

transaction for each year or part thereof during which the prohibited transaction continues. However, if the prohibited transaction is not corrected during the "correction period," the civil penalty may be in an amount not more than 100% of the "amount involved." The Department of Labor will apply the definitions set out in §§ 2560.502i-1(b)-(e) of this Chapter of Title 29 (civil penalties under section 502(i) of ERISA) in determining the "amount involved," "correction," "correction period," and for computation of the section 8477(e)(1)(B) penalty.

(b) The rules of practice set forth in §§ 2570.1-12 of Part 2570, Subpart A of Subchapter G of this Chapter of Title 29 (procedures for the assessment of civil sanctions under ERISA section 502(i)) are applicable to prohibited transaction penalty proceedings under FERSA section 8477(e)(1)(B).

Signed at Washington, DC, this 2nd day of August, 1989.

Ann L. Combs,

Deputy Assistant Secretary for Policy.

[FR Doc. 89-18502 Filed 8-8-89; 8:45 am]

BILLING CODE 4510-29-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 90143-9144]

RIN 0651-AA35

Amendment of Patent and Trademark Rules Concerning Judicial Review of Decisions of the Board of Patent Appeals and Interferences and the Trademark Trial and Appeal Board and Other Miscellaneous Matters; Correction

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final Rule; Correction.

SUMMARY: The Patent and Trademark Office is correcting errors in the final rule which appeared in the *Federal Register* on Thursday, July 13, 1989 (54 FR 29548).

1. On page 29551, in the third column, in § 1.136(b), in the tenth line, "affect" should read "effect".

2. On page 29553, in the first column, in § 1.303(c), the tenth line, "provided in 35 U.S.C. 146. The notice of" should read "provided in 35 U.S.C. 146, the notice of".

Dated: August 4, 1989

Fred E. McKelvey,

Solicitor.

[FR Doc. 89-18607 Filed 8-8-89; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3606-8]

Approval and Promulgation of Implementation Plans, Ohio; Ozone

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving a site-specific revision to the ozone portion of the Ohio State Implementation Plan (SIP) for the Goodyear Tire and Rubber Company (Goodyear) in St. Marys, Ohio. The revision, submitted by the State of Ohio on June 1, 1987, consists of variances for Goodyear's adhesive application lines K001, to K019, which exempts these lines from the requirements of Ohio Administrative Code (OAC) Rule 3745-21-09(U). The variances also limit the total volatile organic compound (VOC) emissions from the lines to 255 tons per year.

EFFECTIVE DATE: This final action becomes effective September 8, 1989.

ADDRESSES: Copies of the State submittal and other materials related to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Maggie Greene, at (312) 886-6088, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 43266-0149.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, (312) 886-6088.

SUPPLEMENTARY INFORMATION:

I. Background Information

USEPA approved the Ohio VOC rules as part of the ozone SIP as meeting the reasonable available control technology (RACT) Part D requirements of the Clean Air Act on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097).¹ Although RACT VOC

¹ RACT is defined as the lowest emission rate that a source is capable of meeting by the application of control technology that is reasonably

regulations are only required by Part D of the Clean Air Act in all ozone nonattainment areas, Ohio's rules are applicable to both attainment and nonattainment areas.

On November 23, 1988 (53 FR 47547), USEPA published a Notice of Proposed Rulemaking (NPR) on a revision to Ohio's ozone SIP for Goodyear Tire and Rubber in St. Marys. Although the State requested that this revision be approved as a site-specific RACT determination for Goodyear, USEPA proposed to approve this revision as a relaxation from RACT, in conjunction with the removal of the accommodative SIP for the area. In order for a site-specific RACT determination to be approvable, a source must demonstrate that it is either technically or economically infeasible to meet an emission rate limit lower than that proposed as site-specific RACT for the source.

Reductions in VOC emissions may be obtained, either by reducing the VOC content of the coatings, or by installing control systems to capture and destroy the VOC before they escape into the ambient air. Therefore, it must be demonstrated that both of these control methods are either technically or economically infeasible at the facility.

A detailed discussion on the extent of such an investigation of available coatings is contained in Appendix A of the proposed rulemaking on Easco published on November 9, 1988, at 53 FR 45285. (Although the Easco proposed rulemaking pertains to RACT requirements in a nonattainment area, the same kind of investigation applies to RACT determinations in attainment areas where there is an accommodative SIP in place.)

II. Public Comments

Comments on the NPR were received from the Ohio Environmental Protection Agency (OEPA) on December 23, 1988. These comments and USEPA's responses are provided below.

OEPA Comment

The OEPA believes no additional documentation is needed on the unavailability of complying coatings for bonding metal and rubber for the following reasons:

(1) The two coating suppliers (Lord Corp. and Dayton Chemical Products-Whittaker Corp.) identified in the technical support materials are the two major suppliers of metal-to-rubber adhesive coatings for the Ohio area.

available considering technological and economic feasibility.

