

substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of October 7, 2002. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 7, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which 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, Intergovernmental regulations, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 13, 2002.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 02-25296 Filed 10-4-02; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[PA135-4101a; FRL-7389-2]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County's Generic VOC and NO<sub>x</sub> RACT Regulation and Revised Definitions

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Pennsylvania State Implementation Plan (SIP) submitted by the Commonwealth of Pennsylvania on behalf of the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality (hereafter the ACHD). These revisions consist of a generic regulation which requires major sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) to implement reasonably available control technology (RACT) and related changes to the definitions of the terms "major source" and "potential emissions" and "low NO<sub>x</sub> burner with separate overfire air." This generic RACT regulation applies to major sources not otherwise subject to RACT pursuant to other ACHD regulations. These sources are located in Allegheny County. EPA is approving this revision to the SIP in

accordance with the Clean Air Act (CAA).

**DATES:** This final rule is effective on November 21, 2002 without further notice, unless EPA receives adverse comments by November 6, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

**FOR FURTHER INFORMATION CONTACT:** Janice M. Lewis, (215) 814-2185, at the EPA Region III address above, or via e-mail at [lewis.janice@epa.gov](mailto:lewis.janice@epa.gov). While information may be requested via e-mail, any comments must be submitted in writing to the EPA Region III address above. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On October 30, 1998, the Pennsylvania Department of Environmental Protection (PADEP), submitted on behalf of Allegheny County Health Department (ACHD) a formal revision to the State Implementation Plan (SIP) for the control of VOC and NO<sub>x</sub> emissions from major sources. This revision included amendments to the definitions of the terms major source, potential emissions, and low NO<sub>x</sub> burner with separate overair. This revision consists of new reasonably available control technology (RACT) regulations which would require sources that emit or have the

potential to emit 50 tons per year (tpy) or more of VOC or 100 tpy or more of NO<sub>x</sub> in Allegheny County to comply with RACT requirements by May 31, 1995.

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), major sources of VOC & NO<sub>x</sub> located in Allegheny County were required to implement RACT 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). At the time of the SIP revision submittal, Allegheny County was classified as a moderate ozone nonattainment area. On October 19, 2001 (66 FR 53094), the Pittsburgh-Beaver Valley Ozone Area, which includes Allegheny County, was redesignated to attainment. The SIP submittal which is the subject of this rulemaking consists of Allegheny County's; Article XXI; Section 2105.06—Major Sources of NO<sub>x</sub> and VOC Compounds and revisions to Section 2101.20 which amends definitions of the terms Major Source, Potential Emissions and Low NO<sub>x</sub> Burner with Separate Overfire Air.

## II. Summary of SIP Revisions

### A. Section 2105.06—Major Sources of Nitrogen Oxides (NO<sub>x</sub>) and Volatile Organic Compounds (VOC)

Allegheny County's Article XXI, Section 2105.06 requires major sources of VOCs and NO<sub>x</sub> for which no applicable emission limitations have been established, to identify their emissions, propose RACT, and to complete implementation of RACT by May 31, 1995. Subsequently, PADEP will submit for ACHD each source-specific RACT determination to EPA for approval as a SIP revision.

### B. Section 2105.06(d) Presumptive RACT Requirements for Certain NO<sub>x</sub> Sources

Section 2105.06(d) provides certain major NO<sub>x</sub> sources with an alternative to case-by-case RACT determinations. This section 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 separate overfired air. For units with a rated heat input between 20 mmBTUs/hr and 50 mmBTUs/hr presumptive RACT is an annual adjustment or tune-up of the combustion process to include at a minimum; Inspection, adjustment, cleaning, or replacement of fuel-burning equipment, including the burners and

moving parts necessary for proper operation as specified by the manufacturer; inspection of the flame pattern or characteristics and adjustments necessary to minimize total emissions of NO<sub>x</sub>, and to the extent practicable minimize emissions of CO; and inspection of the air-to-fuel ration control system and adjustments necessary to ensure proper calibration and operation as specified by the manufacturer. For all combustion units with a rated heat input equal to or greater than 20 mmBTU/hr and less than 50 mmBTU/hr, presumptive RACT is to record each adjustment in a permanently bound log book, or other methods approved by ACHD, which contains, at a minimum: The date of the adjustment procedure, the name of the service company and technicians, the operating rate or load after adjustment, the CO and NO<sub>x</sub> emission rates after adjustment, the excess oxygen rate after adjustment, and other information required by the applicable operating permit.

