

- Provide advance notice of workload to improve planning in processing and delivery operations;

- Support improved understanding of, and opportunities to reduce, postal costs;

If these new standards are adopted, the Postal Service also expects to provide support to its smaller and mid-sized mailers in applying IMpb-compliant labels to every commercial parcel. The Postal Service intends to provide pre-printed IMpb-compliant tracking barcodes to permit imprint and postage meter mailers for use with non-presorted mailings, and to provide tools for Merchandise Return Service (MRS) permit holders to enable their customers to print IMpb-compliant MRS labels online.

To improve piece-level visibility within USPS processing, the Postal Service is investigating the operational feasibility of electronically associating individual parcel tracking numbers with specific sacks, trays, pallets, or similar containers. Depending on the results, the Postal Service may, at a future date, establish a requirement for all commercial parcel mailers to electronically transmit Intelligent Mail tray barcode (IMtb) and Intelligent Mail container barcode (IMcb) nesting data to the Postal Service. Nesting data would be required to be included in the shipment manifest or to be transmitted through another approved electronic documentation method. Recognizing that package mailers have not previously been required to use these barcodes, if this requirement is adopted, the Postal Service will work with the industry to support transitioning to the use of these barcodes, and to determine the proper timing for its implementation.

**Stanley F. Mires,**

*Attorney, Legal Policy & Legislative Advice.*

[FR Doc. 2013-04302 Filed 2-25-13; 8:45 am]

BILLING CODE 7710-12-P

---

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2013-0055; FRL-9785-3]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County Reasonably Available Control Technology Under the 8-Hour Ozone National Ambient Air Quality Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for Allegheny County Health Department (ACHD). This SIP revision consists of a demonstration that Allegheny County's portion of the Pennsylvania requirements of reasonably available control technology (RACT) for nitrogen oxides (NOx) and volatile organic compounds (VOCs) satisfies the RACT requirements set forth by the Clean Air Act (CAA). This SIP revision demonstrates that all requirements for RACT are met either through Certification that previously adopted RACT controls in Allegheny County's SIP that were approved by EPA under the 1-hour ozone national ambient air quality standards (NAAQS) are based on the currently available technically and economically feasible controls, and continue to represent RACT for the 8-hour ozone NAAQS, a negative declaration demonstrating that no facilities exist in Allegheny County for certain control technology guideline (CTG) categories; and a new RACT determination for a specific source. This action is being taken under the CAA.

**DATES:** Written comments must be received on or before March 28, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2013-0055 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email:* [Fernandez.cristina@epa.gov](mailto:Fernandez.cristina@epa.gov).

C. *Mail:* EPA-R03-OAR-2013-0055, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R03-OAR-2013-0055. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you

consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201. Copies are also available at Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Emlyn Velez-Rosa, (215) 814-2038, or by email at [Velez-Rosa.Emlyn@epa.gov](mailto:Velez-Rosa.Emlyn@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Ozone is formed in the atmosphere by photochemical reactions between VOC, NOx, and carbon monoxide (CO) in the presence of sunlight. In order to reduce ozone concentrations in the ambient air, the CAA requires all nonattainment

areas to apply controls on VOC/NO<sub>x</sub> emission sources to achieve emission reductions.

Since the 1970s, EPA has consistently interpreted RACT to mean the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility. See 72 FR 20586, 20610 (April 25, 2007). Section 182 of the CAA sets forth two separate RACT requirements for ozone nonattainment areas. The first requirement, contained in section 182(a)(2)(A) of the CAA, and referred to as RACT fix-up, requires the correction of RACT rules for which EPA identified deficiencies before the CAA was amended in 1990. The Pennsylvania RACT fix-up SIP submittal was approved with a conditional limited approval on March 23, 1998 (63 FR 13789) and later converted to a full approval on October 22, 2008 (73 FR 62891).

