# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[PA 042–4055; FRL–5820–4]**

### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; New Source Review and Emissions Registry Regulation

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to grant limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania pursuant to the requirements of the Clean Air Act (CAA). This revision requires major new and modified sources of volatile organic compounds (VOCs), nitrogen oxides ($NO_X$), particulate matter (PM), particulate matter with an aerodynamic diameter of less than 10 microns (PM–10), PM–10 precursors, sulfur oxides ($SO_X$), carbon monoxide (CO), or lead (Pb) to meet certain new source review permitting requirements if they are proposing to locate in a designated nonattainment area. These requirements also apply to major new and modified sources of VOCs and for $NO_X$ proposing to locate in the ozone transport region (OTR). This action is being taken under section 110 of the Clean Air Act (CAA).

**DATES:** Comments must be received on or before June 2, 1997.

**ADDRESSES:** Comments may be mailed to Kathleen Henry, Chief, Permit Programs Section, Mailcode 3AT23, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Michael H. Markowski, 3AT23, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, (215) 566–2063.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. New Source Requirements and Pennsylvania's Submittal*

The CAA requires that all states submit to EPA, by November 15, 1992, a revision to their state implementation plans (SIPs) requiring major new and major modified sources to meet certain new source review (NSR) requirements if those sources are being located in areas designated nonattainment for a pollutant, are expected to emit pollutants in quantities likely to significantly impact such areas, or, in the case of VOC or $NO_X$ sources, if they are being located in the OTR. This requirement for a SIP revision applies to Pennsylvania, which currently has areas designated nonattainment for ozone (a pollutant formed under certain meteorological conditions from precursor VOC and $NO_X$ emissions), CO, $SO_2$ and PM–10.

Pennsylvania submitted a revision to its SIP, on February 4, 1994, requiring major new and modified sources of VOCs, $NO_X$, PM, PM–10, PM–10 precursors, $SO_X$, CO, or Pb to meet certain NSR requirements if they are being located in a designated nonattainment area, if they are expected to emit these pollutants in quantities sufficient to significantly impact a nonattainment area, or, in the case of VOC and $NO_X$ sources, if they are being located in the OTR. The NSR requirements include installing Lowest Achievable Emission Rate (LAER) technology and obtaining emission offsets. The submittal included associated emissions banking requirements and an emissions reduction credit (ERC) registry. Pennsylvania's submittal adds these new provisions in Subchapter E, Sections 127.201 through 127.217 of the Pennsylvania Code, and removes the older provisions, which were found in Subchapter C., Sections 127.61 through 127.73 (it reserves those regulation numbers).

### *B. Federal Requirements*

According to section 172(c)(5) of the CAA, SIPs must require permits for the construction and operation of new or modified major stationary sources in nonattainment areas. The statutory permit requirements for ozone nonattainment areas are generally contained in revised section 173 of the CAA, and in subpart 2 of part D. Further, on July 23, 1996, EPA published in the **Federal Register** a comprehensive rulemaking which proposed significant changes to the current Prevention of Significant Deterioration (PSD) and nonattainment NSR rules. See 61 FR 38311 (1996). That rulemaking proposed to revise regulations for the approval and promulgation of SIPs and the requirements for preparation, adoption, and submittal of implementation plans governing the NSR programs mandated by Parts C and D of Title I of the CAA. Upon EPA promulgation of the final rulemaking at a later date, all states, including Pennsylvania, will be expected to evaluate their new source review regulations in accordance with the new requirements and to revise such regulations accordingly.

Important CAA requirements for new sources in nonattainment areas are found under sections 172, 173, 182, and 184 of the CAA. These requirements are summarized below.

a. According to section 173(a)(1) of the CAA, the state regulation must assure that calculations of emissions offsets are based on the same emissions baseline used in the demonstration of reasonable further progress (RFP).

b. According to section 173(c)(1) of the CAA, the state regulation may include provisions which allow offsets to be obtained in another nonattainment area if that area has an equal or higher nonattainment classification and emissions from the other nonattainment area contribute to a NAAQS violation in the area in which the source would construct.

c. According to section 173(c)(1) of the CAA, the state regulation must provide that any emissions offsets obtained in conjunction with the issuance of a permit to a new or modified source must be in effect and enforceable by the time the new or modified source commences operation.