For the following source types, presumptive RACT is the installation, maintenance, and operation of the source in accordance with manufacturer's specifications: (1) Boilers and other combustion sources with individual rated gross heat inputs less than 20mmBTUs/hr of operation; (2) combustion turbines with individual heat input rates less than 25mmBTU/hr which are used for natural gas distribution; (3) internal combustion engines rated at less than 50 brake horsepower (bhp) gross which are set and maintaining 4 degree retarded timing 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 percent, or an emergency standby engine operating less than 500 hours in a consecutive 12-month period; (6) sources which have been approved as meeting the Lowest Available Emission Rate (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 the Best Available Control Technology (BACT) for NO<sub>x</sub> emissions since November 15, 1990, with federally enforceable emissions limitations, also these sources must still meet any applicable, more stringent category-wide RACT requirements.

### C. Section 2105.06(e) NO<sub>x</sub> RACT Emission Averaging General Requirements

Section 2105.06(e) permits major NO<sub>x</sub> sources to submit a RACT proposal that includes 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 for Allegheny County. 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 up-front agreement that a violation at one of the participating sources is considered a violations at all of the participating sources.

### D. Section 2105.06(f) Presumptive RACT Requirements for Certain VOC Sources

Section 2105.06(f) provides that RACT for VOC sources is the installation, maintenance, and operation of the source in accordance with the manufacturer's specifications. VOC sources that have been approved as meeting BACT and/or LAER since November 15, 1990, must also meet more stringent category-wide RACT emission limitations.

### E. Section 2105.06(g) Recordkeeping

The recordkeeping provisions apply to all VOC and NO<sub>x</sub> sources in Allegheny County. 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 to demonstrate compliance with the applicable RACT requirements. This section also requires that sources of VOC and NO<sub>x</sub> that claim exemptions from RACT maintain records that clearly demonstrate their exempt status.

### F. Section 2101.20 Definition for Major Source, Potential Emissions and Low NO<sub>x</sub> Burner With Separate Overfire Air

1. *Major Source*—The October 30, 1996 submittal amends the definitions of the terms Major Source, Potential Emissions and Low NO<sub>x</sub> Burner with Separate Overfire Air found in Section 2101.20. Allegheny County defines the term Major Source as any stationary source, or any group of stationary sources, that is located on one or more contiguous or adjacent properties, is under common control of the same person (or persons under common control), belongs to a single major industrial grouping, and is described as follows: For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of VOC or NO<sub>x</sub> in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as

“serious,” 25 tpy or more in areas classified as “severe,” and ten (10) tpy or more in areas classified as “extreme”; except that the references in this paragraph to 100, 50, 25, and ten (10) tpy of nitrogen oxides shall not apply with respect to any source of which the Administrator has made a finding, under Section 182 (f)(1) or (2) of the Clean Air Act, that requirements under Subsection 182(f) of the Act do not apply; for ozone transport regions established pursuant to Section 184 of the Clean Air Act, sources with the potential to emit 50 tpy or more of VOCs. The definition of a major source conforms to EPA’s definition. For the purposes of defining “major source,” a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (*i.e.*, all have the same two-digit code) as described in the most recent Standard Industrial Classification Manual.

2. *Potential Emissions*—Allegheny County defines the term Potential Emissions as the maximum capability of a source to emit air contaminants, including fugitive emissions, under the physical and operational design of the source. Any physical or operational limitation on the capability to emit air contaminants, including air pollution control equipment and techniques and permit conditions limiting the operating rate, hours of operation, or fuels or raw materials used, shall be treated as part of the design of the source to the extent such limitation, or its effect on emissions, is federally enforceable under the provisions of the Clean Air Act.

3. *Low NO<sub>x</sub> Burner with Separate Overfire Air*—Allegheny County defines this term as a burner design capable of reducing the formation of oxides of nitrogen (NO<sub>x</sub>) emissions through substoichiometric combustion of fuel by means of a burner assembly consisting of two or more stages and the addition of secondary combustion air introduced downstream of the burner location.