The second requirement, set forth in section 182(b)(2) of the CAA, applies to moderate (or worse) ozone nonattainment areas and attainment areas in the ozone transport region (OTR) established pursuant to section 184 of the CAA. These areas are required to implement RACT controls on all major VOC and NO<sub>x</sub> emission sources and on all sources and source categories covered by a CTG issued by EPA. Allegheny County has adopted all CTGs and they are listed in Section II of this notice. Further details of Allegheny County's RACT requirements can be found in a Technical Support Document (TSD) prepared for this rulemaking and included in the docket at EPA-R03-OAR-2013-0055.

Section 182(b)(2) of the CAA required Allegheny County to implement RACT on all sources and source categories covered by a CTG issued by EPA. Stationary sources with the potential to emit 50 tons per year or more of VOCs or 100 tons per year or more of NO<sub>x</sub> that were not covered by a CTG were also required to implement RACT.

The ozone transport region (OTR) is established by section 184 of the CAA. Areas in the OTR are subject to OTR-specific RACT requirements. Section 184(b)(1)(B) of the CAA requires the implementation of RACT with respect to all sources of VOC covered by a CTG. Additionally, section 184(b)(2) of the CAA requires the implementation of major stationary source requirements as if the area was a moderate nonattainment area on any stationary source with a potential to emit at least 50 tons per year of VOC or 100 tons per year of NO<sub>x</sub>. Because Allegheny County is in Pennsylvania which is in the OTR,

Allegheny County must comply with section 184(b)(1)(B) and (2) of the CAA.

EPA requires for the 8-hour ozone NAAQS that states meet the CAA RACT requirements, either through a certification that previously adopted RACT controls in their SIP approved by EPA under the 1-hour ozone NAAQS represent adequate RACT control levels for 8-hour ozone NAAQS attainment purposes or through the establishment of new or more stringent requirements that represent RACT control levels. See *Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline (Phase 2 Rule)*, 70 FR 71612, 71655 (November 29, 2005). Sections 172(c)(1) and 182(b)(2) of the CAA require that all SIPs satisfy the NO<sub>x</sub> and VOCs RACT requirements that apply in areas that have not attained the NAAQS for ozone. See 42 U.S.C. 7502(c)(1), 7511a(b)(2), and 7511a(f). EPA has determined that states that have RACT provisions approved in their SIPs for 1-hour ozone nonattainment areas have several options for fulfilling the RACT requirements for the 8-hour ozone NAAQS. If a state meets certain conditions, it may certify that previously adopted 1-hour ozone RACT controls in the SIP continue to represent RACT control levels for purposes of fulfilling 8-hour ozone RACT requirements. Alternatively, a state may establish new or more stringent requirements that represent RACT control levels, either in lieu of or in conjunction with a certification.

As set forth in the preamble to the Phase 2 Rule, a certification must be accompanied by appropriate supporting information such as consideration of information received during the public comment period and consideration of new data (70 FR 71612, 71655). This information may supplement existing RACT guidance documents that were developed for the 1-hour ozone standard, such that the state's SIP accurately reflects RACT for the 8-hour ozone standard based on the current availability of technically and economically feasible controls. Establishment of new RACT requirements will occur when states have new stationary sources not covered by existing RACT regulations, or when new data or technical information indicates that a previously adopted RACT measure does not represent a

newly available RACT control level. Another 8-hour ozone NAAQS requirement for RACT is to submit a negative declaration if there are no CTG sources or major sources of VOC and NO<sub>x</sub> emissions in lieu of or in addition to a certification.

## II. Summary of the SIP Revision

On May 5, 2009, the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision on behalf of ACHD for its SIP that addresses the requirements of RACT under the 8-hour ozone NAAQS set forth by the CAA. Allegheny County's SIP revision is consistent with the process in the Phase 2 Rule preamble and satisfies the requirements of RACT set forth by the CAA under the 8-hour ozone NAAQS through: (1) Certification that previously adopted RACT controls in Allegheny County's SIP, which were approved by EPA under the 1-hour ozone NAAQS, are based on the currently available, technically and economically feasible controls and continue to represent RACT for the 8-hour ozone NAAQS; (2) a negative declaration demonstrating that no facilities exist in Allegheny County for the applicable CTG categories; and (3) a new RACT determination for a single source based upon reliance on the Maximum Achievable Control Technology (MACT) standard as allowed in the Phase 2 Rule.

