

**§ 213.27 Change in conditions after submission to IRS.**

AID will promptly notify the IRS if, after submission of a debt to the IRS for offset, AID:

- (a) Determines that an error has been made with respect to the information submitted to the IRS;
- (b) Receives a payment or credits a payment, other than an IRS offset, to the account of the debtor;
- (c) Receives notice that the debtor has filed for bankruptcy under title 11 of the United States Code or the debt has been discharged in bankruptcy;
- (d) Receives notice that an offset was made at the time when the automatic stay provisions of 11 U.S.C. 362 were in effect;
- (e) Receives notice that the debt has been extinguished by death; or
- (f) Refunds all or part of the offset amount to the debtor.

Dated: November 22, 1994.

**Tony L. Cully,**

*Controller.*

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**ENVIRONMENTAL PROTECTION AGENCY**
**40 CFR Part 52**

[PA 41-1-6288; FRL-5133-5]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Limited Approval/Limited Disapproval of Reasonably Available Control Technology Requirements for Major Sources of VOC and NO<sub>x</sub>**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing three alternative actions in today's notice concerning Pennsylvania's State Implementation Plan (SIP) revision, which contains regulations requiring major sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) to implement reasonably available control technology (RACT). The intended effect of this action is to propose and solicit comment on the range of alternative actions regarding the Pennsylvania RACT submittal (Pennsylvania Chapters 129.91 through 129.95 and the associated definitions in Chapter 121). The three alternatives propose either limited approval/limited disapproval or full disapproval of the Pennsylvania regulations. In addition to the specific issues related to the

Pennsylvania submittal, EPA is also specifically taking public comment on the general issue of whether RACT submittals of regulations which allow for future case-by-case SIP revisions meet the RACT requirements of the Clean Air Act and should be approved now, for Pennsylvania, and can be approved in the future for submittals by any state to EPA. EPA's resolution of this issue in this rulemaking will affect its completeness and approvability determinations in future case-by-case SIP revisions meet the RACT requirements of the Clean Air Act and should be approved now, for Pennsylvania, and can be approved in the future for submittals by any state to EPA. EPA's resolution of this issue in this rulemaking will affect its completeness and approvability determinations in future rulemaking on SIP submittals by other states. These actions are being taken under section 110 of the CAA.

**DATES:** Comments must be received on or before February 13, 1995.

**ADDRESSES:** Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, 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; Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Cynthia H. Stahl, (215) 597-9337, at the EPA Region III address.

**SUPPLEMENTARY INFORMATION:** On February 4, 1994, the Pennsylvania Department of Environmental Resources (PA DER) submitted a revision to its State Implementation Plan (SIP) for the control of VOC and NO<sub>x</sub> emissions from major sources (Pennsylvania Chapters 129.91 through 129.95 and the associated definitions in Chapter 121). This submittal was amended with a revision on May 3, 1994 correcting and clarifying the presumptive NO<sub>x</sub> RACT requirements under Chapter 129.93. The Pennsylvania SIP revision consists of new regulations which would require sources which emit or have the potential to emit 25 tons or more of VOC or NO<sub>x</sub> per year in Philadelphia or 50 tons or more of VOC per year in the remainder of the Commonwealth to

comply with reasonably available control technology requirements by May 31, 1995. Outside of the Philadelphia ozone nonattainment area, sources of NO<sub>x</sub> which emit or have the potential to emit 100 tons or more per year are required to comply with RACT by no later than May 31, 1995. While the Pennsylvania regulations contain specific provisions requiring major VOC and NO<sub>x</sub> sources to implement RACT, the regulations under review do not contain specific emission limitations in the form of a specified overall percentage emission reduction requirement or other numerical emission standards. Instead, the Pennsylvania regulations contain technology-based or operational "presumptive RACT emission limitations" for certain major NO<sub>x</sub> sources. For other major NO<sub>x</sub> sources, and all covered major VOC sources, the submittal contains a "generic" RACT provision. A generic RACT regulation is one which does not impose specific upfront emission limitations but instead allows for future case-by-case determinations. This regulation allows DER to make case-by-case RACT determinations which are then submitted to EPA as revisions to the Pennsylvania SIP.

