

December 17; and December 20 through December 22, 2004.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: November 9, 2004.

John L. Grenier,

*Captain, U.S. Coast Guard, Acting
Commander, First Coast Guard District.*

[FR Doc. 04-25965 Filed 11-22-04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA211-4231; FRL-7835-4]

Approval and Promulgation of Air Quality Implementation Plans, Pennsylvania; Control of Volatile Organic Compound Emissions From AIM Coatings

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision pertains to the control of volatile organic compounds (VOC) emissions from architectural and industrial maintenance (AIM) coatings. EPA is approving this SIP revision in accordance with the Clean Air Act (CAA or the Act).

EFFECTIVE DATE: This final rule is effective on December 23, 2004.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 11, 2004 (69 FR 11580), EPA published a notice of proposed

rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of a Pennsylvania regulation pertaining to the control of VOC from AIM coatings. The formal SIP revision was submitted by the Pennsylvania Department of Environmental Protection (PADEP) on December 3, 2003. The specific requirements of Pennsylvania's SIP revision for AIM coatings and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. On April 12, 2004, EPA received timely comments from two parties on the March 11, 2004 NPR. Some of the timely comments were adverse to EPA's March 11, 2004 proposed rulemaking. EPA also received late comments from one party. While EPA is not obligated to consider late comments, EPA has elected to do so in this instance. A summary of the comments submitted and EPA's responses are provided in Section II of this document.

On October 19, 2004, the PADEP submitted a supplement to its December 3, 2003 SIP revision. The supplement includes a nonsubstantive correction notice published in the Pennsylvania Bulletin, 33 Pa. B. 5618 (November 15, 2003) which corrects numbering and typographical errors that appeared at 33 Pa. B. 5297 (October 25, 2003) in the adoption of Chapter 130, Subchapter C. (relating to architectural and maintenance coatings). The subsections in Subchapter C. Architectural and Industrial Maintenance Coatings have been corrected to number as subsections 130.601–130.611. The supplement also includes the codified version of the Pennsylvania AIM coating regulation, 25 Pa. Code, Subchapter C. Subsections 130.601–130.611, effective October 25, 2003.

EPA is aware that concerns have been raised about the achievability of VOC content limits of some of the product categories under the Pennsylvania AIM coatings rule. EPA understands that under the Commonwealth's rule these concerns may be addressed through a variance process, which we support, that may result in changes to the limits for certain categories. Although we are approving this rule today, the Agency is concerned that if the rule's limits make it impossible for manufacturers to produce coatings that are desirable to consumers, there is a possibility that users may misuse the products by adding additional solvent, thereby circumventing the rule's intended VOC emission reductions. We intend to work with the Commonwealth and manufacturers to explore ways to ensure that the rule achieves the intended VOC

emission reductions, and we intend to address this issue in evaluating the amount of VOC emission reduction credit attributable to the rule.

II. Public Comments and EPA Responses

A. Comment: Request for Clarification—One commenter, the Department of the Navy on behalf of the Department of Defense (DOD), compliments PADEP and EPA for their effort to ensure that Pennsylvania attains and maintains compliance with the National Ambient Air Quality Standards (NAAQS). The DOD requests clarification of the Applicability subsection of Pennsylvania's rule (citing to 25 Pa. Code subsection 130.601). The DOD states that in response to the difficulty military installations have had with managing hazardous materials, the military services adopted and implemented an innovative approach to managing hazardous materials, including AIM coatings that are used in the military installations. The DOD explains that this approach establishes a single point of control and accountability over the purchase, receipt and distribution of hazardous materials to the various organizations around a military installation. This "single point of control" receives, approves, and processes all requests for hazardous materials submitted by the various organizations on an installation. The DOD goes on to state that once the materials are ordered, purchased and obtained by this "single point of control," this unit "supplies" the various organizations with requested amounts of particular hazardous material for use. The DOD requests that a definition be added to Pennsylvania's regulation that would state that the term "Supply" or "Supplied" does not include internal transactions within a business or government entity, and that the term only applies to transactions between manufacturers/commercial distributors that sell, or otherwise provide AIM coating products to businesses/governmental entities/individuals. Alternatively, the DOD requests that either PADEP provide a written reply clarifying whether the terms "supply" or "supplied" apply to "the single point of contact" at military installations, or that EPA clarify this issue in its response to comments.

Response: Throughout its comments to EPA, the DOD refers to the Pennsylvania AIM coatings rule as a proposed regulation. In fact, this AIM coatings regulation has been fully adopted by the Commonwealth of Pennsylvania (see 33 Pa. B. 5297, October 25, 2003, 33 Pa. B. 5618,

November 15, 2003 and 25 Pa. Code Subsections 130.601–130.611) and was submitted to EPA for approval as revision to the Pennsylvania SIP on December 3, 2003. EPA's March 11, 2004 NPR proposed approval of Pennsylvania's request that its fully adopted AIM coatings regulation be made part of the SIP. EPA can only take action on a SIP revision as it is submitted by a state, and cannot, through its rulemaking action, alter the state's submission. EPA, however, does hereby clarify that it interprets that the "single point of control" system that the military services have developed to manage hazardous materials does not subject military installations to the rule in as much as they do not sell, offer for sale or manufacture architectural coating products. The DOD does have the obligation under section 130.601 of the rule to ensure that the products a person "applies or solicits" meet the requirements of the rule.

B. Comment: Paperwork Requirements for End Users—The DOD comments that a few scattered references to the "end user" in Pennsylvania's AIM coatings rule subject the end user of AIM coatings to additional reporting and monitoring requirements (e.g., prove that every time a coating is used, it is not thinned beyond allowable limits). The DOD goes on to state that as it is DOD's practice to use coatings as specified by the manufacturer, as an end user it will be subjected to additional burdensome paperwork requirements without any demonstrable reductions in VOC emissions. The DOD, therefore request that 25 Pa. Code subsection 130.603 (c) Thinning and (d) Rust Preventative Coatings be deleted from Pennsylvania's AIM coatings rule. (From its context, it is clear that the DOD's comment is in reference to 130.603(d) Thinning and (e) Rust Preventative Coatings in Pennsylvania's AIM coatings regulation.)

Response: Pennsylvania's AIM coatings rule does not use the term "end user" but rather the term "the person who solicits and applies." As indicated in EPA's response to Comment A, EPA's March 11, 2004 NPR proposed approval of Pennsylvania's request that its fully adopted AIM coatings rule be made part of the SIP. EPA can only take action on a SIP revision as it is submitted by a state, and cannot, through its rulemaking action, alter the state's submission. EPA, cannot, therefore, delete paragraphs (d) Thinning and (e) Rust Preventative Coatings from section 130.603 of the Pennsylvania AIM coatings rule by its rulemaking on the SIP revision submission. EPA, however,

does hereby clarify that it does not interpret 130.603 (d) and (e) to require the person who solicits and applies to keep records "to prove that every time a coating is used, it is not thinned beyond allowable limits." Rather each *manufacturer* is to comply with subsection 130.604(a)(2) Thinning Recommendations, and indicate on the label or lid its recommendations regarding thinning of the coating or specify that the coating is to be applied without thinning. So long as the person who solicits and applies coatings (or end user) does so in accordance with the VOC limits found in Table 1 of Pennsylvania's AIM coatings rule, that person would be in compliance.