### A. VOC CTG RACT Controls

Allegheny County's Regulations, codified at Article XXI, contain the County's CTG VOC RACT controls that were implemented and approved in the Allegheny County SIP under the 1-hour ozone NAAQS. Table 1 lists Allegheny County's VOC RACT controls for which Allegheny County has provided the required evaluation and is certifying as meeting the 8-hour ozone NAAQS RACT requirements. Revisions to Article XXI section 2105.10 for surface coating processes and related definitions found in Article XXI section 2101.20 were made after this May 5, 2009 SIP submittal and approved by EPA into the Pennsylvania SIP on December 28, 2010 (75 FR 81480) and supersede the May 5, 2009 submittal. EPA approved new regulations in the December 28, 2010 rulemaking action including emission limits for Large Appliance and Metal Surface Coatings, Article XXI section 2105.77 and emission limits for Paper, Film, and Foil Surface Coatings, Article XXI section 2105.79. Allegheny County also incorporated by reference Pennsylvania's Consumer Products Rule that amended Article XXI section 2105.88, which was finalized by EPA on

November 29, 2012 (77 FR 71115) and supersedes the May 5, 2009 submittal. In this proposal EPA is not taking action on those CTG Rules below that have been revised and approved by EPA after the May 5, 2009 submittal.

TABLE 1—ALLEGHENY COUNTY’S CTG VOC RACT CONTROLS

Article XXI Section	Existing stationary sources—40 CFR 52.2020(C)			
	CTG for RACT basis	State effective date	Federal Register date for SIP approval	Citation
2105.10 VOC Sources Surface Coating Processes.	Control of Volatile Organic Emissions from Existing Stationary Sources, Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks. Control of Volatile Organic Emissions from Existing Stationary Sources, Volume III: Surface Coating of Metal Furniture. Control of Volatile Organic Emissions from Existing Stationary Sources, Volume IV: Surface Coating for Insulation of Magnet Wire. Control of Volatile Organic Emissions from Existing Stationary Sources, Volume V: Surface Coating of Large Appliances. Control of Volatile Organic Emissions from Existing Stationary Sources, Volume VI: Surface Coating of Miscellaneous Metal Parts and Products.	10/20/1995 07/10/03	11/14/2002 06/24/2005	67 FR 68935 70 FR 36511
2105.11 VOC Sources Graphic Arts Systems.	Control of Volatile Organic Emissions from Existing Stationary Sources, Volume VIII: Graphic Arts—Rotogravure and Flexography.	10/20/1995	11/14/2002	67 FR 68935
2105.12 VOC Sources VOC Storage Tanks.	Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks.	10/20/1995	11/14/2002	67 FR 68935
2105.13 Gasoline Loading Facilities.	Control of Volatile Organic Emissions from Bulk Gasoline Plants. Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations.	10/20/1995	11/14/2002	67 FR 68935
2105.15 Degreasing Operations ...	Control of Volatile Organic Emissions from Solvent Metal Cleaning.	10/20/1995	11/14/2002	67 FR 68935
2105.16 Cutback Asphalt Paving ..	Control of Volatile Organic Compounds from Use of Cutback Asphalt.	10/20/1995	11/14/2002	67 FR 68935
2105.17 Ethylene Production Facilities.	.....	10/20/1995	11/14/2002	67 FR 68935
2105.19 Synthetic Organic Chemical and Polymer Manufacturing—Fugitive Emissions.	Control of Volatile Organic Compound Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment.	10/20/1995	11/14/2002	67 FR 68935
2105.70 Petroleum Refineries .....	.....	10/20/1995	11/14/2002	67 FR 68935
2105.71 Pharmaceutical Products	Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products.	10/20/1995	11/14/2002	67 FR 68935
2105.72 Manufacture of Pneumatic Rubber Tires.	Control of Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires.	10/20/1995	11/14/2002	67 FR 68935
2105.74 Aerospace Manufacturing and Rework.	Aerospace .....	07/10/2003	06/24/2005	70 FR 36511
2105.75 Mobile Equipment Repair and Refinishing.	ACT: Automobile Body refinishing .....	07/10/2003	06/24/2005	70 FR 36511
2105.76 Wood Furniture Manufacturing Operations.	Wood Furniture .....	07/10/2003	06/24/2005	70 FR 36511

