

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[PA 042-4067; FRL-5869-5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of Definitions for the Pennsylvania VOC and NO_x RACT and New Source Review Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes definitions for twenty-seven terms used in the new source review and reasonably available control technology (RACT) regulations. The intended effect of this action is to approve the definitions in Pennsylvania regulation, Chapter 121.1. This action is being taken under section 110 of the Clean Air Act.

DATES: This final rule is effective October 14, 1997 unless within September 11, 1997, adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO and Mobile Sources, Mailcode 3AT21, 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; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597-9337, at the EPA Region III address above, or via e-mail at stahl.cynthia@epamail.epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION: On February 4, 1994, the Pennsylvania Department of Environmental Protection (PA DEP) (formerly known as the Pennsylvania Department of Environmental Resources) submitted a revision to its State Implementation

Plan (SIP) for twenty seven definitions pertaining the control of VOC and NO_x emissions from major sources (Pennsylvania Chapters 129.91 through 129.95 and the new source review regulations (Chapter 127).

Summary of Regulations

The Pennsylvania submittal includes the following new and revised definitions in Chapter 121.1: Applicability determination, Best Available Control Technology (BACT), creation, de minimis emission increase, emission reduction credit (ERC), economic incentive program, generation, Lowest Achievable Emission Rate (LAER)—revised, low NO_x burner with separated overfire air, marginal ozone nonattainment area, mobile emission reduction credit (MERC), major facility, major modification (revised), moderate ozone nonattainment area, major NO_x emitting facility, major VOC emitting facility, National Ambient Air Quality Standard (NAAQS), Northeast Ozone Transport Region, Oxides of Nitrogen (NO_x), owner or operator, PM-10, PM-10 precursor, Reasonably Available Control Technology (RACT), secondary emissions (revised), serious ozone nonattainment area, severe ozone nonattainment area, and state implementation plan (SIP).

EPA Analysis

The Chapter 121.1 definitions associated with the Pennsylvania VOC and NO_x RACT regulation and the new source review regulations conform to the definitions in the Act and to EPA's existing requirements located in 40 CFR Part 52. Pennsylvania's proposed definition of low NO_x burner with separated overfire air makes the applicability of this technology to the group of sources specified in the regulation as "coal-fired combustion units" unclear. However, although the sources covered by this requirement include stoker and cyclone combustion units that do not have "burners" as such, the Pennsylvania regulation requiring low NO_x burners and separated overfire air on $\geq 100\text{mmBTU/hr}$ coal fired combustion units, can be practically and reasonably interpreted to apply to only those units with burners. Therefore, the definition of low NO_x burners with separated overfire air is acceptable.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to

approve the SIP revision should adverse or critical comments be filed. This action will be effective October 14, 1997 unless, within 30 days of publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on October 14, 1997.

Final Action

EPA is approving the definitions contained in Chapter 121.1, including the twenty seven definitions identified earlier in this rulemaking, that were submitted on February 4, 1994 pertaining to VOC and NO_x RACT and new source review.

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.

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

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.

Approvals of SIP submittals under section 110 and subchapter I, part D of the CAA 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, I certify 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).

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 regulation that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205 of the Unfunded Mandates Act, 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 of the Unfunded Mandates Act 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 promulgated 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 Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action pertaining to the definitions in Pennsylvania Chapter 121 must be filed in the United States Court of Appeals for the appropriate circuit by October 14, 1997. 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 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: July 24, 1997.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

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. 7401-7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(127) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(127) Revisions to the Pennsylvania Regulations, Chapter 121.1—Definitions, submitted on February 4, 1994 by the Pennsylvania Department of Environmental Protection (formerly Pennsylvania Department of Environmental Resources) and effective on January 15, 1994.

(i) Incorporation by reference.

(A) Letter dated February 4, 1994 from the Pennsylvania Department of Environmental Protection transmitting the definitions in Chapter 121 relating to the Pennsylvania VOC and NOx RACT regulation (Chapter 129.91 through 129.95) and new source review regulation (Chapter 127).

(B) Title 25 Pennsylvania Code, Chapter 121.1—definitions, effective January 15, 1994.

[FR Doc. 97-21255 Filed 8-11-97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN-178-02-9724a; TN-179-01-9723a; FRL-5871-9]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to the Chattanooga/Hamilton County Portion Regarding Prevention of Significant Deterioration (PSD), Nitrogen Oxides, Lead Emissions, Volatile Organic Compounds (VOC), and PM₁₀ Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Chattanooga/Hamilton County (Chattanooga) portion of the Tennessee State Implementation Plan (SIP) which were submitted to EPA by Tennessee, through the Tennessee Department of Air Pollution Control (TDAPC), on December 11, 1995, and June 26, 1996. The EPA is approving these revisions to the Chattanooga regulations regarding nitrogen oxides, prevention of significant deterioration (PSD), lead sources, stack heights, infectious waste incinerators, and volatile organic compounds (VOC) reasonably available control technology (RACT) for miscellaneous metal parts coaters and synthesized pharmaceutical products, and PM₁₀. At the time of the submittal, Chattanooga/Hamilton County submitted packages from the City of Chattanooga, Hamilton County, and the nine other municipalities in Hamilton County. The State has certified to EPA that the substantive codes of the County and the nine municipalities are essentially the same as the City of Chattanooga's. Therefore EPA's review has been limited to the City's code.

DATES: This final rule is effective October 14, 1997 unless adverse or critical comments are received by September 11, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Karen C. Borel at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.