due to the nature of the federal-state relationship under the CAA, 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).

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 promulgated 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 federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. 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 December 15, 1997. Filing a petition for reconsideration by the Regional 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 to approve VOC RACT determinations for a number of individual sources in Virginia as a revision to the Commonwealth's SIP 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: September 27, 1997.

William T. Wisniewski,

Acting 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. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraph (c)(121) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(121) Revisions to the State Implementation Plan submitted on August 12, 21, 26, 30, 1996, September 3, 1996 and March 27, 1997 by the Virginia Department of Environmental Quality regarding non-CTG VOC RACT requirements for six sources:

(i) Incorporation by reference.

(A) Letters submitted by the Virginia Department of Environmental Quality transmitting source-specific VOC RACT determinations in the form of Consent Agreements on the following dates: August 12, 21, 26, 30, 1996, September 3, 1996 and March 27, 1997.

(B) Consent Agreements:

(*1*) AlliedSignal Inc.—Hopewell Plant, City of Hopewell, VA, Consent Agreement Registration Number 50232, effective March 26, 1997;

(*2*) AlliedSignal Inc.—Chesterfield Plant, Chesterfield County, VA, Consent Agreement Registration Number 50233, effective May 20, 1996;

(*3*) Bear Island Paper Company, L.P., Hanover County, VA, Consent Agreement Registration Number 50840, effective July 12, 1996;

(*4*) Stone Container Corporation Hopewell Mill, City of Hopewell, Virginia, Consent Agreement Registration Number 50370, effective May 30, 1996;

(*5*) E.I. DuPont de Nemours and Company, Spruance Plant, Chesterfield County, Virginia, Consent Agreement Registration Number 50397, effective May 30, 1996;

(*6*) ICI Americas, Inc. Film Division—Hopewell Site, Chesterfield County, Virginia, Consent Agreement Registration Number 50418, effective May 30, 1996.

(ii) Additional material.

(A) Technical Support Documents submitted as part of the RACT determinations in paragraph (c)(121)(i) of this section by the Commonwealth of Virginia on August 12, 21, 23, 26, 30, 1996, September 3, 1996 and March 27, 1997.

[FR Doc. 97–27122 Filed 10–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN40–03–6988; FRL–5906–3]

Approval and Promulgation of State Implementation Plan; Minnesota; Evidentiary Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final action approves the State Implementation Plan (SIP) revision submitted by the State of Minnesota. The State's revision clarifies the types of testing and monitoring data, including stack and process monitoring data, that can be used directly for compliance certifications and enforcement.

EFFECTIVE DATE: This final rule is effective November 13, 1997.

ADDRESSES: Copies of the documents relevant to this action are available forpublic inspection during normal business hours at the following location:U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Regulation Development Section 2, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 353–6960.

SUPPLEMENTARY INFORMATION:

I. Background

In 1990, section 114 of the Clean Air Act (Act) was amended to require the Administrator of EPA to promulgate rules implementing an enhanced monitoring and compliance program for major stationary sources of air pollution. EPA determined that certain SIPs may preclude EPA and the States from implementing such a program because these SIPs may be interpreted to limit the types of testing and monitoring data

that may be used for determining compliance and establishing violations. Therefore, EPA issued a SIP call to those States whose SIPs may have limited the types of testing and monitoring data that may be used for determining compliance and establishing violations.

On March 24, 1994, EPA issued a SIP call to the State of Minnesota to revise its SIP. As part of the SIP call, EPA provided draft SIP language to the State. The SIP call clarified that any monitoring approved for the source (and included in a federally enforceable operating permit) may form the basis of the compliance certification, and that any credible evidence may be used for purposes of enforcement in Federal court.

On April 9, 1997, EPA published a direct final rulemaking approving the Minnesota Pollution Control Agency's (MPCA's) SIP revision that was made in response to EPA's SIP call. During the 30 day public comment period, adverse comments were received from the Minnesota Chamber of Commerce, the American Petroleum Institute and the National Environmental Development Association.

II. Public Comment/EPA Response

The following evaluation summarizes each comment received and EPA's response to the comment.