C. Comment: Container Labeling Requirements—In its final comment, the DOD states that while manufacturers of any architectural coatings are required to display certain information, such as VOC content, on the container, they are not required to identify the applicable coating category on the container. The DOD comments that for easy verification of VOC compliance by the user, 25 Pa. Code subsection 130.604 should be amended to require the coating category be listed next to VOC content.

Response: For the purposes satisfying the requirements for approval as a SIP revision, EPA has determined that the container labeling requirements found at section 130.604 of Pennsylvania's AIM coatings rule are adequate.

D. Comment: The Pennsylvania AIM Coatings Rule is Based on Flawed Data—Additional comments on EPA's March 11, 2004 NPR proposing approval of Pennsylvania's AIM coatings rule have been submitted on behalf of the Sherwin Williams Company and from the National Paint and Coatings Association (NPCA), hereafter referred to as the commenters. The comments from NPCA reference and endorse the comments submitted on behalf of the Sherwin Williams Company and reiterate the comments made to the Commonwealth by NPCA during Pennsylvania's rule adoption process. The commenters assert that the Pennsylvania AIM coatings rule is based on flawed data and that the use of this data violates the Data Quality Objectives Act ("DQOA") (Section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554; H.R. 5658)). The data at issue is contained in what the commenters characterize as a "study prepared by E.H. Pechan & Associates" ("Pechan Study") in 2001. The alleged flaws relate to emissions reductions calculated in the Pechan Study; certain of the underlying data and data analyses are allegedly "unreproducible."

Further, the commenters assert that if better data were used, the OTC model AIM coatings rule would achieve greater VOC emissions reductions, relative to the Federal AIM coatings rule, than was calculated in the Pechan Study (51 percent reduction versus 31 percent reduction), even if certain source categories were omitted from regulation under the OTC rule. For these reasons, the commenters state that EPA must not approve the proposed Pennsylvania AIM coatings rule as a revision to the SIP.¹

Response: EPA disagrees with this comment. What the commenters characterize as the Pechan Study is not at issue in this rulemaking. The Pechan Study was not submitted to EPA by the Commonwealth in support of its AIM coatings rule. Further, even if the Pechan Study had been submitted by the Commonwealth the validity of that data would not be at issue because, at this time, Pennsylvania is not asking for approval of any quantified amount of VOC emission reduction from the enactment of its regulation. Rather, this regulation has been submitted by the Commonwealth, and is being considered by EPA, on the basis that it strengthens the existing Pennsylvania SIP. The commenters do not dispute that the Pennsylvania AIM coatings rule will, in fact, reduce VOC emissions.

Section 110 of the Act provides the statutory framework for approval/disapproval of SIP revisions. Under the Act, EPA establishes NAAQS for certain pollutants. The Act establishes a joint Federal and state program to control air pollution and to protect public health. States are required to prepare SIPs for each designated "air quality control region" within their borders. The SIP must specify emission limitations and other measures necessary for that area to meet and maintain the required NAAQS. Each SIP must be submitted to EPA for its review and approval. EPA will review and *must approve* the SIP revision if it is found to meet the minimum requirements of the Act. See Section 110(k)(3) of the Act; see also *Union Elec. Co. v. EPA*, 427 U.S. 246, 265, 96 S.Ct. 2518, 49 L.Ed.2d 474 (1976). The Act expressly provides that the states may adopt more stringent air pollution control measures than the Act requires with or without EPA approval. See Section 116 of the Act. EPA only has power to disapprove state plans,

¹ One of the commenters has submitted a "Request for Correction of Information" (RFC) dated June 2, 2004, to EPA's Information Quality Guidelines Office in Washington, DC. EPA is evaluating and will respond separately to the RFC, which raises substantively similar issues to those raised by this comment.

and revisions thereto, that are less stringent than a standard or limitation provided by Federal law. See Section 110(k) of the Act; *see also Duquesne Light v. EPA*, 166 F.3d 609 (3d Cir. 1999).

The Pechan Study is not part of the Commonwealth's submission in support of its AIM coatings rule. Because the Commonwealth's December 3, 2003 submission is not claiming a specific amount of emissions reductions, the level of emissions reductions that might be calculable using data contained in the Pechan Study is irrelevant to whether EPA can approve this SIP revision.² The only relevant inquiry at this time is whether this SIP revision meets the minimum criteria for approval under the Act, including the requirement that the Commonwealth's AIM coatings rule be at least as stringent as the Federal AIM coatings rule set forth at 40 CFR 59.400, subpart D.

As set forth herein, EPA has concluded that the Pennsylvania AIM coatings rule meets the criteria for approvability. It is worth noting that EPA agrees with the commenters' conclusion that the Pennsylvania AIM coatings rule is more stringent than the Federal AIM coatings rule, though not for the reasons given by the commenters, i.e., that the commenters' "better" data demonstrates that OTC Model AIM coatings Rule achieves a 51 percent, as opposed to the Pechan Study's 31 percent reduction in VOC emissions beyond that required by the Federal AIM coatings rule. Rather, the Pennsylvania AIM coatings rule is, on its face, more stringent than the Federal AIM coatings rule. The preamble of the Pennsylvania AIM coatings rule states: "This final-form rulemaking sets specific VOC content limits, in grams per liter, for 48 AIM coating categories and requires more stringent VOC content limits than the Federal rule." 33 Pa. B. 5297 (October 25, 2003). Examples of where Pennsylvania's AIM coatings rule is facially more stringent than the Federal AIM coatings rule include, but are not limited to, the VOC content limit for non-flat high gloss coatings and antifouling coatings. The Federal AIM coatings rule VOC content limit for non-flat high gloss coatings is 380 grams/liter while the Pennsylvania AIM coatings rule's limit is 250 grams/liter, and the Federal AIM coatings

rule's VOC content limit for anti-fouling coatings is 450 grams/liter while the Pennsylvania AIM coatings rule's is 400 grams/liter. Examples of where Pennsylvania AIM coatings rule is as stringent, but not more stringent, than the Federal AIM coatings rule include, but are not limited to, the VOC content limit for antenna coatings and low-solids coatings. In both rules the VOC content limits for these categories are 530 grams/liter and 120 grams/liter, respectively. Thus, on a category by category basis, the Pennsylvania AIM coatings rule is as stringent or more stringent than the Federal AIM coatings rule. Further, EPA has received no comments that the Pennsylvania AIM coatings rule is less stringent than the Federal rule.

