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6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2017-0342; FRL-9975-86-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Pennsylvania's Adoption of Control Techniques Guidelines for Automobile and Light-Duty Truck Assembly Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Commonwealth of Pennsylvania's state implementation plan (SIP). The revision includes amendments to the Pennsylvania Department of Environmental Protection's (PADEP) regulations incorporating the control techniques guidelines (CTG) for the automobile and light-duty truck assembly coatings category and addresses the requirement to adopt reasonably available control technology (RACT) for that category. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2017-0342. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by

statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Joseph Schulingkamp, (215) 814-2021, or by e-mail at schulingkamp.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Ground level ozone is formed in the atmosphere by photochemical reactions between volatile organic compounds (VOCs), nitrogen oxides (NO_x), and carbon monoxide (CO) in the presence of sunlight. In order to reduce ozone concentrations in the ambient air, the CAA requires all nonattainment areas to apply controls on VOC and NO_x emission sources to achieve emission reductions. Among effective control measures, RACT controls significantly reduce VOC and NO_x emissions from major stationary sources. NO_x and VOC are referred to as ozone precursors and are emitted by many types of pollution sources, including motor vehicles, power plants, industrial facilities, and area wide sources, such as consumer products and lawn and garden equipment. Scientific evidence indicates that adverse public health effects occur following exposure to ozone. These effects are more pronounced in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases.

RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological

and economic feasibility (44 FR 53761 at 53762, September 17, 1979). Section 182 of the CAA sets forth two separate RACT requirements for ozone nonattainment areas. The first requirement, contained in section 182(a)(2)(A) of the CAA, and referred to as RACT fix-up, requires the correction of RACT rules for which EPA identified deficiencies before the CAA was amended in 1990. Pennsylvania previously corrected its deficiencies under the 1-hour ozone standard and has no further deficiencies to correct under this section of the CAA. The second requirement, set forth in section 182(b)(2) of the CAA, applies to moderate (or worse) ozone nonattainment areas as well as to marginal and attainment areas in ozone transport regions (OTRs) established pursuant to section 184 of the CAA, and requires these areas to implement RACT controls on all major VOC and NO_x emission sources and on all sources and source categories covered by a CTG issued by EPA.¹ *See* CAA section 182(b)(2) and 184(b).

In subsequent **Federal Register** notices, EPA has addressed how states can meet the RACT requirements of the CAA. In June 1977, EPA published a CTG for automobile and light-duty truck assembly coatings (EPA-450/2-77-008). This CTG discusses the nature of VOC emissions from this industry, available control technologies for addressing such emissions, the costs of available control options, and other items. EPA also published a national emission standard for hazardous air pollutants (NESHAP) for surface coating of automobiles and light-duty trucks in 2004 (40 CFR part 63, subpart IIII).

¹ CTGs are documents issued by EPA intended to provide state and local air pollution control authorities information to assist them in determining RACT for VOC from various sources. The recommendations in the CTG are based upon available data and information and may not apply to a particular situation based upon the circumstances. States can follow the CTG and adopt state regulations to implement the recommendations contained therein, or they can adopt alternative approaches. In either case, states must submit their RACT rules to EPA for review and approval as part of the SIP process. Pursuant to section 184(b)(1)(B) of the CAA, all areas in the OTR must implement RACT with respect to sources of VOCs in the state covered by a CTG issued before or after November 15, 1990.

In 2008, after conducting a review of currently existing state and local VOC emission reduction approaches for this industry, reviewing the 1977 CTG and the NESHAP for this industry, and considering the information that has become available since then, EPA developed a new CTG for automobile and light-duty truck assembly coatings, entitled Control Techniques Guidelines for Automobile and Light-Duty Truck Assembly Coatings (Publication No. EPA 453/R-08-006).

On November 18, 2016, the PADEP submitted a formal revision to the Commonwealth of Pennsylvania's SIP to adopt EPA's 2008 CTG for automobile and light-duty truck assembly coatings. The new regulation reflecting this adoption can be found under *25 Pa. Code Chapter 129—Standards for Sources*. Specifically, this revision adds to the SIP *25 Pa. Code § 129.52e* which adopts the RACT requirements for automobile and light-duty assembly coatings and covers heavier vehicle coating operations as well. The revision also includes changes to *25 Pa. Code § 129.51* to accommodate alternative compliance methods for the adopted CTG.

II. Summary of SIP Revision and EPA Analysis

EPA's CTG for automobile and light-duty truck assembly coatings includes recommendations to reduce VOC emissions. These recommendations include VOC emissions limits for coating operations; work practices for storage and handling of coatings, thinners, and coating waste materials; and work practices for the handling and use of cleaning materials. The emission limits for coating processes covered by this CTG are found in Table 1 of the technical support document (TSD) which EPA prepared supporting this rulemaking.² Table 1 includes emission limits expressed in kilograms of VOC per liter (kg VOC/liter) and pounds of VOC per gallon (lbs VOC/gal). The emission limits for the miscellaneous materials used at coating facilities are

² The TSD is available in the docket for this proposed rulemaking and available online at www.regulations.gov.

found in Table 2 of the TSD. Table 2 includes emission limits expressed in grams of VOC per liter (g VOC/liter). Additional information regarding this CTG can be found in the TSD found in the docket for this rulemaking and available online at www.regulations.gov.

