

(i) *System name*: Armed Services Military Accession Testing

(ii) *Exemption*: Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service or military service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process. Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(d).

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(32) *System identifier*: A0608-18 DASG.

(i) *System name*: Army Family Advocacy Program (FAP) Files

(ii) *Exemptions*: (A) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f).

(iii) *Authority*: 5 U.S.C. 552a(k)(2) and (k)(5).

(iv) *Reason*: (A) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsections (k)(2) and (k)(5) of the Privacy Act of 1974.

(E) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(G) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

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October 30, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01-27689 Filed 11-2-01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA-4155; FRL-7090-3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_x RACT Determinations for Eight Individual Sources in the Philadelphia-Wilmington-Trenton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania (Pennsylvania). The revisions impose reasonably available control technology (RACT) on eight major sources of volatile organic compounds (VOC) and/or nitrogen oxides (NO_x) located in the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA or the Act).

EFFECTIVE DATE: This final rule is effective on November 20, 2001.

ADDRESSES: 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 the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink (215) 814-2104 or by e-mail at spink.marcia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On April 18, 2000, EPA published a direct final rule approving RACT determinations submitted by the Pennsylvania Department of Environmental Protection (PADEP) for twenty-six major sources of NO_x and/or volatile organic compounds (VOC) and a companion notice of proposed rulemaking (65 FR 20788). We received adverse comments on the direct final rule and a request for an extension of the comment period. We had indicated

in our April 18, 2000 direct final rulemaking that if we received adverse comments, we would withdraw the direct final rule and address all public comments in a subsequent final rule based on the proposed rule (65 FR 20788). On June 19, 2000 (65 FR 38168), EPA published a withdrawal notice in the **Federal Register** informing the public that the direct final rule did not take effect. On June 19, 2000 (65 FR 38169), we also published a notice providing an extension of the comment period and making corrections to our original proposed rule.

This final rule pertains to eight of the twenty-six sources which were included in the April 18, 2000 rulemaking. The remaining twenty-four sources have been or will be the subject of separate rulemakings.

II. Summary of the SIP Revisions

On November 4, 1997, July 24 1998, October 2, 1998, March 3, 1999, April 9, 1999, and April 20, 1999, the PADEP submitted NO_x and/or VOC RACT determinations for eight sources located in the Philadelphia area, namely Stoney Creek Technologies, LLC.; Superpac, Inc.; Transit America Inc.; American Bank Note Co.; Atlas Roofing Corporation; Beckett; Klearfold; and National Label Company. On April 18, 2000 (65 FR 20788), EPA proposed to approve these SIP revisions. Detailed descriptions of the RACT determination for these eight sources were provided in EPA's Technical Support Documents (TSDs) prepared in support of its April 18, 2000 rulemaking as well as in the SIP submissions made by PADEP, and shall not be restated here. Copies of those materials are in the administrative record for this final rule.

On April 18, 2000 EPA proposed to approve these RACT determinations (65 FR 20788) because the PADEP and the Philadelphia Air Management Services (AMS) established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The PADEP and the AMS have also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

III. Summary of Public Comments Received and EPA's Responses

EPA received comments on its April 18, 2000 proposal to approve Pennsylvania's RACT SIP submittals for twenty six-six sources from Citizens for Pennsylvania's Future (PennFuture), and from a concerned citizen. Only the comments submitted by PennFuture are

germane to the RACT determinations for Stoney Creek Technologies, LLC.; Superpac, Inc.; Transit America Inc.; American Bank Note Co.; Atlas Roofing Corporation; Beckett; Klearfold; and National Label Company. Those comments and EPA's responses are as follows:

Comments: PennFuture comments that EPA should require that each RACT submittal include "effective and enforceable numerical emission limits" as a condition for approval. Additionally, PennFuture requests that EPA only approve limits that are no higher than the best emission rate actually achieved after the application of RACT, adjusted only to reflect legally and technically valid averaging times and deviations. PennFuture contends that such an approach will ensure maximum environmental benefits and minimize the opportunity for sources to generate spurious emission reduction credits (ERCs) against limits that exceed emission levels actually achieved following the application of RACT. Lastly PennFuture comments that EPA should describe the RACT determinations in its rulemaking notices published in the **Federal Register** rather than simply citing to technical support documents and other materials available in docket of the rulemaking.

Response: While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (See <http://www.epa.gov/ttn/catc/dir1/ctg.txt>).

In EPA's proposed conditional limited approval of the Commonwealth's RACT regulations (62 FR 43134, August 12, 1997) and in EPA's final conditional limited approval of those regulations (63 FR 13789, March 23, 1998), EPA addressed the issue of what types of RACT provisions would be acceptable. In the proposed rule EPA noted that

while it defines RACT as "the lowest emission limitation that a source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility," the definition of emission limitation did not necessarily require the establishment of a numerical emission limitation. EPA further noted that "(s)ection 302 of the Act in turn defines 'emission limitation' 'requirement * * * which limits the quantity, rate or concentration of air pollutants on a continuous basis,* * *, and any design, equipment, work practice or operational standard promulgated under this chapter.'" Furthermore, in the March 23, 1998 final rule EPA stated that, "it is possible that RACT for certain sources and source categories could consist of requirements that do not specifically include emission limitations, but instead have other limitations."

With regard to the criteria EPA uses to determine whether to approve or disapprove RACT SIP revisions submitted by PADEP pursuant to 25 PA Code Chapter 129.91–129.95, we look to the provisions of those SIP-approved regulations and to the requirements of the Clean Air Act and relevant EPA guidance. As previously stated, on March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_x and VOCs*, requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements*. Under subsection 129.92, that proposal is to include among other information (1) A list of each subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as

practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision. The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by-case RACT determinations by the DEP. Rather, EPA stated that "* * * RACT rules may not merely be procedural rules (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources."