E. Comment: Approval of the Pennsylvania AIM Coatings rule as a SIP Revision Violates Clean Air Act Sections 110(a)(2)(A) and 110(a)(2)(E)—With respect to Sections 110(a)(2)(A) and 110(a)(2)(E) of the Act, the commenters assert that Pennsylvania cannot give the assurances required by these provisions of the Act since each provision requires that a state be able to assure that SIP revisions "meet applicable requirements" of the Act, and that no "Federal or State law" prohibits the state from "carrying out such implementation plan or portion thereof." Such assurance cannot be given, the commenters allege, because the Pennsylvania AIM coatings rule violates the DQOA, Sections 183(e)(9) and 184(c) of the Act, and Sections 4004.2 and 4005 of the Pennsylvania Air Pollution Control Act (PAPCA).

Response: For the reasons set forth herein and in responses to comments D. and F.—J., EPA disagrees that the Pennsylvania AIM coatings rule violates the DQOA, the provisions of the CAA or the PAPCA. Therefore, nothing prevents Pennsylvania from giving the assurances contemplated by Sections 110(a)(2)(A) and (a)(2)(E) of the Act.

Section C. of the preamble of Pennsylvania's rule states: "The final form rulemaking is being made under section 5 of the Air Pollution Control Act (35 P.S. subsection 4005), which grants the [Pennsylvania Environmental Quality Board (the EQB)] the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution." See C. Statutory Authority, 33 Pa. B. 5297 (October 25, 2003). The EQB made the Finding that "This rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this preamble." See J. Findings, paragraph (4), 33 Pa. B. 5306 (October 25, 2003).

Under 4004.2 of the PAPCA, in order for the Commonwealth to adopt a rule for the State Implementation Plan that is more stringent than its comparable Federal requirement, the EQB must find that the rule is reasonably necessary to achieve and maintain the NAAQS or find the rule is necessary to avoid the impositions of sanctions under the Act. For the Pennsylvania AIM coatings rule, the EQB made those Findings. See J. Findings, paragraphs (5) and (6), 33 Pa. B. 5306 (October 25, 2003). The EQB, acting under the authorizing statutes, ordered that the regulations of the PADEP are amended by adding Subsections 130.601–130.611 (as correctly renumbered 33 Pa. B. 5618, November 18, 2003) as set forth in Annex A, which has been codified as 25 Pa. Code Chapter 130, Subchapter C—the Pennsylvania AIM coatings rule—that is the subject of this SIP revision. Further the EQB ordered that its Chairperson submit the Order and Annex A to the Office of the General Counsel and the Office of the Attorney General for review and approval as to legality and form, as required by law. The EQB also ordered that its Chairperson submit its Order and Annex A to the Independent Regulatory Review Committee (IRRC) and the Senate and House Environmental Resources and Energy Committees as required by Pennsylvania's Regulatory Review Act. The EQB also ordered that its Chairperson certify the Order and Annex A and deposit them with the Legislative Reference Bureau as required by law. Finally the EQB ordered that its Order shall take effect immediately upon publication in the Pennsylvania Bulletin. See K. Order, paragraphs (a)–(e), 33 Pennsylvania Bulletin 5306 (October 25, 2003). The Order was adopted by the Board at its July 15, 2003 meeting. Between the July 15, 2003 adoption date of the Order and the October 25, 2003 date of its publication in the Pennsylvania Bulletin, the reviews as to legality and form of 25 Pa. Code Chapter 130, Subchapter C—the Pennsylvania AIM coatings rule were performed. The PADEP Office of General Counsel approved 25 Pa. Code, Chapter 130, Subchapter C as to its legality and form on July 24, 2003. The IRRC approved 25 Pa. Code, Chapter 130, Subchapter C as to its legality and form on September 12, 2003. The Office of the Attorney General for the Commonwealth of Pennsylvania approved 25 Pa. Code, Chapter 130, Subchapter C as to its legality and form on October 3, 2003. EPA, in its review of the SIP revision submission of the Pennsylvania AIM coatings rule, has

² After submission of a request for approval of a quantified amount of emissions reductions credit due to the AIM coatings rule, EPA will evaluate the credit attributable to the rule. Whatever methodology and data the State uses in such a request, the issue of proper credit will become ripe for public comment and any comments received will be responded to at that time.

found no reason to indicate that the review performed by PADEP's Office of the General Counsel, the IRRC and the Office of the Attorney General for the Commonwealth of Pennsylvania as to the legality of its AIM coatings rule under State law, is insufficient. (Documentation of the approvals by the Office of General Counsel, the IRRC and the Office of the Attorney General have been made part of the administrative record of this final rulemaking).

F. Comment: The PA AIM Coatings Rule Was Adopted in Violation of Clean Air Act Section 183(e)(9)—The commenters state that in 1998, after a seven-year rule development process, EPA promulgated its nationwide regulations for AIM coatings pursuant to Section 183(e) of the Act. The commenters note that Pennsylvania's AIM coatings rule imposes numerous VOC emission limits that will be more stringent than the corresponding limits in EPA's regulation. The commenters assert that Section 183(e)(9) of the Act requires that any state which proposes regulations to establish emission standards other than the Federal standards for products regulated under Federal rules shall first consult with the EPA Administrator. The commenters believe that Pennsylvania failed to engage in that required consultation, and, therefore (1) Pennsylvania violated Section 183(e)(9) in its adoption of the Pennsylvania AIM coatings rule, and (2) approval of the AIM coatings rule by EPA would violate, and is, therefore, prohibited by Sections 110(a)(2)(A) and (a)(2)(E) of the Act.

Response: EPA disagrees with this comment. Contrary to the implication of the commenters, Section 183(3)(9) does not require states to seek EPA's permission to regulate consumer products. By its explicit terms, the statute contemplates consultation with EPA only with respect to "whether any other state or local subdivision has promulgated or is promulgating regulations or any products covered under [section 183(e)]." The commenters erroneously construe this as a requirement for permission rather than informational consultation. Further, the final Federal architectural coatings regulations at 40 CFR 59.410 explicitly provides that States and their political subdivisions retain authority to adopt and enforce their own additional regulations affecting these products. See also, 63 FR 48848, 48884. In addition, as stated in the preamble to the final rule for architectural coatings, Congress did not intend Section 183(e) to preempt any existing or future State rules governing VOC emissions from consumer and commercial products. See

63 FR 48848, 48857. Accordingly, PADEP retains authority to impose more stringent limits for architectural coatings as part of its SIP, and its election to do so is not a basis for EPA to disapprove the SIP. See, *Union Elec. Co. v. EPA*, 427 U.S. at 265–66 (1976). Although national uniformity in consumer and commercial product regulations may have some benefit to the regulated community, EPA recognizes that some localities may need more stringent regulation to combat more serious and more intransigent ozone nonattainment problems.

