

via the RACT II permits, source-specific RACT determinations under the 1997 and 2008 8-hour ozone NAAQS for certain major sources of NO<sub>x</sub> and VOC emissions.

### III. EPA's Evaluation of SIP Revisions

After thorough review and evaluation of the information provided by PADEP in its SIP revision submittal for nine major sources of NO<sub>x</sub> and/or VOC in Pennsylvania, EPA finds that PADEP's case-by-case RACT determinations and conclusions provided are reasonable and appropriately considered technically and economically feasible controls, while setting lowest achievable limits. EPA finds that the proposed source-specific RACT controls for the sources subject to this rulemaking action adequately meet the CAA RACT requirements for the 1997 and 2008 8-hour ozone NAAQS for the major sources of NO<sub>x</sub> and/or VOC in Pennsylvania, as they are not covered by or cannot meet Pennsylvania's presumptive RACT regulation.

EPA also finds that all the proposed revisions to previously SIP approved RACT requirements, under the 1979 1-hour ozone standard (RACT I), as discussed in PADEP's SIP revisions, will result in equivalent or additional reductions of NO<sub>x</sub> and/or VOC emissions and should not interfere with any applicable requirement concerning attainment or reasonable further progress with the NAAQS or interfere with other applicable CAA requirement in section 110(l) of the CAA.

EPA's complete analysis of PADEP's case-by-case RACT SIP revisions is included in the TSD available in the docket for this rulemaking action and available online at <https://www.regulations.gov>, Docket number EPA-R03-OAR-2019-0657.

### IV. Proposed Action

Based on EPA's review, EPA is proposing to approve the Pennsylvania SIP revisions for the nine case-by-case RACT facilities listed in Table 2 of this document and incorporate by reference in the Pennsylvania SIP, via the RACT II permits, source specific RACT determinations under the 1997 and 2008 8-hour ozone NAAQS for certain major sources of NO<sub>x</sub> and VOC emissions. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. As EPA views each facility as a separable SIP revision, should EPA receive comment on one facility but not others, EPA may take separate, final action on the remaining facilities.

### V. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference source specific RACT determinations via the RACT II permits as described in Sections II and III—Summary of SIP Revisions and EPA's Evaluation of SIP Revisions. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### VI. 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 approves 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- 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, addressing the NO<sub>x</sub> and VOC RACT requirements for nine case-by-case facilities for the 1997 and 2008 8-hour ozone NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the 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.

Dated: April 21, 2020.

**Cosmo Servidio,**

*Regional Administrator, Region III.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2020-0189; FRL-10008-57-Region 3]

### Air Plan Approval; Pennsylvania; Reasonably Available Control Technology (RACT) Determinations for Case-by-Case Sources Under the 1997 and 2008 8-Hour Ozone National Ambient Air Quality Standards

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve multiple state implementation plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to

establish and require reasonably available control technology (RACT) for 26 major sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) pursuant to the Commonwealth of Pennsylvania's conditionally approved RACT regulations. In this rulemaking action, EPA is only proposing to approve source-specific (also referred to as "case-by-case") RACT determinations for four of the 26 major sources submitted by PADEP. These RACT evaluations were submitted to meet RACT requirements for the 1997 and 2008 8-hour ozone national ambient air quality standards (NAAQS). This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before June 4, 2020.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2020-0189 at <https://www.regulations.gov>, or via email to [opila.marycate@epa.gov](mailto:opila.marycate@epa.gov). For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Emily Bertram, Permits Branch (3AD10), Air and Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-5273. Ms. Bertram can also be reached via electronic mail at [bertram.emily@epa.gov](mailto:bertram.emily@epa.gov).

**SUPPLEMENTARY INFORMATION:** On multiple dates, PADEP submitted

multiple revisions to its SIP to address case-by-case NO<sub>x</sub> and/or VOC RACT for 26 major facilities. These SIP revisions are intended to address the NO<sub>x</sub> and/or VOC RACT requirements under sections 182 and 184 of the CAA for the 1997 and 2008 8-hour ozone NAAQS. Table 1 of this document lists each SIP submittal date and the facilities included in its submittals. Although submitted in multiple packages by PADEP, EPA views each facility as a separable SIP revision and may take separate final action on one or more facilities. In this rulemaking action, EPA is only proposing to approve case-by-case RACT determinations for four of the 26 sources submitted to EPA by PADEP, specifically Transco—Salladasburg Station 520, Novipax, Sunoco Partners Marketing & Terminals, and Global Advanced Metals, USA, Inc. The remaining 22 major sources are either now exempt from the source-specific RACT requirements, will be acted on in a future rulemaking action, once resubmitted to EPA by PADEP, or EPA has previously proposed approval.<sup>1</sup> See Tables 1 and 2 for details related to each case-by-case facility in PADEP's multiple (five) SIP revisions.