ACHD also submitted a negative declaration certifying that the following VOC CTG sources listed in table 2 do not exist in Allegheny County, and therefore ACHD does not need to adopt CTGs for these sources. Table 2 lists VOC CTG sources in Allegheny County’s negative declaration.

TABLE 2—VOC CTG SOURCES FOR WHICH NO APPLICABLE FACILITIES EXIST IN ALLEGHENY COUNTY

- Control of Volatile Organic Compound Emissions From Large Petroleum Dry Cleaners.
- Control of Volatile Organic Emissions From Existing Stationary Sources, Volume II: Factory Surface Coating of Flat Wood Paneling.
- Control of Volatile Organic Compound Equipment Leaks From Natural Gas/Gasoline Processing Plants.
- Control of Volatile Organic Compound Emissions From Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry.
- Control of Volatile Organic Compound Emissions From Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry.
- Control Techniques Guidelines for Shipbuilding and Ship Repair Operations.

**B. Source-Specific RACT Controls**

Table 3 lists Allegheny County's source-specific RACT controls, which were implemented and approved into the SIP under the 1-hour ozone NAAQS, for which Allegheny County is certifying as meeting the 8-hr ozone NAAQS RACT requirements for VOC and/or NO<sub>x</sub>. EPA approved into the Pennsylvania SIP new NO<sub>x</sub> emission control regulation for Glass Melting

Furnaces in Allegheny County on November 29, 2012 (77 FR 71117) which regulation supersedes the source-specific RACT determinations submitted in the May 5, 2009 submittal for sources where Article XXI, section 2105.101 is applicable. Allegheny County submitted a revision on January 25, 2012 removing all references to the cap and trade programs, NO<sub>x</sub> SIP Call or Clean Air Interstate Rule (CAIR) because it certified that those electrical

generating units (EGUs) subject to such programs have source-specific RACT controls that do not rely on the trading programs and because the U.S. Court of Appeals for the District of Columbia Circuit ruled in the *National Resources Defense Council v. EPA*, 571 F.3d 1245, 1256 (July 10, 2009), that "regionwide RACT-level reductions in emissions do not meet the statutory requirement that the reductions be from sources in the nonattainment area."