This statutory condition for offsets augments the existing requirement under section 173 that provides that offsets must be federally-enforceable before permit issuance, although the required emissions reductions need not occur until the date on which the new or modified source commences operations.

d. According to section 173(c)(1) of the CAA, provisions of the state regulation must assure that emissions increases from new or modified sources will be offset by real reductions in actual emissions. EPA's initial guidance interpreting general sections of the CAA is contained in the Title I General Preamble published in the **Federal Register** on April 16, 1992 (57 FR 13498). In the General Preamble, EPA reiterated that emission increases and decreases for netting are to be determined consistent with EPA's current new source rules and the December 4, 1986 emissions trading policy statement (51 FR 43823). In addition, pre-enactment reductions are expected to be treated as new source growth, even though, for applicability purposes, the source's net emissions change is de minimis. EPA's current new source rules state that a decrease in emissions is only creditable if, among other requirements, the decrease has not been relied upon by the state for any permit, attainment demonstration, or reasonable further progress. Therefore, emission reductions made because of RACT or other requirements that have been taken into account in the state's demonstration of reasonable further progress or attainment demonstration are not creditable for netting purposes.

e. According to section 173(c)(2) of the CAA, the state rules must prevent emission reductions otherwise required by the CAA from being credited for purposes of part D offset requirements.

f. According to section 173(a)(5) of the CAA, the state regulation must require that prior to any part D permit being issued there be an analysis of alternative sites, sizes, production processes, and environmental control techniques for proposed sources that demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

g. According to section 328 of the CAA, the state regulation must assure that sources located on the Outer Continental Shelf (OCS) are subject to the same requirements applicable if the source were located in the corresponding onshore area.

h. Section 173(a)(3) of the CAA requires that the state regulation must assure that owners or operators of each proposed new or modified major stationary source demonstrate that all of their other major stationary sources in the state are in compliance.

i. The state regulation must define major new and major modified sources in accordance with the area's nonattainment classification under section 181 for ozone and section 186 for CO.

j. The state regulation must require emission offsets for major new and major modified sources in accordance with the area's nonattainment classification under section 181 for ozone and section 186 for CO.

k. The state regulation must require all applicable new source requirements to be met by sources locating in the OTR. For a severe or extreme ozone nonattainment area located in the transport region, the major stationary source size thresholds applicable to those areas apply for VOC and, presumptively, for $NO_X$. These provisions must also ensure that new or modified major stationary sources obtain VOC and, presumptively, $NO_X$ offsets at a ratio of at least 1.15 to 1 in order to obtain a NSR permit. Higher offset ratios apply in areas classified as serious or above under section 184 of the CAA.

l. The state regulation must ensure that any new or modified major stationary source of $NO_X$ satisfies the requirements applicable to any new or modified major stationary source of VOC, unless a special $NO_X$ exemption is granted by the Administrator under section 182(f) of the CAA.

m. State plans must, for serious and severe ozone nonattainment areas, implement sections 182(c) (6), (7) and (8) of the CAA with regard to modifications.

*C. Nonattainment Area Requirements Pertaining to Pennsylvania*

The CAA defines sources as major at various specified levels of emissions, depending on the attainment/nonattainment status of the area where the source is located, the severity of the nonattainment, and on whether or not the source is located in an OTR. Pennsylvania has areas designated nonattainment for ozone, for PM–10, for $SO_2$, and for CO.

With respect to ozone, section 182(d) of the CAA defines sources of VOCs located in severe ozone nonattainment areas as major when they have the potential to emit 25 tons per year (TPY) or more of VOCs. In Pennsylvania there is one severe ozone nonattainment area, the Philadelphia area (including Philadelphia, Bucks, Chester, Delaware, and Montgomery Counties) where the 25 TPY major source threshold for VOCs applies. Per section 182(f) of the CAA, $NO_X$ sources located in severe ozone nonattainment areas must also be considered major at the same threshold levels as VOC sources. Thus, in the Philadelphia area sources are considered major when they have the potential to emit 25 TPY or more of $NO_X$.

