Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1502–3 also issued under 26 U.S.C. 1502.

Section 1.1502–4 also issued under 26 U.S.C. 1502.

Section 1.1502–9 also issued under 26 U.S.C. 1502. * * *

Section 1.1502–23 also issued under 26 U.S.C. 1502. * * *

Section 1.1502–55 also issued under 26 U.S.C. 1502. * * *

Par. 2. In § 1.1502–3, paragraph (c) is revised to read as follows:

§ 1.1502–3 Consolidated investment credit.

* * * * *

(c) [The text of the proposed paragraph (c) of this section is the same as the text of § 1.1502–3T(c) published elsewhere in this issue of the **Federal Register**.]

* * * * *

Par. 3. In § 1.1502–4, paragraphs (f)(3) and (g)(3) are added to read as follows:

§ 1.1502–4 Consolidated foreign tax credit.

* * * * *

(f) * * *

(3) [The text of the proposed paragraph (f)(3) of this section is the same as the text of § 1.1502–4T(f)(3) published elsewhere in this issue of the **Federal Register**.]

(g) * * *

(3) [The text of the proposed paragraph (g)(3) of this section is the same as the text of § 1.1502–4T(g)(3) published elsewhere in this issue of the **Federal Register**.]

* * * * *

Par. 4. In § 1.1502–9, paragraph (b)(1)(v) is added to read as follows:

§ 1.1502–9 Application of overall foreign losses recapture rules to corporations filing consolidated returns.

* * * * *

(b) * * *

(1) * * *

(v) [The text of the proposed paragraph (b)(1)(v) of this section is the same as the text of § 1.1502–9T(b)(1)(v) published elsewhere in this issue of the **Federal Register**.]

* * * * *

Par. 5. Section 1.1502–21, as proposed to be added at 61 FR 33394, June 27, 1996, is amended in paragraph (c)(1)(iii) by adding *Example 5.* to read as follows:

§ 1.1502–21 Net operating losses.

* * * * *

(c) * * *

(1) * * *

(iii) [The text of the proposed paragraph (c)(1)(iii) *Example 5* of this section is the same as the text of § 1.1502–21T(c)(1)(iii) *Example 5* published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 6. Section 1.1502–23, as proposed to be added at 61 FR 33395, June 27, 1996, is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) and adding a new paragraph (b) to read as follows:

§ 1.1502–23 Consolidated net section 1231 gain or loss.

* * * * *

(b) [The text of the proposed paragraph (b) of this section is the same as the text of § 1.1502–23T(b) published elsewhere in this issue of the **Federal Register**.]

* * * * *

Par. 7. Section 1.1502–55, as proposed to be added at 57 FR 62257, December 30, 1992, is amended by adding paragraph (h)(4)(iii) to read as follows:

§ 1.1502–55 Computation of alternative minimum tax of consolidated groups.

* * * * *

(h) * * *

(4) * * *

(iii) [The text of the proposed paragraph (h)(4)(iii) of this section is the same as the text of § 1.1502–55T(h)(4)(iii) published elsewhere in this issue of the **Federal Register**.]

* * * * *

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–44 Filed 1–9–98; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE–12–1–5886; FRL–5948–9]

Approval and Promulgation of Air Quality Implementation Plans; Delaware—New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing conditional approval of the State Implementation Plan (SIP) revision submitted by the State of Delaware for the purpose of meeting certain requirements of the Clean Air Act (Act), as amended in 1990, with regard to new source review (NSR) in areas that have not attained the national ambient air quality standards (NAAQS). The changes primarily pertain to the ozone precursors, volatile organic compounds (VOCs) and nitrogen oxides (NO_x). This SIP revision was submitted by Delaware to satisfy certain federal requirements for NSR in the State of Delaware. The proposed changes to the Delaware NSR regulation primarily address the definitions of major source size and the increase in emission offset ratios based upon the classifications of ozone nonattainment areas. EPA is proposing conditional approval because the NSR SIP revisions submitted by Delaware strengthen the SIP, but Delaware failed to revise the NSR regulations to adopt provisions relating to modifications in serious and severe ozone nonattainment areas, required by the 1990 Clean Air Act Amendments, and provisions relating to emission offsets and public participation, required by EPA regulations prior to the 1990 Clean Air Act Amendments.

DATES: Comments must be received on or before February 11, 1998.