On July 31, 2019, EPA proposed to approve 21 case-by-case RACT determinations for sources in Pennsylvania (Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania Reasonably Available Control Technology (RACT) Determinations for Case-by-Case Sources under the 1997 and 2008 8-Hour Ozone National Ambient Air Quality Standards; Part 1; 84 FR 37167 (July 31, 2019)). On August 30, 2019, the last day of the comment period, EPA became aware through a comment submitted to *Regulations.gov* that one of the files contained in the SIP submission—which EPA made public in the docket for that rulemaking proposing to approve the submission (Docket No. EPA-R03-OAR-2017-0290-0064)—contained potential CBI. EPA restricted public access in *Regulations.gov* to that file containing potential CBI the same day, prior to the end of the comment period. On September 30, 2019, EPA became aware through additional comments submitted to *Regulations.gov* during the comment

<sup>1</sup> In this action, EPA is proposing approval of sources included in the initial 26 case-by-case determinations submitted by PADEP as SIP revisions. A list of those 26 case-by-case RACT sources can be found in Table 1 of this rulemaking action. EPA proposed approval of 19 of the 26 case-by-case RACT determinations on March 20, 2020. See 85 FR 16021. That rulemaking action and all supporting information can also be found in Docket ID No. EPA-R03-OAR-2019-0686, which is available online at <https://www.regulations.gov>.

period that additional potential CBI was contained in other files EPA had posted to Docket No. EPA-R03-OAR-2017-0290-0064. EPA restricted public access in *Regulations.gov* to the entire docket that same day. In accordance with EPA's CBI regulations at 40 CFR part 2, subpart B, EPA has contacted each business affected by the inclusion of potential CBI in the docket files to inform them that potential CBI was made publicly available on *Regulations.gov*, and afforded each business an opportunity to assert a claim of business confidentiality for any of their information posted by EPA to Docket No. EPA-R03-OAR-2017-0290-0064.

EPA is now proposing to approve two of the 21 Pennsylvania case-by-case RACT determinations in this new rulemaking.<sup>2</sup> EPA has established a docket for this new rulemaking that does not include any materials claimed as CBI (Docket ID No. EPA-R03-OAR-2020-0189). Commenters must submit any comments they have on EPA's proposed approval of the two case-by-case RACT determinations to this new docket number. Because this is a new rulemaking, EPA will not consider any comments on its prior proposal made at Docket ID No. EPA-R03-OAR-2017-0290-0064. Any prior comments on Transco—Salladasburg Station 520 or Sunoco Partners Marketing & Terminals will need to be resubmitted to Docket ID No. EPA-R03-OAR-2020-0189 during the comment period for this proposed rulemaking for EPA to consider them. The commenters are reminded that their comments should not include or rely on any information considered to be CBI or other information whose disclosure is restricted by statute. If a comment includes any CBI or other restricted information, EPA will redact the comment or withhold from the public docket those submissions (or those portions containing the restricted information) as appropriate.

For additional background information on Pennsylvania's "presumptive" RACT II SIP see 84 FR 20274 (May 9, 2019) and on Pennsylvania's source-specific or "case-by-case" RACT determinations see the

<sup>2</sup> In this action, EPA is proposing approval of two (Transco—Salladasburg Station 520 and Sunoco Partners Marketing & Terminals) of the 21 sources it proposed approval of on July 31, 2019. In a separate action, EPA proposed approval of the remaining 19 case-by-case RACT determinations. See 85 FR 16021 (March 20, 2020).

appropriate technical support document <https://www.regulations.gov>, Docket ID (TSD) which is available online at No. EPA-R03-OAR-2020-0189.