Further, there was ample consultation with EPA prior to the Commonwealth's adoption of its AIM coatings rule. On March 28, 2001 the OTC adopted a Memorandum of Understanding (MOU) on regional control measures, signed by all the member states of the OTC, including Pennsylvania, which officially made available the OTC model rules, including the AIM coatings model rule. See the discussion of this MOU in the Report of the Executive Director, OTC, dated July 24, 2001, a copy of which has been included in administrative record of this final rulemaking.

That MOU includes the following text, "WHEREAS after reviewing regulations already in place in OTC and other States, reviewing technical information, consulting with other States and Federal agencies, consulting with stakeholders, and presenting draft model rules in a special OTC meeting, OTC developed model rules for the following source categories * * * architectural and industrial maintenance coatings * * *" (a copy of the signed March 28, 2001 MOU has been placed in the administrative record of this final rulemaking).

EPA Region III and the Commonwealth of Pennsylvania negotiated the adoption of the OTC model rules in the FY 2003 Work Plan for PADEP's annual State Assistance Grant under Section 105 of the Act. The commitment included in the Grant Work Plan (which was approved and funded by EPA under Section 105 of the Act) stated that the PADEP would continue to submit outstanding rules developed in accordance with the March 28, 2001 OTC MOU as SIP revisions by September 9, 2003. The relevant page of the FY 2003 Grant Work Plan has been placed in the administrative record of this final rulemaking.

Therefore, there is no validity to the commenters' assertion that Pennsylvania failed to consult with EPA in the adoption of its AIM coatings rule.

EPA was fully cognizant of the requirements of the Pennsylvania AIM coatings rule before its formal adoption by the Commonwealth.³ For all these reasons, EPA disagrees that Pennsylvania violated Section 183(e)(9) in its adoption of the its AIM coatings rule, and disagrees that approval of the Pennsylvania AIM coatings rule by EPA is in violation of or prohibited by Section 110(a)(2)(A) and (a)(2)(E) of the Act.

G. Comment: The PA AIM Coatings Rule Was Adopted in Violation of Clean Air Act Section 184(c), and Approval of the SIP Revision Would, Itself, Violate That Section—The commenters believe the OTC violated Section 184(c)(1) of the Act by failing to "transmit" its recommendations to the Administrator, and that the OTC's violation was compounded by the Administrator's failure to review the Model Rule through the notice, comment and approval process required by CAA Sections 184(c)(2)–(4). These alleged violations of the Act should have prevented Pennsylvania from adopting the Pennsylvania AIM coatings Rules, and now prevent EPA from validly approving them as a revision to the Pennsylvania SIP.

Response: EPA disagrees with this comment. Section 184(c)(1) of the Act states that "the [OTC] may, after notice and opportunity for public comment, develop recommendations for additional control measures to be applied within all or a part of such transport region if the commission determines such measures are necessary to bring any area in such region into attainment by the dates provided by this subpart." It is important to note that the OTC model AIM coatings rule was not developed pursuant to Section 184(c)(1), which provision is only triggered "[u]pon petition of any State within a transport region established for ozone * * *." No such petition preceded the development of the model AIM coatings rule. Nor, for that matter, was development of a rule upon State petition under Section 184(e)(1) meant to be the exclusive mechanism for development of model rules within the OTC. Nothing in Section 184 prevents the voluntary development of model rules without the prerequisite of a state petition. This provision of the Act was not intended to prevent OTC's

³ While EPA reviewed the model AIM coatings rule and the draft Pennsylvania version of that rule, EPA had no authority conferred under the Clean Air Act to dictate the exact language or requirements of the rule beyond the general requirement that the Pennsylvania rule, in order to be approvable as a SIP revision, must be at least as stringent as its Federal counterpart.

development of model rules which states may individually choose to adapt and adopt on their own, as Pennsylvania did, basing its AIM coatings rule on the model developed within the context of the OTC. In developing its State rule from the OTC model, Pennsylvania was free to adapt that rule as it saw fit (or to leave the OTC model rule essentially unchanged), so long as its rule remained at least as stringent as the Federal AIM coatings rule.

As previously stated, on March 28, 2001, the OTC member states signed a MOU on regional control measures, including the AIM coatings model rule. The OTC did not develop recommendations to the Administrator for additional control measures. The MOU stated that implementing these rules will help attain and maintain the 1-hour standard for ozone and were therefore made available to the states for use in developing their own regulations.

Even though the OTC did not develop the model AIM coatings rule pursuant to Section 184(c)(1) of the Act, nevertheless it provided ample opportunity for OTC member and stakeholder comment by holding several public meetings concerning the model rules including the AIM coatings model rule. The sign-in sheets or agenda for four meetings held in 2000 and 2001 at which the OTC AIM coatings model was discussed (some of which reflect the attendance of a representative of the EPA and/or the commenters), have been placed in the administrative record for this final rulemaking.

H. Comment: The PA AIM Coatings Rule Was Adopted in Violation of the Pennsylvania Air Pollution Control Act (PAPCA)—The commenters assert that the General Assembly of the Commonwealth of Pennsylvania, when it amended the PAPCA in 1992, addressed the issue of consumer product regulation, not by delegating rulemaking authority to the EQB, but by conferring limited enforcement authority upon PADEP. The commenters state that the Legislature authorized PADEP to enforce the Federal standards, not to promulgate its own more stringent standards. The commenters cite to a provision of the PAPCA which confers upon the PADEP the power and duty to develop and submit to EPA procedures to implement and enforce the regulations which EPA adopts under Section 183(e) of the Act to reduce emissions from consumer and commercial products, provided the PADEP will receive the credits attributed to the Federal consumer and commercial products regulations under Section 182 of the CAA regulations, and

that the PADEP has the resources to implement and enforce the program. 35 P.S. subsection 4004. The commenters also cite to the PAPCA subsection 4005 for the proposition that the EQB's rulemaking authority powers are specifically enumerated in thirteen explicit subsections, none of which mention consumer products (with a footnote to an exception in 4005(a)(13) related to aerospace coatings). The commenters also point to PAPCA subsection 4004.2 to note that it is the Legislature's expressed intent that delegated rulemaking authority not be broadly construed but is limited by a requirement that any rule adopted by the EQB under the PAPCA be no more stringent than a specific Federal rule. The commenters conclude, therefore, that if Pennsylvania chooses to regulate AIM coatings beyond the levels set by EPA, that choice must be made by the Pennsylvania General Assembly in the form of a specific statute or by delegating additional specific rulemaking authority to the EQB, and as such delegation is absent, the Pennsylvania AIM coatings rule is unlawful as a matter of Pennsylvania law.