This proposed rulemaking is intended to take comment on whether a generic RACT submittal, such as Pennsylvania's, meets the requirements of sections 172(c), 182(b)(2), and 182(f) of the Clean Air Act. This rulemaking is designed to clarify whether EPA will approve RACT submittals that allow the SIP to be revised with future case-by-case RACT determinations, or will instead require specific and immediately ascertainable emission limitations.

**Background**

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), Pennsylvania is required to implement RACT for all major VOC and NO<sub>x</sub> sources by no later than May 31, 1995. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR) which is established by the CAA. The Pennsylvania portion of the Philadelphia ozone nonattainment area consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties and is classified as severe. The remaining counties in Pennsylvania are classified as either moderate or marginal nonattainment areas or are designated attainment for ozone. However, under section 184 of the CAA, at a minimum, moderate ozone nonattainment area

requirements (including RACT as specified in sections 182(b)(2) and 182(f)) apply throughout the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

### Summary of Regulations

The SIP submittal under review consists of Pennsylvania regulations codified at 25 Pa. Code Chapters 129.91 through 129.95, and the associated definitions in Chapter 121.

#### I. Chapter 121 (Definitions)

The Pennsylvania submittal includes the following new definitions in Chapter 121: Lowest Achievable Emission Rate (LAER), low NO<sub>x</sub> burner with separated overfire air, major NO<sub>x</sub> emitting facility, major VOC emitting facility, marginal ozone nonattainment area, moderate ozone nonattainment area, National Ambient Air Quality Standard (NAAQS), Oxides of Nitrogen (NO<sub>x</sub>), serious ozone nonattainment area, and severe ozone nonattainment area.

#### II. Chapter 129.91

Chapter 129.91 contains the applicability section, and requires owners and operators of covered sources (i.e. all major NO<sub>x</sub> sources and major VOC sources not covered by the source-specific and mobile source RACT requirements of 25 Pa. Code §§ 129.51–129.72, 129.81 and 129.82) to provide PA DER with identification and emission information by May 16, 1994. Covered sources must submit a written RACT proposal to PA DER by July 15, 1994. PA DER is to approve, deny or modify each RACT proposal. Upon notification of approval, covered sources must implement RACT “as expeditiously as practicable” but no later than May 31, 1995.

Following implementation of RACT, certain large combustion units are required to determine emission rates through continuous emissions monitoring or a PA DER approved source testing or modeling program. 25 Pa. Code 129.91(d) provides for the case-by-case RACT determinations to be approved through the SIP revision process.

#### III. Chapter 129.92

Chapter 129.92 details the information required in RACT proposals submitted by these major VOC and NO<sub>x</sub> sources. Except for sources that opt for the presumptive RACT emission limitations, the proposal must include a RACT analysis. The RACT analysis must rank the available control options in descending order of control effectiveness, provide information on

baseline emissions and emission reduction, and evaluate the cost effectiveness of each control option. Cost effectiveness of each control option is required to be calculated using the “OAQPS Control Cost Manual” (Fourth Edition), EPA 450/3–90–006 January 1990 and subsequent revisions. This provision clearly requires sources to provide relevant information in their RACT proposal, including cost factors, but does not limit the consideration of factors which determine what control option is chosen as RACT to cost factors alone. The Pennsylvania regulation also properly does not specify a dollar per ton figure as a threshold over which control options are ineligible for consideration from RACT.