TABLE 1—PADEP SIP SUBMITTALS FOR MAJOR NO<sub>x</sub> AND/OR VOC SOURCES IN PENNSYLVANIA SUBJECT TO SOURCE-SPECIFIC RACT UNDER THE 1997 AND 2008 8-HOUR OZONE STANDARD

SIP submittal date	Major source (county) <sup>a</sup>
8/14/2017 .....	Exelon Generation—Fairless Hills (Bucks)
11/21/2017 .....	The Boeing Co. (Delaware)
	Cherokee Pharmaceuticals, LLC (Northumberland)
	Dominion Transmission—Finnefrock Station (Clinton) <sup>b</sup>
	First Quality Tissue, LLC (Clinton)
	JW Aluminum Company (Lycoming)
	Transco—Salladasburg Station 520 (Lycoming) <sup>c</sup>
	Ward Manufacturing, LLC (Tioga)
	Wood-Mode Inc. (Snyder)
4/26/2018 .....	Foam Fabricators Inc. (Columbia)
	Novipax (Berks) <sup>d</sup>
	Resilite Sports Products Inc. (Northumberland)
	Sunoco Partners Marketing & Terminals (Delaware) <sup>e</sup>
	Texas Eastern—Bernville (Berks)
	Truck Accessories Group (Northumberland) <sup>f</sup>
6/26/2018 .....	Texas Eastern—Shermans Dale (Perry)
	Texas Eastern—Perulack (Juniata)
	Texas Eastern—Grantville (Dauphin)
	NRG Energy Center Paxton, LLC (Dauphin)
	Texas Eastern—Bechtelsville (Berks)
	Merck, Sharp & Dohme Corporation (Montgomery) <sup>g</sup>
10/29/2018 .....	Containment Solutions/Mt. Union Plant (Huntingdon)
	Armstrong World Ind./Marietta Ceiling Plant (Lancaster)
	Jeraco Enterprises Inc. (Northumberland)
	Global Advanced Metals USA Inc. (Montgomery) <sup>h</sup>
	Blommer Chocolate Company (Montgomery)

<sup>a</sup>Unless otherwise noted, EPA proposed approval of the case-by-case RACT determination for 19 of major sources listed in Table 1 in its March 20, 2020 NPRM. See 85 FR 16021. That rulemaking action and all supporting information can also be found in Docket ID No. EPA-R03-OAR-2019-0686, which is available online at <https://www.regulations.gov>.

<sup>b</sup>Dominion Transmission—Finnefrock Station was withdrawn from EPA consideration on August 27, 2018. PADEP determined this source was no longer subject to source-specific RACT requirements for the 1997 and 2008 8-hour ozone NAAQS.

<sup>c</sup>Transco—Salladasburg Station 520 is being acted on in this rulemaking action.

<sup>d</sup>Novipax is being acted on in this rulemaking action.

<sup>e</sup>Sunoco Partners Marketing and Terminal is being acted on in this rulemaking action.

<sup>f</sup>Truck Accessories Group was withdrawn from EPA consideration on July 11, 2019. EPA will be taking action on this source in a future rulemaking action, once resubmitted by PADEP for approval into the PA SIP.

<sup>g</sup>Merck, Sharp & Dohme Corporation was withdrawn from EPA consideration on July 11, 2019. EPA will be taking action on this source in a future rulemaking action, once resubmitted by PADEP for approval into the PA SIP.

<sup>h</sup>Global Advanced Metals USA Inc. is being acted on in this proposed rulemaking action. Additionally, PADEP sent EPA a letter on July 17, 2019 supplementing its original October 29, 2018 SIP revision submittal.

## I. Background

### A. 1997 and 2008 8-Hour Ozone NAAQS

Ground level ozone is not emitted directly into the air but is created by chemical reaction between NO<sub>x</sub> and VOC in the presence of sunlight. Emissions from industrial facilities, electric utilities, motor vehicle exhaust, gasoline vapors, and chemical solvents are some of the major sources of NO<sub>x</sub> and VOC. Breathing ozone can trigger a variety of health problems, particularly for children, the elderly, and people of all ages who have lung diseases such as asthma. Ground level ozone can also have harmful effects on sensitive vegetation and ecosystems.

On July 18, 1997 (62 FR 38856), EPA promulgated a standard for ground level ozone based on 8-hour average concentrations. The 8-hour averaging

period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. EPA has designated two moderate nonattainment areas in Pennsylvania under the 1997 8-hour ozone NAAQS, namely Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE (the Philadelphia Area) and Pittsburgh-Beaver Valley (the Pittsburgh Area). See 40 CFR 81.339.

On March 12, 2008, EPA strengthened the 8-hour ozone standards, by revising its level to 0.075 ppm averaged over an 8-hour period (2008 8-hour ozone NAAQS). On May 21, 2012, EPA designated five marginal nonattainment areas in Pennsylvania for the 2008 8-hour ozone NAAQS: Allentown-Bethlehem-Easton, Lancaster, Reading, the Philadelphia Area, and the Pittsburgh Area. See 77 FR 30088; see also 40 CFR 81.339.