Response: EPA disagrees with this comment. The commenters' citations to the PAPCA are incomplete with regard to the ability of the Commonwealth to adopt air pollution control regulations that are more stringent than comparable Federal requirements. The commenters fail to note the provisions under PAPCA subsection 4004.2(b) whereby the Commonwealth may adopt a rule for the State Implementation Plan that is more stringent than its comparable Federal requirement, if the EQB finds that the rule is reasonably necessary to achieve and maintain the NAAQS or necessary to avoid the impositions of sanctions under the Act. Pennsylvania adopted its AIM coatings rule to achieve additional VOC reductions from AIM coatings. The Pennsylvania AIM coatings rule is a part of the Commonwealth's strategy to achieve and maintain the ozone standard throughout the Commonwealth. The Federal AIM coatings rule was promulgated in 1998. To capture additional VOC emission reductions, the Commonwealth adopted its more stringent AIM coatings rule in October of 2003. As EPA notes in its response to Comment B., the Pennsylvania AIM coatings rule sets specific VOC content limits, in grams per liter, for 48 AIM coating categories and requires, for certain categories, more stringent VOC content limits than the Federal Rule. As indicated in EPA's response to Comment D., EPA

acknowledges that under the PAPCA, in order for the EQB to adopt a rule for the State Implementation Plan that is more stringent than its comparable Federal requirement, the EQB must find that the rule is reasonably necessary to achieve and maintain the NAAQS or to avoid the imposition of sanctions. For the Pennsylvania AIM coatings rule, the EQB made those Findings. See J. Findings, paragraphs (5) and (6), 33 Pennsylvania Bulletin 5306 (October 25, 2003). Consequently, EPA believes that the EQB has made the requisite findings for the adoption of rules and regulations more stringent than those required by the Act. Moreover, the Office of General Counsel for PADEP, the Commonwealth's IRRC, and the Office of the Attorney General for the Commonwealth of Pennsylvania have each approved the Pennsylvania AIM coatings rule with regard to its legality and form under Pennsylvania law. See EPA's response to Comment E. EPA, in its review of the SIP revision submission of the Pennsylvania AIM coatings rule, has found no reason to indicate that the review performed by PADEP's Office of the General Counsel, the IRRC and the Office of the Attorney General for the Commonwealth of Pennsylvania as to the legality of its AIM coatings rule under State law, is insufficient. EPA has, therefore, determined pursuant to Section 110(a)(2)(E) of the Clean Air Act and 40 CFR section 51, appendix V, that Pennsylvania has provided the necessary assurances that it has adequate authority to implement the SIP revision and that it has followed all the procedural requirements of Pennsylvania's laws and constitution in adopting the SIP revision submitted to EPA.

I. Comment: The Pennsylvania AIM Coatings Rule Violates the Commerce Clause of the U.S. Constitution—The commenters claim that the Pennsylvania AIM coatings rule violates the Commerce Clause of Article I, Section 8, of the U.S. Constitution, because it imposes an unreasonable burden on interstate commerce. The commenters assert that because the Pennsylvania AIM coatings rule contains VOC limits and other provisions that differ from the Federal AIM coatings rule in 40 CFR 59.400, the rule causes an unreasonable restriction on coatings in interstate commerce. The commenters further assert that the burdens of the Pennsylvania AIM coatings rule are excessive and outweigh the benefits of the rule. The commenters suggest that EPA should disapprove the SIP revision on this basis.

Response: EPA agrees with this comment only to the extent that it acknowledges that AIM coatings are products in interstate commerce and that state regulations on coatings therefore have the potential to violate the Commerce Clause. EPA understands the commenters' practical concerns caused by differing state regulations, but disagrees with the commenters' view that the Pennsylvania AIM coatings rule impermissibly impinges on interstate commerce. A state law may violate the Commerce Clause in two ways: (i) By explicitly discriminating between interstate and intrastate commerce; or (ii) even in the absence of overt discrimination, by imposing an incidental burden on interstate commerce that is markedly greater than that on intrastate commerce. The Pennsylvania AIM coatings rule does not explicitly discriminate against interstate commerce because it applies evenhandedly to all coatings manufactured or sold for use within the state. At most, therefore, the Pennsylvania AIM coatings rule could have an incidental impact on interstate commerce. In the case of incidental impacts, the Supreme Court has applied a balancing test to evaluate the relative impacts of a state law on interstate and intrastate commerce. *See, Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). Courts have struck down even nondiscriminatory state statutes when the burden on interstate commerce is "clearly excessive in relation to the putative local benefits." *Id.* at 142.

At the outset, EPA notes that it is unquestionable that the Commonwealth has a substantial and legitimate interest in obtaining VOC emissions for the purpose of attaining the ozone NAAQS. The adverse health consequences of exposure to ozone are well known and well established and need not be repeated here. *See, e.g., National Ambient Air Quality Standards for Ozone: Final Response to Remand*, 68 FR 614, 620–25 (January 6, 2003). Thus, the objective of the Commonwealth in adopting the Pennsylvania AIM coatings rule is to protect the public health of the citizens of Pennsylvania. The courts have recognized a presumption of validity where the state statute affects matters of public health and safety. *See, e.g., Kassel v. Consolidated Freightways Corp. of Delaware*, 450 U.S. 662, 671 (1980). Moreover, even where the state statute in question is intended to achieve more general environmental goals, courts have upheld such statutes notwithstanding incidental impacts on out of state manufacturers of a product. *See, e.g., Minnesota v. Clover Leaf*

Creamery, et al., 449 U.S. 456 (1981) (upholding state law that banned sales of milk in plastic containers to conserve energy and ease solid waste problems).

The commenters assert, without reference to any facts, that the Pennsylvania AIM coatings rule imposes burdens and has impacts on consumers that are "clearly excessive in relation to the purported benefits * * *". By contrast, EPA believes that any burdens and impacts occasioned by the Pennsylvania AIM coatings rule are not so overwhelming as to trump the state's interest in the protection of public health. First, the Pennsylvania AIM coatings rule does not restrict the transportation of coatings in commerce itself, only the sale of nonconforming coatings within the state's own boundaries. The state's rule excludes coatings sold or manufactured for use outside the state or for shipment to others. 25 Pa. Code. 130.601(1). The Pennsylvania AIM coatings rule cannot be construed to interfere with the transportation of coatings through the state en route to other states. As such, EPA believes that the cases concerning impacts on the interstate modes of transportation themselves are inapposite. *See, e.g., Bibb v. Navajo Freight Lines*, 359 U.S. 520 (1938).

