

- i. Removing “two-year” each time it appears and adding in its place “five-year”.
- ii. Adding a sentence to the end of the paragraph.
- d. In paragraph (c)(4)(ii)(C)(2)(ii), removing “October 1, 2022” each time it appears and adding in its place “October 1, 2025”.
- e. In the note to paragraph (c)(4)(ii)(C)(2):
- i. Redesignating the note as note 1 to paragraph (c)(4)(ii)(C)(2).
- ii. Removing “October 1, 2022” each time it appears and adding in its place “October 1, 2025”.

The revision reads as follows:

§ 71.40 Caregiver benefits.

- * * * *
- (c) * * *
- (4) * * *
- (ii) * * *
- (C) * * *
- (2) * * *
- (i) * * *

Notwithstanding the previous sentence, if the first reassessment during the five-year period beginning on October 1, 2020 was completed by VA before March 25, 2022, and such reassessment did not result in an increase in the monthly stipend payment, the retroactive payment described in this paragraph (c)(4)(ii)(C)(2)(i) applies to the first reassessment initiated by VA on or after March 25, 2022 that applies the criteria in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii) in place of the definition of “need for supervision, protection, or instruction” that was invalidated by *Veteran Warriors, Inc. v. Sec’y of Veterans Affairs*, 29 F.4th 1320, 1342–43 (Fed. Cir. 2022), if such reassessment results in an increase in the monthly stipend payment, and only as a result of such reassessment.

* * * *

[FR Doc. 2022–20271 Filed 9–20–22; 8:45 am]
 BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0575; FRL–10205–02–R3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Reasonably Available Control Technology Determinations for PPG Industries Springdale Plant’s Case-by-Case Sources Under the 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision was submitted by the Pennsylvania Department of Environmental Protection (PADEP), on behalf of the Allegheny County Health Department (ACHD), to establish and require reasonably available control technology (RACT) for sources at PPG Industries Springdale Plant (PPG Springdale), a major source of volatile organic compounds (VOC), pursuant to the Commonwealth of Pennsylvania’s conditionally approved RACT regulations. In this action, EPA is approving source-specific RACT determinations (case-by-case or CbC) submitted by PADEP for certain VOC sources at PPG Springdale, a facility in Allegheny County. This RACT evaluation was submitted to meet RACT requirements for the 2008 8-hour ozone national ambient air quality standard (NAAQS). EPA is approving this revision to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA) and EPA’s implementing regulations.

DATES: This final rule is effective on October 21, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2020–0575. All documents in the docket are listed on the 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 www.regulations.gov, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Mr. Riley Burger, Permits Branch (3AD10), Air and Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2217. Mr. Burger can also be reached via electronic mail at burger.riley@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 7, 2021, EPA published a notice of proposed rulemaking (NPRM), 86 FR 24564. In the NPRM, EPA proposed approval of case-by-case RACT determinations for sources at ten facilities in Allegheny County, as EPA found that that the RACT controls for these sources met the CAA RACT requirements for the 2008 8-hour ozone NAAQS. On October 21, 2021, EPA approved case-by-case RACT determinations for sources at nine of these major NO_x and VOC emitting facilities in Allegheny County and noted that EPA was not taking final action on PPG Springdale at that time. 86 FR 58220. This rule takes final action on the case-by-case RACT determination for sources at the one remaining facility included in the May 7, 2021 NPRM, PPG Springdale. PADEP, on behalf of ACHD, initially submitted the revisions to its SIP to address case-by-case VOC RACT sources at PPG Springdale on May 7, 2020.

As more fully explained in the NPRM, under certain circumstances, states are required to submit SIP revisions to address RACT requirements for both major sources of nitrogen oxides (NO_x) and VOC and any source covered by control technique guidelines (CTG) for each ozone NAAQS. Which NO_x and VOC sources in Pennsylvania are considered “major,” and are therefore subject to RACT, is dependent on the location of each source within the Commonwealth. NO_x sources in Pennsylvania located in any ozone attainment areas or in any nonattainment areas designated moderate or below are subject to a major source threshold of 100 tons per year (tpy) because of the Ozone Transport Region (OTR) requirements in CAA section 182(f)(1). See definition of “Major NO_x emitting facility” at 25 Pa. Code 121.1 and 40 CFR 52.2020(c)(1). Similarly, VOC sources located in any ozone attainment areas or in any nonattainment areas designated serious or below are subject to a source threshold of 50 tpy because of the OTR requirements in CAA section 184(b)(2). See definition of “Major VOC emitting facility” at 25 Pa. Code 121.1 and 40 CFR 52.2020(c)(1).