On March 6, 2015 (80 FR 12264), EPA announced its revocation of the 1997 8-hour ozone NAAQS for all purposes and for all areas in the country, effective on April 6, 2015. EPA has determined that certain nonattainment planning requirements continue to be in effect under the revoked standard for nonattainment areas under the 1997 8-hour ozone NAAQS, including RACT.

### B. RACT Requirements for Ozone

The CAA regulates emissions of NO<sub>x</sub> and VOC to prevent photochemical reactions that result in ozone formation. RACT is an important strategy for reducing NO<sub>x</sub> and VOC emissions from major stationary sources within areas not meeting the ozone NAAQS. Areas designated nonattainment for the ozone NAAQS are subject to the general nonattainment planning requirements of CAA section 172. Section 172(c)(1) of

the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACT) for demonstrating attainment of all NAAQS, including emissions reductions from existing sources through the adoption of RACT. Further, section 182(b)(2) of the CAA sets forth additional RACT requirements for ozone nonattainment areas classified as moderate or higher. Section 182(b)(2) of the CAA sets forth requirements regarding RACT for the ozone NAAQS for VOC sources. Section 182(f) subjects major stationary sources of NO<sub>x</sub> to the same RACT requirements applicable to major stationary sources of VOC.<sup>3</sup>

Section 184(b)(1)(B) of the CAA applies the RACT requirements in section 182(b)(2) to nonattainment areas classified as marginal and to attainment areas located within ozone transport regions established pursuant to section 184 of the CAA. Section 184(a) of the CAA established by law the current Ozone Transport Region (OTR) comprised of 12 eastern states, including Pennsylvania. This requirement is referred to as OTR RACT. As noted previously, a “major source” is defined based on the source’s PTE of NO<sub>x</sub>, VOC, or both pollutants, and the applicable thresholds differ based on the classification of the nonattainment area in which the source is located. See sections 182(c)–(f) and 302 of the CAA.

Since the 1970’s, EPA has consistently defined “RACT” as 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.<sup>4</sup> EPA has provided more substantive RACT requirements through implementation rules for each ozone NAAQS as well as through guidance. In 2004 and 2005, EPA promulgated an implementation rule for the 1997 8-hour ozone NAAQS in two phases (“Phase 1 of the 1997 Ozone Implementation Rule” and “Phase 2 of the 1997 Ozone Implementation Rule”). 69 FR 23951 (April 30, 2004) and 70 FR 71612 (November 29, 2005), respectively. Particularly, the Phase 2 Ozone Implementation Rule addressed RACT statutory requirements under the 1997

8-hour ozone NAAQS. See 70 FR 71652 (November 29, 2005).

On March 6, 2015 (80 FR 12264), EPA issued its final rule for implementing the 2008 8-hour ozone NAAQS (“the 2008 Ozone SIP Requirements Rule”). At the same time, EPA revoked the 1997 8-hour ozone NAAQS, effective on April 6, 2015.<sup>5</sup> The 2008 Ozone SIP Requirements Rule provided comprehensive requirements to transition from the revoked 1997 8-hour ozone NAAQS to the 2008 8-hour ozone NAAQS, as codified in 40 CFR part 51, subpart AA, following revocation. Consistent with previous policy, EPA determined that areas designated nonattainment for both the 1997 and 2008 8-hour ozone NAAQS at the time of revocation, must retain implementation of certain nonattainment area requirements (*i.e.*, anti-backsliding requirements) for the 1997 8-hour ozone NAAQS as specified under section 182 of the CAA, including RACT. See 40 CFR 51.1100(o). An area remains subject to the anti-backsliding requirements for a revoked NAAQS until EPA approves a redesignation to attainment for the area for the 2008 8-hour ozone NAAQS. There are no effects on applicable requirements for areas within the OTR, as a result of the revocation of the 1997 8-hour ozone NAAQS. Thus, Pennsylvania, as a state within the OTR, remains subject to RACT requirements for both the 1997 8-hour ozone NAAQS and the 2008 8-hour ozone NAAQS.

In addressing RACT, the 2008 Ozone SIP Requirements Rule is consistent with existing policy and Phase 2 of the 1997 Ozone Implementation Rule. In the 2008 Ozone SIP Requirements Rule, EPA requires RACT measures to be implemented by January 1, 2017 for areas classified as moderate nonattainment or above and all areas of the OTR. EPA also provided in the 2008 Ozone SIP Requirements Rule that RACT SIPs must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations stating that there are no sources in the nonattainment area covered by a specific control technique guidelines

(CTG) source category. In the preamble to the 2008 Ozone SIP Requirements Rule, EPA clarified that states must provide notice and opportunity for public comment on their RACT SIP submissions, even when submitting a certification that the existing provisions remain RACT or a negative declaration. States must submit appropriate supporting information for their RACT submissions, in accordance with the Phase 2 of the 1997 Ozone Implementation Rule. Adequate documentation must support that states have considered control technology that is economically and technologically feasible in determining RACT, based on information that is current as of the time of development of the RACT SIP.