For the remainder of Pennsylvania, there are moderate areas to consider as well as the fact that the entire Commonwealth is part of the OTR. This is the key factor establishing the level of VOC or $NO_X$ emissions that trigger major NSR applicability. Per section 184 of the CAA, stationary VOC and $NO_X$ sources located in areas of Pennsylvania that are designated marginal, moderate or attainment for ozone which are also located in the OTR are subject to the same requirements as those applicable to such sources located in moderate ozone nonattainment areas. Therefore, sources located in the OTR are defined as major when they have the potential to emit 50 TPY or more of VOC, and sources located within the OTR are defined as major when they have the potential to emit 100 TPY or more of $NO_X$.

Pennsylvania also has nonattainment areas for PM–10 and CO in portions of Allegheny County, and for $SO_2$ in portions of Allegheny, Armstrong, and Warren Counties. In all of these areas, a new source is considered major when it has the potential to emit 100 TPY or more of the pollutant for which the area is designated nonattainment. Major modifications are defined by significant emissions increases in accordance with federal rules.

## II. EPA Analysis of Pennsylvania's Submittal

*A. Pennsylvania's Definitions of Major Source, Significant Emissions Increases, and Significant Air Quality Impacts*

The Commonwealth's proposed changes to Pennsylvania Regulations, Sections 127.201 through 127.204 pertain to the definitions of major source and major modified source (modification to an existing major source) for each of the affected pollutants: VOC, $NO_X$, PM–10, PM–10 precursors, PM, $SO_X$, CO, and Pb. Pennsylvania's definitions of major source thresholds are consistent with federal requirements, as are Pennsylvania's definitions of significant emissions increases, and its definitions of ''significant'' air quality impacts.

In severe ozone nonattainment areas (the Philadelphia area) a major source of

VOCs or of $NO_X$ is defined as one which has the potential to emit at least 25 TPY VOC or 25 TPY $NO_X$. In serious ozone nonattainment areas (which Pennsylvania does not have at this time), a major source is defined as one that has the potential to emit at least 50 TPY VOC or 50 TPY $NO_X$. Pennsylvania's regulation also includes certain special modification provisions, at Section 127.203(c) (discussed below at II. B.), for determining applicability in severe or serious ozone nonattainment areas.

In severe ozone nonattainment areas the regulation applies to either ''[a] new facility with the potential to emit 25 tons or more per year of $NO_X$ or VOCs,'' or to ''[a] modification to an existing facility with the potential to emit 25 tons or more per year of $NO_X$ or VOC, or a new source at an existing facility resulting in an increase in the potential to emit either VOC or $NO_X$ which, when aggregated with the other emissions increases determined in accordance with subsection (c)(1), results in an increase of 25 tons per year or 1,000 pounds per day or 100 pounds per hour of VOC or $NO_X$, or more, whichever is more restrictive.'' Section 127.203(b)(3).[1]

In serious ozone nonattainment areas the regulation applies to either ''[a] new facility with the potential to emit 50 tons or more per year of $NO_X$ or VOCs,'' or to ''[a] modification to an existing facility with the potential to emit 50 tons or more per year of VOC or $NO_X$, or a new source at an existing facility resulting in an increase in the potential to emit either VOC or $NO_X$ which, when aggregated with the other emissions increases determined in accordance with subsection (c)(1), results in an increase of 25 tons per year, 1,000 pounds per day or 100 pounds per hour of VOC or $NO_X$, or more, whichever is more restrictive.'' Section 127.203(b)(2). There are currently no areas in Pennsylvania that have been classified as serious nonattainment for ozone.

All areas in Pennsylvania other than the Philadelphia severe ozone nonattainment area are treated as moderate ozone nonattainment areas because they are classified as moderate or because the entire Commonwealth is in the OTR. In these areas the Pennsylvania regulation applies to either ''[a] new facility with the potential to emit 100 tons or more per year of $NO_X$ or 50 tons or more per year of VOCs,'' or to ''[a] modification to an existing facility with the potential to emit 100 tons or more per year of $NO_X$ or 50 tons or more per year of VOCs, or a new source at an existing facility resulting in an increase in the potential to emit either VOC or $NO_X$ which, when aggregated with the other emissions increases determined in accordance with Section 127.211, results in an increase of 40 tons per year, 1,000 pounds per day or 100 pounds per hour of VOC or $NO_X$, or more, whichever is more restrictive.'' Section 127.203(b)(1).