(2) The OEPA is not aware of any plants in Ohio that employ complying metal-to-rubber adhesive coatings (all affected plants not otherwise exempted had submitted variance applications).

USEPA Response

OEPA still has not made an adequate demonstration that complying coatings are unavailable. As discussed in the Notice of Proposed Rulemaking (NPR), the two suppliers identified in the technical support materials indicated that they currently have some water-based adhesives available and are working to develop others. OEPA has not addressed this point. In addition, the NPR references an appendix to a notice for Easco Aluminum, published on November 9, 1988 (53 FR 45288), which contains a detailed discussion of the kind of demonstration required. OEPA has made no attempt to address these requirements.

OEPA Comment

Assuming that USEPA agrees on the unavailability of complying coatings, the OEPA prefers to use a tons per year limit, in place of a very high VOC content limit. The tons of VOC per year limit is a status quo limit that is related to the submitted study on cost-effectiveness of add-on control. There is a purpose to the annual VOC limit. However, the use of a pounds of VOC per gallon limit, based on the highest VOC content currently employed, really has no meaningful purpose. The current coatings average 6.4 pounds of VOC per gallon.

USEPA Response

It is not acceptable to use a tons per year limit, in place of a VOC content limit. RACT for surface coating lines is generally defined in terms of pounds of VOC per gallon of coating. If OEPA is concerned with the total mass emission limit, such a limit may be allowed, along with a VOC content limit. However, USEPA believes that in practice, an annual emission limit is not enforceable under Section 113 of the Clean Air Act. USEPA does not approve such limits in nonattainment areas or for the purposes of new source review. See John R. O'Connor's January 20, 1984, memorandum entitled "Averaging Time for Compliance with VOC Emission Limits—SIP Revision Policy" and Edward E. Reich's March 13, 1986, memorandum entitled "Time Frames for Determination of Applicability to New Source Review."

OEPA Comment

If USEPA still believes that this revision is a RACT relaxation, the

OEPA must point out that the affected operations come under Standard Industrial Classification (SIC) Code 3069 (fabricated rubber products), and such operations are not really subject to USEPA's RACT determination for miscellaneous metal parts or products. The USEPA guidance documents do not include operations under SIC code 3069. See Table 1.1 (page 1-2) in the document EPA-450/2-78-015, and see page 28 in the document EPA-450/2-79-004.

USEPA Response

Although the Control Techniques Guidelines (CTG) for miscellaneous metal parts and products does list many categories of sources which are covered, it does not specifically exempt any categories. The purpose of this CTG was to "provide guidance on VOC emission control for job shop and original equipment manufacturing (OEM) industries which apply coatings on metal substrates which have not been the subject of more specific previous documents in this series." For this reason, the application of any coating to a metal substrate must be considered subject to the miscellaneous metal parts and products CTG, unless it is covered by another CTG or specifically exempted.

III. Conclusion

Region V reviewed OEPA's public comments and determined that none of the comments justifies a change from USEPA's proposed action. USEPA is approving this SIP revision request as a relaxation from RACT because the source is located in Auglaize County, which is a rural attainment area for ozone; and the Clean Air Act does not require RACT level VOC control on existing sources in attainment areas. However, this final approval eliminates the accommodative ozone SIP in Auglaize County, Ohio.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Petitions for judicial review of the action under section 307(b)(1) of the Clean Air Act must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 1989. 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

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401-7642.

Dated: June 13, 1989.
Valdas Adamkus,
Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Ohio—Subpart KK

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1870 is amended by adding new paragraph (c)(84) to read as follows:

§ 52.1870 Identification of plan.

(c) * * *

(84) On June 1, 1987, the Ohio Environmental Protection Agency (OEPA) submitted a revision request to Ohio's ozone SIP for the Goodyear Tire and Rubber Company in St. Marys (Auglaize County) Ohio. The revision was in the form of variances for adhesive application lines K001 to K019 and exempts them from the requirements contained in Ohio Administrative Code (OAC) Rule 3745-21-09(U). These variances expire on (3 years and 30 days from date of publication). The accommodative SIP for Auglaize County is removed for the period these variances are in effect.

(i) *Incorporation by reference.* (A) Condition Number 8 (which references Special Terms and Conditions Numbers 1 through 5) within each of 19 "State of Ohio Environmental Protection Agency Variances to Operate An Air Contaminant Source", Application Numbers 0306010138K001-0306010138K019, for Goodyear Tire and Rubber Company. The Date of Issuance is May 22, 1987.

[FR Doc. 89-18497 Filed 8-8-89; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 167

[OPP-70000B; FRL-3625-4]

Registration of Pesticide and Active Ingredient-Producing Establishments, Submission of Pesticide Reports; Confirmation of Effective Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Confirmation of effective date.