EPA reviews the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA first reviews a SIP submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT, respectively. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then we may add additional EPA-generated analyses to the record. Thus, EPA does not believe it would be appropriate to only approve limits that are no higher than the best emission rate actually achieved after the application of RACT, adjusted only to reflect legally and technically valid averaging times and deviations.

EPA does note that an approved RACT emission limitation alone does not constitute the baseline against which ERCs may be generated. There are many other factors that must be considered in the calculation of eligible ERCs under Pennsylvania's approved SIP regulations governing the creation ERCs. Moreover, the scenario posed in PennFuture's comment would not create eligible ERC's under the Commonwealth approved SIP regulations. Under the Commonwealth's regulations pertaining to ERCs, found at 25 PA. Code Chapter 127, sections 127.206 through 127.210

(approved by the EPA at 62 FR 64722 on December 9, 1997), sources cannot obtain ERCs if they find that their RACT controls result in lower emissions than allowed by their specified RACT limits.

EPA believes that Federal rulemaking procedures allow for the format used in April 18, 2000 rulemaking (65 FR 20788). EPA believes that anyone interested in the specific requirements of the individual RACT determinations did have the opportunity to obtain that information, as in the preamble of the April 18, 2000 **Federal Register** notice, EPA offered to send anyone, upon request, a copy of the TSDs prepared in support of the action. Copies of those TSDs are included in the administrative record of this final rule.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_x RACT for Stoney Creek Technologies, LLC.; Superpac, Inc.; Transit America Inc.; American Bank Note Co.; Atlas Roofing Corporation; Beckett; Klearfold; and National Label Company. EPA is approving these RACT SIP submittals because PADEP and AMS established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The PADEP and AMS have also imposed recordkeeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

IV. 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 (Pub. L. 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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for eight named sources.

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 January 4, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_x RACT for eight sources located in the Philadelphia area 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 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)(187) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(187) Revisions to the Pennsylvania Regulations, Chapter 129.91 pertaining to NO_x RACT, submitted on November 4, 1997, July 24 1998, October 2, 1998,

March 3, 1999, April 9, 1999, and April 20, 1999.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific NO_x RACT determinations in the form of plan approvals or operating permits on November 4, 1997, July 24, 1998, October 2, 1998, March 3, 1999, April 9, 1999, and April 20, 1999.

(B) Plan approvals (PA), and Operating permits (OP) for the following sources:

(1) Stoney Creek Technologies, L.L.C., PA-23-0002, effective February 24, 1999, except for the expiration date.

(2) Superpac, Inc., OP-09-0003, effective March 25, 1999, except for the expiration date.

(3) Transit America Inc., PA-1563 for PLID 1563, effective June 11, 1997, except for Condition 4 and Condition 5.

(4) American Bank Note Company, OP-46-0075, effective May 19, 1997, as revised August 10, 1998, except for the expiration date.

(5) Atlas Roofing Corporation, OP-09-0039, effective March 10, 1999, except for the expiration date.

(6) Beckett Corporation, OP-15-0040, effective July 8, 1997, except for the expiration date.

(7) Klearfold, Inc., OP-09-0012, effective April 15, 1999, except for the expiration date.

(8) National Label Company, OP-46-0040, effective July 28, 1997.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations submitted for the sources listed in paragraph (c)(187)(i)(B) of this section.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[FRL-7096-4]

RIN 2060-AJ04

State and Federal Operating Permits Programs: Amendments to the Compliance Certification Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule, removal of amendments.

SUMMARY: We, EPA, received adverse comment, on the direct final action

published on March 1, 2001 (66 FR 12872) to amend the State Operating Permits Program and the Federal Operating Permits Program. We had stated in that direct final action that, if we received adverse comment by April 2, 2001, we would publish a timely withdrawal in the **Federal Register**. We, however, did not publish the withdrawal prior to the April 30, 2001, effective date of the direct final rule. In this action, we are removing the amendments that were published in the March 1, 2001 direct final rule. We will address the adverse comment in a subsequent final action based on the parallel proposal also published on March 1, 2001 (66 FR 12916). We have determined that there is good cause for making this rule final without notice and comment procedures because under the terms of the March 1, 2001 direct final action, no amendment to the State and Federal Operating Permits Programs should have occurred. Thus, notice and comment are contrary to the public interest and unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B) and 553(d).

DATES: This action is effective November 5, 2001.

ADDRESSES: Docket No. A-91-52, containing information relevant to the direct final action being withdrawn, is available for public inspection between 8 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 401 M Street, SW., Room 1500, Washington, DC 20460 or by phoning the Air Docket Office at (202) 260-7548. Refer to Docket No. A-91-52. The Docket Office may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Peter Westlin, Environmental Protection Agency, Office Air Quality Planning and Standards, at 919/541-1058, e-mail: westlin.peter@epa.gov, facsimile 919/541-1039.

SUPPLEMENTARY INFORMATION: On October 22, 1997 (62 FR 54900), we published the final part 64, Compliance Assurance Monitoring (CAM) rule, and revisions to parts 70 and 71, the State and Federal Operating Permits Programs. Part 64 included procedures, design specifications, and performance criteria intended to satisfy, in part, the enhanced monitoring requirements of the Clean Air Act ("the Act"). The revisions to parts 70 and 71 included language to Secs. 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B) specifying the minimum information necessary for the compliance certification required of