ADDRESSES: Comments may be mailed to Ms. Kathleen Henry, Chief, Permit Programs Section, Air, Radiation, and Toxics Division (3AT23), 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. Robin Moran, (215) 566–2064, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

I. Background

For ozone nonattainment areas and ozone transport regions, sections 182(a)(2)(C) and 184(b) require States to submit to EPA by November 15, 1992, a revision that includes each of the following: (1) Provisions to require permits, in accordance with sections 172(c)(5) and 173 of the Act, for the construction and operation of each new or modified major stationary source

(with respect to ozone) to be located in the area (section 182(a)(2)(C)(i) of the Act); and (2) provisions to correct requirements in (or add requirements to) the plan concerning permit programs as were required under section 172(b)(6) of the Act (as in effect immediately before November 15, 1990) as interpreted in EPA regulations promulgated as of November 15, 1990 (section 182(a)(2)(C)(ii) of the Act).

On January 11, 1993, the State of Delaware submitted a revision for Regulation 25, ''Requirements for Preconstruction Review,'' sections 1 and 2 (pertaining to nonattainment NSR). The NSR-related revision consists of changes in the definitions of major source size and increases in the emission offset ratios based on the classifications of Delaware's ozone nonattainment areas. The changes primarily pertain to the ozone precursors, VOCs and NO_X. The changes apply to New Castle, Kent, and Sussex Counties. New Castle and Kent Counties are designated nonattainment for ozone and classified as severe. See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.308. Sussex County is designated as nonattainment for ozone and is classified as marginal. See 40 CFR 81.308. Delaware is located in the northeast ozone transport region (OTR). See section 184(a) of the Act. Because Delaware is located in the OTR, at a minimum, the NSR requirements applicable to moderate ozone nonattainment areas apply. Therefore, in Sussex County, the Act's NSR requirements for a moderate area apply and must be made part of the SIP.

II. Summary of Delaware's NSR Revisions

For all classifications of ozone nonattainment areas and for the OTR, States must adopt the appropriate major source size thresholds and offset ratios. Under the Act, NO_X as well as VOCs is regulated as an ozone precursor, and states must adopt provisions to ensure that any new or modified major stationary source of NO_X in an ozone nonattainment area or the OTR satisfies the NSR requirements applicable to any major source of VOCs, unless a special NO_X exemption is granted by the Administrator under the provisions of section 182(j).

Delaware has established new major source size thresholds for NSR applicability and increased offset ratios for subject sources, in accordance with the Act as follows:

1. Delaware Regulation 25 at section 2.2(B)(2) defines a major source size applicability threshold in Sussex County (a marginal ozone nonattainment area required to meet moderate area NSR provisions because it is located in the OTR) as 50 tons per year (TPY) potential to emit for VOCs and 100 TPY potential to emit for NO_X. Section 2.3(C)(2) requires an offset ratio of 1.15 to 1 (which means that for every 1 ton increase in allowable emissions from a new major stationary source, 1.15 tons of actual emissions must be reduced from existing sources). These provisions satisfy the Act's NSR requirements for defining a major stationary source and for establishing the offset ratios in moderate ozone nonattainment areas.

2. Delaware Regulation 25 at section 2.2(B)(1) defines the major source size applicability threshold for New Castle and Kent Counties (which are classified as severe nonattainment areas for ozone) as 25 TPY potential to emit for VOCs and NO_X. Section 2.3(C)(1) requires an offset ratio of 1.3 to 1 (which means that for every 1 ton increase in allowable emissions from a new major stationary source, 1.3 tons of actual emissions must be reduced from existing sources).

Delaware's plan submittal reflects appropriate modifications to applicability levels, including a de minimis level of 25 tons, as provided in Regulation 25, section 1.9(V)(1), definition of ''Significant.'' This section provides that increases in net emissions shall not exceed 25 tons per year in New Castle and Kent Counties, or 40 tons per year in Sussex County, when aggregated with all other net increases in emissions from the source over any period of five consecutive calendar years which includes the calendar year in which such increases occur. Delaware Regulation 25, section 1.9(V)(1), also provides that no emission reductions from major stationary sources will be creditable if they occurred prior to January 1, 1991, by specifying that no part of the five consecutive calendar year period shall extend before January 1, 1991.

EPA believes that the above changes to Delaware's NSR regulation are consistent with the Act and strengthen the SIP. However, Delaware's SIP revision fails to fully meet the requirements of section 182(a)(2)(C)(i) of the Act, because it does not address the additional requirements of the Clean Air Act Amendments summarized in section III.A. Further, EPA finds that Delaware's SIP revision fails to meet the requirements of section 182(a)(2)(C)(ii) of the Act, because it does not address several provisions related to emissions offsets and public participation which were required by the NSR regulations (40 CFR 51.165) prior to the 1990 Clean Air Act Amendments. These deficiencies are summarized in section III.B.