On May 16, 2016, PADEP submitted a SIP revision addressing RACT for both the 1997 and 2008 8-hour ozone NAAQS in Pennsylvania. PADEP’s May 16, 2016 SIP revision intended to address certain outstanding non-CTG VOC RACT, VOC CTG RACT, and major source VOC and NO_x RACT requirements for both standards. The SIP revision requested approval of

Pennsylvania's 25 Pa. Code 129.96–100, *Additional RACT Requirements for Major Sources of NO_x and VOCs* (the “presumptive” RACT II rule). Prior to the adoption of the RACT II rule, Pennsylvania relied on the NO_x and VOC control measures in 25 Pa. Code 129.92–95, *Stationary Sources of NO_x and VOCs*, (the RACT I rule) to meet RACT for non-CTG major VOC sources and major NO_x sources. The requirements of the RACT I rule remain as previously approved in Pennsylvania's SIP and continue to be implemented as RACT.¹ On September 26, 2017, PADEP submitted a supplemental SIP revision including a letter, dated September 22, 2017, which committed to address various deficiencies identified by EPA in PADEP's original May 16, 2016 “presumptive” RACT II rule SIP revision.

On May 9, 2019, EPA conditionally approved the RACT II rule based on the commitments PADEP made in its September 22, 2017 letter.² 84 FR 20274. In EPA's final conditional approval, EPA established conditions requiring PADEP to submit, for EPA's approval, SIP revisions to address any facility-wide or system-wide NO_x emissions averaging plans approved under 25 Pa. Code 129.98 and any case-by-case RACT determinations under 25 Pa. Code 129.99. PADEP committed to submitting these additional SIP revisions within 12 months of EPA's final conditional approval (*i.e.*, by May 9, 2020). Through multiple submissions between 2017 and 2020, PADEP submitted to EPA for approval the various SIP submissions to implement its RACT II case-by-case determinations and alternative NO_x emissions limits. This rule takes final action on a SIP

¹ The EPA granted conditional limited approval of Pennsylvania's case-by-case RACT I rule on March 23, 1998 pending Pennsylvania's submission of and EPA's determination on proposals for facilities subject to case-by-case (source-specific) RACT requirements. 63 FR 13789. On May 3, 2001, EPA removed the conditional status of its 1998 approval once the state certified that it had submitted case-by-case RACT I proposals for sources subject to the RACT requirements, but retained the limited nature of the approval. 66 FR 22123. EPA granted full approval on October 22, 2008 once it approved all case-by-case RACT I proposals submitted by Pennsylvania. 73 FR 62891. Through this RACT II rule, certain source-specific RACT I requirements will be superseded by more stringent requirements. See Section II of the preamble to this final rule.

² On August 27, 2020, the Third Circuit Court of Appeals issued a decision vacating EPA's approval of three provisions of Pennsylvania's presumptive RACT II rule applicable to certain coal-fired power plants. *Sierra Club v. EPA*, 972 F.3d 290 (3d Cir. 2020). PPG Springdale is not subject to the presumptive RACT II provisions at issue in that *Sierra Club* decision.

revision for VOC sources at PPG Springdale, based on EPA's review.

The SIP revision in this action only establishes 2008 8-hour ozone NAAQS RACT requirements. Applicable RACT requirements under the CAA for sources located in Allegheny County for the 1997 8-hour ozone NAAQS were previously satisfied. See 78 FR 34584 (June 10, 2013).

II. Summary of SIP Revision and EPA Analysis

A. Summary of SIP Revision

To satisfy a requirement from EPA's May 9, 2019 conditional approval, PADEP submitted to EPA SIP revisions addressing alternative NO_x or VOC emissions limits and/or case-by-case RACT requirements for major sources in Pennsylvania subject to 25 Pa. Code 129.98 or 129.99. Among the submitted SIP revisions were case-by-case RACT determinations for sources in Allegheny County, which PADEP submitted on behalf of ACHD. PADEP's submission included a SIP revision pertaining to case-by-case RACT determinations for the existing VOC emissions units at PPG Springdale that required a case-by-case RACT determination.