Second, the Pennsylvania AIM coatings rule is not constructed in such a way that it has the practical effect of requiring extraterritorial compliance with the state's VOC limits. The Pennsylvania AIM coatings rule only governs coatings manufactured or sold for use within the state's boundaries. The manufacturers of coatings in interstate commerce are not compelled to take any particular action, and they retain a range of options to comply with the rule, including, but not limited to: (1) Ceasing sales of nonconforming products in Pennsylvania; (2) reformulating nonconforming products for sale in Pennsylvania and passing the extra costs on to consumers in that state; (3) reformulating nonconforming products for sale more broadly; (4) developing new lines of conforming products; or (5) entering into production, sales or marketing agreements with companies that do manufacture conforming products. Because manufacturers or sellers of coatings in other states are not forced to meet Pennsylvania's regulatory requirements elsewhere, the rule does not impose the type of obligatory extraterritorial compliance that the courts have considered unreasonable. *See, e.g., NEMA v. Sorrell*, 272 F.3d 104 (2nd Cir. 2000) (state label requirement for light bulbs containing mercury sold

in that state not an impermissible restriction). It may be that the Pennsylvania AIM coatings rule will have the effect of reducing the availability of coatings or increasing the cost of coatings within the State, but courts typically view it as the prerogative of the state to make regulatory decisions with such impacts upon its own citizens. *NPCA v. City of Chicago*, 45 F.3d 1124 (7th Cir. 1994), *cert. denied*, 515 U.S. 1143 (1995) (local restriction on sales of paints used by graffiti artists may not be the most effective means to meet objective, but that is up to the local government to decide).

Third, the burdens of the Pennsylvania AIM coatings rule typically do not appear to fall more heavily on interstate commerce than upon intrastate commerce. The effect on manufacturers and retailers will fall on all manufacturers and retailers regardless of location if they intend their products for sale within Pennsylvania, and does not appear to have the effect of unfairly benefitting in-state manufacturers and retailers. The mere fact that there is a burden on some companies in other states does not alone establish impermissible interference with interstate commerce. *See, Exxon Corp. v. Maryland*, 437 U.S. 117, 126 (1978).

In addition, EPA notes that courts do not typically find violations of the Commerce Clause in situations where states have enacted state laws with the authorization of Congress. *See, e.g., Oxygenated Fuels Assoc., Inc. v. Davis*, 63 F. Supp. 1182 (E.D. Cal. 2001) (state ban on MTBE authorized by Congress); *NEMA v. Sorrell*, 272 F.3d 104 (2nd Cir. 2000) (RCRA's authorization of more stringent state regulations confers a "sturdy buffer" against Commerce Clause challenges). Section 183(e) of the Act governs the Federal regulation of VOCs from consumer and commercial products, such as coatings covered by the Pennsylvania AIM coatings rule. EPA has issued a Federal regulation that provides national standards, including VOC content limits, for such coatings. *See* 40 CF 59.400 *et seq.* Congress did not, however, intend Section 183(e) to pre-empt additional state regulation of coatings, as is evident in Section 183(e)(9) which indicates explicitly that states may regulate such products. EPA's regulations promulgated pursuant to the Act recognized that states might issue their own regulations, so long as they meet or exceed the requirements of the Federal regulations. *See, e.g., the National Volatile Organic Compound Emission Standards for Architectural Coatings*, 40 CFR 59.410, and the

Federal Register which published the standards, 63 FR 48848, 48857 (September 11, 1998). Thus, EPA believes that Congress has clearly provided that a state may regulate coatings more stringently than other states.

In Section 116 of the Act, Congress has also explicitly reserved to states and their political subdivisions the right to adopt local rules and regulations to impose emissions limits or otherwise abate air pollution, unless there is a specific Federal preemption of that authority. When Congress intended to create such Federal preemption, it does so through explicit provisions. See, e.g., Section 209(a) of the Act, which pertains to state or local emissions standards for motor vehicles; and Section 211 of the Act which pertains to fuel standards. Moreover, the very structure of the Act is based upon "cooperative federalism," which contemplates that each state will develop its own state implementation plan, and that states retain a large degree of flexibility in choosing which sources to control and to what degree in order to attain the NAAQS by the applicable attainment date. *Union Electric Co. v. EPA*, 427 U.S. 246 (1976). Given the structure of the Act, the mere fact that one state might choose to regulate sources differently than another state is not, in and of itself, contrary to the Commerce Clause.

Finally, EPA understands that there may be a practical concern that a plethora of state regulations could create a checkerboard of differing requirements would not be the best approach to regulating VOCs from AIM coatings or other consumer products. Greater uniformity of standards does have beneficial effects in terms of more cost effective and efficient regulations. As EPA noted in its own AIM coatings rule, national uniformity in regulations is also an important goal because it will facilitate more effective regulation and enforcement, and minimize the opportunities for undermining the intended VOC emission reductions. 63 FR 48856–48857. However, EPA also recognizes that Pennsylvania and other states with longstanding ozone nonattainment problems have local needs for VOC reductions that may necessitate more stringent coatings regulations. Under Section 116 of the Act, states have the authority to do so, and significantly, many states in the Northeast have joined together to prepare and promulgate regulations more restrictive than the Federal AIM coatings rule to apply uniformly across that region. This regional collaboration provides regional uniformity of

standards. Pennsylvania may have additional burdens to insure compliance with its rule, but for purposes of this action EPA presumes that the Commonwealth take appropriate actions to enforce it as necessary. The EPA has no grounds for disapproval of the SIP revision based upon the commenters' Commerce Clause comment.

J. Comment: The Emission Limits and Compliance Schedule in the Pennsylvania AIM Coatings Rule are Neither Necessary nor Appropriate to Meet Applicable Requirements of the Clean Air Act—The commenters claim that the Pennsylvania AIM coatings rule is not "necessary or appropriate" for inclusion in the Pennsylvania SIP, because EPA did not direct Pennsylvania to achieve VOC reductions through the AIM coatings rule, but left it to the State to decide how such reduction can be achieved. The commenters further assert that the Pennsylvania AIM coatings rule is not necessary or appropriate for inclusion in the Pennsylvania SIP because of the numerous procedural and substantive failings on the part of PADEP in promulgating the rule.

Response: EPA disagrees with this comment. If fulfillment of the "necessary or appropriate" condition of Section 110(a)(2)(A) required EPA to determine that a measure was necessary or appropriate and require a state to adopt that measure, this condition would present a "catch 22" situation. EPA does not generally have the authority to require the State to enact and include in its SIP any particular control measure, even a "necessary" one.⁴ However, under Section 110(a)(2)(a) a control measure must be either "necessary or appropriate" (emphasis added); the use of the disjunctive "or" does not provide that a state must find that *only* a certain control measure and *no other measure* will achieve the required reduction. Rather, a state may adopt and propose for inclusion in its SIP any measure that meets the other requirements for approvability so long as that measure is at least as appropriate, though not exclusive, means of achieving emissions reduction. See also, *Union Elec. Co. v. EPA*, 427 U.S. 246, 264–266 (1976)

⁴ As noted in *Virginia v. EPA*, 108 F.3d 1397 (DC Cir. 1997), EPA does have the authority within the mechanism created by Section 184 of the Act to order states to adopt control measures recommended by the OTC, if EPA agrees with and approves that recommendation. 108 F.3d, n.3 at 1402. As we have previously stated, the OTC model AIM coatings rule was not developed pursuant to the Section 184 mechanism; EPA therefore has no authority to order that Pennsylvania or any other state adopt this measure in order to reduce VOC emissions.