#### IV. Chapter 129.93 (Presumptive NO<sub>x</sub> RACT Requirements)

Chapter 129.93 provides certain major NO<sub>x</sub> sources with an alternative to case-by-case RACT determinations. Chapter 129.93(b)(1) specifies that presumptive RACT for coal-fired combustion units with a rated heat input equal to or greater than 100 million British thermal units per hour (mmBtu/hr) is the installation of low NO<sub>x</sub> burners with separated overfire air. Chapter 129.93(b)(2) provides that presumptive RACT for combustion units with a rated heat input between 20 mmBtu/hr and 50 mmBtu/hr is an annual adjustment or tuneup of the combustion process. Chapter 129.93(b)(4) and (5) provides that owners and operators of oil, gas and combination oil/gas-fired units are required to keep records of fuel certification and to perform annual adjustment in accordance with the EPA document “Combustion Efficiency Optimization Manual for Operators of Oil and Gas-fired Boilers”, September 1983, EPA–340/1–83–023, or equivalent PA DER procedures.

For the following groups of sources, Pennsylvania proposes that RACT is the installation, maintenance and operation of the sources in accordance with manufacturers specifications. These groups as listed in Chapter 129.93(c)(1) through (7), are as follows: (1) boilers and combustion sources with individual rated gross heat inputs of less than 20 mmBtu/hr; (2) combustion turbines with individual heat input rates of less than 25 mmBtu/hr which are used for natural gas distribution; (3) internal combustion engines rated at less than 500 brake horsepower (bhp) which are set and maintaining 4° retarded relative to standard timing; (4) incinerators or thermal/catalytic oxidizers used primarily for air pollution control; (5) any fuel burning equipment, gas turbine or internal combustion engine with an

annual capacity factor of less than 5%, or an emergency standby engine operating less than 500 hours in a consecutive 12-month period; (6) sources that have been approved as meeting LAER for NO<sub>x</sub> emissions since November 15, 1990 with federally enforceable emission limitations; and (7) sources which have been approved as meeting BACT for NO<sub>x</sub> emissions since November 15, 1990 with federally enforceable emission limitations. The last group of sources are required, however, to meet any more stringent category-wide RACT emission limitation promulgated by EPA or Pennsylvania.

#### V. Chapter 129.94 (NO<sub>x</sub> Averaging Provisions)

Chapter 129.94 permits major NO<sub>x</sub> sources to submit a RACT proposal which includes the averaging of emissions at two or more facilities provided several conditions are met and the proposal is approved by EPA as a revision to the Pennsylvania SIP. Among other conditions, the averaging scheme must require emission caps and enforceable emission rates at each participating source, telemetry links between the participating sources, and an agreement that a violation at one of the participating sources is considered a violation at all of the participating sources.

#### VI. Chapter 129.95

Chapter 129.95 is the recordkeeping provision which is applicable to all VOC and NO<sub>x</sub> sources in the Commonwealth. This section clearly requires that records be kept for a period of at least 2 years and that such records must provide sufficient data and calculations so that compliance with the applicable RACT requirements can be demonstrated. This section also requires that sources of VOC and NO<sub>x</sub> which claim exemptions from the RACT requirement maintain records clearly demonstrating their exempt status.

### EPA Analysis

#### I. Definitions

The definitions associated with the Pennsylvania VOC and NO<sub>x</sub> RACT regulation and contained in Chapter 121, with the exception of the definition of low NO<sub>x</sub> burner with separated overfire air, conform to the definitions in the Act and to EPA’s existing requirements located in 40 CFR Part 52. Pennsylvania’s proposed definition of low NO<sub>x</sub> burner with separated overfire air makes the applicability of this technology to the group of sources specified in the regulation as “coal-fired

combustion units" unclear. The sources covered by this requirement include stoker and cyclone combustion units which do not have "burners" as such. It is unclear how the low NO<sub>x</sub> burner requirement would apply to these sources. Pennsylvania may correct this deficiency by clarifying the language in Chapter 129.93 pertaining to "coal-fired combustion units" or by amending its definition (in Chapter 121) of low NO<sub>x</sub> burners with separated overfire air to describe the applicable requirements in the situation where a combustion unit does not have burners.