In the case-by-case RACT determinations for PPG Springdale submitted by PADEP on behalf of ACHD, an evaluation was completed to determine if previously SIP-approved, case-by-case RACT emission limits or operational controls (herein referred to as RACT I and contained in RACT I permits) were more stringent than the new RACT II presumptive or case-by-case requirements. If previously SIP-approved RACT I requirements are more stringent, such RACT I requirements continue to apply to the applicable source. If the new case-by-case RACT II requirements are more stringent than the RACT I requirements, then the RACT II requirements supersede the prior RACT I requirements.³

Here, EPA is approving a SIP revision pertaining to case-by-case RACT requirements for certain VOC sources at PPG Springdale. PPG is a major source of VOC and was subject to RACT I under the name PPG Industries, Inc.—Springdale. The case-by-case RACT determinations submitted by PADEP, on behalf of ACHD, consist of an evaluation of all reasonably available controls at the time of evaluation for each affected emissions unit, resulting in a

³ While the prior SIP-approved RACT I permit for PPG Springdale will remain part of the SIP, this RACT II rule will incorporate by reference the RACT II requirements through the RACT II permit and clarify the ongoing applicability of specific conditions in the RACT I permit.

determination of what specific emissions limit or control measures satisfy RACT for that particular unit. The adoption of additional, or revised emissions limits or control measures to existing SIP-approved RACT I requirements were specified as requirements in a revised federally enforceable permit (hereafter RACT II permit) issued by ACHD to PPG Springdale. The RACT II permit was submitted as part of the Pennsylvania RACT SIP revision for EPA's approval in the Pennsylvania SIP under 40 CFR 52.2020(d)(1). The RACT II permit being approved in this action for PPG Industries Springdale Plant (formerly PPG Industries, Inc.—Springdale) is permit number 0057–OP18a, effective February 28, 2020, and is part of the docket for this rulemaking, which is available online at <https://www.regulations.gov>, Docket No. EPA–R03–OAR–2020–0575.⁴ For certain VOC sources at PPG Springdale, EPA is incorporating by reference in the Pennsylvania SIP the source-specific emissions limits and control measures in the RACT II permit, and is determining that these provisions satisfy the RACT requirement under the 2008 8-hour ozone NAAQS.

B. EPA's Final Action

This CbC RACT SIP revision incorporates determinations by ACHD of source-specific RACT II controls for individual VOC emission units at PPG Springdale, where those units are not covered by or cannot meet Pennsylvania's presumptive RACT regulation. After thorough review and evaluation of the information submitted to EPA by PADEP on behalf of ACHD, in its SIP revision submittals for sources at PPG Springdale, EPA found that: (1) ACHD's case-by-case RACT determinations and conclusions establish limits and/or controls on individual sources that are reasonable and appropriately considered technically and economically feasible controls; and (2) ACHD's determinations are consistent with the CAA, EPA regulations, and applicable EPA guidance.

ACHD, in its RACT II determinations, considered the prior source-specific RACT I requirements and, where more stringent, retained those RACT I requirements as part of its new RACT determinations. EPA found that all the proposed revisions to previously SIP-approved RACT I requirements would

⁴ The RACT II permit included in the docket for this rule is a redacted version of the facilities' federally enforceable permit. It reflects the specific RACT requirements being approved into the Pennsylvania SIP via this final action.

result in equivalent or additional reductions of VOC emissions. Consistent with section 110(l) of the CAA, the revisions for this major VOC source will not result in additional VOC emissions and thus should not interfere with any applicable requirement concerning attainment.

Other specific requirements of the 2008 8-hour ozone NAAQS case-by-case RACT determinations for PPG Springdale and the rationale for EPA's action are explained more thoroughly in the NPRM, and its associated technical support document (TSD), and will not be restated here.

III. Public Comments and EPA Responses

EPA received one comment relevant to PPG Springdale on the May 7, 2021 NPRM. 86 FR 24564. A summary of the comment and EPA's response are discussed in this section. A copy of the comment can be found in the docket for this rule action.

Comment 1: The comment requests that EPA not take final action on the revisions pertaining to PPG Springdale as certain RACT requirements are involved in the appeal of the facility's permit before ACHD's hearing officer. The comment requests EPA delay action until the appeal is adjudicated or resolved, and any modifications to the permit are finalized.