Minnesota Chamber of Commerce Comments

Following is a summary of comments received from the Minnesota Chamber of Commerce in a letter dated May 9, 1997 signed by Sherry Munyon. After each comment is EPA's response.

Comment 1: EPA's final ''credible evidence'' rule clearly removes any reference to ''presumptively credible'' forms of evidence and properly leaves questions of legal admissibility and credibility to judicial and administrative tribunals (62 FR 8316 February 24, 1997). Therefore, it appears that EPA is set to approve a SIP revision containing a rule based on an interpretation to which it no longer subscribes.

Response 1: In writing its rule, the MPCA did not feel that it had the authority to create presumptively credible evidence, since the MPCA did not feel it had the authority to create judicial ''presumptions.'' Therefore, the MPCA simply stated that violations may be based on any required monitoring method or any credible evidence. In doing this, the MPCA clarifies that its own rules cannot be used to limit a court's consideration of any credible evidence of a violation of a MPCA standard. This does not create judicial presumptions, nor does it conflict with EPA's final Credible Evidence rule.

Comment 2: If MPCA's rule is incorporated into the SIP, sources would then face two different standards regarding the admissibility and credibility of evidence.

Response 2: The EPA believes, contrary to the commentor, that approving this SIP revision actually enhances consistency rather than creating inconsistency. Since the rule submitted for Federal approvability is already adopted at the State level, approving it into the SIP would mean that both State and Federal authorities would be enforcing the same provisions.

American Petroleum Institute Comments

Following is a summary of comments received from the American Petroleum Institute in a letter dated May 8, 1997 signed by John E. Reese. After each comment is EPA's response.

Comment 1: Because sections 7007.0800 Subpart 6.C.(5) and 7017.0100 Subparts 1 and 2 of the Minnesota regulations were based on EPA's premature March 24, 1994 SIP call, the Minnesota regulations are not consistent with the current status of EPA's Enhanced Monitoring rulemaking. For example, section 7007.0800 Subpart 6.C.(5) makes reference to ''an enhanced monitoring protocol'' even though in 1995 EPA abandoned the Enhanced Monitoring approach in favor of the Compliance Assurance Monitoring (CAM) approach. Thus, the reference to ''Enhanced Monitoring'' in the Minnesota regulations is likely to cause confusion, and should be revised.

Response 1: By stating that the Minnesota rule, made in response to EPA's March 24, 1994 SIP call, is inconsistent with the current status of EPA's Enhanced Monitoring Rule, the commentor makes the argument that EPA's SIP call is inconsistent with the current status of EPA's Enhanced Monitoring Rule. This is not the case. In the EPA's final Credible Evidence Revisions rule, EPA has stated that:

> EPA's decision to forego the enhanced monitoring approach in favor of the CAM proposal has no effect on the basic goals of the SIP call, which are to clarify that non-reference test data can be used in enforcement actions, and to remove any potential ambiguity regarding this data's use for Title V compliance certifications (62 FR 8314, p. 8327).

While the commentor is correct in pointing out that MPCA's SIP revision does include language in section 7007.0800 Subpart 6.C.5 that makes reference to ''an enhanced monitoring protocol,'' EPA does not believe that any confusion will arise from the language found in Minnesota's rule. The section that contains the reference to the enhanced monitoring protocol does not limit the additional methods that can be used to demonstrate compliance with, or violation of, a standard to only an enhanced monitoring protocol. Also included are, ''any other monitoring method incorporated into a permit issued under this chapter.'' If only the language pertaining to ''an enhanced monitoring protocol'' were included as a revision to the language found in MPCA's, a SIP revision might be warranted. However, because there is additional language that does not limit using other methods as well, no conflict or confusion will arise from mentioning an enhanced monitoring protocol.

Comment 2: EPA's SIP call is invalid. Neither section 110 or any other provision of the Clean Air Act requires States to include credible evidence provisions in their SIPs. Even if one accepts EPA's assertion in the recently promulgated Credible Evidence Rule, 62 FR 8314 (February 24, 1997), that sections 113(a), 113(e), and 114 of the Clean Air Act authorize EPA to use any Credible Evidence to establish violations of emissions standards and limitations, those provisions speak only to the Administrator, and the courts, not to the States.