## II. RACT Proposal Requirements

Chapter 129.92 requires sources to provide information on the emission reduction, technological feasibility, and cost of control option. This requirement is consistent with EPA's definition of RACT as the lowest emission limitation that a source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. See NO<sub>x</sub> Supplement to the General Preamble on Title I, 57 FR 55620, 55622-23 (Nov. 25, 1992); CTG Supplement to General Preamble on SIP Revisions in Nonattainment areas, 44 FR 53761, 53762 (Sept. 17, 1979); "Guidance for Determining Acceptability of SIP regulations in Non-Attainment Areas," Memorandum of Roger Strelow, Assistant Administrator for Air and Waste Management, December 9, 1976). As noted below, however, the agency believes that there is a significant issue as to whether Pennsylvania's generic RACT provision complies with Clean Air Act requirements.

## III. Generic VOC and NO<sub>x</sub> RACT Requirements

Chapter 129.91 contains Pennsylvania's generic, or "case-by-case," RACT provisions. Under this approach, the covered sources are not subject to specific, "upfront" (i.e., immediately ascertainable) emission limitations. Instead, the regulations establish a process for the state to review and approve individual RACT emission limitations proposed by the sources, which are then to be submitted to EPA as SIP revisions. Since the wood furniture emission standards contained in the existing Pennsylvania regulation have not been federally approved, Chapter 129.91 states that wood furniture sources are required to comply with the RACT requirements of Chapter 129.91.

Pennsylvania believes that the case-by-case approach is consistent with the RACT requirements of the Clean Air

Act. Pennsylvania notes that section 172(c)(1) requires that nonattainment plan provisions "shall provide for the *implementation* of [RACT] as expeditiously as practicable \* \* \*" Section 182(b)(2) provides that SIP submittals for moderate ozone nonattainment areas shall "include provisions to require the *implementation* of [RACT]," and further requires that the submittals "provide for the *implementation* of required measures as expeditiously as practicable, but no later than May 31, 1995." (Emphasis added.) Pennsylvania asserts that its submittal satisfies these requirements, as its generic RACT provision requires approved RACT programs to be implemented by May 31, 1995. Pennsylvania also believes that its case-by-case approach complies with EPA's definition of RACT, which directs states to consider the economic and technological circumstances of the regulated sources.

However, EPA believes that the more reasonable interpretation of the statutory requirements, and the one that accords with EPA's longstanding definition of RACT, is that RACT submittals must include specific, upfront emission limitations for all covered sources, rather than a process leading to the development of emission limitations at some later date. EPA defines RACT as the lowest emission limitation that a source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. See Memorandum of Roger Strelow, Assistant Administrator for Air and Waste Management, December 9, 1976); NO<sub>x</sub> Supplement to the General Preamble on Title I, 57 FR 55620, 55622-23 (Nov. 25, 1992). Section 302 of the Act in turn defines "emission limitation" as "a requirement \* \* \* which limits the quantity, rate, or concentration of air pollutants on a continuous basis, \* \* \*, and any design, equipment, work practice or operational standard promulgated under this chapter." Under Sections 110(a)(2)(A) and 172(c)(6) of the Act, emission limitations must be "enforceable," and Section 107(d)(3)(E)(iii) further requires that emission reductions be "permanent and enforceable" in order to be creditable for attainment demonstration. Process-oriented generic RACT submittals such as Pennsylvania's, which do not include specific and ascertainable emission limitations, do not by themselves provide enforceable standards. The source becomes subject to federally enforceable requirements only after EPA

approves a subsequent SIP revision incorporating the source-specific RACT regulations promulgated by the state.