III. NSR Deficiencies

A. 1990 Clean Air Act Amendment NSR Deficiencies

Section 182(a)(2)(C)(i) requires that states must submit, by November 15, 1992, a revision to the SIP which contains provisions to require permits, in accordance with sections 172(c)(5) and 173 of the Act, for the construction and operation of each new or modified source (with respect to ozone) to be located in the area. EPA finds that Delaware's January 11, 1993 submittal does not meet the requirements of section 182(a)(2)(C)(i) because Regulation No. 25 does not include the following provisions:

1. Consistent with sections 182(c) (7) and (8) of the Act, provisions for the special rule for modifications of sources in serious and severe ozone nonattainment areas. Section 182(c)(7) applies to facilities with potential emissions of VOC or NO_X of less than 100 TPY, where the modification results in an other than de minimus increase in emissions. The owner or operator may choose to offset the emissions of the proposed source with those elsewhere in the same facility at a ratio of at least 1.3 to 1 in order to avoid having the proposed source be considered a modification. If the facility does not offset at the required ratio, the change shall be considered a modification, but the facility would be required to install Best Available Control Technology (BACT) instead of Lowest Achievable Emissions Rate (LAER) technology. Section 182(c)(8) applies to facilities with potential emissions of 100 TPY or more of VOC or NO_X, where the modification results in an other than de minimus increase in emissions. The increase shall be considered a modification, but the source may choose to offset the emissions from the proposed source with emission reductions elsewhere in the same facility at an internal offset ratio of 1.3 to 1 in order to avoid installing LAER.

B. Pre-1990 NSR Deficiencies

Section 182(a)(2)(C)(ii) requires that states must submit, by November 15, 1992, a revision to the SIP which contains provisions to correct requirements in (or add requirements to) the plan concerning permit programs as were required under section 172(b)(6) of the Act (as in effect immediately before November 15, 1990) as interpreted in EPA regulations promulgated as of November 15, 1990. EPA finds that

Delaware's January 11, 1993 submittal does not meet the requirements of section 182(a)(2)(C)(ii) because Regulation No. 25 does not include the following provisions:

1. Public participation procedures consistent with 40 CFR 51.161. While section 3 of Delaware's Regulation No. 25, pertaining to the Prevention of Significant Deterioration of Air Quality, contains public participation procedures, Regulation No. 25 does not specify the public participation procedures to be used in issuing nonattainment NSR permits.

2. A requirement that where the emissions limit under the SIP allows greater emissions than the potential to emit of the source, emission offset credit will be allowed only for control below this potential. See 40 CFR 51.165(a)(3)(ii)(A).

3. Provisions for granting emission offset credit for fuel switching, consistent with 40 CFR 51.165(a)(3)(ii)(B).

4. Requirements consistent with 40 CFR 51.165(a)(3)(ii)(C)(1) for the crediting of emission reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels (shutdown credits). These requirements must include a provision that such reductions may be credited if they are permanent, quantifiable and federally-enforceable, and if the area has an EPA-approved attainment plan.

Delaware may also include provisions consistent with 40 CFR 51.165(a)(3)(ii)(C)(2) which allow the use of shutdown credits in areas without an approved attainment demonstration. EPA notes that the Agency proposed two alternative revisions to these requirements in the NSR Reform Rulemaking. See 61 FR 38325 (July 23, 1996).

5. A requirement that the shutdown or curtailment is creditable only if it occurred after the date of the most recent emissions inventory or attainment demonstration. See 40 CFR 51.165(a)(3)(ii)(C)(1).

6. A requirement that all emission reductions claimed as offset credit shall be federally enforceable. See 40 CFR 51.165(a)(3)(ii)(E).

7. Requirements for the permissible location of offsetting emissions. See 40 CFR 51.165(a)(3)(ii)(F) and section 173(c)(1) of the Act.

8. A requirement that credit for an emission reduction can be claimed to the extent that the State has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR part 51 (i.e., the SIP), or the State has not relied on it in a demonstration of attainment or reasonable further progress. See 40 CFR 51.165(a)(3)(ii)(G) and sections 173(c) (1) and (2) of the Act.

Because of the deficiencies identified in Sections III.A. and III.B. above, EPA is proposing conditional approval of the Delaware SIP revision for the NSR regulation, amended Delaware Regulation 25, sections 1 and 2, which was submitted on January 11, 1993. EPA is soliciting public comments on the issues discussed in this notice 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 notice.

Proposed Action

In light of the above deficiencies, EPA is proposing conditional approval of this SIP revision under section 110(k)(4) of the Act. EPA is proposing conditional approval of the Delaware NSR SIP if Delaware commits, in writing, within 30 days of EPA's proposal to correct the deficiencies identified in this rulemaking. If the State does not make the required written commitment to EPA within 30 days, EPA will withdraw this proposed conditional approval action. If the State does make a timely commitment, but the conditions are not met by the specified date within one year, EPA is proposing that the rulemaking will convert to a final disapproval. EPA would notify Delaware by letter that the conditions have not been met and that the conditional approval of the NSR SIP has converted to a disapproval. Each of the conditions must be fulfilled by Delaware and submitted to EPA as an amendment to the SIP.