(holding that "necessary" measures are those that meet the "minimum conditions" of the Act, and that a state "may select whatever mix of control devices it desires," even ones more stringent than Federal standard, to achieve compliance with a NAAQS, and that "the Administrator must approve such plans if they meet the minimum requirements" of Section 110(a)(2) of the Act). Clearly, in light of the Act and the case law, EPA's failure to specify the state adoption of a specific control measure cannot dictate whether a measure is necessary or appropriate.

In this particular instance, EPA identified an emission reduction shortfall associated with Pennsylvania's 1-hour ozone attainment demonstration SIP, and required Pennsylvania to address the shortfall (See, 64 FR 70428 and 66 FR 54143). It is the Commonwealth's prerogative to develop whatever rule or set of rules it deems necessary or appropriate such that the rule or rules will collectively achieve the additional emission reductions for attainment of the 1-hour ozone standard as identified by EPA.

As stated previously, the Commonwealth's December 3, 2003 SIP revision submittal, supplemented by further documentation added to the administrative record by EPA to respond to comments submitted on its March 11, 2004 NPR, provides evidence that it that it has the legal authority to adopt its AIM rule and that it has followed all of the requirements in the Commonwealth law and constitution that are related to adoption of the plan.

K. Comment: The Written Comments Submitted by the Commenters to the Pennsylvania EQB, the Pennsylvania IRRC and the PADEP on Pennsylvania's Proposed Version of its AIM Coatings Rule Are Incorporated by Reference into the Comments Submitted to EPA on its March 11, 2004 NPR Proposing Approval of the Final, Adopted Pennsylvania AIM Coatings Rule—In their letters submitted to EPA as comment to EPA's proposed approval of the Pennsylvania AIM coatings rule, the commenters incorporate by reference a letter from Madelyn K. Harding, Sherwin Williams Company to the Pennsylvania EQB dated February 20, 2002 and its attachments; a letter from W. Lance H. Hensarath, Sherwin Williams Company to Kathleen McGinty, Secretary of the Pennsylvania DEP, dated April 21, 2003 and its attachment; a letter from Harvey P. Sass, Sherwin Williams Company to Commissioner John R. McGinley, Jr., IRRC, dated September 5, 2003 and its attachment; and NPCA's Statement Before Pennsylvania Independent

Regulatory Review Commission, dated September 12, 2003. The following summarizes the comments presented to Pennsylvania and incorporated by reference by the commenters:

(1) The commenters have significant concerns with the proposed standards for certain paints and coatings, e.g., interior wood clear and semi-transparent stains, interior wood vanishes, interior wood sanding sealers, exterior wood primers, and floor coatings. The commenters assert that Pennsylvania's proposed AIM coatings regulation is based upon the inaccurate assumption that compliant coatings are available or can be developed which will satisfy customer requirements and meet all of the performance requirements of these categories. The commenters contend that such coatings are not effectively within the limits of current technology and that this inaccurate assumption will result in increased and earlier repainting which can damage floors in Pennsylvania due to seasonal variations in temperature and humidity.

(2) The commenters contend that PADEP has not considered the increase in emissions resulting from the performance issues and consequential repainting.

(3) The commenters suggest changes to the VOC standards for only a few of the product categories proposed by Pennsylvania in its AIM coatings regulation, and claim that the version of the AIM coatings rule it counter-proposes will achieve significant reductions beyond the Federal AIM coatings rule (26.5 tons/day) which is very close to the amount of emission reductions determined by PADEP for the Pennsylvania proposed regulation.

(4) The commenters state that Pennsylvania's proposed AIM coatings rule is unreasonably stringent and unnecessary for the protection of public health, welfare and safety, and it is arbitrary and capricious as the record does not support the emission reduction claims.

(5) The commenters contend that Pennsylvania's proposed AIM coatings rule will have a significant adverse impact on the commenters, and that the PADEP can issue a regulation that achieves substantial VOC reductions beyond the Federal AIM coatings rule without causing serious adverse impact on potential sales of certain products. A further comment contends that due to Pennsylvania's climate, the added costs of heating trucks and warehouses to transport and store coatings will adversely impact manufacturers, shippers, end users and on society in the form of more energy consumption.

(6) The commenters assert that the economic analysis of Pennsylvania's proposed AIM coatings rule is inaccurate because it uses a cost figure of \$6400 per ton of emissions reduced based upon an economic analysis done for California. The commenters contend that the cost figure is inappropriate given the differences in the stringency of the current requirements for AIM coatings in Pennsylvania versus California, and therefore, Pennsylvania needs to make an independent determination of the cost of VOC reductions from its proposed AIM coatings regulation.

(7) The commenters indicate that both the Consumer Products regulation and AIM coatings rule proposed by Pennsylvania are based on rule developments in California. However, Pennsylvania's proposal includes the California averaging provision for consumer products but does not do so for AIM. The commenters assert that the failure to include the California averaging provision in the Pennsylvania AIM coatings rule is arbitrary and capricious, and places an unequal burden on the architectural coating industry.

(8) The commenters also submitted comments to the Commonwealth of Pennsylvania regarding its proposed AIM coatings rule asserting that the EQB and PADEP do not have authority under the Commerce Clause and the Pennsylvania Air Pollution Control Act (PAPCA) to adopt the proposed AIM coatings rule.

Response: As previously stated in this document, EPA disagrees with the commenter's assertion that the adoption of the AIM coatings regulation by the Commonwealth is in violation of the PAPCA. Please see EPA's response to Comment H. With regard to the comments regarding the Commerce Clause, please see EPA's response to Comment I.

With regard to the other comments submitted by the commenters to the Commonwealth on its proposed AIM coatings rule that they have incorporated by reference in their comments to EPA on EPA's March 11, 2004 proposed approval, EPA's response is that it is important to understand EPA's role and responsibilities with regard to the review and approval, or disapproval, of rules submitted as SIP revisions. Prior to approving a SIP revision request submitted by a state, EPA reviews the submission to ensure that the state provided the opportunity for comment and held a hearing(s) on the proposed state regulation that is at issue in the SIP revision pursuant to Section 110(a) of

the Act. In this case, the Commonwealth of Pennsylvania's December 3, 2003 submission of its AIM coatings rule to EPA includes the necessary documentation to demonstrate that it met these requirements. The Commonwealth's December 3, 2003 SIP revision submission is included in docket of this rulemaking. A complete SIP revision submission from a state includes copies of timely comments properly submitted to the state on the proposed SIP revision and the state's responses to those comments. The Commonwealth of Pennsylvania's December 3, 2003 submission of its AIM coatings rule as a SIP revision to EPA properly includes both the comments submitted on its proposed AIM coatings rule and the Commonwealth's responses to those comments. (See both the document entitled, Architectural and Industrial Maintenance (AIM) Coatings, Comment and Response Document prepared by the DEP, dated February 27, 2003 and 33 Pennsylvania Bulletin 5297 (October 25, 2003)).