Furthermore, EPA believes that the May 31, 1995 RACT *implementation* deadline specified in Section 182(b)(2) of the Act does not authorize states to delay the *promulgation* of RACT standards beyond the SIP submittal deadline of November 15, 1992. To the contrary, EPA believes that the extended implementation deadline was designed to give sources an adequate opportunity to understand and comply with newly-promulgated RACT standards, and to give EPA an opportunity to review RACT submittals prior to the implementation date. These objectives may not be served by Pennsylvania's generic RACT provisions, under which the Commonwealth will not be in a position to submit case-by-case RACT emission limitations as SIP revisions until some months after July 15, 1994 (the date that sources are required to submit RACT proposals to PA DER).

## IV. Presumptive NO<sub>x</sub> RACT Requirements

Pennsylvania gives major NO<sub>x</sub> sources the option of complying with the "presumptive RACT emission limitations" of Chapter 129.93 as an alternative to developing and implementing a RACT limit on a case-by-case basis. The proposed presumptive RACT in Chapter 129.93(c)(3) for internal combustion engines, which requires the engines to be set and maintained at 4° retarded relative to standard timing is acceptable to EPA. Standard timing is typically defined as 2 to 6° before top dead center. EPA agrees with Pennsylvania's proposal for internal combustion engines, which is an operation and maintenance requirement and applicable recordkeeping requirement, and believes that this may constitute RACT for these sources. Pennsylvania's operation and maintenance requirements for internal combustion engines, coupled with the applicable recordkeeping requirements, is acceptable to EPA as RACT.

EPA has identified deficiencies in the other presumptive RACT emission limitations of Chapter 129.93. For coal-fired combustion units (100mmBTU/hour or greater), Chapter 129.93(b)(1) provides that presumptive RACT is low NO<sub>x</sub> burners with separated overfire air control technology. Although EPA accepts Pennsylvania's determination that this technology constitutes RACT for this source category, the agency believes it is necessary and appropriate to quantify the emission reduction required to be obtained through this

technology. Pennsylvania may correct this deficiency with an additional SIP submittal including enforceable, numerical emission limitations to be met through the installation of the low NO<sub>x</sub> burner and separated overfire air control technology. Coal-fired combustion units greater than or equal to 100 mmBTU/hr represent a significant portion of the NO<sub>x</sub> emission inventory in Pennsylvania. Establishing specific emission limitations for these sources in the SIP will allow Pennsylvania to quantify and rely on the expected emission reductions from these sources for air quality planning purposes. The proposed presumptive RACT determinations contained in Chapters 129.93(b)(2) and 129.93(c) (1), (2), (4), and (5) are not acceptable to EPA because Pennsylvania has not provided sufficient technical support to justify these presumptions as RACT. With proper technical support and justification, EPA may determine for some sources and source categories that operation and maintenance requirements alone constitute RACT. It is not acceptable, however, for the RACT to be defined, without further elaboration, as "installation, maintenance and operation of the source in accordance with manufacturers specifications." Once approved by EPA, a RACT standard cannot be relaxed by action of a private party. Such a result might occur if RACT is defined simply as compliance with manufacturer's specifications. In order to correct these deficiencies in Chapter 129.93(b)(2), (c)(1), (2), (4), and (5), Pennsylvania must propose and provide adequate technical support for an emission limitation (which may be an operation and maintenance requirement, if appropriate) for these sources.

In Chapter 129.93(c) (6) and (7), Pennsylvania is proposing that for NO<sub>x</sub> sources for which the state has approved NO<sub>x</sub> LAER and BACT determinations since November 15, 1990, the presumptive RACT emission limitation shall be the approved LAER or BACT determinations. These provisions allowing sources with approved NO<sub>x</sub> LAER and BACT determinations are not acceptable because EPA cannot delegate the responsibility of approving RACT determinations to a state. Chapter 129.93(c) (6) and (7) allows all NO<sub>x</sub> sources receiving LAER determinations since November 1990 and all future LAER determinations to be declared RACT without EPA approval via the SIP process. RACT determinations cannot be approved through a permit but rather

