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Federal Register, Vol. 44, No. 181, 53761-53763, 9/17/1979 (1316-4), "State Implementation Plans; General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas – Supplement (on Control Techniques Guidelines)"

Summary: Provisions of the Clean Air Act enacted in 1977 require states to revise their State Implementation Plans for all areas that have not attained National Ambient Air Quality Standards. States are to have submitted the necessary plan revisions to EPA by January 1 1979. The Agency is now publishing proposals inviting public comment of whether each of the submittals should be approved. These are followed by final actions on the submittals. In the April 4, 1979 issue of the Federal Register, EPA published a General Preamble identifying and summarizing the major considerations that will guide EPA's evaluation of the submittals (44 FR 20372). This was followed by a correction of typographical error on April 30 (44 FR 25243) and Supplements on July 2 (44 FR 38583) and August 28 (44 FR 50371). Today's Supplement provides further discussion on Control Techniques Guidelines for stationary sources of volatile organic compounds.

Federal Register notice attached

assistance of staff. Such determinations shall be communicated to the applicant by certified letter. An oral conference will be scheduled at the request of the applicant. Communications of determinations to the applicant shall include an explanation of the availability of grievance procedures.

(b) *Availability of hearings.* All persons aggrieved by initial Commission determinations concerning eligibility or benefits may request a Hearing to present evidence and argument concerning the determination. Parties seeking such relief from the Commission's initial determination shall be known as "applicants."

(c) *Requests for hearings.* Hearing requests may be made in person or by letter and must be received by the Commission within thirty days after the notice letter was mailed or the oral conference was held, unless good cause is shown for an extension of that time limit.

(d) *Hearings Officers.* Hearings will be conducted by the Hearing Officer appointed for this purpose by the Commissioners: *Provided,*

That the individual(s) directly responsible for the initial determination being appealed shall not be eligible to serve as Hearing Officers.

(e) *Hearing scheduling.* Hearings will be held as scheduled by the Hearing Officer. (1) Notice to the applicant will be provided at least five days prior to the hearing stating the date, time, place, and scope of the hearing. (2) All hearings shall be held within thirty days after Commission receipt of the applicant's request therefor unless this time limit is extended upon showing of good cause. (3) All hearings shall be conducted at the Commission offices in Flagstaff, Arizona, unless otherwise designated.

(f) *Evidence and Procedure.* (1) The applicant has a right to:

(i) Be represented by a lawyer or other representative, who once identified, shall receive copies of all correspondence and written communication to the applicant and shall be deemed as acting for the applicant when submitting any request, brief, or communication to the Commission therefor;

(ii) Present evidence, witnesses, and argument;

(iii) Have produced Commission evidence relative to the determination at issue, and employees possessing knowledge material thereto;

(iv) Examine and/or cross-examine all witnesses;

(v) A transcript of the hearing on request and upon payment of appropriate Commission fees.

(2) The Hearing Officer is empowered to:

(i) Administer oaths and affirmations to witnesses;

(ii) Receive relevant evidence;

(iii) Regulate the course and conduct of the Hearing;

(iv) Have a record made of the proceedings.

(g) *Post-hearing briefs.* The applicant may submit post-hearing briefs or written comments to the Hearing Officer within two weeks after conclusion of the Hearing.

(h) *Hearing Officer decisions.* (1) The Hearing Officer shall submit to the Commission written findings of fact, conclusions of law, and decision based on all the evidence and argument presented, within thirty days after conclusion of the Hearing.

(2) Copies of the Hearing Officer's findings of fact, conclusions of law, and decision shall be provided to the applicant. The applicant may submit briefs or other written argument to the Commission within two weeks of the date of the Hearing Officer's determination was mailed to them.

(i) *Final Agency action.* After receipt of the Hearing Officer's decision and the applicant's post-decision briefs or written argument, if any, the Commission shall affirm or reverse the decision and issue its final agency action upon the application in writing; copies thereof shall be sent by certified mail to the applicant.

(j) *Direct appeal to Commissioners.* Commission determinations concerning issues other than individual eligibility or benefits may be appealed directly to the Commission in writing. The Commission decision will constitute final agency action on such issues.

Sandra Massetto,

Chairperson, Navajo and Hopi Indian Relocation Commission.

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ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1316-4]

State Implementation Plans; General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas—Supplement (on Control Techniques Guidelines)

AGENCY: Environmental Protection Agency.

ACTION: General preamble for proposed rulemaking—Supplement.

SUMMARY: Provisions of the Clean Air Act enacted in 1977 require states to revise their State Implementation Plans for all areas that have not attained National Ambient Air Quality Standards. States are to have submitted the necessary plan revisions to EPA by January 1, 1979. The Agency is now publishing proposals inviting public comment on whether each of the submittals should be approved. These are followed by final actions on the submittals. In the April 4, 1979 issue of the Federal Register, EPA published a General Preamble identifying and summarizing the major considerations that will guide EPA's evaluation of the submittals (44 FR 20372). This was followed by a correction of a typographical error on April 30 (44 FR 25243) and Supplements on July 2 (44 FR 38583) and August 28 (44 FR 50371). Today's Supplement provides further discussion on Control Techniques Guidelines for stationary sources of volatile organic compounds.