The major source size threshold for new sources of PM–10, PM–10 precursors, and PM is 100 TPY. A major modification is defined as a modification of a major source resulting in a significant increase in emissions. A significant increase in emissions is defined as an increase (aggregated with other applicable increases over a specified period of years, in accordance with Section 127.211) in the potential to emit PM–10 of 15 TPY, of PM of 25 TPY, or of PM or PM–10 of 1000 pounds per day or 100 pounds per hour, whichever is more restrictive. The significant air quality impact levels for PM–10, PM–10 precursors and PM are 1.00 microgram/cubic meter (microgram/$m^3$) on an annual and 5.00 micrograms/$m^3$ on an 24-hour average.

The major source size threshold for new sources of PM–10, PM–10 precursors, and PM is 100 TPY. A major modification is defined as a modification of a major source resulting in a significant increase in emissions. A significant increase in emissions is defined as an increase (aggregated with other applicable increases over a specified period of years, in accordance with Section 127.211) in the potential to emit PM–10 of 15 TPY, of PM of 25 TPY, or of PM or PM–10 of 1000 pounds per day or 100 pounds per hour, whichever is more restrictive. The significant air quality impact levels for PM–10, PM–10 precursors and PM are 1.00 microgram/cubic meter (microgram/$m^3$) on an annual and 5.00 micrograms/$m^3$ on an 24-hour average.

The major source size threshold for new $SO_X$ sources is 100 TPY. A major modification is defined as a modification of a major source resulting in a significant increase in emissions. A significant increase in emissions is defined as an increase in the potential to emit $SO_X$ (aggregated with other applicable increases over a specified period of years, in accordance with Section 127.211) of 40 TPY, 1000 pounds per day or 100 pounds of $SO_X$ per hour, whichever is more restrictive. The significant air quality impact levels for $SO_X$ are 1.00 microgram/$m^3$ on an annual average, 5.00 micrograms/$m^3$ on a 24-hour average, and 25.00 micrograms/$m^3$ on a 3-hour average.

The major source size threshold for new CO sources is 100 TPY. A major modification is defined as a modification to a major source resulting in a significant emissions increase. A significant increase in emissions is defined as an aggregated increased potential to emit CO of at least 50 TPY, 1000 pounds per day or 100 pounds per hour, whichever is more restrictive. The significant air quality impact levels for CO are 0.5 milligrams/cubic meter (milligrams/$m^3$)on an 8-hour average and 2.0 milligrams/$m^3$ on a 1-hour average.

For new Pb sources, the major source size threshold for NSR applicability is 100 TPY. A significant increase in emissions is defined as an aggregated increased potential to emit Pb of 0.6 TPY, 10 pounds per day or 1 pound per hour, whichever is more restrictive. The significant air quality impact level is 0.1 micrograms/$m^3$ on a 24-hour average.

*B. Special Modification Provisions*

The special modification provisions in the CAA at section 182(c) (6) through (8) are incorporated into the Pennsylvania regulation in Section 127.203(c) (1) through (3). These provisions are applicable to VOC or $NO_X$ sources locating in serious or severe ozone nonattainment areas. Currently there are no serious areas in Pennsylvania. Section 127.203(c)(1) specifies that sources are to aggregate their potential emissions over a consecutive 5-year period in order to determine whether the de minimis level of 25 TPY, 1000 pounds per day or 100 pounds per hour is exceeded. This provision further specifies that the 5-year contemporaneous period cannot extend back beyond January 1, 1991 or the design year of the most recent attainment demonstration, whichever is more recent. Section 127.203(c)(2) applies to facilities with potential emissions of VOC or $NO_X$ of less than 100 TPY where the modification results in an other than de minimis increase in emissions. The owner or operator may choose to offset the emissions of the proposed source with those elsewhere in the same facility at a ratio of at least 1.3 to 1 in order to avoid having the proposed source being considered an applicable modification under these regulations. If the facility does not offset at the required ratio, the change shall be considered an applicable modification, but the facility would be required to install BACT instead of LAER, and to meet Pennsylvania's BAT requirements. Section 127.203(c)(3) applies to facilities whose potential emissions of

[1] Subsection (c)(1) refers to certain special rules for modifications to VOC or $NO_X$ facilities located in serious and severe nonattainment areas for ozone.

