portion of the eastern Massachusetts serious ozone nonattainment area.

### III. Administrative 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), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This 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.*).

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**. 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. 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 September 23, 2002. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. 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, Ozone, Volatile organic compounds.

Dated: June 21, 2002.

**Ira Leighton,**

*Acting Regional Administrator, EPA New England.*

Part 52 of 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 EE—New Hampshire

2. Section 52.1520 is amended by adding paragraph (c)(68) to read as follows:

#### § 52.1520 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(68) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division on June 28, 1996 and April 15, 2002.

(i) Incorporation by reference.

(A) Order ARD-00-001 issued by the New Hampshire DES to Anheuser-

Busch Incorporated, effective April 15, 2002.

(B) Env-A 1204.27, "Applicability Criteria and Compliance Options for Miscellaneous and Multi-category Stationary VOC Sources," effective August 21, 1995, is granted full approval for the New Hampshire portion of the eastern Massachusetts serious ozone nonattainment area.

(ii) Additional materials.

(A) Letter from the DES, dated April 15, 2002, submitting revised Anheuser-Busch order to EPA as a SIP revision and withdrawing previous submittal for this facility dated June 20, 2000.

(B) Letter from the DES, dated March 22, 2002, containing information on New Filcas of America.

3. In § 52.1525, Table 52.1525 is amended by adding an entry for "Env-A 1204.27" in the State citation chapter column immediately following the entry for "CH air 1204, Part Env-A 1204 (except 1204.9)" and by adding an entry for "Order ARD-00-001" in the same column immediately following the entry for "Order ARD 98-001" to read as follows:

#### § 52.1525 EPA—approved New Hampshire state regulations

\* \* \* \* \*

TABLE 52.1525.—EPA—APPROVED RULES AND REGULATIONS—NEW HAMPSHIRE

Title/subject	State citation chapter	Date adopted by State	Date approved by EPA	Federal Register citation	52.1520	Explanation
* * *						
Applicability Criteria and Compliance Options for Miscellaneous and Multi-category Stationary VOC Sources.	Env-A 1204.27	8/21/95 ..	July 23, 2002 ..	[Insert <i>FR</i> citation from published date].	(c)(68)	Rule fully approved for the New Hampshire portion of the eastern Massachusetts serious ozone nonattainment area.
* * *						
Source Specific Order .....	Order ARD-00-001	4/15/02 ..	July 23, 2002 ..	[Insert <i>FR</i> citation from published date].	(c)(68)	VOC RACT for Anheuser-Busch.
* * *						

<sup>1</sup> These regulations are applicable statewide unless otherwise noted in the Explanation section.

<sup>2</sup> When the New Hampshire Department of Environmental Services was established in 1987, the citation chapter title for the air regulations changed from CH Air to Env-A.

[FR Doc. 02-18396 Filed 7-22-02; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[MN 67-01-7292(a); FRL-7248-9]

### Approval of Section 112(l) Program of Delegation; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

**SUMMARY:** The EPA is approving, through a "direct final" procedure, a request from Minnesota for delegation of the Federal air toxics program pursuant to section 112(l) of the Clean Air Act (Act). The State's mechanism of delegation involves the straight delegation of all existing and future section 112 standards unchanged from the Federal standards. The actual

delegation of authority of individual standards, except standards addressed specifically in this action, will occur through a procedure set forth in a Memorandum of Agreement (MOA) between the Minnesota Pollution Control Agency (MPCA) and EPA. This request for approval of a mechanism of delegation applies only to those part 70 sources subject to a section 112 standard in Minnesota. It does not include those sources in Indian country.

**DATES:** The "direct final" is effective on September 23, 2002, unless EPA receives adverse or critical written comments by August 22, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Written comments should be sent to: Robert Miller, Chief, Permits and Grants Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and other supporting information used in developing the approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR-18J, Chicago, Illinois 60604. Please contact Robert Miller at (312) 353-0396 to arrange a time if inspection of the submittal is desired.

#### FOR FURTHER INFORMATION CONTACT:

Bryan Holtrop, AR-18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6204, [holtrop.bryan@epa.gov](mailto:holtrop.bryan@epa.gov) or, Rachel Rineheart, AR-18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 886-7017, [rineheart.rachel@epa.gov](mailto:rineheart.rachel@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" are used we mean EPA.

#### Table of Contents

I. Why Are We Delegating This Program to MPCA?