For Further Information Contact: The appropriate EPA regional office listed on the first page of the April 4, 1979 General Preamble (44 FR 20372) or the following headquarters office: G. T. Helms, Chief, Control Programs Operations Branch, Control Programs Development Division, EPA Office of Air Quality Planning and Standards (MD-15), Research Triangle Park, North Carolina 27711, (919) 541-5365 or 541-5226.

Public Comment: As explained in the April 4 General Preamble, EPA Regional Administrators are publishing Federal Register proposals inviting comment on whether the individual plan submittals should be approved. The General Preamble, the July 2 Supplement, the August 28 Supplement, and this Supplement are notices of proposed rulemaking, applicable to each decision by EPA whether to approve a state plan submittal. EPA's final action will be in the form of a ruling approving or disapproving the individual plan submittal. If the discussion in this Supplement requires alteration of any comments on a plan for which the comment period has already ended, the commenter should contact the appropriate EPA Regional Office immediately so that the issue can be appropriately resolved.

Supplementary Information: General background information is set out at length in the April 4 General Preamble. This Supplement provides further discussion on the Control Techniques Guidelines (CTGs) issued by EPA for sources of volatile organic compounds (VOC). (VOC is a chemical precursor of

ozone, and is therefore controlled in plans for the ozone ambient standard).

In several proposals involving particular state plan submittals, EPA has stated that the submitted regulations for control of sources of VOC were not supported by the information in the CTGs. Where EPA noted a problem, the Agency proposed that the State would have to provide an adequate demonstration that its regulations represent reasonably available control technology (RACT), or amend the regulations to be consistent with the information in the CTGs. The purpose of the following discussion is to explain generally the legal and policy considerations supporting these proposals, and to discuss in general the purpose of the CTGs.

1. *RACT for Ozone Plans.* In the 1977 amendments to the Clean Air Act, Congress specified that, in order for a state implementation plan (SIP) to satisfy the requirements of Part D of Title I of the Act (Part D), the SIP must provide for application of all reasonably available control measures, which includes RACT for all stationary sources.¹ In using the term "reasonably available control technology," Congress apparently adopted EPA's pre-existing conception of the term.²

EPA has defined RACT as: The lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.³ RACT for a particular source is determined on a case-by-case basis, considering the technological and economic circumstances of the individual source.

EPA regulations provide that less stringent emission limitations than those achievable with RACT are acceptable only if the State plan shows that the less stringent limitations are sufficient to attain and maintain national ambient air

quality standards, and show reasonable further progress during the interim before attainment.⁴ Otherwise, RACT limitations are required, as discussed in detail in the April 4 General Preamble.⁵

2. *EPA's Control Techniques Guidelines.* In the 1977 amendments to the Act, Congress instructed States to begin revising their plans to assure attainment of standards, and also instructed EPA to prepare guidance material to assist states in their efforts to develop ozone plans. While EPA's main effort was to prepare material on control of transportation sources, Congress also required the Agency to publish, and make available to State air pollution control agencies, information on control of emissions from non-transportation sources including fuel transfer and storage operations and operations using solvents.⁶ Congress stated its intent that these documents were "to be a basic resource available to State and local governments in determining the measures to be included in plans to achieve and maintain the national ambient air quality standards."⁷ While deliberating on the 1977 amendments to the Act containing these specific instructions, Congress was aware that EPA had already begun preparing a series of CTGs to provide guidance to States and industry on controlling stationary sources of VOC.⁸

Each CTG describes techniques available for reducing emissions of VOC from a category of sources, and states recommended levels of control. There were 11 such CTG's published before January 1978, and 9 published during 1978. EPA intends the CTG's to serve the following functions:

a. *Informing the States.* The primary purposes of each CTG is to inform the State and local air pollution control agencies of air pollution control techniques available for reducing emissions of VOC from the class of sources covered by the CTG. This information, involving the capabilities and problems general to the industry, should be useful to both control

agencies and industry in developing needed emission limitations for stationary sources within the State.

b. *Establishing the Deadline for Submitting SIP Requirements.* EPA believes that States will be able to make more technologically sound decisions in adopting emission limitations if they are permitted to defer adoption until after the information in the CTGs is available. Therefore, EPA has stated that a SIP revision due January 1, 1979 is acceptable if it includes necessary emission limitations for source categories covered by CTGs published by January 1978.⁹ Emission limitations for source categories covered by CTGs published between January 1978 and January 1979 must be adopted and submitted to EPA by July 1, 1980.¹⁰

c. *Recommendation to States.* Along with information, each CTG contains recommendations to the States of what EPA calls the "presumptive norm" for RACT, based on EPA's current evaluation of the capabilities and problems general to the industry. Where the States finds the presumptive norm applicable to an individual source or group of sources, EPA recommends that the State adopt requirements consistent with the presumptive norm level in order to include RACT limitations in the SIP.¹¹

However, recommended controls are based on capabilities and problems which are general to the industry; they do not take into account the unique circumstances of each facility. In many cases appropriate controls would be more or less stringent. States are urged to judge the feasibility of imposing the recommended controls on particular sources, and adjust the controls accordingly.