VOC or $NO_X$ are greater than or equal to 100 TPY. The source may choose to offset the emissions from the proposed source with emission reductions elsewhere in the same facility at an internal offset ratio of 1.3 to 1 in order to avoid installing LAER. The source is still required to install technology to meet Pennsylvania's BAT requirements. Pennsylvania's regulations pertaining to the special modification provisions are consistent with the CAA's requirements.

**C. Provisions for Emission Reduction Credits**

Section 127.211 of the Pennsylvania regulation states the applicability criteria for determining whether a source is subject to the new source regulations. Included in these criteria is a requirement that all sources determined to be major (new or modified) must have emission reduction credits certified by Pennsylvania through the emission reduction credit (ERC) registry, established in Sections 127.206 through 127.210. Pennsylvania requires that ERCs be generated after January 1, 1991, which is consistent with the baseline that will be used in Pennsylvania's rate of progress demonstrations and demonstrations of attainment.

All ERCs are required to be made federally enforceable in the plan approval, which will specify that the emissions decrease is federally enforceable on or before the commence construction date. Detailed information required to accompany a source's application to register ERCs is provided in Section 127.207. Pennsylvania retains control over all ERCs deposited into the registry and all ERCs withdrawn for use from the registry. All Pennsylvania sources requiring emission offsets must obtain their ERCs through the Pennsylvania ERC registry. Out-of-state sources may deposit ERCs into the Pennsylvania registry or trade ERCs provided there is reciprocity between Pennsylvania and the other state and only upon approval through SIP approved rules and procedures, including an EPA approved SIP revision.

The registry listing the ERCs available, along with other pertinent information, will be published in the *Pennsylvania Bulletin* on a quarterly basis. ERCs generated through the curtailment or shutdown of a source, and which are not included in a plan approval and used as offsets expire for use as offsets 10 years after the date the facility ceased emitting those emissions. ERCs used for netting have a shorter lifetime, as specified in Section 127.211. The offset ratios, based on an area's nonattainment classification or location in the OTR, are located in Section 127.210. Pennsylvania requires that fugitive VOC emissions, regardless of the location of the source in the Commonwealth, be offset by at least a 1.3:1 ratio. The offset ratios are consistent with those required in the CAA.

For ERCs banked prior to January 1, 1991, Section 127.208(6) prohibits the use of ERCs in an area with a higher nonattainment classification than the one in which they were generated. Section 127.205(2) requires proposed new source applicants to demonstrate that all other facilities under their operation or ownership are in compliance or on a schedule for compliance approved by Pennsylvania. Section 127.205(5) requires proposed new or modified source owners or operators to conduct alternative sites and benefits analyses to demonstrate that the benefits of the proposed source significantly outweigh the environmental and social costs imposed on the Commonwealth as a result of the proposed source's location, construction or modification. Section 127.206(I) clearly prohibits use of ERCs to achieve compliance with Reasonably Available Control Technology (RACT), Best Available Technology (BAT), New Source Performance Standards (NSPS), Best Available Control Technology (BACT), Lowest Achievable Emission Reductions (LAER) or other emissions limitations required by the CAA or Pennsylvania's Clean Air Act.

**D. Prior Shutdown Credits**

An issue associated with this proposed rulemaking action is that Pennsylvania's regulations allow sources located in nonattainment areas which lack approved attainment demonstrations to take credit for emission reductions obtained from shutdowns or curtailments of production or operating hours in cases where the reductions took place prior to the source's application for a new source review permit. Current EPA regulations, developed prior to the CAA Amendments of 1990, provide that states having nonattainment areas without EPA approved attainment demonstrations may allow sources located in those areas to take credit for emission reductions resulting from shutdowns or curtailments of production or operating hours only if the reductions occurred on or after the date the new proposed source or modification files a permit application, or, if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source. See 40 CFR part 51.165(a)(3)(ii)(C)(2). Thus, under current EPA regulations, states are prohibited from crediting emission reductions which occurred prior to the date the new proposed source or modification files a permit application (prior shutdown or curtailment credits). It is important to note that Pennsylvania's current SIP regulations do not contain this so called ''shutdown prohibition.''