Response 1: Under Clean Air Act Section 110(k), EPA has a statutory responsibility to act on plan revisions submitted by states by specified deadlines. EPA's failure to act within those deadlines can subject EPA to a lawsuit for our failure to timely execute a mandatory statutory duty. There is no provision in the Clean Air Act to toll the statutory deadline pending the outcome of state proceedings, or for any other reason. As long as the SIP revision is pending before EPA, our statutory obligation to approve or disapprove that revision in whole or part remains. Pennsylvania could formally withdraw the SIP revision from EPA's consideration but has not done so. EPA therefore remains under a statutory duty under section 110(k) of the Act to approve or disapprove this SIP revision in whole or part. EPA has determined that it will complete its statutory duty as proposed to approve this SIP revision with respect to PPG Springdale. If the outcome of the appeal process affects the RACT determination, Pennsylvania can then submit any proposed SIP revision with supporting documentation for the changes to EPA for review and appropriate agency action. At this time EPA is finalizing these case-by-case

RACT determinations for PPG Springdale.

IV. Final Action

EPA is approving case-by-case RACT determinations for certain VOC sources at PPG Springdale, as required to meet obligations pursuant to the 2008 8-hour ozone NAAQS, as revisions to the Pennsylvania SIP.

V. Incorporation by Reference

In this document, 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 source-specific RACT determinations under the 2008 8-hour ozone NAAQS for one major VOC-emitting facility in Pennsylvania, as discussed in Section II. of this preamble. 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 rule of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁵

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

⁵ 62 FR 27968 (May 22, 1997).

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this 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. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and 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). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

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 November 21, 2022. 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 approving Pennsylvania’s NO_x and VOC RACT requirements for one facility for the 2008 8-hour ozone NAAQS 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Adam Ortiz,
Regional Administrator, Region III.

For the reasons set out in the preamble, 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 (d)(1) is amended by:

■ a. Revising the entry “PPG Industries, Inc.—Springdale”; and

■ b. Adding an entry at the end of the table for “PPG Industries Springdale Plant (formerly referenced as PPG Industries, Inc.—Springdale)”.

The revision and addition read as follows:

§ 52.2020 Identification of plan.

*	*	*	*	*
(d)	*	*	*	
(1)	*	*	*	

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanations/ §§ 52.2063 and 52.2064 citations ¹
PPG Industries, Inc.—Springdale.	CO-254	Allegheny	12/19/96	10/12/01, 66 FR 52050	See also 52.2064(l)(1).
PPG Industries Springdale Plant (formerly referenced as PPG Industries, Inc.—Springdale).	0057-OP18a	Allegheny	2/28/2020	9/21/2022 [INSERT FEDERAL REGISTER CITATION].	52.2064(l)(1).

¹ The cross-references that are not § 52.2064 are to material that pre-date the notebook format. For more information, see § 52.2063.

* * * * *

■ 3. Amend § 52.2064 by adding paragraph (l) to read as follows:

§ 52.2064 EPA-approved Source-Specific Reasonably Available Control Technology (RACT) for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_x).

* * * * *

(l) Approval of source-specific RACT requirements for 2008 8-hour ozone national ambient air quality standard for PPG Springdale is incorporated as specified. (Rulemaking Docket No. EPA-OAR-2020-0575.)

(1) PPG Industries Springdale Plant—Incorporating by reference Permit No. 0057-OP18a, effective February 28, 2020, as redacted by ACHD, which supersedes Consent Order 254, issued December 19, 1996, except for Conditions 1.13 through 1.22, which remain as RACT requirements. See also § 52.2063(c)(165)(i)(B)(2), for prior RACT approval.

(2) [Reserved]

[FR Doc. 2022-20108 Filed 9-20-22; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R01-OAR-2021-0883; FRL-10221-01-R1]

Notification of Memorandum of Agreement; Massachusetts; Clean Air Act (CAA) Sections 111(d) and/or 129 Federal Plan Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification.

SUMMARY: On October 15, 2021, the United States Environmental Protection Agency’s (EPA) Region 1 Acting Administrator signed a Memorandum of Agreement (MOA) between the Massachusetts Department of Environmental Protection (MassDEP) and EPA Region 1 regarding existing affected sources subject to Clean Air Act (CAA) sections 111(d) and/or 129 Federal Plan requirements. Subsequently, the MOA became effective upon signature of the MassDEP Commissioner on November 9, 2021. This document is informing the public

of the MOA and making a copy of the document accessible.

DATES: On November 9, 2021, the MOA between EPA Region 1 and MassDEP was finalized upon signature of both parties.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2021-0883. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, 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 at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that, if possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are