In addition, in the 2008 Ozone SIP Requirements Rule, EPA clarified that states can use weighted average NO<sub>x</sub> emissions rates from sources in the nonattainment area for meeting the major NO<sub>x</sub> RACT requirement under the CAA, as consistent with existing policy.<sup>6</sup> EPA also recognized that states may conclude in some cases that sources already addressed by RACT determinations for the 1979 1-hour and/or 1997 8-hour ozone NAAQS may not need to implement additional controls to meet the 2008 8-hour ozone NAAQS RACT requirement. See 80 FR 12278–12279 (March 6, 2015).

### C. Applicability of RACT Requirements in Pennsylvania

As indicated earlier, RACT requirements apply to any ozone nonattainment areas classified as moderate or higher (serious, severe or extreme) under CAA sections 182(b)(2) and 182(f). Pennsylvania has outstanding ozone RACT requirements for both the 1997 and 2008 8-hour ozone NAAQS. The entire Commonwealth of Pennsylvania is part of the OTR established under section 184 of the CAA and thus is subject statewide to the RACT requirements of CAA sections 182(b)(2) and 182(f), pursuant to section 184(b).

At the time of revocation of the 1997 8-hour ozone NAAQS (effective April 6,

<sup>3</sup> A “major source” is defined based on the source’s potential to emit (PTE) of NO<sub>x</sub> or VOC, and the applicable thresholds for RACT differs based on the classification of the nonattainment area in which the source is located. See sections 182(c)–(f) and 302 of the CAA.

<sup>4</sup> See December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, “Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas,” and also 44 FR 53762 (September 17, 1979).

<sup>5</sup> On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir. Court) issued an opinion on the 2008 Ozone SIP Requirements Rule. *South Coast Air Quality Mgmt. Dist. v. EPA*, No. 15–1115 (D.C. Cir. February 16, 2018). The D.C. Cir. Court found certain parts reasonable and denied the petition for appeal on those. In particular, the D.C. Cir. Court upheld the use of NO<sub>x</sub> averaging to meet RACT requirements for 2008 8-hour ozone NAAQS. However, the Court also found certain other provisions unreasonable. The D.C. Cir. Court vacated the provisions it found unreasonable.

<sup>6</sup> EPA’s NO<sub>x</sub> RACT guidance “Nitrogen Oxides Supplement to the General Preamble” (57 FR 55625; November 25, 1992) encouraged states to develop RACT programs that are based on “area wide average emission rates.” Additional guidance on area-wide RACT provisions is provided by EPA’s January 2001 economic incentive program guidance titled “Improving Air Quality with Economic Incentive Programs,” available at <https://www.epa.gov/sites/production/files/2015-07/documents/eipfin.pdf>. In addition, as mentioned previously, the D.C. Cir. Court recently upheld the use of NO<sub>x</sub> averaging to meet RACT requirements for 2008 8-hour ozone NAAQS. *South Coast Air Quality Mgmt. Dist. v. EPA*, No. 15–1115 (D.C. Cir. February 16, 2018).

2015), only two moderate nonattainment areas remained in the Commonwealth of Pennsylvania for this standard, the Philadelphia and the Pittsburgh Areas. As required under EPA's anti-backsliding provisions, these two moderate nonattainment areas continue to be subject to RACT under the 1997 8-hour ozone NAAQS. Given its location in the OTR, the remainder of the Commonwealth is also treated as moderate nonattainment area under the 1997 8-hour ozone NAAQS for any planning requirements under the revoked standard, including RACT. The OTR RACT requirement is also in effect under the 2008 8-hour ozone NAAQS throughout the Commonwealth, since EPA did not designate any nonattainment areas above marginal for this standard in Pennsylvania. Thus, in practice, the same RACT requirements continue to be applicable in Pennsylvania for both the 1997 and 2008 8-hour ozone NAAQS. RACT must be evaluated and satisfied as separate requirements under each applicable standard.

RACT applies to major sources of NO<sub>x</sub> and VOC under each ozone NAAQS or any VOC sources subject to CTG RACT. Which NO<sub>x</sub> and VOC sources in Pennsylvania are considered "major" and are therefore subject to RACT is dependent on the location of each source within the Commonwealth. Sources located in nonattainment areas would be subject to the "major source" definitions established under the CAA. In the case of Pennsylvania, sources located in any areas outside of moderate or above nonattainment areas, as part of the OTR, shall be treated as if these areas were moderate.