must be approved through a SIP revision. EPA cannot agree to LAER determinations as RACT since those determinations are not now before the agency for review. Therefore, Pennsylvania must delete the provisions in Chapter 129.93(c) (6) and (7) pertaining to LAER and BACT determinations in order to correct this deficiency. The presumptive RACT proposals in Chapter 129.93 (b) and (c) which require only annual tune-ups or maintenance procedures simply allow these sources, without adequate technical justification, to maintain the status quo. The CAA requires that states in moderate and worse ozone nonattainment areas and in the OTR control its major NO<sub>x</sub> sources to RACT levels. Since the operation and maintenance and tune-up requirements located in Chapter 129.93 are unsupported, they serve as exemptions from the NO<sub>x</sub> RACT requirement in sections 182 and 184 of the CAA.

The provisions in the CAA for NO<sub>x</sub> exemptions are contained in section 182(f). In order to exempt major NO<sub>x</sub> sources from RACT requirements, Pennsylvania must petition EPA, and receive EPA approval, for such an exemption under 182(f). EPA's guidance on the criteria for approval of NO<sub>x</sub> exemptions under section 182(f) is contained in the EPA document, "Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f)", December 1993. Pennsylvania has not submitted a petition under section 182(f) but, even if it had, EPA could not approve the exclusion of major NO<sub>x</sub> sources from RACT requirements until approval of such petition under section 182(f) is granted.

#### V. NO<sub>x</sub> Averaging Provision

The NO<sub>x</sub> averaging provision in Chapter 129.94 is acceptable to EPA since there is the opportunity for further refinement of the averaging scheme conditions, and assurance of enforceability, when the individual averaging proposals are submitted to EPA as SIP revisions.

#### VI. Recordkeeping

The recordkeeping requirements of Chapter 129.95 are consistent with EPA requirements.

#### Proposed Action

As noted above, there is considerable controversy about whether generic RACT provisions, such as the one under review, comply with the requirements of Sections 172 (c)(1) and 182 (b)(2). EPA believes that this notice and comment rulemaking would be an

appropriate vehicle to announce a clear agency position on this issue. Accordingly, EPA is proposing three alternative actions in today's notice: two forms of limited approval/limited disapproval, and a full disapproval. Under Options #1 and #2, the limited approval/limited disapproval options, EPA has identified certain deficiencies which prevent granting full approval of this rule under section 110(k)(3) and Part D. Because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule(s) under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval, due to the fact that the rule does not meet the section 182 and 184 requirements of Part D due to the noted deficiencies. EPA is soliciting public comment on each alternative.

In addition, EPA is soliciting public comment on the approvability of generic RACT provisions generally. The outcome of this rulemaking will affect the determination of the completeness and approvability of generic RACT submittals in future rulemaking actions.

#### Option #1

The first proposed action, and EPA's preferred option, is a proposed limited approval/limited disapproval of Pennsylvania VOC and NO<sub>x</sub> RACT regulations, Chapters 129.91 through 129.95 with the associated definitions in Chapter 121. The limited approval would be for the limited purpose of strengthening the SIP, as the Pennsylvania regulation imposes requirements on previously unregulated sources.

The limited disapproval would be based on two separate grounds:

- (1) A determination that the presumptive NO<sub>x</sub> emission limitations cannot be approved as RACT for the reasons described above; and
- (2) A determination that Pennsylvania's generic VOC and NO<sub>x</sub> provisions are deficient because they do not contain specific, immediately ascertainable emission limitations (as defined in Section 302(k) of the CAA) for all applicable sources.

