

proposes that Rule 54(a) be amended to automatically invoke § 3624(c)(2) if the required alternate cost presentation does not accompany a Postal Service rate request. Id. at 3-4. As an alternate means of enforcement, MMA proposes that the Commission adopt a rule modeled upon the Federal Energy Regulatory Commission's rule 385.2001 [18 CFR], which authorizes that agency to reject filings that do not comply with its rules. Id. at 4-5.

Like MMA, NAA comments that proposed Rule 54(a) will have to be resolutely enforced, either through invocation § 3624(c)(2) or dismissal of the Postal Service's filing, if it is to be effective. NAA Comments at 3-4. ABA also urges that failures to comply with Rule 54(a) automatically invoke § 3624(c)(2), although it recommends that waivers be available in exceptional circumstances. ABA Comments at 1-2. The OCA asks that the sanctions for noncompliance with proposed Rule 54(a) be clarified and strengthened. It urges that noncompliance with proposed Rule 54(a) be treated as the equivalent of failure to respond to discovery and that the sanctions available in 39 CFR § 3001.28 be applied. OCA Comments at 25-27.

It is understandable that the comments on proposed Rule 54(a) have emphasized the need for sanctions, since the Postal Service has not complied with orders to provide alternate cost presentations in recent dockets. In doing so, the Postal Service has relied heavily on the fact that current Rule 54 does not explicitly require it to give parties and the Commission the notice that proposed Rule 54(a) would require. With amended Rule 54(a) in place, the Commission is optimistic that the Postal Service will comply with its requirements. Appropriate sanctions for noncompliance with amended Rule 54(a) will be determined as the need arises.

#### Regulatory Evaluation

It has been determined pursuant to 5 U.S.C. 605(b) that this amended rule will apply exclusively to the Postal Service in proceedings conducted by the Postal Rate Commission. Therefore, it is certified that this amendment will not have a significant economic impact on a substantial number of small entities under the terms of the Regulatory Flexibility Act, 5 U.S.C. 501 *et seq.* Because this rule will only apply to the Postal Service in Commission proceedings, it has also been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism

Assessment pursuant to Executive Order 12612. Inasmuch as the rule imposes information reporting requirements exclusively upon the United States Postal Service for the purpose of conducting postal rate proceedings, it does not contain any information collection requirements as defined in the Paperwork Reduction Act [44 U.S.C. 3502(4)], and consequently the review provisions of 44 U.S.C. 3507 and the implementing regulations in 5 CFR part 1320 do not apply.

#### List of Subjects in 39 CFR Part 3001

Administrative practices and procedure.

For the reasons set out in the preamble, 39 CFR part 3001 is amended as follows:

#### PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for 39 CFR part 3001 continues to read as follows:

T4Authority: 39 U.S.C. 404(b), 3603, 3622-24, 3661, 3662.

2. In § 3001.54, paragraph (a)(1) is revised to read as follows:

#### § 3001.54 Contents of formal requests.

(a) General requirements. (1) Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance, and impact of the proposed changes or adjustments in rates or fees and to show that the changes or adjustments in rates or fees are in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act. To the extent information is available or can be made available without undue burden, each formal request shall include the information specified in paragraphs (b) through (r) of this section. The request shall describe any changes that it proposes in the attribution procedures applied by the Commission in the most recent general rate proceeding in which its recommended rates or fees were adopted. If a request proposes to change the cost attribution principles applied by the Commission in the most recent general rate proceeding in which its recommended rates were adopted, the Postal Service's request shall include an alternate cost presentation satisfying paragraph (h) of this section that shows what the effect on its request would be if it did not propose changes in attribution principles. If the required information is set forth in the Postal Service's prepared direct evidence, it

shall be deemed to be part of the formal request without restatement.

\* \* \* \* \*

Issued by the Commission on May 27, 1997.

**Margaret P. Crenshaw,**

Secretary.

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[SIPTRAX No. PA-4058a; FRL-5832-3]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC and NO<sub>x</sub> RACT Determinations for Individual Sources

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) reasonably available control technology (RACT) on five major sources located in Pennsylvania. The intended effect of this action is to approve source-specific operating permits that establish the above-mentioned RACT requirements in accordance with the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

**EFFECTIVE DATE:** This action will become effective August 4, 1997 unless notice is received on or before July 3, 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 Campbell, Air, Radiation, and Toxics Division, Mailcode 3AT22, 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; Pennsylvania Department of

Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** David Campbell, (215) 566-2196, at the EPA Region III office or via e-mail at campbell.dave@epamail.epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the above Region III address.

**SUPPLEMENTARY INFORMATION:** On August 1, 1995, December 8, 1995, and September 13, 1996, the Commonwealth of Pennsylvania submitted formal revisions to its State Implementation Plan (SIP). Each source subject to this rulemaking will be identified and discussed below. Any plan approvals and operating permits submitted coincidentally with those being approved in this notice, and not identified below, will be addressed in a separate rulemaking action.