Pennsylvania's revised NSR regulations, 25 Pa. Code Chapter 127, Subchapter E, affirmatively allow sources to take credit for emission reductions resulting from shutdowns or curtailments of production or operating hours which occurred after January 1, 1991, or the design year of the most recent attainment demonstration, whichever is more recent. Because Pennsylvania's regulation would allow sources located in nonattainment areas lacking approved attainment plans to take credit for shutdowns or curtailments which occurred prior to the date a new proposed source or modification files a permit application, Pennsylvania's regulation appears not to conform with the existing EPA regulatory prohibition on the use of prior shutdown or curtailment credits found at 40 CFR part 51.165(a)(3)(ii)(C)(2).

However, as explained above, on July 23, 1996, EPA published in the **Federal Register** a comprehensive rulemaking which proposed significant changes to the current PSD and nonattainment NSR rules. This proposed rulemaking is hereinafter referred to as the ''NSR Reform Rulemaking.'' See 61 FR 38311. The NSR Reform Rulemaking proposes to revise regulations for the approval and promulgation of SIPs and the requirements for preparation, adoption, and submittal of implementation plans governing the NSR programs mandated by Parts C and D of Title I of the CAA. Specifically, section VII.A of EPA's NSR Reform Rulemaking, entitled ''Emissions Credits Resulting From Source Shutdowns and Curtailments'', proposes to eliminate the current restrictions on crediting of emissions reductions from source shutdowns and curtailments that occurred after 1990. In the NSR Reform Rulemaking, EPA proposes two different alternatives for eliminating the prior shutdown prohibition. The second of these alternatives, entitled ''Shutdown Alternative 2'', generally lifts the current offset restriction applicable to emissions reductions from source shutdowns and source curtailments for all nonattainment areas and all pollutants where such reductions occur after the baseyear of the emissions

inventory used (or to be used) to meet the applicable provisions of Part D of the CAA. See proposed Section 51.165(a)(3)(ii)(C)(5) [Alternative 2], 61 FR 38314. Under this alternative, states could allow emissions reductions from source shutdowns or curtailments to be used as offsets in all nonattainment areas and for all pollutants provided such reductions occurred after the baseyear of the emissions inventory used by the state to meet the applicable provisions of Part D of the CAA.

As explained above, Pennsylvania's NSR regulation allows sources to take credit for emission reductions resulting from shutdowns or curtailments of production or operating hours which occurred after January 1, 1991, or the design year of the most recent attainment demonstration, whichever is more recent. Because of this regulatory language, Pennsylvania would not have to modify its NSR rule if, in the future, an attainment demonstration were required to be based on a more recent design year. Currently, the earliest date by which emissions reductions from source shutdowns or curtailments would be creditable towards offsets under Pennsylvania's NSR rule is on or after January 1, 1991. This is because 1990 is the base year required to be used to satisfy the Part D progress and attainment demonstration requirements of the CAA. That date would move forward to the new design year of any subsequent attainment demonstration required to be done by Pennsylvania. Thus, EPA believes that Pennsylvania's NSR regulation is generally consistent with ''Shutdown Alternative 2'' as described in EPA's proposed NSR Reform Rulemaking since both the Pennsylvania rule and Alternative 2 allow sources to take credit only for emissions reductions from shutdowns or curtailments occurring after January 1, 1991. Because Pennsylvania's NSR regulation is consistent with Alternative 2 of EPA's proposed NSR Reform Rulemaking (as discussed above), and because approval of the revised version of Pennsylvania's NSR regulation submitted on February 4, 1994 would strengthen the SIP to be consistent with the CAA's provisions for NSR, EPA believes that Pennsylvania's NSR revised regulation warrants limited approval. If EPA promulgates Alternative 2, this limited approval would convert to a full approval.

The alternative shutdown-related alternative set forth in EPA's NSR Reform Rulemaking proposal is entitled ''Shutdown Alternative 1.'' This alternative proposes, for ozone nonattainment areas, to lift the current offset restriction applicable to emissions reductions from source shutdowns and curtailments in such areas without EPA-approved attainment demonstrations, provided the emissions reductions occur after November 15, 1990 and the area has kept current with the CAA's scheduled Part D ozone nonattainment planning requirements. See proposed Section 51.165(a)(3)(ii)(C) (5) and (6) [Alternative 1].