PADEP's submittal presented the regulatory revisions undertaken to adopt EPA's CTG for automobile and light-duty truck coatings. PADEP revised 25 Pa. Code Chapter 129—Standards for Sources to adopt the aforementioned CTG. The revisions include the addition of § 129.52e which adopts the RACT requirements for automobile and light-duty truck assembly coatings as stated by EPA in the relevant CTG for this category of sources. The revision also includes updates to 25 Pa. Code § 129.51 to accommodate alternative compliance methods for the adopted CTG. Additional information regarding PADEP's submittal can be found within the TSD and state submittal which are both located in this docket and available online at www.regulations.gov.

EPA reviewed PADEP's submittal and found that the regulatory changes reflect EPA's CTG for automobile and light-duty trucks. The emission limits for the coating processes as well as the emission limits for the miscellaneous materials used during coating processes are consistent with those recommended in EPA's CTG. Additionally, the regulatory changes address EPA's recommended work practices.

EPA notes that under 25 Pa. Code § 129.52e(c), *Existing RACT permit*, PADEP is allowing the provisions of §129.52e to supersede the requirements of a RACT permit previously issued under 25 Pa. Code §§ 129.91-129.95 if the permit was issued prior to January 1, 2017 and to the extent that the RACT permit contains less stringent requirements than those in 25 Pa. Code § 129.52e. EPA further notes that the RACT permits issued under §§ 129.91-129.95 were issued for

previous RACT determinations on a case-by-case basis; these permits would then have been submitted to EPA as source-specific SIP revisions and would likely have been approved by EPA for inclusion into the Pennsylvania SIP. If EPA approved those source-specific RACT determinations as meeting the requirements of RACT under the CAA, then the permits associated with those determinations were approved into the SIP and would have been identified at 40 CFR 52.2020(d). To the extent that the provisions of § 129.52e are more stringent than those of a previous SIP-approved permit, PADEP may make a source-specific determination as to whether the requirements of the previous RACT permit apply, or those of § 129.52e. If PADEP chooses to make such a determination to remove prior case-by-case RACT limits from the SIP, such revision must be submitted to EPA as a SIP revision in order to remove the previously approved permit from the SIP and must meet requirements under CAA section 110(l). Otherwise, the previously approved RACT limits (even if less stringent) remain applicable requirements for sources subject now to the more stringent CTG also. Until such a SIP revision is made, the requirements of *25 Pa. Code* 129.52e and the SIP-approved case by case RACT requirements both apply and EPA cannot remove the source-specific permits from the SIP. EPA is not taking any such action in this rulemaking to remove previously approved RACT permits and thus the requirements of a previously SIP-approved permit still apply until such permit is removed from the SIP even if the new limits, reflected in this CTG that Pennsylvania has adopted, are more stringent. EPA is approving PADEP's SIP submittal because the regulatory revisions adopt EPA's CTG for automobile and light-duty truck coatings.

On October 24, 2017 (82 FR 49128 and 82 FR 49166), EPA simultaneously published a notice of proposed rulemaking (NPR) and a direct final rule (DFR) for the Commonwealth of Pennsylvania approving the SIP revision. EPA received four adverse comments on the

rulemaking and withdrew the DFR prior to the effective date of December 26, 2017.

III. Response to Comments

During the comment period, EPA received several anonymous comments on the rulemaking. Of the comments, one comment generally discussed climate change and a second comment generally discussed wildfires and wildland fire management policy; EPA believes these two comments are not germane to this rulemaking action, thus no further response is provided. The following is a summary of the comments that are pertinent to this rulemaking action along with EPA's response to those comments.

Comment #1: The first commenter stated that EPA did not address a March 28, 2017 Executive Order (EO) regarding the promotion of energy independence and economic growth.³

Response #1: EPA disagrees with the commenter's assertion that this rulemaking action required evaluation mandated under the EO. The EO in question pertains to reviewing existing regulations, order, guidance documents, policies, and any other similar agency actions (collectively, agency action) that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy. First, EPA does not believe this EO applies to this rulemaking action because, to the extent this rulemaking is considered an agency action under the EO, this action was not an existing agency action as of March 28, 2017, the date the EO was signed. Second, assuming *arguendo*, that this rulemaking action is considered an agency action under the EO, this rulemaking action does not create a burden as that term is defined in the EO. As defined in the EO, the term "burden" means, "to unnecessarily obstruct, delay, curtail, or otherwise impose significant cost on the

³ Based on the comment, EPA assumes the EO in question is EO 13738, Promoting Energy Independence and Economic Growth, signed March 28, 2017.

siting, permitting, production, utilization, transmission, or delivery of energy resources.” This rulemaking action does not affect the siting, permitting, production, utilization, transmission, or delivery of energy resources as this action merely approves Pennsylvania’s submission as meeting certain CTG requirements necessary under the CAA, thus any required review under this EO is not applicable. Finally, EPA does not have discretion to disapprove the state’s SIP submission where it meets the applicable CAA requirements. CAA section 110(k)(3) requires that EPA “shall” approve the SIP submission “as a whole” if it meets the applicable requirements in the CAA. Pennsylvania’s submission adopts RACT for sources identified in EPA’s CTG, as required by CAA section 184(b). Thus, considering the plain language of the CAA in section 110(k)(3), EPA cannot consider disapproving or requiring changes to a state’s SIP submittal based on a particular EO or statutory reviews.