TABLE 3—SOURCE-SPECIFIC RACT CONTROLS

Facility name	State effective date	Pollutant	Federal Register date	Citation
Allegheny Ludlum Corporation	12/19/1996	NO <sub>x</sub> /VOC	10/18/2001	66 FR 52857.
Ashland Specialty Chemical Co	12/30/1996	NO <sub>x</sub> /VOC	10/16/2001	66 FR 52506.
Bay Valley Foods	06/09/2005	NO <sub>x</sub>	05/11/2006	71 FR 27394.
Bellefield Boiler Plant	12/19/1996	NO <sub>x</sub>	10/12/2001	66 FR 52044.
Eastman Chemical Resins, Inc	11/01/1999	NO <sub>x</sub> /VOC	10/16/2001	66 FR 52506.
GE Lighting LLC	12/19/1996	NO <sub>x</sub>	10/16/2001	66 FR 52527.
Guardian Industries Corp	08/27/1996	NO <sub>x</sub>	10/16/2001	66 FR 52527.
Koppers Industries, Inc	08/27/1996	VOC	10/17/2001	66 FR 52700.
Neville Chemical Co	12/13/1996	NO <sub>x</sub> /VOC	10/16/2001	66 FR 52506.
NRG Energy Center	06/09/2005	NO <sub>x</sub>	05/11/2006	71 FR 27394.
Orion Power Brunot Island	08/27/1996	NO <sub>x</sub> /VOC	10/15/2001	66 FR 52327.
Orion Power Cheswick	03/08/1996	NO <sub>x</sub>	10/18/2001	66 FR 52867.
PACT—Pennsylvania Allegheny County Thermal	03/04/1996	NO <sub>x</sub>	10/12/2001	66 FR 52044.
Port Glenshaw Glass, LLC	03/10/2000	NO <sub>x</sub> /VOC	10/16/2001	66 FR 52527.
PPG Industries, Inc Springdale	12/19/1996	VOC	10/12/2001	66 FR 52505.
Pressure Chemical Company	06/11/1997	VOC	10/17/2001	66 FR 52700.
Shenango Inc	12/30/1996	NO <sub>x</sub> /VOC	10/16/2001	66 FR 52511.
US Steel Clairton	12/30/1996	NO <sub>x</sub> /VOC	10/16/2001	66 FR 52511.
US Steel Edgar Thomas	12/30/1996	NO <sub>x</sub> /VOC	10/16/2001	66 FR 52511.
US Steel Irvin	12/30/1996	NO <sub>x</sub> /VOC	10/16/2001	66 FR 52511.

Finally, the Laurel Mountain Whirlpool facility did not have a 1-hour ozone NAAQS RACT determination, but is subject to the MACT standards of 40 CFR 63 subpart WWWW, which has been determined sufficient for VOC 8-hour ozone NAAQS RACT in accordance with the Phase 2 Rule. Further details of ACHD's RACT re-evaluations can be found in the TSD prepared for this rulemaking.

**III. Proposed Action**

EPA is proposing to approve the ACHD SIP revision that addresses the requirements of RACT under the 8-hour ozone NAAQS, which was submitted on May 5, 2009. This SIP revision includes a combination of: (1) Certifications that previously adopted RACT controls in Pennsylvania's SIP which were approved by EPA under the 1-hour ozone NAAQS are based on the currently available, technically and economically feasible controls and continue to represent RACT for the 8-hour ozone NAAQS; (2) a negative declaration demonstrating that no facilities exist in Allegheny County for the applicable CTG categories; and (3) a new RACT determination for a single

source. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

**IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using

practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the Allegheny County RACT SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### 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.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: February 14, 2013.

**Shawn M. Garvin,**

*Regional Administrator, Region III.*

[FR Doc. 2013-04409 Filed 2-25-13; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL MARITIME COMMISSION

### 46 CFR Parts 515, 520, and 532

[Docket No. 11-22]

RIN 3072-AC51

#### Non-Vessel-Operating Common Carrier Negotiated Rate Arrangements; Tariff Publication Exemption

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Maritime Commission proposes to impose registration requirements on foreign-based unlicensed non-vessel-operating common carriers (NVOCCs) and to extend an exemption from certain provisions and requirements of the Shipping Act of 1984 and the Commission regulations to foreign-based unlicensed non-vessel-operating common carriers that agree to negotiated rate arrangements (NRAs). The extension of the exemption is to make NRAs more useful and to enhance competition among all NVOCCs.

**DATES:** Comments or suggestions due on or before: April 29, 2013.

**ADDRESSES:** Submit all comments concerning this proposed rule to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573-0001, Phone: (202) 523-5725, Email: [secretary@fmc.gov](mailto:secretary@fmc.gov).

**FOR FURTHER INFORMATION CONTACT:** Rebecca A. Fenneman, General Counsel, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573-0001, Phone: (202) 523-5740, Email: [generalcounsel@fmc.gov](mailto:generalcounsel@fmc.gov).