Response 2: EPA's SIP call is valid. The purpose of the SIP call is to clarify that non-reference test data can be used in enforcement actions, and to remove any potential ambiguity regarding this data's use for Title V compliance certifications. In responding to the SIP call the MPCA submitted to EPA rule revisions that ensured that the Minnesota SIP does not preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedures had been performed. This is all that is required to be consistent with EPA's final Credible Evidence rule.

Comment 3: The reference to ''Minnesota Statutes'' is incorrect, the correct reference is to ''Minnesota Rules.''

Response 3: EPA recognizes that the codification from the direct final **Federal Register** rule published on April 9, 1997 did incorrectly reference ''Minnesota Statutes.'' The new codification correctly references ''Minnesota Rules.''

National Environmental Development Association Comments

Following is a summary of comments received from the National Environmental Development Association in a letter dated May 9, 1997 signed by Leslie Sue Ritts. After each comment is EPA's response.

Comment 1: EPA cannot and should not approve State SIP revisions during the pendency of judicial review of EPA's credible evidence rule.

Response 1: The commentor assumes that if EPA's Credible Evidence rule is found to be illegal, it follows that Minnesota's rule is also illegal and cannot be approved. This is not necessarily the case. If EPA's rule is found to be illegal, EPA may not be able to require Minnesota to follow the requirements of the SIP call but EPA can still approve Minnesota's SIP revision. States can submit, and EPA can approve, SIP revisions that exceed Federal requirements at any point in time. If it is found that EPA's Credible Evidence rule is found to be illegal, this does not prevent EPA from approving MPCA's SIP revision.

Comment 2: The National Environmental Development Association believes that the current rule should be withdrawn because Minnesota's rule is clearly based on a version of the enhanced monitoring proposal and an EPA ''model rule'' that were withdrawn by EPA in April 1995. References to ''presumptive'' credible evidence in the **Federal Register** notice, while also not clear on the face of the Minnesota regulations, are also plainly inconsistent with the notion in the final Federal credible evidence rule that all monitoring evidence, whatever its origin, would be weighed by a trier of fact and to provisions in the EPA credible rule that condition the use of credible evidence as ''relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.'' In addition, references in the **Federal Register** notice to Federal ''enhanced monitoring protocols'' and ''model rules'' are obsolete. These will eventually be replaced by Federal requirements for ''compliance assurance monitoring'' plans under the pending CAM rule which the Federal agency is about to finalize.

Response 2: The MPCA did not base its rule on EPA's model rule. In writing its rule, the MPCA did not feel that it had the authority to create presumptively credible evidence, since the MPCA did not feel it had the authority to create judicial ''presumptions.'' Therefore, the MPCA simply stated that violations may be based on any required monitoring method or any credible evidence. In doing this, the MPCA clarifies that its own rules cannot be used to limit a court's consideration of any credible evidence of a violation of a MPCA standard. This does not create judicial presumptions, nor does it conflict with EPA's final Credible Evidence rule.

III. Final Action

The comments received were found to warrant no changes from proposed to final action on the approval of Minnesota's Evidentiary Rule. Therefore, EPA is approving the Evidentiary Rule submitted by the MPCA for inclusion in the State's SIP. The approval of this submittal into the SIP clarifies the types of testing and monitoring data that can be used for compliance demonstrations and enforcement.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP 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

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 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.

This approval does not create any new requirements, but simply approves 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 the State action. The Act forbids EPA to base its actions concerning state plans on such grounds. *Union Electric Co.* v. *EPA*., 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with 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 the private sector, of $100 million or more. This Federal action approves pre-existing requirements under State or local law. No new Federal requirements are imposed. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 16, 1997.

David A. Ullrich,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart Y—Minnesota

2. Section 52.1220 is amended by adding paragraph (c)(44) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(44) This revision provides for data which have been collected under the enhanced monitoring and operating permit programs to be used for compliance certifications and enforcement actions.