Comment #2: The second commenter asserted that EPA should review its CTG and Alternative Control Technology (ACT) guidance documents to “make sure they aren’t too costly.” The commenter further asserted that VOC reductions in Pennsylvania are not needed and EPA should only require RACT reductions in areas with “bad air.” The commenter concluded by stating EPA should withdraw the rule in its entirety to enable economic growth and promote jobs.

Response #2: EPA disagrees with the commenter that this rulemaking should be withdrawn and that EPA’s CTGs and ACTs should be reviewed. The CTG at issue in this rulemaking was issued in 2008. This rulemaking action concerns only EPA’s action approving Pennsylvania’s SIP submission adopting the CTG requirements, and thus comments about the CTG itself are outside the scope of this action. In any case, EPA considered the cost of installing controls when developing the CTG and concluded, “The recommended VOC emission rates described [in the

CTG] reflect the control measures that are currently being implemented by these facilities. Consequently, there is no additional cost to implement the CTG recommendations for coatings.” Further, the CTG went on to state the following for the work practices being recommended: “The CTG also recommends work practices for reducing VOC emissions from both coatings and cleaning materials. We believe that our work practice recommendations in the CTG will result in a net cost savings. Implementing work practices reduces the amount of coating and cleaning materials used by decreasing evaporation.” Thus, EPA did consider cost when issuing this CTG in a prior rulemaking.

EPA further disagrees with the commenter’s assertion that VOC reductions are not needed in the entire Commonwealth of Pennsylvania, and disagrees that the state or EPA has the discretion not to implement those reductions. First, the commenter provided no evidence supporting a claim that VOC reductions are only needed in areas with “bad air.” (EPA assumes this is a reference to nonattainment areas). Second, Congress, through the CAA, has dictated that VOC RACT is required to be implemented throughout entire Commonwealth. CAA section 182(b)(2)(A) requires that, for each ozone nonattainment area classified as Moderate or above, the area must revise their SIPs to include RACT for each category of VOC sources covered by CTG documents issued between November 15, 1990 and the date of attainment. CAA section 184(a) further establishes a single OTR, of which the entire Commonwealth of Pennsylvania is included, and section 184(b)(1)(B) requires all states in the OTR to submit SIPs implementing RACT with respect to *all* sources of VOC in the state that are covered by a CTG. Finally, Pennsylvania and EPA are not permitted to ignore statutory mandates for any policy reason, including to promote jobs or to enable economic growth. Thus, the requirements of the CAA require Pennsylvania to revise its SIP in order to implement VOC RACT for all CTGs issued,

including the automobile and light-duty truck assembly coating category. As Pennsylvania is in the OTR, VOC reductions from RACT and from implementing CTGs are required by the CAA in the entire Commonwealth.

IV. Final Action

EPA is approving the revision to Pennsylvania's SIP which adopts EPA's CTG for automobile and light-duty truck coatings because Pennsylvania's regulation incorporates the requirements of the CTG and thus meets requirements in CAA sections 110 and 184(b).

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of 25 Pa. Code Chapter 129 – Standards for Sources, Sections 129.51 and 129.52e. EPA has made, and will continue to make, these materials generally available through 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). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference by the Director of the Federal Register in the next update of the SIP compilation.⁴

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with

⁴ 62 FR 27968 (May 22, 1997).

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 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 (Public Law 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 rule 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.

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. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in

the United States Court of Appeals for the appropriate circuit by [Insert date 60 days after date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, in which Pennsylvania adopts EPA's CTG for automobile and light-duty truck assembly coatings, 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, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 13, 2018.

Cecil Rodrigues
Acting Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

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

Subpart NN--Pennsylvania

2. In § 52.2020, the table in paragraph (c)(1) is amended by revising the entry for Section 129.51 and adding an entry for Section 129.52e.

The revision and addition read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) ***

(1) EPA-Approved Pennsylvania Regulations and Statutes

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
* * * * *				
Chapter 129—Standards for Sources				
* * * * *				
Sources of VOCs				
Section 129.51	General	10/22/16	[Insert date of Federal Register publication] [Insert Federal Register citation]	Amendments add alternative compliance methods for the requirements of Section 129.52e. Previous approval dated 6/25/2015.
* * * * *				
Section 129.52e	Control of VOC emissions from automobile and light-duty truck assembly coating operations and heavier vehicle coating operations	10/22/16	[Insert date of Federal Register publication] [Insert Federal Register]	New section is added. This section does not remove or replace any permits

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
			<u>citation]</u>	approved under 52.2020(d).
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