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. The Pennsylvania submittals that are the subject of this notice are meant to satisfy the RACT requirements for five sources in Pennsylvania.

**Summary of SIP Revision**

The details of the RACT requirements for the source-specific plan approvals and operating permits can be found in the docket and accompanying technical support document (TSD) and will not be reiterated in this notice. Briefly, EPA is approving a revision to the Pennsylvania SIP pertaining to the determination of RACT for five major sources. Several of the operating permits contain conditions irrelevant to the determination of VOC or NO<sub>x</sub> RACT. Consequently, these provisions are not being included in this approval for source-specific VOC or NO<sub>x</sub> RACT.

**RACT Determinations**

The following table identifies the individual operating permits EPA is approving. The specific emission limitations and other RACT requirements for these sources are summarized in the accompanying technical support document, which is available from the EPA Region III office.

PENNSYLVANIA—VOC AND NO<sub>x</sub> RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source	County	Plan approval (PA #), operating permit (OP #), compliance permit (CP #)	Source type	"Major source" pollutant
Medusa Cement Company .....	Lawrence .....	OP 37-013	Cement manufacturing .....	NO <sub>x</sub>
Keystone Cement Company .....	Northampton .....	OP 48-0003	Cement manufacturing .....	NO <sub>x</sub> , VOC
Lehigh Portland Cement Company .....	York .....	OP 67-2024	Cement manufacturing .....	NO <sub>x</sub>
Mercer Lime and Stone Company .....	Butler .....	OP 10-023	Lime manufacturing .....	NO <sub>x</sub>
Con-Lime, Inc. ....	Centre .....	OP 14-0001	Lime manufacturing .....	NO <sub>x</sub>

Several of the operating permits contain a provision that allows for future changes to the emission limitations based on continuous emissions monitoring (CEM) or other monitoring data. Since EPA cannot approve emission limitations that are not currently before it, any changes to the emission limitations as submitted to EPA on August 1, 1995, December 8, 1995, and September 13, 1996 must be resubmitted to and approved by EPA in order for these changes to be incorporated into the Pennsylvania SIP. Consequently, the source-specific RACT emission limitations that are being approved into the Pennsylvania SIP are those that were submitted on the above-mentioned dates and are the subject of this rulemaking notice. These emission limitations will remain unless and until they are replaced pursuant to 40 CFR part 51 and approved by the U.S. EPA.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial

amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective August 4, 1997 unless, within 30 days of publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on August 4, 1997. If adverse comments are received that do not pertain to all

documents subject to this rulemaking action, those documents not affected by the adverse comments will be finalized in the manner described here. Only those documents that receive adverse comments will be withdrawn in the manner described here.

**Final Action**

EPA is approving five operating permits as RACT for five individual sources.

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.

*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 Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 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.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act 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, 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 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 proposed/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. Submission to Congress and the General Accounting Office

Under section 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 section 804(2).

## E. 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 August 4, 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 and NO<sub>x</sub> RACT determinations for a number of individual sources in Pennsylvania 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: May 19, 1997.

**Stanley L. Laskowski,**

*Acting Regional Administrator, Region III.*

40 CFR part 52, subpart NN of chapter I, title 40 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 NN—Pennsylvania**

2. Section 52.2020 is amended by adding paragraph (c)(122) to read as follows:

**§ 52.2020 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(122) Revisions to the Pennsylvania Regulations, Chapter 129.91 pertaining to VOC and NO<sub>x</sub> RACT, submitted on August 1, 1995, December 8, 1995, and September 13, 1996 by the Pennsylvania Department of Environmental Resources (now known as the Pennsylvania Department of Environmental Protection):

(i) Incorporation by reference.

(A) Three letters submitted by the Pennsylvania Department of Environmental Resources (now, the Pennsylvania Department of Environmental Protection) transmitting source-specific VOC and/or NO<sub>x</sub> RACT determinations in the form of operating permits on the following dates: August 1, 1995, December 8, 1995, and September 13, 1996.

(B) Operating Permits (OP):

(1) Medusa Cement Company, Lawrence County—OP 37-013, effective July 27, 1995, except for item No. 9 relating to future emission limitations.

(2) Keystone Cement Company, Northampton County—OP 48-0003, effective May 25, 1995, except for the expiration date and item No. 7 relating to future emission limitations.

(3) Lehigh Portland Cement Company, York County—OP 67-2024, effective May 26, 1995, except for the expiration date and item No. 7 relating to future emission limitations.

(4) Mercer Lime and Stone Company, Butler County—OP 10-023, effective May 31, 1995, except for item No. 6 relating to future emission limitations.

(5) Con-Lime, Inc., Centre County—OP 14-0001, effective June 30, 1995, except for the expiration date and item No. 8 relating to future emission limitations and items (or portions thereof) Nos. 17, 18, 20, 22, 24, 25, and 26 relating to non-VOC or non-NO<sub>x</sub> provisions.

(ii) Additional Material.

(A) Remainder of the Commonwealth of Pennsylvania's August 1, 1995, December 8, 1995, and September 13, 1996 submittals.

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