SUMMARY: This document announces the effective date of a final regulation issued by the Agency on September 8, 1988. As required by section 25(a)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA submitted the final regulation to both Houses of Congress for review prior to it taking effect. The rule required that producers of pesticide active ingredients register their establishments and submit reports to EPA. The final rule was published in the *Federal Register* of September 8, 1988 (53 FR 35056). The minimum 60-day period for Congressional review has ended.

EFFECTIVE DATE: The regulation is effective on August 9, 1989.

FOR FURTHER INFORMATION CONTACT: Phyllis Flaherty, Office of Compliance Monitoring (EN-342), Environmental Protection Agency, Rm. E-703C, 401 M St., SW., Washington, DC 20460, 202-382-7825.

SUPPLEMENTARY INFORMATION: EPA issued a final regulation requiring producers of active ingredients to register their establishments and submit reports to EPA. The final regulation also deleted the establishment registration requirement for custom blenders as well as several minor changes clarifying the requirements for pesticide-producing establishments.

However, as required by section 25(a)(4) of FIFRA, the final rule could not take effect until it had been submitted to Congress for a period of 60 days of concurrent Congressional session, as defined by section 25(a)(4). Since it was not possible to predict an exact date on which the Congressional review period would end, the preamble to the final rule stated that EPA would issue a *Federal Register* notice after the review period was over announcing the effective date of the regulation. The 60-day period of continuous Congressional session ended on April 19, 1989.

Accordingly, the final regulation promulgated on September 8, 1988, is effective on August 9, 1989.

List of Subjects in 40 CFR Part 167

General provisions, Registration requirements, Recordkeeping and reporting requirements.

Dated: July 21, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89-18255 Filed 8-8-89; 8:45 am]

BILLING CODE 5580-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-7; FCC 89-256]

Broadcast Services; Amendment of the Radio-TV Cross-Ownership Rule To Liberalize the Commission's Waiver Policy With Respect to the Common Ownership of a Radio-TV Station Combination in the Same Market

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This decision considers petitions for reconsideration of the *Second Report and Order* in MM Docket No. 87-7, which adopted new waiver policies for the common ownership of radio and television combinations the same market. This action reaffirms the decision to look with favor upon waivers of the multiple ownership rules in the top 25 markets where there are 30 or more separately owned, operated, and controlled broadcast licensees after the proposed merger. The decision also deletes a rule adopted in the *Second Report and Order* barring ownership of more than one AM station, one FM station and one television station in a single metropolitan market to give the Commission discretion to consider combinations involving a television station and more than one radio station in the same service when unique public interest benefits can be demonstrated.

EFFECTIVE DATE: August 2, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tatsu Kondo, Policy and Rules Division, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's decision in MM Docket No. 87-7, adopted August 2, 1989, and released August 4, 1989. The full text of this Commission decision is available for inspection and copying during business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Decision

1. The *Second Report and Order* in MM Docket No. 87-7, 54 FR 8744 (March 2, 1989) ("*Second Report and Order*"), relaxed on the Commission's one-to-a-market multiple ownership rule, which

prohibits the common ownership of radio and television stations in the same television market. Although the Commission retained the rule, it adopted a new, more relaxed case-by-case waiver policy for all potential radio-TV combinations. First, the Commission will look favorably upon waiver applications involving radio and television station combinations in the top television markets where there are at least 30 separately owned, operated and controlled broadcast licensees or "voices" after the proposed merger. Second, it will look favorably upon proposed combinations involving at least one "failed station"—i.e., a station that has not been operated for a substantial period of time or that is involved in bankruptcy proceedings. All other waiver applications will be examined on a case-by-case basis upon certain specific public interest criteria.

Under the new waiver policy, however, the Commission stated it would not grant any application if the proposed combination would result in any one entity holding an attributable interest in more than one AM station, one FM station, and one television station in any single television "metro" market, as defined by the Arbitron Ratings Company.

2. Great American Television and Radio, Inc., and Holston Valley Broadcasting Corp. filed petitions for reconsideration of the *Second Report and Order*. Great American requested that the Commission reconsider its decision to limit its new waiver policy to the top 25 markets. Great American is the licensee of stations in the 28th and 29th markets, and each of those markets has 30 or more voices. Great American argued that there was no reason for the Commission to adopt a top 25 market cut-off in the *Second Report and Order*. It therefore requested that the Commission apply its new waiver policy to all markets in which there are 30 or more voices.

3. The Commission determined that Great American had not presented arguments in its request for reconsideration not already considered prior to adoption of the top 25 market/30 voices standard for the new waiver policy. Before adopting this standard, the Commission carefully considered other options suggested by the commenters, including whether to expand the cut-off to more markets or whether to have a market cut-off at all. Based on the reexamining record, however, the Commission determined that a cautious approach, limiting the new waiver policy to the very largest, or top 25 markets where there are at least