#### SUPPLEMENTARY INFORMATION:

**Submit Comments:** Submit an original and 5 copies in paper form, and if possible, send a PDF of the document by email to [secretary@fmc.gov](mailto:secretary@fmc.gov). Include in the subject line: Docket No. 11-22, Comments on Non-Vessel-Operating Common Carrier Negotiated Rate Arrangements; Tariff Publication Exemption.

#### Background

On March 2, 2011, the Commission published a final rule promulgating 46 CFR part 532, Docket No. 10-03, *Non-Vessel-Operating Common Carrier Negotiated Rate Arrangements*, which exempted licensed non-vessel-operating common carriers (NVOCCs) that enter into negotiated rate arrangements (NRAs) from the tariff rate publication requirements of the Shipping Act of 1984 and certain provisions and requirements of the Commission's regulations. 76 FR 11351 (Mar. 2, 2011).

However, concerns about extending the exemption to foreign-based unlicensed NVOCCs were raised by staff. *Id.* at 11355-11356. Foreign-based unlicensed NVOCCs are not subject to the same stringent requirements as licensed NVOCCs, such as review of the experience and character of the shareholders, major officers, and Qualifying Individual of the license applicant. Accordingly, the Commission decided at the time to permit the NRAs only to licensed NVOCCs, while stating that it will commence proceedings to obtain and consider additional comments on potential modifications to the final rule, including possible extension of the exemption to foreign-based unlicensed NVOCCs. *Id.* at 11357.

The Commission later issued a Notice of Inquiry, Docket No. 11-22, *Non-Vessel-Operating Common Carrier Negotiated Rate Arrangements; Tariff Filing Exemption*, seeking comments on ways to make the NRA rules more useful and on its possible extension to foreign-based unlicensed NVOCCs. 76 FR 80866 (Dec. 27, 2011). Adopting suggestions by a number of ocean transportation intermediaries and U.S. and foreign trade associations, the Commission published a direct final rule eliminating some of the technical requirements of the rule. 77 FR 33971 (June 8, 2012). The Commission, however, decided to continue to consider other suggestions, including possible extension of the exemption to

foreign-based unlicensed NVOCCs, at a future date. *Id.* at 33972.

#### Discussion

The Commission may exempt any specified future activity from any requirements of the Shipping Act of 1984 "if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce." 46 U.S.C. 40103. The Commission may attach conditions to an exemption and may, by order, revoke an exemption. *Id.* In Docket No. 10-03, the Commission found that allowing licensed NVOCCs to opt out of the requirements to publish tariff rates will enhance competition, rather than result in a substantial reduction in competition among licensed NVOCCs. 76 FR 11351, 11352. After reviewing all of the comments received and in light of the conditions for using NRAs, the Commission also found that permitting licensed NVOCCs the option of operating under NRAs would not be detrimental to commerce. *Id.* at 11353.

Commission staff, however, raised concerns that extending the exemption to foreign-based unlicensed NVOCCs could hamper the Commission's ability to protect the shipping public, as the exemption is predicated, among other things, on the prompt availability of records. *Id.* at 11353. There were also concerns about the lack of oversight of foreign-based unlicensed NVOCCs. *Id.* at 11356. The licensing process for licensed NVOCCs includes a detailed review of the experience and character of the applicant's Qualifying Individual, and the character of its major officers and shareholders. *Id.* Further, the Commission's Bureau of Certification and Licensing's review of applicants includes a thorough vetting of the Commission's complaint and enforcement records system as well as commercial databases to analyze the applicant's financial background. *Id.* While the Commission approves a license based upon substantive and verified information, the Commission knows little more than the name and address of foreign-based unlicensed NVOCCs. *Id.* Further, foreign-based unlicensed NVOCCs are not required to designate a Qualifying Individual. *Id.*

Those discussions brought to light the need for a registration process for foreign-based unlicensed NVOCCs. The registration process requires such NVOCCs submit a registration form to the Commission that identifies the NVOCCs' legal name, trade name(s), principal address, contact information including name of a contact person, and name, address, and contact person for a