The Commonwealth of Pennsylvania's SIP revision submission of its AIM coatings rule does not request that EPA approve a specific amount of VOC emission reduction credit. As such, the comments regarding the Commonwealth's emission reduction calculations are not germane to EPA's rulemaking to approve Pennsylvania's requested SIP revision. The Commonwealth's responses to the timely comments on the proposed Pennsylvania AIM coatings rule made by the commenters to Pennsylvania are included in the Commonwealth's December 3, 2003 submission to EPA for approval of the SIP revision.

The cost per ton figure determined by the Commonwealth in its economic analysis, its decision to rely upon information from California and its decision whether to include averaging provisions in its final AIM coatings rule are all decisions which fall within a state's purview, and issues regarding those decisions are rightfully raised by interested parties to the State during its regulatory adoption process. Therefore, it was appropriate that the commenters commented to the Commonwealth on these matters during the adoption of its AIM coatings rule. EPA has reviewed the SIP revision submitted and has determined that the commenters' comments on those issues they have incorporated by reference on this rulemaking, along with the Commonwealth's responses to those issues, are included therein. In the context of a SIP approval, EPA's review of these state decisions is limited to whether the SIP revision meets the

minimum criteria of the Act. Provided that the rule adopted by the state satisfies those criteria, EPA must approve such a SIP revision. *See, Union Elec Co. v. EPA.*

With regard to the comments concerning the availability of complying coatings and the ability to develop complying coatings that can meet customer requirements and performance requirements, EPA notes (as did the Commonwealth in its responses to such comments) that the final version of the Pennsylvania AIM coatings regulation includes variance provisions at 130.606–130.610. These provisions allow for variances from the VOC standards found in 130.603 to be granted by the PADEP to applicants which demonstrate technological infeasibility. EPA finds that the Commonwealth's approach to address demonstrated technological infeasibility in its AIM coatings rule by the variance provisions of 130.606–130.610 is both reasonable and within its purview, and therefore approvable as a SIP revision.

III. Final Action

EPA is approving the Pennsylvania SIP revision for the control of VOC emissions from AIM coatings submitted on December 3, 2003 and supplemented on October 19, 2004. The Pennsylvania AIM coatings rule is part of the Commonwealth's strategy to achieve and maintain the 1-hour ozone standard throughout the Commonwealth.

IV. Statutory and Executive Order Reviews

A. General 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 (Public Law 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). This action 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.*).

B. Submission to Congress and the Comptroller General

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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

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 January 24, 2005. 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, pertaining to Pennsylvania's AIM coatings rule, 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 1, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 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 NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(227) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(227) Revisions pertaining to the control of volatile organic compound emissions from architectural and industrial maintenance coatings submitted on December 3, 2003 and October 19, 2004 by the Commonwealth of Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letters of December 3, 2003 and October 19, 2004 from the Pennsylvania Department of Environmental Protection transmitting Pennsylvania's Architectural and Industrial Maintenance Coatings regulations.

(B) 25 Pa. Code Chapter 130, Subchapter C. Architectural and Industrial Maintenance Coatings, Subsections 130.601–130.611, inclusive, effective October 25, 2003.

(ii) Additional Material.—Remainder of the Commonwealth's submittals pertaining to the revisions listed in paragraph (c)(227)(i) of this section.

[FR Doc. 04–25815 Filed 11–22–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 10, 12, 28, 30

[USCG–2004–18884]

RIN 1625–ZA03

Shipping and Transportation; Technical, Organizational and Conforming Amendments

AGENCY: Coast Guard, DHS.

ACTION: Final rule; corrections.

SUMMARY: This document contains corrections to the Shipping and Transportation; Technical, Organizational and Conforming Amendments final rule for Titles 46 and 49 of the Code of Federal Regulations (USCG–2004–18884) published on September 30, 2004, in the **Federal Register** (69 FR 58336).

DATES: These corrections are effective November 23, 2004.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, USCG–2004–18884, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: If you have questions on these corrections, call Robert Spears, Project Manager, Standards Evaluation and Development Division (G–MSR–2), Coast Guard, at 202–267–1099. If you have questions on viewing, or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Background

Each year titles 46 and 49 of the Code of Federal Regulations are updated on

October 1. That rule, which became effective September 30, 2004, corrected organization names and addresses, revised authority citations for certain parts to reflect our move to the Department of Homeland Security (DHS) in March 2003, and made other technical and editorial corrections throughout titles 46 and 49. Neither that rule nor this rule makes any substantive change to the existing regulations.

Need for Correction

The final rule that was published on September 30, 2004, contains errors which may prove to be misleading and need to be clarified. This rule makes those clarifications.

List of Subjects

46 CFR Part 10

Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Reporting and recordkeeping requirements, Seamen.

46 CFR Part 28

Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 10, 12, 28, and 30 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

■ 1. The authority citation for part 10 continues to read as follows:

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. Chapter 71; 46 U.S.C. 7502, 7505, 7701, 8906; Department of Homeland Security Delegation No. 0170.1. Sec. 10.107 is also issued under the authority of 44 U.S.C. 3507.

§ 10.805 [Amended]

■ 2. In § 10.805(f), remove the words “The expiration date of a certificate of registry issued without an expiration date shall be determined in accordance with § 10.811.”

PART 12—CERTIFICATION OF SEAMEN

■ 3. The authority citation for part 12 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701;

Department of Homeland Security Delegation No. 0170.1.

■ 4. Revise § 12.02–3(b)(3) to read as follows:

§ 12.02–3 Where documents are issued.

(a) * * *

(b) * * *

(3) The written examinations are forwarded to the Commanding Officer, National Maritime Center by Merchant Marine Details. Any Marine Inspection Office at which an applicant with a temporary permit appears may request and obtain the examination in the case from the Commanding Officer, National Maritime Center. Any Marine Inspection Office which doubts the propriety of issuing a permanent certificate in lieu of a temporary permit which has been issued by a foreign Merchant Marine Detail shall inform the Commanding Officer, National Maritime Center fully as to the circumstances.

§ 12.15–5 [Amended]

■ 5. In § 12.15–5(c), remove the word “therefore” and add, in its place, the word “therefor”.

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

■ 6. The authority citation for part 28 continues to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; Department of Homeland Security Delegation No. 0170.1.

§ 28.30 [Amended]

■ 7. In § 28.30(a), after the words “subchapter S”, remove the words “of this chapter”; and before the words “subchapter S”, add the words “33 CFR”.

PART 30—GENERAL PROVISIONS

■ 8. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; Department of Homeland Security Delegation No. 0170.1; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–05 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 30.15–1 [Amended]

■ 9. In § 30.15–1(a) remove the word “therefore” and add, in its place, the word “therefor”.

§ 30.30–11 [Amended]

■ 10. In § 30.30–11(b) remove the word “therefore” and add, in its place, the word “therefor”.