(i) Incorporation by reference.

(A) Minnesota Rules, sections 7007.0800 Subpart 6.C.(5), 7017.0100 Subparts 1 and 2, both effective February 28, 1995.

* * * * *

[FR Doc. 97–27129 Filed 10–10–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA–5029a, FRL–5904–3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; VOC RACT for Phillip Morris, Hercules, Virginia Power Station, and the Hopewell Regional Wastewater Treatment Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving six State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. These revisions establish and require volatile organic compound (VOC) reasonably available control technology (RACT) on six major sources located in Virginia. The intended effect of this action is to approve source-specific plan approvals and Consent Agreements that establish the above-mentioned RACT requirements in accordance with the Clean Air Act (the Act).

DATES: This action is effective November 28, 1997 unless notice is received on or before October 29, 1997 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to David L. Arnold, Air, Radiation, and Toxics Division, Mailcode 3AT21, 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; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Kimberly Peck, (215) 566–2165, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: On April 9, 1996, August 8, 16, 19, 23, 1996, and March 26, 1997, the Commonwealth of Virginia submitted formal revisions to its SIP. These revisions consist of plan approvals and Consent Agreements, signed by the companies and the Virginia Department of Environmental Quality, to establish and impose source-specific VOC RACT requirements for major sources of VOC. Today's rulemaking proposes to approve the source-specific VOC RACT requirements for six companies. All of the sources are located in the Richmond moderate ozone nonattainment area.

I. Background

Under the pre-amended Clean Air Act (i.e., the Act prior to the 1990 Amendments), ozone nonattainment areas were required to adopt RACT rules for VOC sources. EPA issued three sets of control technique guideline documents (CTGs), establishing a ''presumptive norm'' for RACT for various categories of VOC sources. The Richmond, Virginia area was designated nonattainment under the pre-amended Act and was required to adopt RACT for all CTG categories as well as non-CTG VOC sources with a potential to emit 100 tons per year (TPY) or more. Under the 1990 amendments to the Act, amended sections 172(c)(1) and 182(a)(2), required the Richmond, Virginia nonattainment area to correct its RACT requirements in effect prior to enactment of the 1990 amendments. Virginia submitted those RACT corrections as SIP revisions on May 10, 1991 and June 20, 1991. Among the regulations in that SIP revision, was a provision (Rule 120–04–0407) establishing the legal basis for imposing RACT on all individual major VOC sources subject to RACT in the Northern Virginia and Richmond nonattainment areas not covered by an existing state adopted VOC control regulation. The RACT correction SIP was approved by EPA on March 31, 1994 (See 59 FR 15117). To implement Rule 120–04–0407, the Commonwealth must submit an enforceable RACT determination for all major VOC sources not otherwise controlled under existing VOC RACT regulations of the SIP.

Sections 182(b)(2) (A), (B) and (C) of the Act require moderate and above areas to adopt standards for all sources covered by any CTG document issued by the Administrator after 1990 and before the area is required to attain the standard; all sources covered by any CTG before the date of enactment of the 1990 CAA amendments; and all major sources of VOC not subject to a CTG. In addition, areas newly designated under the 1990 amendments as ozone nonattainment areas are required to adopt RACT rules consistent with those previously designated nonattainment. This provision of the Act makes nonattainment areas that were previously exempt from RACT requirements ''catch up'' to requirements during the earlier period, and therefore, is known as the RACT catch-up requirement. Because Rule 120–04–0407 imposed RACT on all major VOC sources in the Northern Virginia and Richmond nonattainment areas on an individual basis, this rule partially satisfied the RACT catch-up requirement. On November 6, 1992, Virginia submitted a SIP revision expanding the geographic boundaries of the VOC emission control areas to coincide with the revised boundaries of the Richmond and Northern Virginia ozone nonattainment areas resulting from the 1990 amendments. This SIP was approved by EPA on March 12, 1997 (59 FR 52701). To satisfy the RACT correction and catch-up requirements under sections 182(a)(2) and 182(b)(2)