In Pennsylvania, the SIP program is implemented primarily by the PADEP, but also by local air agencies in Philadelphia County (the City of Philadelphia's Air Management Services [AMS]) and Allegheny County, (the Allegheny County Health Department [ACHD]). These agencies have implemented numerous RACT regulations and source-specific measures in Pennsylvania to meet the applicable ozone RACT requirements. Historically, statewide RACT controls have been promulgated by PADEP in Pennsylvania Code Title 25-Environmental Resources, Part I-Department of Environmental Protection, Subpart C- Protection of Natural Resources, Article III- Air Resources, (25 Pa. Code) Chapter 129. AMS and ACHD have incorporated by reference Pennsylvania regulations, but have also promulgated regulations adopting RACT controls for their own jurisdictions. In addition, AMS and

ACHD have submitted separate source-specific RACT determinations as SIP revisions for sources within their respective jurisdictions, which have been approved by EPA. See 40 CFR 52.2020(d)(1).

States were required to make RACT SIP submissions for the 1997 8-hour ozone NAAQS by September 15, 2006. PADEP submitted a SIP revision on September 25, 2006, certifying that a number of previously approved VOC RACT rules continued to satisfy RACT under the 1997 8-hour ozone NAAQS for the remainder of Pennsylvania.<sup>7</sup> PADEP has met its obligations under the 1997 8-hour ozone NAAQS for its CTG and non-CTG VOC sources. See 82 FR 31464 (July 7, 2017). RACT control measures addressing all applicable CAA RACT requirements under the 1997 8-hour ozone NAAQS have been implemented and fully approved in the jurisdictions of ACHD and AMS. See 78 FR 34584 (June 10, 2013) and 81 FR 69687 (October 7, 2016). For the 2008 8-hour ozone NAAQS, states were required to submit RACT SIP revisions by July 20, 2014. On May 16, 2016, PADEP submitted a SIP revision addressing RACT under both the 1997 and 2008 8-hour ozone NAAQS in Pennsylvania. Specifically, the May 16, 2016 SIP submittal intended to satisfy sections 182(b)(2)(C), 182(f), and 184 of the CAA for both the 1997 and 2008 8-hour ozone NAAQS for Pennsylvania's major NO<sub>x</sub> and VOC non-CTG sources, except ethylene production plants, surface active agents manufacturing, and mobile equipment repair and refinishing.<sup>8</sup>

#### *D. EPA's Conditional Approval for Pennsylvania's RACT Requirements Under the 1997 and 2008 8-Hour Ozone NAAQS*

On May 16, 2016, PADEP submitted a SIP revision addressing RACT under both the 1997 and 2008 8-hour ozone NAAQS in Pennsylvania. PADEP's May 16, 2016 SIP revision intended to address certain outstanding non-CTG VOC RACT, VOC CTG RACT, and major NO<sub>x</sub> RACT requirements under the CAA for both standards. The SIP revision requested approval of Pennsylvania's 25 Pa. Code 129.96–100, *Additional RACT Requirements for Major Sources of NO<sub>x</sub> and VOCs* (the "presumptive" RACT II rule). Prior to the adoption of the RACT II rule, Pennsylvania relied on the NO<sub>x</sub> and VOC control measures in 25 Pa. Code

129.92–95, *Stationary Sources of NO<sub>x</sub> and VOCs*, (the RACT I rule) to meet RACT for non-CTG major VOC sources and major NO<sub>x</sub> sources. The requirements of the RACT I rule remain in effect and continue to be implemented as RACT.<sup>9</sup> On September 26, 2017, PADEP submitted a supplemental SIP revision which committed to address various deficiencies identified by EPA in their May 16, 2016 "presumptive" RACT II rule SIP revision.

On May 9, 2019, EPA conditionally approved the RACT II rule based on PADEP's September 26, 2017 commitment letter. See 84 FR 20274. In EPA's final conditional approval, EPA noted that PADEP would be required to submit, for EPA's approval, SIP revisions to address any facility-wide or system-wide averaging plan approved under 25 Pa. Code 129.98 and any case-by-case RACT determinations under 25 Pa. Code 129.99. PADEP committed to submitting these additional SIP revisions within 12 months of EPA's final conditional approval, specifically May 9, 2020.