If Delaware corrects the deficiencies within one year of conditional approval, and submits a revised NSR SIP revision, EPA will conduct rulemaking to fully approve the revision. In order to make this NSR SIP approvable, Delaware must revise its NSR regulations to include the provisions described in section III of this document by no later than 12 months after EPA's final conditional approval.

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.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, 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).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action would not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

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 SIP revision regarding Delaware's NSR program 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, New source review, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401—7671q.

Dated: December 18, 1997.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 98–673 Filed 1–9–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[Docket No. 971223310–7310–01; I.D. 101194C]

Endangered and Threatened Species; Withdrawal of Proposed Rule to List Snake River Spring/Summer Chinook Salmon and Fall Chinook Salmon as Endangered

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; withdrawal.

SUMMARY: NMFS is withdrawing the proposed rule which published on December 28, 1994, to reclassify Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and Snake River fall chinook salmon (*O. tshawytscha*) from threatened to endangered under the Endangered Species Act of 1973 (ESA). Events have taken place since the proposal that make the reclassification action unnecessary. Increasing abundance, combined with the effects of improved management, indicate that the risks facing these species are now lower than they were at the time of the proposal. While the status of these species has improved since the proposal, conservation efforts must continue to recover Snake River chinook salmon to sustainable levels.

DATES: This proposed rule is withdrawn on January 12, 1998.

ADDRESSES: Environmental and Technical Services Division, NMFS, Northwest Region, 525 NE Oregon Street—Suite 500, Portland, OR 97232–2737.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, NMFS, Protected Resources Division, Northwest Region, telephone (503) 231–2005, or Joe Blum, NMFS, Office of Protected Resources, telephone (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

In response to a June 1990 petition to list under the ESA Snake River chinook salmon, NMFS prepared status review reports for Snake River spring and summer chinook salmon (Matthews and Waples, 1991) and Snake River fall chinook salmon (Waples *et al.*, 1991) providing detailed information, discussion, and references relevant to the level of risk faced by the species, including historical and current abundance, population trends, distribution of fish in space and time, and other information indicative of the health of the population.

NMFS proposed listing Snake River spring/summer chinook salmon (56 FR 29542) and Snake River fall chinook salmon (56 FR 29547) as threatened on June 27, 1991. The final determination listing Snake River spring/summer chinook salmon and Snake River fall chinook salmon as threatened was published on April 22, 1992 (57 FR 14653), and corrected on June 3, 1992 (57 FR 23458). The decision to list was based in part on a determination that the populations constituted evolutionarily significant units (ESUs) pursuant to NMFS' policy on applying the ESA species definition to Pacific salmon published on November 20, 1991 (56 FR 58612). Critical habitat was designated for Snake River spring/summer chinook salmon and Snake River fall chinook salmon on December 28, 1993 (58 FR 68543).

In an emergency rule published in the **Federal Register** on August 18, 1994 (59 FR 42529), NMFS determined that the status of Snake River spring/summer chinook salmon and the status of Snake River fall chinook salmon warranted reclassification to endangered, based on projected declines and continued low abundance levels of adult chinook salmon. Under the ESA (16 U.S.C. 1533(b)(7)) and its implementing regulations at 50 CFR 424.20(a), an emergency rule ceases to have force after 240 days unless additional actions are taken.

NMFS published a proposed rule to reclassify Snake River spring/summer and Snake River fall chinook salmon as endangered on December 28, 1994 (59 FR 66784), and solicited comments from peer reviewers, the public, and interested parties.

After the proposed reclassification, a moratorium on listing actions was enacted by Congress which precluded work on this action. As a result of the moratorium and associated delays in its listing actions, NMFS prioritized its pending listing actions, with reclassifications receiving a low priority. NMFS has now assessed comments and information received in response to the proposed rule. A summary of this information, along with NMFS' analysis and conclusions follows.

Summary of Comments

One hundred fifty-four written comments were received in response to the proposed rule to reclassify Snake River chinook salmon as endangered. NMFS has considered all comments received, including oral testimony from two public hearings (60 FR 7744, February 9, 1995) on the proposal. The majority of comments received voiced opposition to the proposed rule on the basis of potential economic impacts of the designation and questions regarding NMFS' jurisdiction over Snake River spring/summer and fall chinook salmon. Only four of these comments contained information of a technical nature relevant to NMFS' status determination. Several commenters provided information pertinent to research needs and recovery planning; information of this type will be addressed in the