Under Option #1, to correct the deficiencies in the presumptive NO<sub>x</sub> RACT emission limitation provisions, EPA believes that Pennsylvania would have to do the following:

(1) Clarify, and submit as a SIP revision, the applicability of the presumptive RACT requirement for coal-fired combustion units,

(2) Submit SIP revisions to EPA including the specific emission limitations resulting from the application of low NO<sub>x</sub> burners with separated overfire air for those sources choosing to meet RACT requirements through Chapter 129.93(b), and,

(3) Submit SIP revisions to EPA, with adequate technical support, correcting the deficiencies identified in Chapters 129.93 (b)(2), (c)(1), (2), (4), (5), (6) and (7). To the extent that Pennsylvania proposes operation and maintenance requirements for these sources, the state must provide technical support showing that specific numerical emission limitations are impractical, and demonstrating that the proposed operation and maintenance requirements qualify as RACT.

To correct the deficiency with the generic RACT provision under Option #1, Pennsylvania must provide emission limitations, compliance and monitoring requirements (along with adequate technical justification for these requirements) for all major VOC and NO<sub>x</sub> sources required to implement RACT. To ensure that all sources are subject to RACT requirements, Pennsylvania must either (1) submit all case-by-case RACT proposals for all covered sources to EPA for approval as SIP revisions and certify that there are no other sources required to implement RACT, or (2) submit a "default" RACT emission limitation that would apply to all sources subject to the generic provision until EPA approval of a source-specific RACT SIP revision.

EPA has preliminarily determined that this option is correct, but will review public comment on this and other outcomes before making a final determination.

#### Option #2

Under the limited approval/limited disapproval option #2, EPA would be determining, for the reasons stated above, that the Pennsylvania regulation with the presumptive control technology requirements can be approved and disapproved in a limited fashion for the same reasons given under option #1. However, EPA would be determining under option #2 that the case-by-case SIP revision provision of the Pennsylvania submittal meets the RACT requirements of section 182(b)(2) of the CAA and provides sufficient safeguards to ensure that RACT is implemented by May 31, 1995. The difference between this option and the first option is that EPA, while expecting

to receive the case-by-case RACT proposals as specified by the Pennsylvania regulation, would not consider the lack of submittal of these proposals at this time to be reason for limited disapproval of the submitted Pennsylvania regulation. Therefore, under this option, Pennsylvania may correct the deficiencies in the regulation by:

(1) Clarifying, and submitting as a SIP revision, the applicability of the presumptive RACT requirement for coal-fired combustion units,

(2) Submitting SIP revisions to EPA including the specific emission limitations resulting from the application of low NO<sub>x</sub> burners with separated overfire air for those sources choosing to meet RACT requirements through Chapter 129.93(b), and

(3) Submitting SIP revisions to EPA, with adequate technical support, correcting the deficiencies identified in Chapters 129.93(b)(2), (c)(1), (2), (4), (5), (6) and (7). To the extent that Pennsylvania proposes operation and maintenance requirements for these sources, the state must provide technical support showing that specific numerical emission limitations are impractical, and demonstrating that the proposed operation and maintenance requirements qualify as RACT.

#### Option #3

In its third alternative, EPA is proposing to fully disapprove Chapter 129.91, pertaining to applicability, Chapter 129.92, pertaining to VOC and NO<sub>x</sub> RACT submittals, Chapter 129.93, pertaining to presumptive RACT control technology requirements, Chapter 129.94, pertaining to NO<sub>x</sub> RACT averaging provisions, and Chapter 129.95, pertaining to VOC and NO<sub>x</sub> source recordkeeping requirements. The rationale for full disapproval would be that the deficiencies outlined above pertaining to the presumptive control technology requirements and the case-by-case SIP revision provisions of the Pennsylvania regulation are so significant that limited approval/limited disapproval of the submittal, on the grounds that it strengthens the SIP, is not warranted.

Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway

funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of a final disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c). The sanctions will apply if the Pennsylvania submittal is disapproved fully or in a limited fashion.