Therefore, as authorized in CAA section 110(k)(3) and (k)(4), Pennsylvania shall submit the following as case-by-case SIP revisions, by May 9, 2020, for EPA's approval as a condition of approval of 25 Pa. Code 128 and 129 in the May 16, 2016 SIP revision: (1) All facility-wide or system-wide averaging plans approved by PADEP under 25 Pa. Code 129.98 including, but not limited to, any terms and conditions that ensure the enforceability of the averaging plan as a practical matter (*i.e.*, any monitoring, reporting, recordkeeping, or testing requirements); and (2) all source-specific RACT determinations approved by PADEP under 25 Pa. Code 129.99, including any alternative compliance schedules approved under 25 Pa. Code 129.97(k) and 129.99(i); the case-by-case RACT determinations submitted to EPA for approval into the SIP should include any terms and conditions that ensure the enforceability of the case-by-case or source-specific RACT emission limitation as a practical matter (*i.e.*, any monitoring, reporting, recordkeeping, or testing requirements). See May 9, 2019 (84 FR 20274).

## **II. Summary of SIP Revisions**

In order to satisfy a requirement from EPA's May 9, 2019 conditional approval, PADEP has submitted to EPA, SIP revisions addressing case-by-case RACT requirements for major sources in

<sup>7</sup> The September 15, 2006 SIP submittal initially included Pennsylvania's certification of NO<sub>x</sub> RACT regulations; however, NO<sub>x</sub> RACT portions were withdrawn by PADEP on June 27, 2016.

<sup>9</sup> These requirements were initially approved as RACT for Pennsylvania under the 1979 1-hour ozone NAAQS.

Pennsylvania subject to 25 Pa. Code 129.99. As noted in Table 1, on multiple dates PADEP submitted to EPA, five separate SIP revisions pertaining to Pennsylvania’s case-by-case NO<sub>x</sub> and/or VOC RACT determinations for 26 major sources located in the Commonwealth. PADEP provided documentation in its SIP revisions to support its case-by-case RACT determinations for affected emission units at each major source subject to 25 Pa. Code 129.99. Specifically, in these SIP submittals,

PADEP evaluated a total of 26 major NO<sub>x</sub> and/or VOC sources in Pennsylvania for case-by-case RACT.<sup>10</sup> In the Pennsylvania RACT SIP revisions, PADEP included a case-by-case RACT determination for the existing emissions units at each of these major sources of NO<sub>x</sub> and/or VOC that required a source specific RACT determination. In PADEP’s RACT determinations an evaluation was completed to determine if previously SIP-approved, case-by-case RACT

requirements (herein referred to as RACT I) were more stringent and required to be retained in the sources Title V air quality permit and subsequently, the Federally-approved SIP, or if the new case-by-case RACT requirements are more stringent and replace the previous Federally-approved provisions. EPA, in this action, is taking action on four major sources of NO<sub>x</sub> and/or VOC in Pennsylvania, subject to Pennsylvania’s case-by-case RACT requirements, as summarized in Table 2.

TABLE 2—FOUR MAJOR NO<sub>x</sub> AND/OR VOC SOURCES IN PENNSYLVANIA SUBJECT TO CASE-BY-CASE RACT II UNDER THE 1997 AND 2008 8-HOUR OZONE NAAQS

Major source (county)	1-Hour ozone RACT source? (RACT I)	Major source pollutant (NO <sub>x</sub> and/or VOC)	RACT II permit (effective date)
Transco—Salladasburg Station 520 (Lycoming) .....	Yes .....	NO <sub>x</sub> and VOC .....	41–00001 (06/06/17)
Novipax (Berks) .....	Yes .....	VOC .....	06–05036 (12/19/2017)
Sunoco Partners Marketing & Terminals (Delaware) .....	Yes .....	NO <sub>x</sub> and VOC .....	23–00119 (01/20/17)
Global Advanced Metals USA, Inc. (Montgomery) .....	Yes .....	VOC .....	46–00037 (03/10/17)

The case-by-case RACT determinations submitted by PADEP consist of an evaluation of all reasonably available controls at the time of evaluation for each affected emissions unit, resulting in a PADEP determination of what specific control requirements, if any, satisfy RACT for that particular unit. The adoption of new or additional controls or the revisions to existing controls as RACT were specified as requirements in new or revised Federally enforceable permits (hereafter RACT II permits) issued by PADEP to the source. The RACT II permits, which revise or adopt additional source-specific controls, have been submitted as part of the Pennsylvania RACT SIP revisions for EPA’s approval in the Pennsylvania SIP under 40 CFR 52.2020(d)(1). The RACT II permits submitted by PADEP are listed in the last column of Table 2 of this document, along with the permit effective date, and are part of the docket for this rulemaking, which is available online at <https://www.regulations.gov>, Docket ID No. EPA–R03–OAR–2020–0189.<sup>11</sup> EPA is proposing to incorporate by reference in the Pennsylvania SIP, via the RACT II permits, source-specific RACT determinations under the 1997 and 2008 8-hour ozone NAAQS for certain major sources of NO<sub>x</sub> and VOC emissions.