EPA acknowledges that either Alternative 1 or 2 may be eventually incorporated into the final NSR Reform Rulemaking upon its final promulgation. It is also noted that while EPA is with this rulemaking action proposing to grant limited approval of Pennsylvania's NSR regulation based on the rule's consistency with Shutdown Alternative 2 in EPA's NSR Reform Rulemaking, the Commonwealth may need to amend its NSR regulation if Shutdown Alternative 1 rather than Shutdown Alternative 2 is promulgated. If Alternative 1 is promulgated, EPA would determine the status of Pennsylvania's conformance with Part D ozone planning requirements. If Pennsylvania's SIP was not current with the Part D ozone planning requirements for any nonattainment area, EPA would make a SIP call for Pennsylvania to amend its NSR rule to conform with Alternative 1 as provided in EPA's final NSR Reform Rulemaking.

## III. Proposed Action

EPA is proposing limited approval of the revisions to the Pennsylvania SIP NSR regulations submitted on February 4, 1994 because such approval would strengthen the SIP so that it meets the NSR requirements of the CAA as discussed herein. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the **ADDRESSES** section of this document.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

## IV. Administrative Requirements

### *A. Executive Order 12866*

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

### *C. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and

advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

The Administrator's decision to approve or disapprove Pennsylvania's NSR SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: April 22, 1997.

**Stanley L. Laskowski,**

*Acting Regional Administrator, Region III.*

[FR Doc. 97–11492 Filed 5–1–97; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 81

**[ME3–1–5258b; A–1–FRL–5815–3]**

## Approval and Promulgation of Redesignation; Maine; Redesignation of Millinocket to Attainment for Sulfur Dioxide

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a redesignation request submitted by the State of Maine. This action redesignates Millinocket to attainment for Sulfur Dioxide ($SO_2$). In the Final Rules Section of this **Federal Register**, EPA is approving the State's redesignation as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

**DATES:** Comments must be received on or before June 2, 1997.

**ADDRESSES:** Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystems Protection, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystems Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

**FOR FURTHER INFORMATION CONTACT:** Ian D. Cohen, (617) 565–3568.

**SUPPLEMENTARY INFORMATION:** For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: March 27, 1997.

**John P. DeVillars,**

*Regional Administrator, Region I.*

[FR Doc. 97–11484 Filed 5–1–97; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–300486; FRL–5617–5]**

**RIN AC18**

## Bromoxynil; Pesticide Tolerances

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to establish the following time-limited tolerances, to expire on January 1, 1998, for the residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) and its metabolite DBHA (3,5-dibromo-4-hydrobenzoic acid) resulting from the application of octanoic and heptanoic acid esters of bromoxynil to cotton: undelinted cottonseed at 7 ppm, cotton gin byproducts at 50 ppm, cotton hulls at 21 ppm. (Active ingredient codes are 35302 for the octanoic acid ester, and 128920 for the heptanoic acid ester. CAS Reg. Nos. are 1689-99-2 for the octanoic acid ester, and 56634-95-8 for the heptanoic acid ester.) In addition, this document proposes to revise tolerances for the residues of bromoxynil, resulting from the application of octanoic and heptanoic acid esters of bromoxynil to cotton, in or on cattle, hogs, horses, goats, and sheep to 0.5 ppm in meat, 3.0 ppm in meat by-products, and 1.0 ppm in fat; and in milk to 0.1 ppm. Further, this document proposes to establish tolerances for residues of bromoxynil, resulting from the application of octanoic and heptanoic acid esters of bromoxynil to cotton, at 0.05 ppm in eggs; and at 0.05 ppm in poultry meat, meat byproducts, and fat. EPA proposes that the tolerances for the cotton commodities expire on January 1, 1998. Rhone-Poulenc AG Co. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act as amended by the Food Quality Protection Act of 1996 requesting a tolerance on cottonseed.

**DATES:** Comments, identified by the docket control number ''OPP–300486,'' must be received on or before May 19, 1997.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted electronically by following the instructions under Unit IX. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

**FOR FURTHER INFORMATION CONTACT:** By mail: Jim Tompkins, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, e-mail: tompkins.jim@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 24, 1995 (60 FR 27414), EPA established a time-limited tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of the herbicide bromoxynil, (3,5-dibromo-