The presumptive norm is only a recommendation. For any source or group of sources, regardless of whether they fall within the industry norm, the

⁹ 44 FR 20376 col. 3 (April 4, 1979); 43 FR 21070 (May 3, 1978).

¹⁰ See memorandum from David G. Hawkins, EPA Assistant Administrator for Air, Noise and Radiation, to Regional Administrator, Regions I-X, on "State Implementation Plans/Revised Schedules for Submitting Reasonably Available Control Technology Regulations for Stationary Sources of Volatile Organic Compounds (VOC)" (August 22, 1979). The July 1, 1980 deadline is six months later than the deadline EPA had announced in the statements cited in footnote 9. Since the process of adopting regulations appears more lengthy than first anticipated, additional time may be necessary to accommodate public, administrative, and legislative review.

Adoption of emission limitations may not be deferred until after publication of CTGs where deferral would result in failure to achieve reasonable further progress. See 44 FR 20377 n. 25 (April 4, 1979).

¹¹ Or requirements that deviate imperceptibly (e.g., up to 5 percent less control) from the recommended presumptive norm.

¹ Sections 172(b)(2)-(3) of the Act (42 U.S.C. 7502(b)(2)-(3)).

² Congress did not adopt its own definition of "RACT," and was well aware of how EPA used the term. See, e.g., Hearings on H.R. 4151, H.R. 4758, and H.R. 4444 before the Subcommittee on Health and Environment of the House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess., Part 2 at 1806, 1825 (Serial No. 95-59, March 8-11 and April 18, 1977).

³ EPA articulated its definition of RACT in a memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, Regions I-X, on "Guidance for Determining Acceptability of SIP Regulations in Non-attainment Areas," section 1.a (December 9, 1976), reprinted in (1976) 7 Environmental Reporter, Current Developments (BNA) 1210 col. 2; and in EPA's publication *Workshop on Requirements for Non-attainment Area Plans—Compilation of Presentations 154* (OAQPS No. 1.2-103, revised edition April 1978).

⁴ 40 CFR 51.1(o)(1). The regulations refer only to attainment and maintenance. The analogous requirement for the SIP to show reasonable further progress was established by the 1977 amendments. See 44 FR 20375 col. 3 (April 4, 1979).

⁵ 44 FR 20375-20377.

⁶ Section 108(f)(1)(A)(ii) of the Act (40 USC 7408(f)(1)(A)(ii)).

⁷ Report to accompany S. 252, S. Rep. No. 95-127, 95th Cong., 1st Sess. 24, (May 10, 1977).

⁸ See Hearings, note 2 above, Part 2 at 1427-32. EPA's authority to publish information and recommended levels of control is provided by section 103(b)(1) (40 USC 7403(b)(1)), which generally authorizes EPA to publish "information, including appropriate recommendations" to assist air pollution control agencies, in addition to section 103(f)(1)(A)(ii).

State may develop case-by-case RACT requirements independently of EPA's recommendation. EPA will propose to approve any submitted RACT requirement that the State shows will satisfy the requirements of the Act for RACT, based on the economic and technical circumstances of the particular sources being regulated.

d. *Basis for the EPA Decision on Approval.* EPA sought information from the relevant industries in preparing the CTGs, and EPA believes that the information in the CTGs is highly relevant to the decision whether to approve State regulations. For SIPs that must include RACT limitations, each CTG will be part of the rulemaking record on which EPA's decision will be based.¹² However, the CTG does not establish conclusively how issues must be resolved. In reviewing an individual regulation, EPA will consider not only the information in the CTG, but also any material included in the State submittal and in public comments on the submittal.

For emission limitations that are consistent with the information in the CTGs, therefore, the State may be able to rely solely on the information in the CTG to support its determination that the adopted requirements represent RACT. Where this is not the case, EPA believes that the State must submit justification of its own, to support its determination. EPA will then consider the information submitted by the State, together with the information in the CTG and public comment.

Note: Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Secs. 110(a), 172, Clean Air Act, as amended (42 U.S.C. 7410(a), 7502)).

Dated: September 5, 1979.

David G. Hawkins,

Assistant Administrator for Air, Noise and Radiation.

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¹²This is what was meant by EPA's statement that "the criteria for SIP approval rely heavily upon the information contained in the CTG." 44 FR 21676 (May 19, 1978).