**III. EPA’s Evaluation of SIP Revisions**

After thorough review and evaluation of the information provided by PADEP

in its SIP revision submittals for four major sources of NO<sub>x</sub> and/or VOC in Pennsylvania, EPA finds that PADEP’s case-by-case RACT determinations and conclusions provided are reasonable and appropriately considered technically and economically feasible controls while setting lowest achievable limits. EPA finds that the proposed source-specific RACT controls for the sources subject to this rulemaking action adequately meet the CAA RACT requirements for the 1997 and 2008 8-hour ozone NAAQS for the major sources of NO<sub>x</sub> and/or VOC in Pennsylvania, as they are not covered by or cannot meet Pennsylvania’s presumptive RACT regulation.

EPA also finds that all the proposed revisions to previously SIP approved RACT requirements, under the 1979 1-hour ozone standard (RACT I), as discussed in PADEP’s SIP revisions, will result in equivalent or additional reductions of NO<sub>x</sub> and/or VOC emissions and should not interfere with any applicable requirement concerning attainment or reasonable further progress with the NAAQS or interfered with other applicable CAA requirement in section 110(l) of the CAA.

EPA’s complete analysis of PADEP’s case-by-case RACT SIP revisions is included in the TSD available in the docket for this rulemaking action and available online at <https://www.regulations.gov>, Docket ID No. EPA–R03–OAR–2020–0189.

**IV. Proposed Action**

Based on EPA’s review, EPA is proposing to approve the Pennsylvania SIP revisions for the four case-by-case RACT facilities listed in Table 2 of this document and incorporate by reference in the Pennsylvania SIP, via the RACT II permits, source specific RACT determinations under the 1997 and 2008 8-hour ozone NAAQS for two major sources of NO<sub>x</sub> and VOC emissions. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. As EPA views each facility as a separable SIP revision, should EPA receive comment on one facility but not the others, EPA may take separate, final action on the remaining facilities.

**V. Incorporation by Reference**

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference source specific RACT determinations via the RACT II permits as described in Sections II and III—Summary of SIP Revisions and EPA’s Evaluation of SIP Revisions. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER**

<sup>10</sup> As noted previously, EPA, in this action, is proposing approval for four of the 26 case-by-case RACT determinations submitted by PADEP in the applicable five SIP revisions. See Table 1 of this

document for information specific to each SIP revision.

<sup>11</sup> The RACT II permits are redacted versions of a facility’s Federally enforceable permits and reflect

the specific RACT requirements being approved into the Pennsylvania SIP.

**INFORMATION CONTACT** section of this preamble for more information).

## VI. 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 approves 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- 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, addressing the NO<sub>x</sub> and VOC RACT

requirements for four case-by-case facilities for the 1997 and 2008 8-hour ozone NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the 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.

Dated: April 17, 2020.

**Cosmo Servidio,**

*Regional Administrator, Region III.*

[FR Doc. 2020-08744 Filed 5-4-20; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[WC Docket No. 18-89; DA 20-406; FRS 16678]

### National Security Threats to the Communications Supply Chain Through FCC Programs

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Wireline Competition Bureau (Bureau) of the Federal Communications Commission (Commission) seeks comment on how the recently enacted Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act), signed into law on March 12, 2020, applies to proposals under consideration in the Commission's *Protecting Against National Security Threats to the Communications Supply Chain* rulemaking and related proceedings.

**DATES:** Comments are due on or before May 20, 2020 and reply comments are due on or before June 4, 2020. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed as soon as possible.

**ADDRESSES:** Interested parties are invited to file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed

using the Commission's Electronic Comment Filing System (ECFS).

■ **Electronic Filers:** Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.

■ **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by commercial courier or by the U.S. Postal Service. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Filings will not be accepted via hand or messenger delivery.

■ **Commercial deliveries** (not including those sent using the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

■ **U.S. Postal Service First-Class, Express, and Priority mail** must be addressed to 445 12th Street SW, Washington, DC 20554.

*People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Government Affairs Bureau at 202-418-0530 (voice, 202-418-0432 (tty)).

*Ex Parte Rules.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenters written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section