### III. EPA’s Analysis of the SIP Revisions for Allegheny County

On October 16, 2001 (66 FR 52506), EPA fully approved the Commonwealth of Pennsylvania’s Generic VOC and NO<sub>x</sub> RACT regulations as they apply in the Pittsburgh-Beaver Valley Ozone area, including Allegheny County. All of the source specific RACT determinations for major sources of NO<sub>x</sub> and VOC located in Allegheny County have already been issued by ACHD,

submitted to EPA by PADEP, and approved by EPA as SIP revisions. In accordance with the EPA policy memorandum for “Approval Options for Generic RACT Rules Submitted to Meet the non-CTG VOC RACT Requirement and Certain NO<sub>x</sub> RACT Requirements” dated November 7, 1996, Allegheny County’s generic RACT regulation is fully approvable because all of the source-specific RACT determinations have already been submitted and approved as SIP revisions, and there are no remaining unregulated sources. EPA has also determined that Allegheny County’s regulation is consistent with Pennsylvania’s generic VOC and NO<sub>x</sub> RACT regulations which were fully approved for the Pittsburgh-Beaver Valley Ozone area, including Allegheny County, on October 16, 2001 (66 FR 52506).

### IV. Final Action

EPA is granting full approval of Allegheny County’s Generic VOC and NO<sub>x</sub> RACT regulations, Article XXI, Section 2105.06—Major Sources of NO<sub>x</sub> and VOC Compounds and revisions to Section 2101.20—Definitions for the terms Major Source, Potential Emissions and Low NO<sub>x</sub> Burner with Separate Overfire Air, as revisions to the Pennsylvania SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the “Proposed Rules” section of today’s **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on November 21, 2002 without further notice unless EPA receives adverse comment by November 6, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### V. Administrative Requirements

#### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus

standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule to approve and revise certain definitions of Allegheny County's Generic VOC and NO<sub>x</sub> RACT regulations do 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, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 24, 2002.  
**James M. Newsom**,  
*Acting Regional Administrator, Region III.*

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 *et seq.*

**Subpart NN—Pennsylvania**

2. Section 52.2020 is amended by adding paragraph (c)(157) to read as follows:

**§ 52.2020 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(157) Approval of revisions to the Allegheny County Regulations, Article XXI pertaining to Major Sources of Nitrogen Oxides and Volatile Organic Compounds and Definitions for Major Source, Potential Emissions and Low NO<sub>x</sub> burner with separate overfire air submitted on October 30, 1998, by the Pennsylvania Department of Environmental Protection on behalf of Allegheny County Health Department:

(i) Incorporation by reference.

(A) The letter dated October 30, 1998, from the Pennsylvania Department of Environmental Protection transmitting Allegheny County's Generic VOC and NO<sub>x</sub> RACT regulations, Appendix 33; Article XXI, Section 2105.06—Major Sources of Nitrogen Oxides and Volatile Organic Compounds and Section 2101.20—Definition for Major Source, Potential Emissions and Low NO<sub>x</sub> Burner with Separate Overfire Air.

(B) Additions of the following Article XXI definitions and regulations, effective October 20, 1995:

(1) Regulation 2101.20—definitions of "major source" (introductory paragraph, paragraphs (d) and (e) and closing paragraph; only), "potential emissions" and "low NO<sub>x</sub> burner with separate overfire air."

(2) Regulation 2105.06—Major Sources of Nitrogen Oxides and Volatile Organic Compounds.

(ii) Additional Material—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(157)(i) of this section.

[FR Doc. 02-25285 Filed 10-4-02; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[MT-001-0046a; FRL-7383-2]

**Approval and Promulgation of Air Quality Implementation Plans; State of Montana: General Conformity**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action approving revisions to the Montana State Implementation Plan (SIP) submitted by the Governor of Montana on August 26, 1999. The revisions adopt Administrative Rules of Montana (ARM), Sub-Chapter 14, "Conformity of General Federal Actions," Sections 17.8.1401 and 17.8.1402, into the SIP. The rules require conformity of general Federal actions to assure that actions of federal agencies that take place in nonattainment or maintenance areas, other than transportation actions, are consistent with the goals of the Montana SIP. EPA is taking this action under section 110 and 176 of the Clean Air Act (Act).

**DATES:** This rule is effective on December 6, 2002, without further notice, unless EPA receives adverse comment by November 6, 2002. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices:

United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202-2466; and,

Air and Radiation Docket and Information, Room B-108, United States Environmental Protection Agency, (Mail Code 6102T), 1301 Constitution Avenue NW, Washington, DC 20460.

Copies of the State documents relevant to this action are available for public inspection at: Montana Department of Environmental Quality, Planning, Prevention and Assistance