If EPA decides to issue a limited approval/limited disapproval pursuant to Options #1 or #2, EPA intends to conduct final limited approval/limited disapproval rulemaking on the Pennsylvania regulation without further proposal. If Pennsylvania chooses to make modifications to their RACT regulation, by correcting definitions and adding default emission limitation requirements for all major VOC and NO<sub>x</sub> sources, EPA will conduct rulemaking appropriate to our preliminary judgment on the approvability of the substance of any subsequent submittal. Under the limited approval/limited disapproval options, to the extent that any subsequent Pennsylvania submittal modifying the February 10, 1994 submittal is made, EPA intends to finalize, without further proposal, limited approval/limited disapproval of the regulation that remains unaffected by the subsequent submittal.

If EPA decides to fully disapprove the regulation pursuant to Option #3, EPA intends to disapprove the submittal without further proposal unless Pennsylvania either (a) submits all case by-case RACT determinations to EPA and certifies that there are no other subject sources, or (b) modifies their regulation to add default emission limitations for all major VOC and NO<sub>x</sub> sources.

If Pennsylvania submits a regulation subsequent to this notice and withdraws the present submittal, EPA intends to propose action on the new submittal.

EPA has proposed three actions and is specifically soliciting comment on these actions and the rationale provided as the basis for each of those actions. A consequence of adopting options #1 or #3 in the final rulemaking is that future RACT submittals with generic provisions may be deemed inadequate to meet the RACT requirements of section 182(b)(2). Such a decision will significantly impact future determinations as to whether such generic RACT regulation submittals meet the completeness criteria in 40 CFR Part 51 Appendix V. Further discussion of the Pennsylvania submittal and rationale for these proposals is contained in the

accompanying technical support document.

Through the first two proposal options, EPA is proposing a limited approval of Chapters 129.91 through 129.95 and the associated definitions in Chapter 121 which was submitted on February 10, 1994, including the corrective revision submitted on May 3, 1994.

As noted, EPA's preliminary review of this submittal indicates that the Pennsylvania generic VOC and NO<sub>x</sub> RACT regulation submitted on February 10, 1994 and the corrective revision submitted on May 3, 1994 should be approved/disapproved in a limited fashion, under the rationale for option #1; to strengthen the Pennsylvania SIP and to allow Pennsylvania to correct the deficiencies in the RACT regulation cited above. EPA has proposed three actions and is specifically soliciting comment on these actions and the rationale provided as the basis for each of those actions. Public comments on the issues discussed in this notice or on other relevant matters will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this notice.

Under the limited approval/limited disapproval options, EPA has identified certain deficiencies which prevent granting full approval of this rule under section 110(k)(3) and Part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule(s) under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule(s) under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval, due to the fact that the rule does not meet the section 182 and 184 requirements of Part D because of the noted deficiencies. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of Pennsylvania's submitted Chapters 129.91 through 192.95 and associated definitions in Chapter 121 under section 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies, and, as such, the rule does not fully meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission

under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions as discussed above.

Except to the extent that EPA proposes to use this rulemaking as a vehicle to announce an agency policy on generic RACT submittals, nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify 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 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).

EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does

not remove existing requirements and impose any new Federal requirements.

This action has been classified as a Table 2 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 an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

The Administrator's decision to approve or disapprove the Pennsylvania SIP revisions, pertaining to the VOC and NO<sub>x</sub> RACT regulations, will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: October 27, 1994.

**W.T. Wisniewski,**

*Acting Regional Administrator, Region III.*

[FR Doc. 95-822 Filed 1-11-95; 8:45 am]

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#### 40 CFR Part 70

[SD-001; FRL-5137-4]

#### Clean Air Act Proposed Interim Approval of Operating Permits Program; State of South Dakota

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed interim approval.

**SUMMARY:** EPA proposes interim approval of the Operating Permits Program submitted by the State of South Dakota for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

**DATES:** Comments on this proposed action must be received in writing by February 13, 1995.

**ADDRESSES:** Comments should be addressed to Laura Farris at the Region 8 address. Copies of the State's submittal and other supporting information used in developing this proposed rule are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency,