

**FINAL-FORM RULEMAKING
ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CHS. 121 AND 129]**

**Additional RACT Requirements for Major Sources of
NO_x and VOCs for the 2015 Ozone NAAQS**

The Environmental Quality Board (Board) amends Chapters 121 and 129 (relating to general provisions; and standards for sources) to read as set forth in Annex A. This final-form rulemaking amends Chapter 129 to establish additional presumptive reasonably available control technology (RACT) requirements and RACT emission limitations for certain major stationary sources of oxides of nitrogen (NO_x) and volatile organic compound (VOC) emissions in existence on or before August 3, 2018, to address the Federal requirements for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS) under the Clean Air Act (CAA) (42 U.S.C.A. §§ 7401—7671q).

This final-form rulemaking amends Chapter 121 to add new terms to and amend existing terms in § 121.1 (relating to definitions) to support the final-form amendments to Chapter 129.

This final-form rulemaking will be submitted to the United States Environmental Protection Agency (EPA) for approval as a revision to the Commonwealth's State Implementation Plan (SIP) following promulgation of this final-form rulemaking.

This final-form rulemaking was adopted by the Board at its meeting on **DATE**, 2022.

A. Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information, contact Viren Trivedi, Chief, Division of Permits, Bureau of Air Quality, Rachel Carson State Office Building, P.O. Box 8468, Harrisburg, PA 17105-8468, (717) 783-9476; or Jesse C. Walker, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania Hamilton Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) web site at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board" and then navigate to the Board meeting of **DATE**, 2022).

C. Statutory Authority

This final-form rulemaking is authorized under section 5(a)(1) of the Air Pollution Control Act (APCA) (35 P.S. § 4005(a)(1)), which grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this

Commonwealth; and section 5(a)(8) of the APCA, which grants the Board the authority to adopt rules and regulations designed to implement the provisions of the CAA.

D. Background and Purpose

This final-form rulemaking establishes §§ 129.111—129.115 (relating to additional RACT requirements for major sources of NO_x and VOCs for the 2015 ozone NAAQS) to meet CAA requirements for the control of ground-level ozone. Emissions of NO_x and VOCs are precursors for ground-level ozone formation. Ground-level ozone, a public health and welfare hazard, is not emitted directly to the atmosphere from air contamination sources, but forms from the photochemical reaction between emissions of VOCs and NO_x in the presence of sunlight.

Ground-level ozone is a highly reactive gas which at sufficient concentrations can produce a wide variety of harmful public health and welfare effects. At elevated concentrations, ground-level ozone can adversely affect human and animal health, vegetation, materials, economic values, and personal comfort and well-being. It can cause damage to important food crops, forests, livestock and wildlife. Repeated exposure to ground-level ozone pollution may cause a variety of adverse health effects for both healthy people and those with existing conditions including difficulty in breathing, chest pains, coughing, nausea, throat irritation and congestion. It can worsen bronchitis, heart disease, emphysema and asthma, reduce lung capacity and lead to increased morbidity. Asthma is a significant and growing threat to children and adults. High levels of ground-level ozone also affect animals including pets, livestock and wildlife in ways similarly to humans.

The EPA is responsible for establishing NAAQS, or maximum allowable concentrations in the ambient air, for six criteria air pollutants considered harmful to public health and welfare, including the environment: ground-level ozone; particulate matter; nitrogen dioxide (NO₂); carbon monoxide; sulfur dioxide; and lead. Section 109 of the CAA (42 U.S.C.A. § 7409) established two types of NAAQS: primary standards, which are limits set to protect public health; and secondary standards, which are limits set to protect public welfare and the environment, including protection against visibility impairment and from damage to animals, crops, vegetation and buildings. The EPA established primary and secondary ground-level ozone NAAQS to protect public health and welfare.

On April 30, 1971, the EPA promulgated primary and secondary NAAQS for photochemical oxidants, which include ozone, under section 109 of the CAA. See 36 FR 8186 (April 30, 1971). These were set at an hourly average of 0.08 parts per million (ppm) total photochemical oxidants not to be exceeded more than 1 hour per year. On February 8, 1979, the EPA announced a revision to the then-current 1-hour standard. See 44 FR 8202 (February 8, 1979). The final rule revised the level of the primary 1-hour ozone standard from 0.08 ppm to 0.12 ppm and set the secondary standard identical to the primary standard. This revised 1-hour standard was reaffirmed on March 9, 1993. See 58 FR 13008 (March 9, 1993).

Section 110(a) of the CAA (42 U.S.C.A. § 7410(a)) gives states the primary responsibility for achieving the NAAQS. Section 110(a) of the CAA provides that each state shall adopt and submit to the EPA a plan to implement measures (a SIP) to enforce the NAAQS or a revision to

the NAAQS promulgated under section 109(b) of the CAA. A SIP includes the regulatory programs, actions and commitments a state will carry out to implement its responsibilities under the CAA. Once approved by the EPA, a SIP is legally enforceable under both Federal and state law.

Section 172(c)(1) of the CAA (42 U.S.C.A. § 7502(c)(1)) provides that SIPs for nonattainment areas must include "reasonably available control measures," including RACT, for affected sources of emissions. RACT is defined as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. See 44 FR 53762 (September 17, 1979). Section 182 of the CAA (42 U.S.C.A. § 7511a) requires that, for areas that exceed the NAAQS for ozone, states shall develop and administer a program that mandates that certain major stationary sources implement RACT. Under sections 182(f)(1) and 184(b)(2) of the CAA (42 U.S.C.A. §§ 7511a(f)(1) and 7511c(b)(2)), these RACT requirements are applicable to all sources in this Commonwealth that emit or have a potential to emit 100 tons per year (TPY) or more of NO_x. Under sections 182(b)(2) and 184(b)(2) of the CAA, these RACT requirements are applicable to all sources in this Commonwealth that emit or have a potential to emit at least 50 TPY of VOCs. Sources that emit or have the potential to emit equal to or greater than these levels are classified as "Title V" facilities or "major" facilities or sources. The owners and operators of these facilities are subject to the permitting requirements of Title V of the CAA, namely sections 501—507 of the CAA (42 U.S.C.A. §§ 7661—7661f). For more detail, see § 121.1 for the regulatory definitions of the terms "major facility," "major NO_x emitting facility," "major VOC emitting facility" and "Title V facility."

For RACT implementation purposes, this entire Commonwealth is treated as a "moderate" ozone nonattainment area, because this Commonwealth is included in the Ozone Transport Region (OTR) established by operation of law under sections 176A and 184 of the CAA (42 U.S.C.A. §§ 7506a and 7511c). Section 184(b) of the CAA addresses provisions for the SIP of a state included in the OTR. Section 184(b)(1)(B) of the CAA requires that states in the OTR, including this Commonwealth, submit a SIP revision requiring implementation of RACT for all major stationary sources of NO_x and VOC emissions in the state and not just for those sources that are located in designated nonattainment areas of the state. The RACT requirements established in this final-form rulemaking apply to the owners and operators of all major facilities or sources in this Commonwealth that emit or have a potential to emit equal to or greater than 100 TPY of NO_x or 50 TPY of VOCs, as required under section 184 of the CAA for states in the OTR. Consequently, the Commonwealth's SIP must include RACT regulations applicable Statewide to the owners and operators of affected major stationary sources of NO_x and VOC emissions. The Commonwealth's RACT regulations under §§ 129.91—129.95 (relating to stationary sources of NO_x and VOCs) were implemented Statewide in January 1994 for the 1979 and 1993 1-hour ozone standard. See 24 Pa.B. 467 (January 15, 1994). Additionally, because the five-county Philadelphia area was designated as severe ozone nonattainment for the 1979 1-hour standard, the owners and operators of existing sources of 25 TPY or more of either pollutant in the five-county Philadelphia area were required under section 182(d) of the CAA to implement the RACT requirements in §§ 129.91—129.95. These requirements remain applicable to the owners and operators of these sources of 25 TPY or more in the five-county Philadelphia area.

On July 18, 1997, the EPA concluded that revisions to the then-current 1-hour ozone primary standard to provide increased public health protection were appropriate at this time to protect public health with an adequate margin of safety. Further, the EPA determined that it was appropriate to establish a primary standard of 0.08 ppm averaged over 8 hours. At this time, the EPA also established a secondary standard equal to the primary standard. See 62 FR 38856 (July 18, 1997). Because ozone monitoring data is measured out to three decimal places, the standard effectively became 0.084 ppm because of rounding; areas with ozone levels as high as 0.084 ppm were considered as meeting the 0.08 ppm standard. See 73 FR 16436 (March 27, 2008). In 2004, the EPA designated 37 counties in this Commonwealth as 8-hour ozone nonattainment areas for the 1997 8-hour ozone NAAQS. See 69 FR 23858, 23931 (April 30, 2004).

On March 27, 2008, the EPA lowered the primary and secondary 8-hour ozone standards from 0.08 ppm to 0.075 ppm. See 73 FR 16436 (March 27, 2008). The 2008 8-hour ozone standard is expressed to a level of three decimal places rather than two decimal places as in the 1997 standard. See 72 FR 37818 (July 11, 2007); 73 FR 16436. The EPA made designations for the 2008 8-hour ozone standards on April 30, 2012, with an effective date of July 20, 2012. The EPA designated all or portions of Allegheny, Armstrong, Beaver, Berks, Bucks, Butler, Carbon, Chester, Delaware, Fayette, Lancaster, Lehigh, Montgomery, Northampton, Philadelphia, Washington and Westmoreland Counties as "marginal" nonattainment for the 2008 8-hour ozone NAAQS, with the rest of this Commonwealth designated unclassifiable/attainment. See 77 FR 30088, 30143 (May 21, 2012).

The Commonwealth's RACT regulations under §§ 129.96—129.100 (relating to additional RACT requirements for major sources of NO_x and VOCs) were implemented in April 2016 for the 1997 and 2008 8-hour ozone standards. See 46 Pa.B. 2036 (April 23, 2016).

On October 26, 2015, the EPA lowered the primary and secondary 8-hour ozone standards from 0.075 ppm to 0.070 ppm. See 80 FR 65292 (October 26, 2015). Like the 2008 8-hour ozone standard, the 2015 8-hour ozone standard is expressed to a level of three decimal places. See 79 FR 75234 (December 17, 2014); 80 FR 65292. The EPA made designations for the 2015 8-hour ozone standards on June 4, 2018, with an effective date of August 3, 2018. On June 4, 2018, the EPA designated Bucks, Chester, Delaware, Montgomery and Philadelphia Counties as "marginal" nonattainment, with the rest of this Commonwealth designated attainment/unclassifiable. See 83 FR 25776, 25828 (June 4, 2018). The Department's preliminary analysis of the 2021 ambient air ozone season monitoring data shows that all ozone samplers in this Commonwealth are monitoring attainment of the 2015 8-hour ozone NAAQS except these two: the Bristol sampler in Bucks County and the Philadelphia Air Management Services Northeast Airport sampler in Philadelphia County; all ozone samplers in this Commonwealth are projected to monitor attainment of the 1997 and 2008 8-hour ozone NAAQS.

The EPA's final rules to implement the 2008 and 2015 8-hour ozone NAAQS require states with areas classified as "moderate" nonattainment or higher to submit a demonstration, as a revision to the SIP, that their current regulations fulfill 8-hour ozone RACT requirements for all control technique guideline (CTG) categories and all major non-CTG sources. See 80 FR 12264 (March 6, 2015) and 83 FR 62998 (December 6, 2018). This requirement applies to this entire Commonwealth due to its Statewide designation of "moderate" ozone nonattainment as a

member of the OTR. Therefore, a re-evaluation of what constitutes RACT for affected sources in this Commonwealth must be fulfilled each time the EPA revises a NAAQS. This was the case in 1997 when the EPA replaced the 1993 1-hour ozone standard with the 8-hour ozone standard and was the case in 2008 and again in 2015 when the EPA lowered the 8-hour ozone standard. State regulations to control emissions of NO_x and VOCs from major stationary sources will be reviewed by the EPA to determine if the provisions meet the RACT requirements of the CAA and its implementing regulations designed to attain and maintain the ozone NAAQS. Therefore, the Commonwealth must submit a SIP revision to demonstrate how it will attain and maintain the 2015 8-hour ozone standard in the nonattainment areas.

The EPA's past implementation of regulations for revised NAAQS ozone standards have required OTR states to submit RACT SIP revisions based on the timeframe provided in section 184 of the CAA as measured from the effective date of designations made for those revised NAAQS, rather than from November 15, 1990. This requirement was first codified in 40 CFR 51.916 (relating to what are the requirements for an Ozone Transport Region under the 8-hour NAAQS?) for the 1997 8-hour ozone NAAQS, later codified for the 2008 8-hour ozone NAAQS in 40 CFR 51.1116 (relating to requirements for an Ozone Transport Region) and most recently codified for the 2015 8-hour ozone NAAQS in 40 CFR 51.1316 (relating to requirements for an Ozone Transport Region). Under these provisions, states in the OTR were required to submit SIP revisions addressing the RACT requirements of section 184 of the CAA for the revised 2015 8-hour ozone NAAQS not later than 2 years after the effective date of August 3, 2018, or by August 3, 2020. See 83 FR 25776. The Commonwealth has missed this deadline, but the Department is working to submit the required SIP revision to the EPA as quickly as possible.

To address the Commonwealth's RACT obligations under section 184 of the CAA, the Department conducted a generic RACT analysis to determine if additional NO_x or VOC emissions limitations or controls beyond those established for the 1997 and 2008 8-hour ozone NAAQS under §§ 129.96—129.100 would represent RACT for the 2015 8-hour ozone NAAQS. This generic analysis identified existing affected source categories by size and fuel type; identified available technically and economically feasible control options for NO_x or VOC emissions, or both, for each type of existing source category; estimated emission reduction potential for each control technology; identified costs for technologies, using appropriate updates; and evaluated cost-effectiveness using the guidance provided in the EPA Air Pollution Control Cost Manual, EPA/452/B-02-001, 6th Edition, January 2002, as amended, and as updated in the 7th Edition beginning in 2019, for both uncontrolled and controlled sources (combinations of technologies). After conducting this analysis, the Department determined what constitutes RACT for each affected source category in this Commonwealth.

Based on this analysis, the Board has determined that additional cost-effective controls represent RACT for the 2015 8-hour ozone NAAQS beyond those established for the 1997 and 2008 8-hour ozone NAAQS. The RACT emission limitations and requirements being implemented for the 2015 ozone NAAQS are at least as stringent as the RACT emission limitations and requirements for the 1979, 1997 and 2008 ozone NAAQS. To the extent that a prior RACT emission limitation or requirement established for the 1979, 1997 or 2008 ozone NAAQS is more stringent, the owner and operator of the affected source shall comply with the more stringent emission limitation or requirement. There are ten existing source categories that

are affected by this final-form rulemaking: combustion units; municipal solid waste landfills; municipal waste combustors; process heaters; turbines; stationary internal combustion engines; cement kilns; glass melting furnaces; lime kilns; and combustion sources including direct-fired heaters, furnaces or ovens; as well as other existing source categories that are not regulated elsewhere under Chapter 129.

The final-form RACT requirements apply to the owners and operators of subject facilities or sources in this Commonwealth that emit or have a potential to emit 100 TPY or more of NO_x or 50 TPY or more of VOCs, including those located in Bucks, Chester, Delaware, Montgomery and Philadelphia Counties. There are approximately 500 Title V facilities in this Commonwealth under the Department's jurisdiction whose owners and operators may be subject to this final-form rulemaking. The Department preliminarily determined that the owners and operators of approximately 10—30 affected major facilities or sources under the Department's jurisdiction meet the definition of "small business" specified in section 3 of the Regulatory Review Act (71 P.S. § 745.3). The owners and operators of the affected facilities or sources are familiar with the existing requirements for emissions control, recordkeeping and reporting for their entity and have the professional and technical skills needed for compliance with these final-form requirements.

The Board has determined that this final-form rulemaking fulfills the requirements for RACT re-evaluation. As more fully discussed in section E of this preamble, the Board is establishing a compliance option hierarchy whereby the owner or operator of a source or facility that is subject to § 129.111 (relating to applicability) that cannot meet the presumptive RACT requirements and RACT emission limitations under § 129.112 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule) may apply for a facility-wide or system-wide NO_x emissions averaging plan under § 129.113 (relating to facility-wide or system-wide NO_x emissions averaging plan general requirements) or an alternative case-by-case RACT determination under § 129.114 (relating to alternative RACT proposal and petition for alternative compliance schedule). The Board provides the owners and operators of certain affected facilities or sources with a less resource intensive demonstration established under § 129.114(i) of this final-form rulemaking as an alternative to performing a complete case-by-case RACT analysis. This less resource intensive demonstration may be used by an owner or operator of a subject source or facility to demonstrate that the previous case-by-case determination made under §§ 129.96—129.100 (RACT II) remains RACT for the 2015 8-hour ozone standard. For the owners and operators of eligible subject sources, this approach will likely reduce the consulting costs that an owner or operator may choose to incur. Additionally, there is no fee due to the Department to submit an analysis under final-form § 129.114(i).

The Department must ensure that the 1997, 2008 and 2015 8-hour ozone NAAQS are attained and maintained by implementing permanent and Federally enforceable control measures. Reductions in ozone precursor emissions that are achieved following the adoption and implementation of RACT emission control measures for source categories covered by this final-form rulemaking will assist the Commonwealth in making substantial progress in attaining and maintaining the 1997, 2008 and 2015 8-hour ozone NAAQS. The Board has determined that the requirements of this final-form rulemaking are reasonably necessary to attain and maintain the

health-based and welfare-based 8-hour ozone NAAQS in this Commonwealth and to satisfy related CAA requirements.

The Department presented the draft final-form Annex A to the Air Quality Technical Advisory Committee on April 7, 2022, and to the Small Business Compliance Advisory Committee on April 27, 2022, and briefed the committees on the comments received on the proposed rulemaking. The Department presented the draft final-form Annex A to the Citizens Advisory Council's (CAC) Policy and Regulatory Oversight Committee on April 14, 2022, and to the CAC on April 19, 2022. At its meeting on May 18, 2022, the CAC concurred with the Department's recommendation to present this final-form rulemaking to the Board for consideration. Advisory committee meetings are advertised and open to the public.

E. Summary of Final-Form Rulemaking and Changes from Proposed to Final-Form Rulemaking

§ 121.1. Definitions

This section contains definitions relating to the air quality regulations. This final-form rulemaking amends § 121.1 to add the terms “combustion source” and “natural gas compression and transmission facility fugitive VOC air contamination source” to support the final-form amendments to Chapter 129.

This final-form rulemaking amends the definition of the proposed term “combustion source.” The proposed definition of “combustion source” specified under subparagraph (i) that this is a stationary device that combusts solid, liquid or gaseous fuel used to produce heat or energy for industrial, commercial or institutional use by direct heat transfer. Subparagraph (ii) specified that the term does not include brick kilns, cement kilns or lime kilns. This final-form rulemaking amends the term “combustion source” to specify that it is limited to §§ 129.111—129.115 by adding the words “For purposes of §§ 129.111—129.115 (relating to additional RACT requirements for major sources of NO_x and VOCs for the 2015 ozone NAAQS):” before subparagraph (i). No changes are made to subparagraph (i) from proposed to this final-form rulemaking. Subparagraph (ii) is amended from proposed to this final-form rulemaking to exclude three additional source categories: glass melting furnaces; a source listed in § 129.112(g)(2) or (3) (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule); and a source subject to § 129.112(g)(4). These changes are made in response to comments received on the proposed rulemaking.

No changes are made to the term and definition of “natural gas compression and transmission facility fugitive VOC air contamination source” from proposed to this final-form rulemaking.

This final-form rulemaking amends the definitions of two existing terms in § 121.1. The definition of the term “major NO_x emitting facility” is amended under subparagraph (v) to add the words “For purposes of §§ 129.91—129.95 (relating to stationary sources of NO_x and VOCs), twenty-five” before TPY to clarify that for purposes of §§ 129.91—129.95, a major NO_x emitting facility is a facility which emits or has the potential to emit NO_x from the processes located at the site or on contiguous properties under the common control of the same person at a rate greater than 25 TPY for a facility located in Bucks, Chester, Delaware, Montgomery or

Philadelphia County. The Commonwealth's RACT regulations under §§ 129.91—129.95 were promulgated on January 15, 1994, and applicable Statewide for the 1979 and 1993 1-hour ozone standard. See 24 Pa.B. 467. The definition of this term is further amended to add subparagraph (vi), which states that “For purposes of §§ 129.96—129.100 and 129.111—129.115 (relating to additional RACT requirements for major sources of NO_x and VOCs; and additional RACT requirements for major sources of NO_x and VOCs for the 2015 ozone NAAQS), one hundred TPY Statewide.” Subparagraph (vi) clarifies that for purposes of §§ 129.96—129.100 and 129.111—129.115, a major NO_x emitting facility is a facility which emits or has the potential to emit NO_x from the processes located at the site or on contiguous properties under the common control of the same person at a rate greater than 100 TPY and this rate is applicable Statewide. The Commonwealth's RACT regulations under §§ 129.96—129.100 were promulgated on April 23, 2016, and applicable Statewide for the 1997 and 2008 8-hour ozone standards. See 46 Pa.B. 2036. These changes are made in response to comments received on the proposed rulemaking.

Likewise, the definition of the term “major VOC emitting facility” is amended under subparagraph (iv) to add the words “For purposes of §§ 129.91—129.95, twenty-five” before TPY to clarify that for purposes of §§ 129.91—129.95, a major VOC emitting facility is a facility which emits or has the potential to emit VOCs from the processes located at the site or on contiguous properties under the common control of the same person at a rate greater than 25 TPY for a facility located in Bucks, Chester, Delaware, Montgomery or Philadelphia County. The definition of this term is further amended to add subparagraph (v), which states that “For purposes of §§ 129.96—129.100 and 129.111—129.115, fifty TPY Statewide.” Subparagraph (v) clarifies that for purposes of §§ 129.96—129.100 and 129.111—129.115, a major VOC emitting facility is a facility which emits or has the potential to emit VOCs from the processes located at the site or on contiguous properties under the common control of the same person at a rate greater than 50 TPY and this rate is applicable Statewide. These changes are made in response to comments received on the proposed rulemaking.

No other changes are made to this section from proposed to this final-form rulemaking.

§ 129.111. Applicability

Subsection (a) provides that, except as specified in subsection (c), the NO_x requirements of this section and §§ 129.112—129.115 apply Statewide to the owner and operator of a major NO_x emitting facility that commenced operation on or before August 3, 2018, and the VOC requirements of this section and §§ 129.112—129.115 apply Statewide to the owner and operator of a major VOC emitting facility that commenced operation on or before August 3, 2018, for which a requirement or emission limitation, or both, has not been established in §§ 129.51, 129.52(a)—(k) and Table I categories 1—11, 129.52a—129.52e, 129.54—129.63a, 129.64—129.69, 129.71—129.75, 129.77 and 129.101—129.107. The owner or operator shall identify and list the sources and facilities subject to this subsection as specified in paragraphs (1) and (2) in the written notification required under § 129.115(a) (relating to written notification, compliance demonstration and recordkeeping and reporting requirements).

Subsection (a) is amended from proposed to this final-form rulemaking to add the words “that commenced operation on or before August 3, 2018,” after “major NO_x emitting facility” and to

delete the words “were in existence” after “major VOC emitting facility that” and add the words “commenced operation” to clarify that construction or installation of the affected emissions unit at the major NO_x emitting facility or at the major VOC emitting facility had been completed and the emissions unit had begun operating on or before August 3, 2018. The date of August 3, 2018, is the effective date of the designations for the 2015 8-hour ozone standards. On June 4, 2018, the EPA designated Bucks, Chester, Delaware, Montgomery and Philadelphia Counties as “marginal” nonattainment, effective August 3, 2018, with the rest of this Commonwealth designated attainment/unclassifiable. See 83 FR 25776, 25828.

Paragraph (1) is amended from proposed to this final-form rulemaking to clarify that the owner or operator shall identify and list in the written notification required under § 129.115(a) the sources and facilities that commenced operation on or before August 3, 2018, for which a requirement or emission limitation has not been established in the specified sections. Proposed paragraph (1) did not include the words “that commenced operation on or before August 3, 2018.” Sources and facilities that commenced operation after August 3, 2018, at a major NO_x emitting facility or at a major VOC emitting facility are subject to a best available technology (BAT) analysis and do not need to be included in the written notification required under § 129.115(a).

Paragraph (2) is amended from proposed to this final-form rulemaking to clarify that the owner or operator shall identify and list in the written notification required under § 129.115(a) the sources and facilities that commenced operation on or before August 3, 2018, and are subject to the specified sections. The specified sections established RACT emission limitations and RACT requirements consistent with the EPA CTGs for the specified categories of sources. The owner or operator of a source or facility that is subject to one of these specified sections shall comply with the applicable RACT requirements and RACT emission limitations and is not subject to the RACT requirements and RACT emission limitations of §§ 129.111—129.115.

Subsection (a) and (a)(1) and (2) are further amended from proposed to this final-form rulemaking to delete the group of sections “129.71—129.73” and “129.75” and add the group of sections “129.71—129.75” inclusive of § 129.74 (relating to control of VOC emissions from fiberglass boat manufacturing materials). These sections establish RACT requirements and RACT emission limitations consistent with the recommendations provided by the EPA in the applicable CTG documents. The owners and operators of sources of emissions or facilities that are subject to the requirements of one or more of §§ 129.71—129.75 are not subject to §§ 129.111—129.115 for these sources of emissions or facilities.

The changes to subsection (a) and (a)(1) and (2) are made in response to comments received on the proposed rulemaking.

Subsection (b) provides that, except as specified in subsection (c), the NO_x requirements of this section and §§ 129.112—129.115 apply Statewide to the owner and operator of a NO_x emitting facility that commenced operation on or before August 3, 2018, and the VOC requirements of this section and §§ 129.112—129.115 apply Statewide to the owner and operator of a VOC emitting facility that commenced operation on or before August 3, 2018, when the installation and operation of a new source after August 3, 2018, or a modification or change in

operation after August 3, 2018, of a source that commenced operation on or before August 3, 2018, results in the source or facility meeting the definition of a major NO_x emitting facility or a major VOC emitting facility and for which a requirement or an emission limitation, or both, has not been established in §§ 129.51, 129.52(a)—(k) and Table I categories 1—11, 129.52a—129.52e, 129.54—129.63a, 129.64—129.69, 129.71—129.75, 129.77 and 129.101—129.107. The owner or operator shall identify and list the sources and facilities subject to this subsection as specified in paragraphs (1) and (2) in the written notification required under § 129.115(a).

Subsection (b) is amended from proposed to this final-form rulemaking to add the words “that commenced operation on or before August 3, 2018,” after “NO_x emitting facility” and after “VOC emitting facility,” add the words “and operation” after “installation,” add the words “after August 3, 2018,” after “of a new source” and “change in operation,” delete the words “an existing” and insert the word “a” before “source” and delete the word “after” following “source,” and add the words “that commenced operation on or before” before the words “August 3, 2018, results in.” These amendments clarify that the owner and operator of a source or a facility that is not major on or before August 3, 2018, becomes subject to §§ 129.111—129.115, as applicable, when the installation and operation of a new source after August 3, 2018, or a modification or change in operation after August 3, 2018, of a source that commenced operation on or before August 3, 2018, results in the source or the facility meeting the definition of a major NO_x emitting facility or a major VOC emitting facility. These changes are made in response to comments received on the proposed rulemaking.

Subsection (b) and (b)(1) and (2) are amended from proposed to this final-form rulemaking to delete the group of sections “129.71—129.73” and “129.75” and add the group of sections “129.71—129.75” inclusive of § 129.74. These sections establish RACT requirements and RACT emission limitations consistent with the recommendations provided by the EPA in the applicable CTG documents. The owners and operators of sources of emissions or facilities that are subject to the requirements of one or more of §§ 129.71—129.75 are not subject to §§ 129.111—129.115 for these sources of emissions or facilities.

The changes to subsection (b) and (b)(1) and (2) are made in response to comments received on the proposed rulemaking.

Subsection (c) establishes that §§ 129.112—129.114 do not apply to the owner and operator of a NO_x air contamination source that has the potential to emit less than 1 TPY of NO_x located at a major NO_x emitting facility subject to subsection (a) or (b), or to the owner and operator of a VOC air contamination source that has the potential to emit less than 1 TPY of VOC located at a major VOC emitting facility subject to subsection (a) or (b). The owner or operator shall identify and list these sources in the written notification required under § 129.115(a).

No changes are made to subsection (c) from proposed to this final-form rulemaking.

Subsection (d) establishes that, except as specified in subsection (e), this section and §§ 129.112—129.115 do not apply to the owner and operator of a facility that is not a major NO_x emitting facility or a major VOC emitting facility on or before December 31, 2022.

Subsection (d) is amended from proposed to this final-form rulemaking to add the words “except as specified in subsection (e)” and to amend the date of applicability from the date of publication of this final-form rulemaking to the date certain of December 31, 2022.

The amendment of subsection (d) from proposed to this final-form rulemaking with the compliance date certain of December 31, 2022, in place of the proposed compliance date, which was the date of publication of this final-form rulemaking, is made to address the required implementation deadline of January 1, 2023, in the EPA 2015 ozone implementation rule, for states to implement the RACT requirements and RACT emission limitations to address the 2015 8-hour ozone NAAQS. See 40 CFR 51.1312(a)(3)(i); see also 40 CFR 51.1316(b)(3)(1).

Subsection (e) is added to this final-form rulemaking to establish that if the owner and operator of a facility that complied with subsection (d), that is, the facility was not a major NO_x emitting facility or a major VOC facility on or before December 31, 2022, then meets the definition of a major NO_x emitting facility or a major VOC emitting facility after December 31, 2022, the affected owner or operator shall comply with subsection (b) once the facility meets the applicable major facility threshold. Likewise, if the owner or operator of a NO_x emitting facility or a VOC emitting facility that becomes subject to subsection (b) as a result of meeting the definition of a major NO_x emitting facility or major VOC emitting facility on or before December 31, 2022, then falls below the applicable major facility emission threshold on or before December 31, 2022, and then resumes major facility status after December 31, 2022, that owner or operator shall comply with subsection (b) again once the facility meets the applicable major facility threshold and will be subject again to the applicable RACT requirements and RACT emission limitations of §§ 129.111—129.115.

§ 129.112. Presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule

Subsection (a) establishes that the owner and operator of a source listed in one or more of subsections (b)—(k) located at a major NO_x emitting facility or major VOC emitting facility subject to § 129.111 shall comply with the applicable presumptive RACT requirement or RACT emission limitation, or both, beginning with the specified compliance date in paragraph (1) or (2), unless an alternative compliance schedule is submitted and approved under subsections (n)—(p) or under § 129.114. Paragraph (1) specifies the compliance date of January 1, 2023, for a source subject to § 129.111(a). Paragraph (2) specifies the compliance date of January 1, 2023, or 1 year after the date the source meets the definition of a major NO_x emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b). The owner or operator shall meet the applicable standards or regulations within the time frame required by standards or regulations even if the permit is not revised to incorporate the standards or regulations within the required time frame.

No changes are made to subsection (a) from proposed to this final-form rulemaking.

Subsection (b) establishes that the owner and operator of a source listed in this subsection that is located at a major NO_x emitting facility or major VOC emitting facility subject to § 129.111

shall comply with the applicable presumptive RACT requirements in paragraph (1) and the recordkeeping and reporting requirements in paragraph (2).

Paragraph (1) specifies that the owner and operator of one or more of the combustion unit or process heater types listed in paragraph (1)(i) and (ii) shall comply with the applicable presumptive RACT requirements for that source, which include, among other things, inspection and adjustment requirements. Paragraph (1)(i) and (ii) are amended from proposed to this final-form rulemaking to add the words “or process heater” after the words “combustion unit.” These changes are made in response to comments received on the proposed rulemaking. No other changes are made to paragraph (1) from proposed to this final-form rulemaking.

Paragraph (2) specifies the applicable recordkeeping and reporting requirements. Paragraph (2) is amended from proposed to this final-form rulemaking to delete “§ 129.115(e), (f) or (g)” and add “§ 129.115(f) and (i)” to provide the correct cross reference. No other changes are made to paragraph (2) from proposed to this final-form rulemaking.

Paragraph (3) specifies that compliance with the applicable presumptive RACT requirements in paragraph (1) and recordkeeping and reporting requirements in paragraph (2) assures compliance with the provisions in §§ 129.93(b)(2)—(5) and 129.97(b)(1)—(3) (relating to presumptive RACT emissions limitations; and presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule). No changes are made to paragraph (3) from proposed to this final-form rulemaking.

Subsection (c) establishes that the owner and operator of a source listed in this subsection located at a major NO_x emitting facility or major VOC emitting facility subject to § 129.111 shall comply with the applicable presumptive RACT requirement, which is the installation, maintenance and operation of the source in accordance with the manufacturer's specifications and with good operating practices.

Subsection (c)(8) is amended from proposed to this final-form rulemaking to delete the word “or” and add a comma after the words “thermal oxidizer” and add the words “or flare” after the words “catalytic oxidizer.” These changes are made in response to comments received on the proposed rulemaking. No other changes are made to subsection (c) from proposed to this final-form rulemaking.

Subsection (d) establishes that, except as specified in subsection (c), the owner and operator of a combustion unit, brick kiln, cement kiln, lime kiln, glass melting furnace or combustion source located at a major VOC emitting facility subject to § 129.111 shall comply with the specified presumptive RACT requirement, which is the installation, maintenance and operation of the source in accordance with the manufacturer's specifications and with good operating practices for the control of the VOC emissions from the combustion unit, brick kiln, cement kiln, lime kiln, glass melting furnace or combustion source. Subsection (d) is amended from proposed to this final-form rulemaking to add the words “glass melting furnace” after lime kiln, add the words “brick kiln, cement kiln, lime kiln, glass melting furnace” after combustion unit, and delete the word “other” in two places. These changes are made in response to comments received on the

proposed rulemaking. No other changes are made to subsection (d) from proposed to this final-form rulemaking.

Subsection (e) establishes that the owner and operator of a municipal solid waste landfill subject to § 129.111 shall comply with the applicable presumptive RACT requirements specified in paragraph (1) or (2).

Paragraph (1) is amended from proposed to this final-form rulemaking to delete the reference to 40 CFR Part 60, Subpart Cc (relating to emission guidelines and compliance times for municipal solid waste landfills) and add the reference to the Federal Plan for Municipal Solid Waste Landfills in 40 CFR Part 62, Subpart OOO (relating to Federal plan requirements for municipal solid waste landfills that commenced construction on or before July 17, 2014 and have not been modified or reconstructed since July 17, 2014). This change is made in response to comments received that the requirements of 40 CFR Part 60, Subpart Cc are superseded by the requirements of 40 CFR Part 62, Subpart OOO. The EPA issued the Federal Plan in 40 CFR Part 62, Subpart OOO, on May 21, 2021, with an effective date of June 21, 2021. See 86 FR 27756 (May 21, 2021).

Proposed paragraph (2), which referenced 40 CFR Part 60, Subpart WWW (relating to standards of performance for municipal solid waste landfills that commenced construction, reconstruction, or modification on or after May 30, 1991, but before July 18, 2014), is deleted in this final-form rulemaking because the requirements of 40 CFR Part 60, Subpart WWW are superseded by the requirements of 40 CFR Part 60, Subpart XXX (relating to standards of performance for municipal solid waste landfills that commenced construction, reconstruction, or modification after July 17, 2014).

The requirements of 40 CFR Part 60, Subpart XXX, were specified in proposed paragraph (3). Proposed paragraph (3) is renumbered to paragraph (2) in this final-form rulemaking.

Subsection (f) establishes that the owner and operator of a municipal waste combustor (MWC) subject to § 129.111 shall comply with the presumptive RACT emission limitation of 110 parts per million volume dry (ppmvd) NO_x @ 7% oxygen. Proposed subsection (f) specified a presumptive RACT emission limitation of 150 ppmvd NO_x @ 7% oxygen. Subsection (f) was amended from proposed to this final-form rulemaking to delete the emission limitation of 150 ppmvd NO_x @ 7% oxygen and add the emission limitation of 110 ppmvd NO_x @ 7% oxygen. This change is made in response to comments received on the proposed rulemaking and an analysis by the Department showing that the emission limitation of 110 ppmvd NO_x @ 7% oxygen is achievable, cost-effective, and constitutes RACT for MWCs.

Subsection (g) establishes that, except as specified in subsection (c), the owner and operator of a NO_x air contamination source listed in this subsection that is located at a major NO_x emitting facility or a VOC air contamination source listed in this subsection that is located at a major VOC emitting facility subject to § 129.111 may not cause, allow or permit NO_x or VOCs to be emitted from the air contamination source in excess of the applicable presumptive RACT emission limitation specified in paragraphs (1)—(4).

Paragraph (1) is amended from proposed to this final-form rulemaking. Paragraph (1)(vi), which applies to the owner or operator of a circulating fluidized bed combustion unit with a rated heat input equal to or greater than 250 million Btu/hour and firing waste coal products, is amended to add the words “RACT requirements and” after the word “presumptive.” Paragraph (1)(vi) is further amended to add clause (C), which specifies that the owner or operator shall control the NO_x emissions each operating day by operating the installed air pollution control technology and combustion controls at all times consistent with the technological limitations, manufacturer’s specifications, good engineering and maintenance practices and good air pollution control practices for controlling emissions. Clause (C) replaces proposed paragraph (1)(viii), which is deleted in this final-form rulemaking. These changes are made in response to comments received on the proposed rulemaking.

No changes were made to paragraphs (1)(i)—(v) and (vii) from proposed to this final-form rulemaking.

Paragraph (2) is amended from proposed to this final-form rulemaking to clarify the applicable presumptive RACT emission limitations for combined cycle or combined heat and power combustion turbines and for simple cycle or regenerative cycle combustion turbines based on the Department’s review of information provided by commentators during the public comment period as well as the Department’s review of available stack test emissions data. Proposed paragraph (2)(i) established the applicable presumptive RACT emission limitations for the owner or operator of a combined cycle or combined heat and power combustion turbine with a rated output equal to or greater than 1,000 brake horsepower (bhp) and less than 180 MW. Paragraph (2)(i) is amended in this final-form rulemaking to establish the applicable presumptive RACT emission limitations for the owner or operator of a combined cycle or combined heat and power combustion turbine with a rated output equal to or greater than 1,000 bhp and less than 4,100 bhp rather than less than 180 MW. Paragraph (2)(i)(A) is amended from proposed to this final-form rulemaking to delete the limitation of 42 ppmvd NO_x @ 15% oxygen and add the limitation of 120 ppmvd NO_x @ 15% oxygen. Paragraph (2)(i)(C) is amended from proposed to this final-form rulemaking to delete the limitation of 96 ppmvd NO_x @ 15% oxygen and add the limitation of 150 ppmvd NO_x @ 15% oxygen.

Paragraph (2)(ii) is amended from proposed to this final-form rulemaking to establish the applicable presumptive RACT emission limitations for the owner or operator of a combined cycle or combined heat and power combustion turbine with a rated output equal to or greater than 4,100 bhp and less than 180 MW. The applicable presumptive RACT emission limitations are established in paragraph (2)(ii)(A)—(D). Clause (A) establishes the limitation of 42 ppmvd NO_x @ 15% oxygen when firing natural gas or a noncommercial gaseous fuel. Clause (B) establishes the limitation of 5 ppmvd VOC (as propane) @ 15% oxygen when firing natural gas or a noncommercial gaseous fuel. Clause (C) establishes the limitation of 96 ppmvd NO_x @ 15% oxygen when firing fuel oil. Clause (D) establishes the limitation of 9 ppmvd VOC (as propane) @ 15% oxygen when firing fuel oil.

Proposed paragraph (2)(ii) is renumbered in this final-form rulemaking to paragraph (2)(iii). No other changes are made to renumbered paragraph (2)(iii) in this final-form rulemaking.

Proposed paragraph (2)(iii) is renumbered in this final-form rulemaking to paragraph (2)(iv). Renumbered paragraph (2)(iv) is further amended in this final-form rulemaking to establish the applicable presumptive RACT emission limitations for the owner or operator of a simple cycle or regenerative cycle combustion turbine with a rated output equal to or greater than 1,000 bhp and less than 4,100 bhp, rather than the proposed rated output of less than 3,000 bhp. Subparagraph (iv)(A) is amended from proposed to this final-form rulemaking to delete the limitation of 85 ppmvd NO_x @ 15% oxygen when firing natural gas or a noncommercial gaseous fuel and add the limitation of 120 ppmvd NO_x @ 15% oxygen, based on the Department's review of information provided by commentators during the public comment period and the Department's review of available stack test emissions data.

Proposed paragraph (2)(iv) is renumbered in this final-form rulemaking to paragraph (2)(v). Renumbered paragraph (2)(v) is further amended in this final-form rulemaking to establish the applicable presumptive RACT emission limitations for the owner or operator of a simple cycle or regenerative cycle combustion turbine with a rated output equal to or greater than 4,100 bhp, rather than the proposed rated output of 3,000 bhp, and less than 60,000 bhp.

Proposed paragraph (3) established applicable presumptive RACT emission limitations for the owners or operators of four subcategories of stationary internal combustion engines in subparagraphs (i)—(iv). Subparagraph (iv)(A) is amended from proposed to this final-form rulemaking to establish the applicable presumptive RACT emission limitation for the owner or operator of a rich burn stationary internal combustion engine with a rating equal to or greater than 100 bhp is 2.0 gram NO_x/brake horsepower-hour (bhp-hr) when firing natural gas or a noncommercial gaseous fuel, rather than the proposed limitation of 0.6 gram NO_x/bhp-hr. This change is made in response to comments received on the proposed rulemaking.

No changes are made to paragraph (3)(i)—(iii) or to subparagraph (iv)(B) from proposed to this final-form rulemaking. No changes are made to paragraph (4) from proposed to this final-form rulemaking.

Subsection (h) establishes that the owner and operator of a Portland cement kiln subject to § 129.111 shall comply with the applicable presumptive RACT emission limitation in paragraphs (1)—(3).

Subsection (i) establishes that the owner and operator of a glass melting furnace subject to § 129.111 shall comply with the applicable presumptive RACT emission limitation in paragraphs (1)—(5).

Subsection (j) establishes that the owner and operator of a lime kiln subject to § 129.111 shall comply with the applicable presumptive RACT emission limitation of 4.6 pounds of NO_x per ton of lime produced.

No changes are made to subsections (h)—(j) from proposed to this final-form rulemaking.

Subsection (k) establishes that the owner and operator of a direct-fired heater, furnace, oven or other combustion source with a rated heat input equal to or greater than 20 million Btu/hour

subject to § 129.111 shall comply with the applicable presumptive RACT emission limitation of 0.10 lb NO_x/million Btu heat input. Subsection (k) is amended from proposed to this final-form rulemaking to add the category of other combustion source and to remove the proposed requirement that the limitation be complied with on a daily average basis or that compliance be determined through a stack test. These changes are made in response to comments received on the proposed rulemaking.

Subsection (l) provides that the requirements and emission limitations of this section supersede the requirements and emission limitations of a RACT permit issued to the owner or operator of an air contamination source subject to one or more of subsections (b)—(k) prior to *blank* (*Editor's Note: The blank refers to the effective date of this final-form rulemaking when published as a final-form rulemaking.*) under §§ 129.91—129.95 or under §§ 129.96—129.100 to control, reduce or minimize NO_x emissions or VOC emissions, or both, from the air contamination source unless the RACT permit contains more stringent requirements or emission limitations, or both. No changes are made to subsection (l) from proposed to this final-form rulemaking.

Subsection (m) provides that the requirements and emission limitations of this section supersede the requirements and emission limitations of §§ 129.201—129.205, 129.301—129.310, 145.111—145.113 and 145.141—145.146 unless the requirements or emission limitations of §§ 129.201—129.205, 129.301—129.310, 145.111—145.113 or 145.141—145.146 are more stringent. Subsection (m) is amended from proposed to this final-form rulemaking to add §§ 129.301—129.310 (relating to control of NO_x emissions from glass melting furnaces) to the group of regulations whose requirements and emission limitations would be superseded by the requirements and emission limitations of § 129.112 unless the requirements or emission limitations of §§ 129.301—129.310 are more stringent. This change is made in response to comments received on the proposed rulemaking.

Subsection (n) establishes that the owner or operator of a major NO_x emitting facility or a major VOC emitting facility subject to § 129.111 that includes an air contamination source subject to one or more of subsections (b)—(k) that cannot meet the applicable presumptive RACT requirement or RACT emission limitation without installation of an air cleaning device may submit a petition to the Department or appropriate approved local air pollution control agency, in writing or electronically, requesting an alternative compliance schedule in accordance with paragraphs (1) and (2). Subsection (n) is amended from proposed to this final-form rulemaking to add the word “electronically” after the words “in writing.”

Paragraph (1) is amended from proposed to this final-form rulemaking to delete the word “written.” The changes to subsection (n) and (n)(1) are made to provide flexibility to the subject owner or operator in how the petition may be submitted.

Paragraph (1)(i) is amended from proposed to this final-form rulemaking to establish that the petition shall be submitted to the Department or appropriate approved local air pollution control agency as soon as possible but not later than December 31, 2022, for a source subject to § 129.111(a). Proposed paragraph (1)(i) established the due date as 6 months after the date of publication of this final-form rulemaking.

Paragraph (1)(ii) is amended from proposed to this final-form rulemaking to establish that the petition shall be submitted to the Department or appropriate approved local air pollution control agency as soon as possible but not later than December 31, 2022, or not later than 6 months after the date that the source meets the definition of a major NO_x emitting facility or a major VOC emitting facility, whichever is later, for a source subject to § 129.111(b). Proposed paragraph (1)(ii) established the due date as 6 months after the date of publication of this final-form rulemaking or 6 months after the date that the source meets the definition of a major NO_x emitting facility or a major VOC emitting facility, whichever is later.

The changes to the due dates specified in paragraph (1)(i) and (ii) are made to accommodate the length of time for this rulemaking to move through the regulatory development process and meet the implementation deadline of January 1, 2023, for states to implement the RACT requirements and RACT emission limitations to address the 2015 8-hour ozone NAAQS. This final-form rulemaking is expected to be published as a final-form rulemaking in the Pennsylvania Bulletin prior to the end of 2022.

Proposed paragraph (2) established that the written petition must include the items specified in subparagraphs (i)—(v). Paragraph (2) is amended from proposed to this final-form rulemaking to delete the word “written.” The petition may be submitted in writing or electronically as specified in subsection (n). This change provides flexibility to the subject owner or operator in how the petition may be submitted. No changes are made to subparagraphs (i)—(v) from proposed to this final-form rulemaking.

Subsection (o) provides that the Department or appropriate approved local air pollution control agency will review the timely and complete written petition requesting an alternative compliance schedule submitted in accordance with subsection (n) and approve or deny the petition in writing.

Subsection (p) provides that approval or denial under subsection (o) of the timely and complete petition for an alternative compliance schedule submitted under subsection (n) will be effective on the date the letter of approval or denial of the petition is signed by the authorized representative of the Department or appropriate approved local air pollution control agency.

Subsection (q) provides that the Department will submit each petition for an alternative compliance schedule approved under subsection (o) to the Administrator of the EPA for approval as a revision to the Commonwealth's SIP. The owner and operator of the facility shall bear the costs of public hearings and notifications, including newspaper notices, required for the SIP submittal.

No changes are made to subsections (o)—(q) from proposed to this final-form rulemaking.

§ 129.113. Facility-wide or system-wide NO_x emissions averaging plan general requirements

Subsection (a) provides that the owner or operator of a major NO_x emitting facility subject to § 129.111 that includes at least one air contamination source subject to a NO_x RACT emission

limitation in § 129.112 that cannot meet the applicable NO_x RACT emission limitation may elect to meet the applicable NO_x RACT emission limitation in § 129.112 by averaging NO_x emissions on either a facility-wide or system-wide basis. System-wide emissions averaging must be among sources under common control of the same owner or operator within the same ozone nonattainment area in this Commonwealth. No change is made to subsection (a) from proposed to this final-form rulemaking.

Subsection (b) provides that the owner or operator of each facility that elects to comply with subsection (a) shall submit a NO_x emissions averaging plan in writing or electronically to the Department or appropriate approved local air pollution control agency as part of an application for an operating permit modification or a plan approval, if otherwise required. Subsection (b) is amended from proposed to this final-form rulemaking to delete the word “written” before the phrase “NO_x emissions averaging plan” and add the words “in writing or electronically” after the phrase “NO_x emissions averaging plan.” These changes are made to provide flexibility to the subject owner or operator in how the NO_x emissions averaging plan may be submitted.

The application incorporating the NO_x emissions averaging plan requirements of this section shall be submitted by the applicable date specified in subsection (b)(1) or (2). Proposed paragraph (1) established the due date as the date 6 months after the date of publication of this final-form rulemaking for a source subject to § 129.111(a). Paragraph (1) is amended from proposed to this final-form rulemaking to establish the due date as December 31, 2022.

Proposed paragraph (2) established the due date as the date 6 months after the date of publication of this final-form rulemaking or 6 months after the date that the source meets the definition of a major NO_x emitting facility, whichever is later, for a source subject to § 129.111(b). Paragraph (2) is amended from proposed to this final-form rulemaking to establish the due date as December 31, 2022, or 6 months after the date that the source meets the definition of a major NO_x emitting facility, whichever is later.

The changes to the due dates specified in paragraphs (1) and (2) are made to accommodate the length of time for this rulemaking to move through the regulatory development process and meet the implementation deadline of January 1, 2023, for states to implement the RACT requirements and RACT emission limitations to address the 2015 8-hour ozone NAAQS. This final-form rulemaking is expected to be published as a final-form rulemaking in the Pennsylvania Bulletin prior to the end of 2022.

Subsection (c) provides that each NO_x air contamination source included in the application for an operating permit modification or a plan approval, if otherwise required, for averaging NO_x emissions on either a facility-wide or system-wide basis submitted under subsection (b) must be an air contamination source subject to a NO_x RACT emission limitation in § 129.112.

Subsection (d) provides that the application for the operating permit modification or the plan approval, if otherwise required, for averaging NO_x emissions on either a facility-wide or system-wide basis submitted under subsection (b) must demonstrate that the aggregate NO_x emissions emitted by the air contamination sources included in the facility-wide or system-wide NO_x emissions averaging plan are not greater than the NO_x emissions that would be emitted by the

group of included sources if each source complied with the applicable NO_x RACT emission limitation in § 129.112 on a source-specific basis.

Subsection (e) provides that the application for the operating permit modification or a plan approval, if otherwise required, specified in subsections (b)—(d) may include facility-wide or system-wide NO_x emissions averaging only for NO_x emitting sources or NO_x emitting facilities that are owned or operated by the applicant.

Subsection (f) provides that the application for the operating permit modification or a plan approval, if otherwise required, specified in subsections (b)—(e) must include the information identified in paragraphs (1)—(3). Paragraph (1) specifies that the application must identify each air contamination source included in the NO_x emissions averaging plan. Paragraph (2) specifies that the application must list each air contamination source's applicable emission limitation in § 129.112. Paragraph (3) specifies that the application must include methods for demonstrating compliance and recordkeeping and reporting requirements in accordance with § 129.115 for each source included in the NO_x emissions plan submitted under subsection (b).

Subsection (g) provides that an air contamination source or facility included in the facility-wide or system-wide NO_x emissions averaging plan submitted in accordance with subsections (b)—(f) may be included in only one facility-wide or system-wide NO_x emissions averaging plan.

No changes are made to subsections (c)—(g) from proposed to this final-form rulemaking.

Subsection (h) provides in paragraph (1) that the Department or appropriate approved local air pollution control agency will review the timely and complete NO_x emissions averaging plan submitted in accordance with subsections (b)—(g) and approve, deny or modify the NO_x emissions averaging plan, in writing, as specified in paragraphs (2)—(3). The Department or appropriate approved local air pollution control agency will approve the NO_x emissions averaging plan if the approving authority is satisfied that the NO_x emissions averaging plan complies with the requirements of subsections (b)—(g) and that the proposed NO_x emissions averaging plan is RACT for the air contamination sources. The approving authority will deny or modify the NO_x emissions averaging plan if the proposal does not comply with the requirements of subsections (b)—(g). Paragraphs (1)—(3) are amended from proposed to this final-form rulemaking to delete the words “subsection (b)” and add the words “subsections (b)—(g)” for clarity and completeness.

Subsection (i) provides that the proposed NO_x emissions averaging plan submitted under subsection (b) will be approved, denied or modified under subsection (h) by the Department or appropriate approved local air pollution control agency in accordance with 25 Pa. Code Chapter 127 prior to the owner or operator implementing the NO_x emissions averaging plan. Subsection (i) was amended from proposed to this final-form rulemaking to delete the words “subsection (h) in writing through the issuance of a plan approval or operating permit modification” and add the words “25 Pa. Code Chapter 127 (relating to construction, modification, reactivation and operation of sources)” to provide clarity in how the proposed NO_x emissions averaging plan will be approved, denied or modified.

Subsection (j) provides that the owner or operator of an air contamination source or facility included in the facility-wide or system-wide NO_x emissions averaging plan submitted in accordance with subsections (b)—(g) shall submit the reports and records specified in subsection (f)(3) to the Department or appropriate approved local air pollution control agency to demonstrate compliance with § 129.115.

Subsection (k) provides that the owner or operator of an air contamination source or facility included in a facility-wide or system-wide NO_x emissions averaging plan submitted in accordance with subsections (b)—(g) that achieves emission reductions in accordance with other emission limitations required under the APCA or the CAA, or regulations adopted under the APCA or the CAA, that are not NO_x RACT emission limitations may not substitute those emission reductions for the emission reductions required by the facility-wide or system-wide NO_x emissions averaging plan submitted to the Department or appropriate approved local air pollution control agency under subsection (b).

Subsection (l) provides that the owner or operator of an air contamination source subject to a NO_x RACT emission limitation in § 129.112 that is not included in a facility-wide or system-wide NO_x emissions averaging plan submitted under subsection (b) shall operate the source in compliance with the applicable NO_x RACT emission limitation in § 129.112.

Subsection (m) provides that the owner and operator of the air contamination source included in a facility-wide or system-wide NO_x emissions averaging plan submitted under subsection (b) shall be liable for a violation of an applicable NO_x RACT emission limitation at each source included in the NO_x emissions averaging plan regardless of each individual facility's NO_x emission rate.

Subsection (n) provides that the Department will submit each NO_x emissions averaging plan approved under subsection (i) to the Administrator of the EPA for approval as a revision to the SIP. The owner and operator of the facility shall bear the costs of public hearings and notifications, including newspaper notices, required for the SIP submittal.

No changes are made to subsections (j)—(n) from proposed to this final-form rulemaking.

§ 129.114. Alternative RACT proposal and petition for alternative compliance schedule

Subsection (a) provides that the owner or operator of an air contamination source subject to § 129.112 located at a major NO_x emitting facility or major VOC emitting facility subject to § 129.111 that cannot meet the applicable presumptive RACT requirement or RACT emission limitation of § 129.112 may propose an alternative RACT requirement or RACT emission limitation in accordance with subsection (d).

Subsection (b) provides that the owner or operator of a NO_x air contamination source with a potential emission rate equal to or greater than 5.0 tons of NO_x per year that is not subject to § 129.112 or §§ 129.201—129.205 located at a major NO_x emitting facility subject to § 129.111

shall propose a NO_x RACT requirement or RACT emission limitation in accordance with subsection (d).

Subsection (c) provides that the owner or operator of a VOC air contamination source with a potential emission rate equal to or greater than 2.7 tons of VOC per year that is not subject to § 129.112 located at a major VOC emitting facility subject to § 129.111 shall propose a VOC RACT requirement or VOC RACT emission limitation in accordance with subsection (d).

No changes are made to subsections (a)—(c) from proposed to this final-form rulemaking.

Subsection (d) provides that the owner or operator proposing an alternative RACT requirement or RACT emission limitation under subsection (a), (b) or (c) shall comply with the requirements in paragraphs (1)—(7). Proposed paragraph (1) established that the subject owner or operator shall submit a written RACT proposal in accordance with the procedures in § 129.92(a)(1)—(5), (7)—(10) and (b) (relating to RACT proposal requirements) to the Department or appropriate approved local air pollution control agency as soon as possible but not later than the date specified in subparagraphs (i) and (ii). Proposed subparagraph (i) specified the date 6 months after the date of publication of this final-form rulemaking, for a source subject to § 129.111(a). Proposed subparagraph (ii) specified the submittal is due not later than the date 6 months after the date of publication of this final-form rulemaking, or 6 months after the date that the source meets the definition of a major NO_x emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b).

Paragraph (1) is amended from proposed to this final-form rulemaking to establish that the RACT proposal shall be submitted in writing or electronically. This change provides flexibility to the subject owner or operator in submitting the RACT proposal.

Subparagraph (i) is amended from proposed to this final-form rulemaking to specify December 31, 2022, as the due date for a source subject to § 129.111(a)

Subparagraph (ii) is amended from proposed to this final-form rulemaking to specify the due date is either December 31, 2022, or 6 months after the date that the source meets the definition of a major NO_x emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b).

The changes to the due dates specified in subparagraphs (i) and (ii) are made to accommodate the length of time for this rulemaking to move through the regulatory development process and meet the implementation deadline of January 1, 2023, for states to implement the RACT requirements and RACT emission limitations to address the 2015 8-hour ozone NAAQS. This final-form rulemaking is expected to be published as a final-form rulemaking in the Pennsylvania Bulletin prior to the end of 2022.

No changes are made to paragraphs (2)—(7) from proposed to this final-form rulemaking.

Subsection (e) provides that the Department or appropriate approved local air pollution control agency will review the timely and complete alternative RACT proposal submitted in accordance

with subsection (d) and approve, modify or deny in writing the application as specified in paragraphs (1)—(3).

No change is made to subsection (e) from proposed to this final-form rulemaking.

Subsection (f) provides that the proposed alternative RACT requirement or RACT emission limitation and the implementation schedule submitted under subsection (d) will be approved, denied or modified under subsection (e) by the Department or appropriate approved local air pollution control agency in accordance with 25 Pa. Code Chapter 127 prior to the owner or operator implementing the alternative RACT requirement or RACT emission limitation. Subsection (f) was amended from proposed to this final-form rulemaking to delete the words “subsection (e) in writing through the issuance of a plan approval or operating permit modification” and add the words “25 Pa. Code Chapter 127 (relating to construction, modification, reactivation and operation of sources)” to provide clarity in how the proposed alternative RACT requirement or RACT emission limitation and the implementation schedule will be approved, denied or modified.

Subsection (g) provides that the emission limit and requirements specified in the plan approval or operating permit issued by the Department or appropriate approved local air pollution control agency under subsection (f) supersede the emission limit and requirements in the existing plan approval or operating permit issued to the owner or operator of the source prior to *blank* (*Editor’s Note: The blank refers to the effective date of this final-form rulemaking when published as a final-form rulemaking.*), on the date specified in the plan approval or operating permit issued by the Department or appropriate approved local air pollution control agency under subsection (f), except to the extent the existing plan approval or operating permit contains more stringent requirements.

Subsection (h) provides that the Department will submit each alternative RACT requirement or RACT emission limitation approved under subsection (f) to the Administrator of the EPA for approval as a revision to the SIP. The owner and operator of the facility shall bear the costs of public hearings and notifications, including newspaper notices, required for the SIP submittal.

No changes are made to subsections (g) and (h) from proposed to this final-form rulemaking.

Subsection (i) provides that an owner or operator subject to subsection (a), (b) or (c) and § 129.99 (relating to alternative RACT proposal and petition for alternative compliance schedule) that has not modified or changed a source that commenced operation on or before October 24, 2016, and has not installed and commenced operation of a new source after October 24, 2016, may, in place of the alternative RACT requirement or RACT emission limitation required under subsection (d), submit an analysis, certified by the responsible official, in writing or electronically to the Department or appropriate approved local air pollution control agency on or before December 31, 2022, that demonstrates that compliance with the alternative RACT requirement or RACT emission limitation approved by the Department or appropriate approved local air pollution control agency under § 129.99(e) assures compliance with the provisions in subsections (a)—(c) and (e)—(h), except for sources subject to § 129.112(c)(11) or (i)—(k). Proposed subsection (i) provided that compliance with the requirements in § 129.99(a)—(h)

assures compliance with the provisions in subsections (a)—(h), except for sources subject to § 129.112(b)(11), (h)(4) and (5) or (i)—(k). Subsection (i) was amended from proposed to this final-form rulemaking to add the words “subsections (a)—(c) and (e)—(h), except for sources subject to § 129.112(c)(11) or (i)—(k)” after the words “with the provisions in” and deleted the words “subsections (a)—(h), except for sources subject to § 129.112(b)(11), (h)(4) and (5) or (i)—(k).”

Subsection (i) is further amended from proposed to this final-form rulemaking to add paragraphs (1) and (2) to establish the procedures an owner or operator shall follow to submit the analysis required under subsection (i) if the owner or operator chooses to demonstrate compliance with subsections (a)—(c) and (e)—(h) in accordance with subsection (i). Paragraph (1) establishes cost-effectiveness thresholds of \$7,500 per ton of NO_x emissions reduced and \$12,000 per ton of VOC emissions reduced as “screening level values” to determine the amount of analysis and due diligence that the owner or operator shall perform if there is no new pollutant specific air cleaning device, air pollution control technology or technique available at the time of submittal of the analysis.

Final-form paragraph (1)(i) specifies that the owner or operator of a subject source or facility that evaluates and determines that there is no new pollutant specific air cleaning device, air pollution control technology or technique available at the time of submittal of the analysis and that each technically feasible air cleaning device, air pollution control technology or technique evaluated for the alternative RACT requirement or RACT emission limitation approved by the Department or appropriate approved local air pollution control agency under § 129.99(e) had a cost effectiveness equal to or greater than \$7,500 per ton of NO_x emissions reduced or \$12,000 per ton of VOC emissions reduced shall include the information specified in paragraph (1)(i)(A)—(E) in the analysis. Clause (A) specifies a statement that explains how the owner or operator determined that there is no new pollutant specific air cleaning device, air pollution control technology or technique available. Clause (B) specifies a list of the technically feasible air cleaning devices, air pollution control technologies or techniques previously identified and evaluated under § 129.92(b)(1)—(3) included in the written RACT proposal submitted under § 129.99(d) and approved by the Department or appropriate approved local air pollution control agency under § 129.99(e). Clause (C) specifies a summary of the economic feasibility analysis performed for each technically feasible air cleaning device, air pollution control technology or technique listed in clause (B) and the cost effectiveness of each technically feasible air cleaning device, air pollution control technology or technique as submitted previously under § 129.99(d) or as calculated consistent with the EPA Air Pollution Control Cost Manual, 6th Edition, EPA/452/B-02-001, January 2002, as amended. Clause (D) specifies a statement that an evaluation of each economic feasibility analysis summarized in clause (C) demonstrates that the cost effectiveness remains equal to or greater than \$7,500 per ton of NO_x emissions reduced or \$12,000 per ton of VOC emissions reduced. Clause (E) specifies that the owner or operator shall provide additional information requested by the Department or appropriate approved local air pollution control agency that may be necessary for the evaluation of the analysis.

Final-form paragraph (1)(ii) specifies that the owner or operator of a subject source or facility that evaluates and determines that there is no new pollutant specific air cleaning device, air pollution control technology or technique available at the time of submittal of the analysis and

that each technically feasible air cleaning device, air pollution control technology or technique evaluated for the alternative RACT requirement or RACT emission limitation approved by the Department or appropriate approved local air pollution control agency under § 129.99(e) had a cost effectiveness less than \$7,500 per ton of NO_x emissions reduced or \$12,000 per ton of VOC emissions reduced shall include the information specified in paragraph (1)(ii)(A)—(F) in the analysis. Clauses (A)—(C) are the same as clauses (A)—(C) under paragraph (1)(i). Clause (D) specifies a statement that an evaluation of each economic feasibility analysis summarized in clause (C) demonstrates that the cost effectiveness remains less than \$7,500 per ton of NO_x emissions reduced or \$12,000 per ton of VOC emissions reduced. Clause (E) specifies that the owner or operator shall include a new economic feasibility analysis for each technically feasible air cleaning device, air pollution control technology or technique listed in clause (B) in accordance with § 129.92(b)(4). Clause (F) specifies that the owner or operator shall provide additional information requested by the Department or appropriate approved local air pollution control agency that may be necessary for the evaluation of the analysis.

Final-form paragraph (2) establishes procedures in paragraph (2)(i)—(iii) that the owner or operator of a subject source or facility that evaluates and determines that there is a new or upgraded pollutant specific air cleaning device, air pollution control technology or technique available at the time of submittal of the analysis shall follow. Subparagraph (i) requires that the owner or operator perform a technical feasibility analysis and an economic feasibility analysis in accordance with § 129.92(b). Subparagraph (ii) requires that the owner or operator submit the analyses performed under subparagraph (i) to the Department or appropriate approved local air pollution control agency for review. Subparagraph (iii) requires that the owner or operator provide additional information requested by the Department or appropriate approved local air pollution control agency that may be necessary for the evaluation of the analysis.

The changes in subsection (i) from proposed to this final-form rulemaking are made in response to concerns and comments submitted by the EPA on the proposed rulemaking. The EPA expressed concerns regarding the need for additional analysis to determine whether the case-by-case determinations made under §§ 129.96—129.100 (RACT II) for the 1997 and 2008 8-hour ozone NAAQS remain RACT for the 2015 8-hour ozone NAAQS under §§ 129.111—129.115 (RACT III).

Subsection (j) is amended from proposed to this final-form rulemaking to provide in paragraphs (1)—(4) that the Department or appropriate approved local air pollution control agency will review the analyses submitted in accordance with subsection (i), solicit public comment on the analyses and the Department's supporting documentation, prepare a summary of the public comments received on the analyses and responses to the comments, and as appropriate, issue the necessary plan approvals and operating permit modifications in conformance with 25 Pa. Code Chapter 127 for the analyses reviewed under paragraph (1).

Final-form subsection (k) provides that the Department will submit the analyses, supporting documentation and summary of public comments and responses described in subsection (j)(2) and (3) as well as the plan approvals and operation permit modifications issued under subsection (j)(4) to the Administrator of the EPA for approval as a revision to the Commonwealth's SIP.

Proposed subsection (j) is re-lettered in this final-form rulemaking as subsection (l) and provides that the owner and operator of a facility proposing to comply with the applicable RACT requirement or RACT emission limitation under subsection (a), (b) or (c) through the installation of an air cleaning device may submit a petition, in writing, requesting an alternative compliance schedule in accordance with paragraphs (1) and (2).

Final-form subsection (l) is further amended to add the words “or electronically” after “in writing.” This change provides flexibility to the subject owner or operator in how the petition may be submitted. Final-form subsection (l)(1) is amended to delete the word “written” to coordinate with the addition of “or electronically” in subsection (l). Final-form paragraph (1)(i) is amended from proposed to final to specify that the due date is December 31, 2022, for a source subject to § 129.111(a). Final-form paragraph (1)(ii) is amended from proposed to final to specify that the due date is December 31, 2022, or 6 months after the date that the source meets the definition of a major NO_x emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b). The amendment of final-form paragraphs (1)(i) and (ii) with the compliance date certain of December 31, 2022, in place of the proposed compliance date, which was the date of publication of this final-form rulemaking, is made to address the required deadline of January 1, 2023, in the EPA 2015 ozone implementation rule, for states to implement the RACT requirements and RACT emission limitations to address the 2015 8-hour ozone NAAQS. See 40 CFR 51.1312(a)(3)(i); see also 40 CFR 51.1316(b)(3)(1). Final-form paragraph (2) is amended to delete the word “written” to coordinate with the addition of “or electronically” in subsection (l).

Proposed subsection (k) is re-lettered in this final-form rulemaking as subsection (m) and provides that the Department or appropriate approved local air pollution control agency will review the timely and complete written petition requesting an alternative compliance schedule submitted in accordance with proposed subsection (j) and approve or deny the petition in writing. Final-form subsection (m) is amended to delete the word “written” and to delete subsection “(j)” and add subsection “(l).”

Proposed subsection (l) is re-lettered in this final-form rulemaking as subsection (n) and provides that the emission limit and requirements specified in the plan approval or operating permit issued by the Department or appropriate approved local air pollution control agency under proposed subsection (k), now final-form subsection (m), which supersedes the emission limit and requirements in the existing plan approval or operating permit issued to the owner or operator of the source prior to *blank* (*Editor’s Note: The blank refers to the effective date of this final-form rulemaking when published as a final-form rulemaking.*), on the date specified in the plan approval or operating permit issued by the Department or appropriate approved local air pollution control agency under proposed subsection (k), except to the extent the existing plan approval or operating permit contains more stringent requirements. Final-form subsection (n) is amended to delete subsection “(k)” and add subsection “(m).”

Proposed subsection (m) is re-lettered in this final-form rulemaking as subsection (o) and provides that approval or denial under proposed subsection (k), now final-form subsection (m), of the timely and complete petition for an alternative compliance schedule submitted under proposed subsection (j), now final-form subsection (l), will be effective on the date the letter of

approval or denial of the petition is signed by the authorized representative of the Department or appropriate approved local air pollution control agency. Final-form subsection (o) is amended to delete subsection “(k)” and add subsection “(m)” and to delete subsection “(j)” and add subsection “(l).”

Proposed subsection (n) is re-lettered in this final-form rulemaking as subsection (p) and provides that the Department will submit each petition for an alternative compliance schedule approved under proposed subsection (k), now final-form subsection (m), to the Administrator of the EPA for approval as a revision to the Commonwealth's SIP. The owner and operator of the facility shall bear the costs of public hearings and notifications, including newspaper notices, required for the SIP submittal. Final-form subsection (p) is amended to delete subsection “(k)” and add subsection “(m).”

§ 129.115. Written notification, compliance demonstration and recordkeeping and reporting requirements

Subsection (a) provides that the owner and operator of an air contamination source subject to this section and § 129.111 shall submit a notification, in writing or electronically, to the appropriate Regional Manager or the appropriate approved local air pollution control agency that proposes how the owner and operator intend to comply with the requirements of this section and §§ 129.111—129.114. Proposed subsection (a) specified that the written notification shall be submitted to the appropriate Regional Manager by the date 6 months after the date of publication of this final-form rulemaking and include the information specified in proposed paragraphs (1)—(6). Subsection (a) is amended from proposed to this final-form rulemaking to delete the word “written” and add a comma and the words “in writing or electronically” after the word “notification.” This change provides flexibility to the subject owner or operator in how the notification may be submitted. Subsection (a) is further amended from proposed to this final-form rulemaking to delete the due date of 6 months after the date of publication of this final-form rulemaking and to add the words “or appropriate approved local air pollution control agency” after the words “Regional Manager.”

Proposed subsection (a) included paragraphs (1)—(6) that specified the information to be included in the written notification. Proposed paragraph (1) specified that the written notification shall include the air contamination sources identified in § 129.111(a) as either subject to a RACT requirement or RACT emission limitation in §§ 129.112—129.114 or exempted from §§ 129.112—129.114. Proposed subsection (a) is amended from proposed to this final-form rulemaking to add new paragraph (1) to establish the due dates for the notification and renumber proposed paragraphs (1)—(6) as final-form paragraphs (2)—(7). Final-form paragraph (1) specifies that the notification shall be submitted to the appropriate Regional Manager or appropriate approved local air pollution control agency as soon as possible but not later than December 31, 2022, for a source subject to § 129.111(a) and not later than December 31, 2022, or 6 months after the date the source meets the definition of a major NO_x emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b).

The due dates specified in final-form paragraph (1) are established to accommodate the length of time for this rulemaking to move through the regulatory development process and meet the

implementation deadline of January 1, 2023, for states to implement the RACT requirements and RACT emission limitations to address the 2015 8-hour ozone NAAQS. This final-form rulemaking is expected to be published as a final-form rulemaking in the Pennsylvania Bulletin prior to the end of 2022.

Proposed subsection (a)(1) is renumbered as paragraph (2) in this final-form rulemaking. Paragraph (2) specifies that the notification shall identify the air contamination sources in § 129.111(a) as either subject to a RACT requirement or RACT emission limitation in §§ 129.112—129.114 or exempted from §§ 129.112—129.114.

Proposed subsection (a) is further amended from proposed to this final-form rulemaking to renumber proposed paragraph (2) as final-form paragraph (3) and proposed paragraph (3) as final-form paragraph (4). No other changes are made to final-form paragraphs (3) and (4) in this final-form rulemaking.

Proposed subsection (a)(4) is renumbered as paragraph (5) in this final-form rulemaking. Final-form paragraph (5) is further amended to delete the reference to paragraph (1) and add the reference to paragraph (2). Subparagraph (ii) is amended from proposed to this final-form rulemaking to delete the reference to paragraph (1)(i) and add the reference to paragraph (2)(i). Subparagraph (iv) is amended from proposed to this final-form rulemaking to delete the reference to paragraph (1)(ii) and add the reference to paragraph (2)(ii). These changes are made to correct the cross references.

Proposed subsection (a)(5) is renumbered as paragraph (6) in this final-form rulemaking. Final-form paragraph (6) is further amended to delete the reference to paragraph (2) and add the reference to paragraph (3). Subparagraph (ii) is amended from proposed to this final-form rulemaking to delete the reference to paragraph (2)(i) and add the reference to paragraph (3)(i). Subparagraph (iv) is amended from proposed to this final-form rulemaking to delete the reference to paragraph (2)(ii) and add the reference to paragraph (3)(ii). These changes are made to correct the cross references.

Proposed subsection (a)(6) is renumbered as paragraph (7) in this final-form rulemaking. Final-form paragraph (7) is further amended to delete the reference to paragraph (3) and add the reference to paragraph (4). This change is made to correct the cross reference.

Subsection (b) provides that, except as specified in subsection (d), the owner and operator of an air contamination source subject to a NO_x RACT requirement or RACT emission limitation or VOC RACT requirement or RACT emission limitation, or both, listed in § 129.112 shall demonstrate compliance with the applicable RACT requirement or RACT emission limitation by performing the monitoring or testing procedures under paragraphs (1)—(6). Proposed subsection (b) included paragraphs (1)—(5).

Paragraph (1) is amended from proposed to this final-form rulemaking to delete the word “and” after § 129.112(f), add a comma, and add the words “and direct-fired heaters, furnaces, ovens or other combustion sources subject to § 129.112(k)” after § 129.112(g)(1). These changes are made in response to comments received on the proposed rulemaking.

Paragraph (3) is amended from proposed to this final-form rulemaking to delete the word “rolling.” This change is made in response to comments received on the proposed rulemaking.

Proposed paragraph (5) is renumbered as paragraph (6) in this final-form rulemaking. Final-form paragraph (5) specifies that for a direct-fired heater, furnace, oven or other combustion source subject to § 129.112(k) with a continuous emissions monitoring system (CEMS), monitoring and testing shall be performed in accordance with the requirements in 25 Pa. Code Chapter 139, Subchapter C (relating to requirements for source monitoring for stationary sources), using a daily average. This requirement is added in response to comments received on the proposed rulemaking.

Final-form paragraph (6) is amended to clarify that for an air contamination source without a CEMS, monitoring and testing shall be performed in accordance with an emissions source test approved by the Department or appropriate approved local air pollution control agency that meets the requirements of Chapter 139, Subchapter A. The source test shall be conducted to demonstrate initial compliance and subsequently on a schedule set forth in the applicable permit. Final-form paragraph (6) is amended to delete “a Department approved” and add “approved by the Department or appropriate approved local air pollution control agency.” These changes are made to for clarity.

No changes are made to paragraphs (2) and (4) from proposed to this final-form rulemaking.

Subsection (c) provides that the owner or operator of a combined cycle combustion turbine may comply with the requirements in § 129.112(g)(2)(iii) on a mass-equivalent basis. The actual emissions during the compliance period must be less than the allowable emissions during the compliance period. The allowable emissions are calculated by multiplying actual heat input in million Btu during the compliance period by the applicable factor listed in paragraphs (1)—(4).

Subsection (c) is amended from proposed to this final-form rulemaking to delete the word “combined-cycle” and add the words “combined cycle” before the word “combustion.” This amendment is made to delete the hyphen in combined cycle. Subsection (c) is further amended from proposed to this final-form rulemaking to correct the cross-reference from § 129.112(g)(2)(ii) to § 129.112(g)(2)(iii). Paragraphs (1)—(4) are amended from proposed to this final-form rulemaking to correct the specified cross references. The cross reference in paragraph (1) is amended from § 129.112(g)(2)(ii)(A) to § 129.112(g)(2)(iii)(A). The cross reference in paragraph (2) is amended from § 129.112(g)(2)(ii)(B) to § 129.112(g)(2)(iii)(B). The cross reference in paragraph (3) is amended from § 129.112(g)(2)(ii)(C) to § 129.112(g)(2)(iii)(C). The cross reference in paragraph (4) is amended from § 129.112(g)(2)(ii)(D) to § 129.112(g)(2)(iii)(D). These changes are made to coordinate with the changes in § 129.112(g)(2) from proposed to this final-form rulemaking.

Subsection (d) provides that, except as specified in §§ 129.112(n) and 129.114(l), the owner and operator of an air contamination source subject to subsection (b) shall demonstrate compliance with the applicable RACT requirement or RACT emission limitation in accordance with the procedures in subsection (a) not later than the applicable date in paragraphs (1) and (2).

Subsection (d) is amended from proposed to this final-form rulemaking to correct the cross reference from § 129.114(j) to § 129.114(l) to coordinate with the changes made in § 129.114 from proposed to this final-form rulemaking. Subsection (d) is further amended from proposed to this final-form rulemaking to correct the cross reference from subsection (a) to subsection (b).

Subsection (e) provides that an owner or operator of an air contamination source subject to this section and §§ 129.111—129.113 may request a waiver from the requirement to demonstrate compliance with the applicable emission limitation listed in § 129.112 if the requirements in paragraphs (1)—(4) are met. Paragraph (1) is amended from proposed to this final-form rulemaking to add the words “or electronically” after the words “in writing.” This change is made to provide flexibility to the subject owner or operator in how the request for a waiver may be submitted.

The waiver in paragraph (1) shall be submitted by the applicable date in subparagraph (i) or (ii). Proposed subparagraph (i) established the due date as the date 6 months after the date of publication of this final-form rulemaking for a source subject to § 129.111(a). Subparagraph (i) is amended from proposed to this final-form rulemaking to establish the due date as December 31, 2022, for a source subject to § 129.111(a). Proposed subparagraph (ii) established the due date as the date 6 months after the date of publication of this final-form rulemaking or 6 months after the date that the source meets the definition of a major NO_x emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b). Subparagraph (ii) is amended from proposed to this final-form rulemaking to establish the due date as December 31, 2022, or 6 months after the date that the source meets the definition of a major NO_x emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b).

The changes to the due dates specified in subparagraph (i) and (ii) are made to accommodate the length of time for this rulemaking to move through the regulatory development process and meet the implementation deadline of January 1, 2023, for states to implement the RACT requirements and RACT emission limitations to address the 2015 8-hour ozone NAAQS. This final-form rulemaking is expected to be published as a final-form rulemaking in the Pennsylvania Bulletin prior to the end of 2022.

No changes are made to paragraphs (2)—(4) from proposed to this final-form rulemaking.

Subsection (f) provides that the owner and operator of an air contamination source subject to this section and §§ 129.111—129.114 shall keep records to demonstrate compliance with §§ 129.111—129.114 and submit reports to the Department in accordance with the applicable regulations in 25 Pa. Code, Part 1, Subpart C, Article III (relating to air resources) and as specified in the operating permit or plan approval for the air contamination source as set forth in paragraphs (1)—(3). Paragraph (3) is amended from proposed to this final-form rulemaking to delete the words “Subpart C, Article III (relating to air resources) regulations” and add the words “applicable regulation” before the words “or as otherwise specified.” This amendment is made in response to *Sierra Club v. EPA*, 972 F.3d 290 (3d Cir. 2020) to clarify that the owners and operators are required to comply with existing recordkeeping and reporting requirements, to which the owners and operators are already subject under existing Commonwealth law and as

specified in the applicable operating permit or plan approval for the air contamination source. These recordkeeping and reporting requirements were previously approved as revisions to the Commonwealth's SIP. No changes are made to paragraphs (1) and (2) from proposed to this final-form rulemaking.

Subsection (g) provides that, beginning with the compliance date specified in § 129.112(a), the owner or operator of an air contamination source claiming that the air contamination source is exempt from the applicable NO_x emission rate threshold specified in § 129.114(b) and the requirements of § 129.112 based on the air contamination source's potential to emit shall maintain records that demonstrate to the Department or appropriate approved local air pollution control agency that the air contamination source is not subject to the specified emission rate threshold.

Subsection (h) provides that, beginning with the compliance date specified in § 129.112(a), the owner or operator of an air contamination source claiming that the air contamination source is exempt from the applicable VOC emission rate threshold specified in § 129.114(c) and the requirements of § 129.112 based on the air contamination source's potential to emit shall maintain records that demonstrate to the Department or appropriate approved local air pollution control agency that the air contamination source is not subject to the specified emission rate threshold.

No changes are made to subsections (g) and (h) from proposed to this final-form rulemaking.

Subsection (i) provides that the owner or operator of a combustion unit or process heater subject to § 129.112(b) shall record each adjustment conducted under the procedures in § 129.112(b). This record must contain, at a minimum, the information specified in paragraphs (1)—(6). Subsection (i) is amended from proposed to this final-form rulemaking to add the words “or process heater” after the word “unit.” This change is made for consistency with the corresponding amendments to § 129.112(b). No changes are made to paragraphs (1)—(6) from proposed to this final-form rulemaking.

Subsection (j) provides that the owner or operator of a Portland cement kiln subject to § 129.112(h) shall maintain a daily operating log for each Portland cement kiln. The record for each kiln must include the information specified in paragraphs (1)—(4).

Subsection (k) provides that the records shall be retained by the owner or operator for 5 years and made available to the Department or appropriate approved local air pollution control agency upon receipt of a written request from the Department or appropriate approved local air pollution control agency.

No changes are made to subsections (j) and (k) from proposed to this final-form rulemaking.

F. Summary of Comments and Responses on the Proposed Rulemaking

General Comments

The Board adopted the proposed rulemaking at its meeting on May 19, 2021. The proposed rulemaking was published at 51 Pa.B. 4333 (August 7, 2021). Three public hearings were held by the Department on September 7, 8 and 9, 2021, respectively. A 67-day public comment period closed on October 12, 2021.

Public comments were received from IRRC, the EPA and 25 commentators. Written comments were not received from the Senate or House Environmental Resources and Energy Committees. On November 12, 2021, IRRC submitted comments to the Board. The public comments received by the Board are summarized as follows and are addressed in a comment and response document which is available from the Department.

Public comments received from the EPA, businesses or regulated industries, industry trade associations, a neighboring state and nongovernmental organizations sought further clarification regarding certain provisions of the proposed rulemaking or for the Board to revise provisions of the proposed rulemaking. IRRC and the EPA sought clarification from the Department regarding what additional analysis the Department will require from the owners and operators of subject facilities that seek to rely on previously approved RACT II conditions to meet RACT III for the 2015 8-hour ozone standard and whether such information would be included as part of the regulatory record to ensure compliance with EPA SIP requirements.

In response to comments from IRRC and the EPA, the Board has amended § 129.114(i) from the proposed rulemaking to this final-form rulemaking to establish requirements for additional analysis to be included in the RACT III case-by-case evaluations. The Board believes that final-form § 129.114(i) provides the conditions to support those instances where the Department or appropriate approved local air pollution control agency may determine that the previously established RACT II controls and limits remain RACT for the 2015 8-hour ozone NAAQS. Final-form § 129.114(i) addresses the EPA's comment that the source shall not have had any significant changes to operations, emission levels, or other site or source specific factors analyzed during the original determination for that source's RACT II permits. Final-form § 129.114(i) establishes the conditions that an owner or operator subject to final-form § 129.114(a), (b) or (c) and to § 129.99 (relating to alternative RACT proposal and petition for alternative compliance schedule) shall not have modified or changed a source that commenced operation on or before October 24, 2016, and shall not have installed and commenced operation of a new source after October 24, 2016. The date of October 24, 2016, is the date specified in § 129.99(i)(1) by which written RACT proposals to address the 1997 and 2008 8-hour ozone NAAQS were due to the Department or the appropriate approved local air pollution control agency from the owner or operator of an air contamination source located at a major NO_x emitting facility or a major VOC emitting facility subject to § 129.96(a) or (b) (relating to applicability).

An owner or operator that is subject to final-form § 129.114(a), (b) or (c) and to § 129.99 and meets the conditions stipulated in final-form § 129.114(i), may, in place of proposing an

alternative RACT requirement or RACT emission limitation under final-form § 129.114(d), submit an analysis, certified by the responsible official, in writing or electronically to the Department or appropriate approved local air pollution control agency on or before December 31, 2022, that demonstrates that compliance with the alternative RACT requirement or RACT emission limitation approved by the Department or appropriate approved local air pollution control agency under § 129.99(e) for the 1997 and 2008 8-hour ozone NAAQS remains RACT for purposes of the 2015 8-hour ozone NAAQS under final-form § 129.114(a)—(c) and (e)—(h), except for sources subject to final-form § 129.112(c)(11) or (i)—(k). The excepted sources specified in final-form § 129.112(c)(11) and (i)—(k) are electric arc furnaces, glass melting furnaces, lime kilns and direct-fired heaters, furnaces, ovens or other combustion sources. These source types did not have presumptive RACT requirements or RACT limitations established under §§ 129.96—129.100 (RACT II). The owners and operators of these source types must comply with the applicable presumptive RACT requirement or RACT limitation, or both, established in § 129.112(c)(11) and (i)—(k). If an owner or operator cannot comply with the applicable requirement or limitation established in § 129.112(c)(11) and (i)—(k), the owner or operator may apply for an alternative RACT requirement or RACT limitation under final-form § 129.114(d).

Final-form § 129.114(i)(1) and (2) address the EPA’s comments about “non-controversial sources,” that is, sources which were well below the dollar per ton of NO_x or VOC threshold used for the case-by-case RACT II analysis of economic feasibility, as well as the EPA’s comments regarding the need for additional case-specific analysis for certain sources or source categories. Final-form § 129.114(i)(1) and (2) establish the process and information needed for the owners and operators of both categories of sources to document for the record that for each source or generic source category, the relevant control technologies and their costs have not changed significantly enough to change the prior RACT II analysis. The Department established cost-effectiveness thresholds of \$7,500 per ton of NO_x emissions reduced and \$12,000 per ton of VOC emissions reduced as “screening level values” for determining if the economic feasibility analyses previously submitted under § 129.99(e) for the 1997 and 2008 8-hour ozone NAAQS should be updated for the 2015 8-hour ozone NAAQS. The NO_x screening level value of \$7,500 is twice the amount of the RACT III cost-effectiveness benchmark for presumptive NO_x RACT (\$3,750). The RACT III cost-effectiveness benchmark for presumptive VOC RACT, \$7,500, is larger in absolute magnitude than the RACT III cost-effectiveness benchmark of \$3,750 for presumptive NO_x RACT, therefore the Department set the VOC screening level value at approximately one and one-half times the amount of the VOC RACT III cost-effectiveness benchmark. These screening level values are large enough to ensure that a cost-prohibitive control technology evaluated under § 129.99 with a cost-effectiveness that is equal to or greater than \$7,500 per ton of NO_x emissions reduced or \$12,000 per ton of VOC emissions reduced is still cost-prohibitive for the purposes of final-form § 129.114 without the need for re-evaluation of economic feasibility. If the cost-prohibitive control technology evaluated under § 129.99 had a cost-effectiveness that is less than \$7,500 per ton of NO_x emissions reduced or \$12,000 per ton of VOC emissions reduced, then the owner or operator shall re-evaluate the economic feasibility of the control technology to verify that it remains cost-prohibitive for purposes of the 2015 8-hour ozone NAAQS.

Final-form § 129.114(i)(2) provides that the owner or operator of a subject source or facility that evaluates and determines that there is a new or upgraded pollutant specific air cleaning device, air pollution control technology or technique available at the time of the submittal of the analysis to the Department or appropriate approved local air pollution control agency shall do the following: perform a technical feasibility analysis and an economic feasibility analysis in accordance with § 129.92(b); submit the analyses to the Department or appropriate approved local air pollution control agency for review; and provide additional information requested by the Department or appropriate approved local air pollution control agency that may be necessary for the evaluation of the analysis.

An owner or operator subject to final-form § 129.114(a), (b) or (c) and to § 129.99 that has modified or changed a source that commenced operation on or before October 24, 2016, or has installed and commenced operation of a new source after October 24, 2016, shall comply with the requirements of final-form § 129.114(d) and propose an alternative RACT requirement or RACT emission limitation. These owners and operators may not use the analysis option under final-form § 129.114(i). This includes the owner or operator of a major NO_x emitting facility that is subject to final-form § 129.111 and was subject to §§ 129.96—129.100 (RACT II) and after October 24, 2016, installed a new source with a PTE of equal to or greater than 5 TPY of NO_x that is not subject to § 129.112 or §§ 129.201—129.205 (relating to additional NO_x requirements) as well as the owner or operator of a major VOC emitting facility that is subject to final-form § 129.111 and was subject to RACT II and after October 24, 2016, installed a new source with a PTE equal to or greater than 2.7 TPY of VOC that is not subject to final-form § 129.112 or has modified equipment (for example, boiler replacement). In this case, a case-by-case RACT analysis shall be performed on the new source or equipment.

In response to IRRC and EPA comments regarding procedures to comply with SIP requirements relating to public participation, the Board has amended final-form § 129.114(j) to provide that the Department or appropriate approved local air pollution control agency will review the analyses submitted under final-form § 129.114(i), solicit public comment on the analyses and supporting documentation, prepare a summary of the public comments and responses to the public comments, and, as appropriate, issue the necessary plan approvals and operating permit modifications in conformance with 25 Pa. Code Chapter 127 (relating to construction, modification, reactivation and operation of sources). The public comment steps for the analyses specified in final-form § 129.114(j)(2) and (3) are provided to satisfy the public participation requirements under section 110 of the CAA and 40 CFR 51.102 (relating to public hearings) for submitting materials to the Administrator of the EPA for approval as a revision to the Commonwealth's SIP under final-form § 129.114(k). If a plan approval or operating permit modification is issued under final-form § 129.114(j)(4), the plan approval or operating permit modification will undergo public comment as part of the issuing process in conformance with 25 Pa. Code Chapter 127.

IRRC and the EPA similarly asked what procedures the Department will follow to satisfy SIP requirements relating to public participation for instances where an owner and operator's previous RACT II determination remains RACT for the 2015 8-hour ozone standard. Final-form § 129.114(k) provides that the Department will submit the analyses, supporting documentation and summary of public comments and responses described in final-form § 129.114(j)(2) and (3) as well as the plan approvals and operating permit modifications issued under final-form §

129.114(j)(4) to the Administrator of the EPA for approval as a revision to the Commonwealth's SIP. These submissions will include all supporting information necessary for the record to demonstrate that the alternative RACT requirement or RACT emission limitation approved by the Department or appropriate local air pollution control agency under § 129.99(e) (RACT II) assures compliance with the provisions in final-form § 129.114 (a)—(c) and (e)—(h) (RACT III), that there is no further reduction in the emission limitations or tightening of the restrictions that is technically or economically feasible, and that no change has occurred at the source that would call into question whether the emission limitations in the RACT II permit remain RACT for the 2015 8-hour ozone NAAQS. The supporting documentation will include the applicable RACT II determinations, which will be made available to the public during the public comment period described under final-form § 129.114(j) and incorporated as part of the SIP submittal to the EPA.

IRRC and several commentators also raised concerns with the timeframe provided for affected owners and operators to comply with the final-form rulemaking and inquired what authority the Department is relying on to extend the compliance date beyond January 1, 2023.

The Board understands the concerns of IRRC and the commentators relating to the timeframe for implementation of the final-form rulemaking. However, the implementation date of January 1, 2023, is required by the EPA's 2015 ozone standard implementation rule. See 83 FR 62998 (December 6, 2018); see also 40 CFR 51.1316(b)(3). In this final-form rulemaking, owners and operators are required to submit alternative compliance schedules, averaging plan proposals and case-by-case proposals for alternative RACT requirements and RACT emission limitations to the Department or appropriate approved local air pollution control agency before the implementation date of January 1, 2023. Sources otherwise subject to the presumptive RACT limit and other RACT requirements for certain source categories in this final-form rulemaking will have to plan to begin complying with RACT III on the implementation date. To this end, the Department will be conducting direct outreach to the regulated community well in advance of the January 1, 2023, implementation date due to the short turnaround time between the expected promulgation date of this final-form rulemaking and the implementation date.

While the implementation date of January 1, 2023, is required by the EPA's 2015 8-hour ozone NAAQS implementation rule (40 CFR 51.1316(b)(3)), there are practical timing considerations for the owners and operators of sources that will need to install and operate control technologies in order to satisfy their applicable RACT III requirements. This includes submission of a plan approval from the owner or operator to the Department or appropriate approved local air pollution control agency, public participation and comment on the proposal as required by law, and ordering and installing the approved control technology as well as the installation of the new control technology or replacement of the existing control technology. Therefore, the requirements for alternative compliance schedules in this final-form rulemaking remain; owners and operators should plan to implement RACT as soon as possible when proposing an alternative compliance plan schedule subject to approval by the Department. Where an alternative compliance schedule, averaging plan proposal or case-by-case proposal is not submitted by the owner or operator to the Department or appropriate approved local air pollution control agency by December 31, 2022, or the owner or operator of the source is not otherwise complying with presumptive RACT III requirements and emissions limitations established for certain source categories on or after the implementation date, the Department will then consider

this to be a compliance matter subject to the Department's authority under the APCA (35 P.S. §§ 4001—4015), to issue notices of violation and conduct enforcement, as appropriate. This approach was previously approved for RACT II by the EPA on May 9, 2019 (84 FR 20274).

IRRC and other commentators had several inquiries regarding the Regulatory Analysis Form (RAF) for the proposed rulemaking. First, IRRC and some commentators contend that the RAF and the Technical Support Document (TSD) submitted with the proposed rulemaking underestimate the number of facilities that will have to install additional RACT controls and fail to account for the cost of new equipment that will be required to meet the new limits imposed by the proposed rulemaking. IRRC requested that the Board provide additional documentation and reasoning to justify the \$25 million number or revise this estimate accordingly and include these cost estimates in Section F of the Preamble to this final-form rulemaking. IRRC and a commentator suggested that the Department's estimated costs incurred by the affected owners and operators to comply with the proposed rulemaking presented in Question #19 of the RAF are underestimated as the alternative compliance options will entail legal and consulting services, which would exceed the estimated cost of \$4,000—6,000 estimated by the Department. IRRC and some commentators also note that the Department did not account for its costs in having to process additional case-by-case proposals and petitions due to lower presumptive limits proposed for multiple source categories. IRRC also asked for the Department to update Question #23 of the RAF to accurately account for the actual cost estimates, which are properly calculated under Question #19 of the RAF.

In response to comments on the RAF from IRRC and others, the Department determined that the owners and operators of approximately 115 engines and turbines would be required to install add-on control technology to meet the presumptive NO_x RACT III emission limitations. Since the publication of the proposed rulemaking, the Department has updated the estimates to reflect that implementation of the final-form control measures could reduce NO_x emissions by as much as 9,800 TPY from engines, turbines and municipal waste combustors and reduce VOC emissions by as much as 825 TPY from engines and turbines. The value of \$25 million has been updated to approximately \$36.7 million per year and was derived from multiplying the estimated 9,800 TPY of NO_x emission reductions by the NO_x RACT cost-effectiveness threshold of \$3,750. The Department does not anticipate any additional costs to the regulated industry to meet the lower VOC standards contained in this final-form rulemaking. Optimization of existing VOC controls should be sufficient to meet the VOC standards in this final-form rulemaking.

No changes were made to Question #19 of the RAF in response to comments from IRRC and other commentators that the Department underestimated the costs of compliance. The Board finds that \$4,000 to \$6,000 is a reasonable estimation of costs that covers public hearings and notifications, including newspaper notices, required for the SIP submittal, as well as application fees. The estimated cost does not include any legal or consultation fees that a company may choose to incur. The cost range provided by the commentator of \$4.4 to \$8.8 million is based on the assumption that 250—500 facilities will require alternative compliance provisions. The Board finds this to be an overestimation as the owners and operators of less than 200 facilities submitted either averaging plans or case-by-case proposals under RACT II. The Department anticipates that the number of facilities for which an averaging plan or case-by-case proposal will be submitted under RACT III will be less than 200. Further, the Department notes that final-form § 129.114(i) provides owners and operators with the opportunity to submit an analysis, where

applicable, demonstrating that RACT II conditions remain RACT for the 2015 8-hour ozone standard. For the owners and operators of eligible subject sources, this administratively efficient and less resource intensive approach than conducting a full case-by-case analysis, will likely reduce consulting costs that an owner or operator may choose to incur.

In response to comments from IRRC and others commenting that the Department did not account for its own costs in having to process additional case-by-case proposals and petitions due to lower presumptive limits proposed for multiple source categories, the Board finds that the Department will not incur any significant additional costs from the implementation of this final-form rulemaking. In the RAF, the Department explains that existing Department staff will be working to review and process alternative compliance schedules, NO_x averaging plans and case-by-case proposals as it did in RACT II; no additional staff will be hired as a result of implementation of this final-form rulemaking. The Board's final-form amendments to § 129.114(i) provide for an administratively efficient and less resource intensive process that it anticipates some affected owners and operators will use to demonstrate that RACT II conditions remain appropriate for RACT III. While this process in final-form § 129.114(i)—(k) is anticipated to save the regulated community costs, the Department will be handling the newspaper publications in these instances, and therefore, incur costs for the required publication of newspaper notices. Accordingly, the Board has revised the RAF based on the Department's estimate of these additional publication and advertising costs.

As previously explained in response to IRRC's request, the total cost to the regulated community in Questions #19 and #23 of the RAF have been revised accordingly to approximately \$36.7 million per year.

IRRC and a commentator commented that the presumptive limit for glass melting furnaces in § 129.112 will conflict with industry-specific regulations that glass melting furnaces are subject to under 25 Pa. Code §§ 129.301-129.310 and that the Department did not provide an explanation in the Preamble of the proposed rulemaking as to why these facilities are subject to RACT III when they were not previously subject to RACT II for the 2008 8-hour ozone standard. IRRC and the commentator requested that operational flexibility for start-up, shutdown and idling that exists for glass melting furnaces in the current regulations be added to this final-form rulemaking. IRRC and a commentator also noted that the proposed rulemaking was overdue and urged its final adoption as soon as possible. IRRC and other commentators commented that stricter emission limits be adopted for certain source categories such as steel producing facilities, coal-fired power plants and municipal waste combustors.

In response to comments from IRRC and another commentator regarding the conflict between this rulemaking and the existing requirements in §§ 129.301—129.310, the Department explains that each time the EPA revises a NAAQS under section 109 of the CAA, the Commonwealth is required to meet the applicable RACT obligations for covered sources under sections 182 and 184 of the CAA (42 U.S.C.A. §§ 7511a and 7511c). The Department has determined that certain provisions, including § 129.303(a) relating to emissions requirements during periods of start-up, shutdown, or idling, in the existing glass melting furnace regulations preclude §§ 129.301—129.310 from meeting the presumptive standards in § 129.112(i) for the 2015 8-hour ozone NAAQS because these provisions do not include enforceable emissions limits. See EPA's

Reinstatement of its 2015 SSM Policy, available at: [Emissions During Periods of Startup, Shutdown, & Malfunction \(SSM\) | US EPA](#) The EPA's SSM Policy precludes the type of flexibility sought by IRRC and the commentator. The EPA also expressed concerns regarding the certification of §§ 129.301—129.310 as RACT for the 1997 and 2008 8-hour ozone NAAQS; §§ 129.301—129.310 were not approved as RACT in the Commonwealth's SIP by the EPA for the 1997 and 2008 8-hour ozone NAAQS. See 76 FR 52283 (August 22, 2011). In response to these comments, the Board has amended final-form § 129.112(m) to reflect that the requirements and emission limitations for glass melting furnaces in § 126.112(i) would supersede existing requirements under §§ 129.301—129.310 unless the requirements or emission limitations of §§ 129.301—129.310 are more stringent.

Owners and operators of a major NO_x emitting facility or a major VOC emitting facility as defined in § 121.1 are subject to RACT III as described in final-form § 129.111. If an owner or operator of a glass melting furnace source cannot meet the presumptive RACT limit in final-form § 129.112(i), then the owner or operator may opt to submit a case-by-case proposal under final-form § 129.114. Certification of final-form § 129.112(i) as RACT for glass melting furnaces for the 2015 8-hour ozone NAAQS will be presumed to certify RACT for glass melting furnaces for the 1997 and 2008 8-hour ozone NAAQS. If an owner or operator cannot meet a presumptive RACT emission limit established under § 129.112(i), the owner or operator may submit a case-by-case proposal for an alternative RACT emission limitation.

In response to comments from IRRC and another commentator that the RACT III rulemaking is overdue and needs to be adopted as soon as possible, the Board acknowledges the comments. The Department has worked diligently to finalize this comprehensive rulemaking as quickly as possible. Litigation over certain aspects of the EPA's approval of certain provisions of the RACT II final-form rulemaking (84 FR 20274; May 9, 2019) in *Sierra Club v. EPA*, 972 F.3d 290 (3d Cir. 2020) has, in part, delayed the RACT III rulemaking.

In response to comments from IRRC and another commentator regarding the stringency of emissions limitations for coal-fired power plants, the Board explains that a coal-fired combustion unit with a rated heat input greater than 250 million Btu/hour, including an EGU with SCR, has no presumptive NO_x RACT requirement or RACT emissions limitation specified in § 129.112. Therefore, § 129.114(a) is not applicable. Owners and operators of these large coal-fired combustion units are required to propose a NO_x RACT requirement or RACT emission limitation under § 129.114(b).

The owners and operators of large coal-fired combustion units that are EGUs equipped with SCR were required to submit an alternative NO_x RACT proposal to satisfy the requirement of § 129.99. See *Sierra Club v. EPA*, 972 F.3d 290 (3d Cir. 2020). Therefore, these owners and operators may submit an analysis under final-form § 129.114(i) to demonstrate that their limitations issued under §§ 129.96—129.100 (RACT II) remain RACT for §§ 129.111—129.115. These analyses received under § 129.114(i) along with supporting documentation will be subject to public comment to meet the Commonwealth's SIP public participation obligations under section 110 of the CAA and 40 CFR 51.102.

§ 129.111. Applicability.

IRRC and a commentator commented that the use of “that were in existence on or before August 3, 2018,” in proposed subsection (a) is vague and sought clarity. In response to these comments, the Board has amended this final-form rulemaking to provide further clarity. In final-form § 129.111(a) and (b), the words “commenced operation” have replaced “in existence.” While “commenced operation” is not defined in § 121.1, the words “commenced operation” are used in the definition of the term “new source” and also widely used in plan approvals issued by the Department’s Air Quality Program.

The Board finds that the Department does not intend for the RACT III provisions to be continually reapplied to new sources at major facilities. The intent of the applicability date in § 129.111(a) and (b) is that RACT should be determined once for each existing major facility or source in accordance with the requirements for the applicable 8-hour ozone NAAQS as the major facility or source exists on the applicability date. The applicability date in § 129.111(a) and (b), namely, August 3, 2018, is the effective date of the designations of the nonattainment areas in this Commonwealth for the 2015 8-hour ozone NAAQS. See 83 FR 25776, 25828 (June 4, 2018).

In response to the EPA’s suggestion that the scope of applicability of § 129.111(a) be narrowed to exclude new sources at existing major facilities, the Board has amended the language of § 129.111(a)(1) and (2) to clarify that the requirements apply to the owner and operator of major sources and facilities subject to § 129.111(a) that commenced operation on or before August 3, 2018. Installation and operation of a new source after August 3, 2018, at a major facility covered by § 129.111(a) is excluded from being identified and listed in accordance with § 129.111(a)(1) and (2) in the notification required under § 129.115(a). A new source installed after August 3, 2018, or the new major facility that commences operation after August 3, 2018, would instead be subject, at a minimum, to a best available technology (BAT) determination which can be no less stringent than RACT established for the 2015 8-hour ozone NAAQS under §§ 129.111—129.115 (RACT III).

The EPA asked the Department to clarify if new facilities that came into existence after July 20, 2012, are not subject to RACT, or alternatively, whether those new facilities would be subject to a newer RACT standard. In response to the EPA’s questions regarding the applicability of RACT to the owners and operators of new [major] facilities that came into existence after July 20, 2012, the applicability date of §§ 129.96—129.100 (RACT II), the Department provides that the owner and operator of a major facility or source that commenced operation after July 20, 2012, but on or before August 3, 2018, would not have been subject to, or evaluated for, RACT for the 1997 and 2008 8-hour ozone NAAQS under §§ 129.96—129.100 (RACT II); rather, the owner and operator of the major facility or source would have been subject, at a minimum, to a BAT determination which could be no less stringent than the RACT II requirements for the 1997 and 2008 8-hour ozone NAAQS. The owner or operator of a major facility or source that commenced operation after July 20, 2012, and is in operation on or before August 3, 2018, would be subject to § 129.111(a) and would be evaluated for and issued an operating permit with the applicable RACT III requirements or emissions limitations, or both, for the 2015 8-hour ozone NAAQS for the major facility or source as it existed on or before August 3, 2018. If the owner or operator of this major facility then installs a new source after August 3,

2018, it is not the Department's intent to require an updated RACT III analysis for the 2015 8-hour ozone NAAQS for the facility, as explained above regarding the scope of applicability of § 129.111(a); rather, the new source would be subject to a BAT determination which can be no less stringent than RACT established for the 2015 8-hour ozone NAAQS under §§ 129.111—129.115 (RACT III).

In response to the EPA's suggestion that the language in § 129.111(b) be clarified, the Board provides that the owner or operator of a non-major facility that commenced operation after July 20, 2012, and is in operation on or before August 3, 2018, would not have been subject to RACT II under §§ 129.96—129.100 nor would they be subject to § 129.111(a), since the facility is not a major facility. If the owner and operator of a non-major facility that commenced operation on or before August 3, 2018, then installs and commences operation of a new source after August 3, 2018, or makes a modification or change in operation after August 3, 2018, of a source that commenced operation on or before August 3, 2018, to the extent that the source or facility now meets the definition of a major NO_x emitting facility or major VOC emitting facility, this owner and operator is subject to the requirements of § 129.111(b). The owner or operator will be evaluated by the Department for applicable RACT III requirements for the 2015 8-hour ozone NAAQS and be issued an operating permit with the applicable RACT III requirements. Once this source or facility meets major status and has been evaluated for applicable RACT III requirements under §§ 129.111—129.115, installation of a subsequent new source or a subsequent modification or change in operation of an existing source after the date of issuance of the permit would be subject to a BAT analysis which could be no less stringent than the RACT III requirements.

As specified under final-form § 129.111(d), the owner and operator of a facility that commenced operation on or before August 3, 2018, that is not a major NO_x emitting facility or a major VOC emitting facility on or before December 31, 2022, would not be subject to §§ 129.111—129.115, except as specified in final-form § 129.111(e). Final-form § 129.111(e) specifies that if the owner and operator of a facility that complied with § 129.111(d) becomes major after December 31, 2022, the owner and operator of the now-major facility shall comply with § 129.111(b). This requirement precludes the situation in which an owner or operator of a major facility or source that is subject to § 129.111(a), or an owner or operator of a facility or source that is subject to § 129.111(b) that becomes major after August 3, 2018, then falls below the applicable major facility threshold on or before December 31, 2022, from being exempt from §§ 129.111—129.115 if the source or facility becomes major again after December 31, 2022.

The owner and operator of a source or facility that commences operation after August 3, 2018, would not be subject to §§ 129.111—129.115. These owners and operators would be evaluated according to applicable programs such as BAT or new source review. These owners and operators may become subject to future RACT requirements or RACT emission limitations, or both, that are implemented to address a future ground-level ozone NAAQS or revision to an existing ground-level ozone NAAQS. These owners and operators would be evaluated for RACT applicability at that time.

IRRC and a commentator asked the Board to explain in the preamble of this final-form rulemaking how the exemptions in subsection (c) will be implemented for facilities that have the potential to emit less than a certain amount of NO_x or VOCs. In response to these comments, the

Board explains that the source exemptions listed in § 129.111(c) are based on potential emissions or potential to emit (PTE). A source that qualifies for an exemption under § 129.111(c) either does not have the physical capability to emit 1 TPY or more of NO_x or VOCs or has a legal restriction that prohibits it from emitting 1 TPY or more of NO_x or VOCs. A change that would allow the source to emit 1 TPY or more of NO_x or VOCs would be a modification subject to BAT requirements. A modification that occurs after December 31, 2022, would not be subject to the RACT requirements and RACT emissions limitations of §§ 129.112—129.115 except as specified in § 129.111(e). The Board notes, however, that this modification may become subject to future RACT requirements or RACT emissions limitations, or both, that are implemented to address a future ground-level ozone NAAQS or revision to an existing ground-level ozone NAAQS. These owners and operators would be evaluated for RACT applicability at that time.

A commentator asked the Board to revise the definitions of “major NO_x emitting facility” and “major VOC emitting facility” to exclude the 25 TPY thresholds for Bucks, Chester, Delaware, Montgomery and Philadelphia Counties consistent with RACT II. In response to the commentator’s request, the Department has explained that it intends for the major facility applicability thresholds established for Bucks, Chester, Delaware, Montgomery and Philadelphia Counties under RACT II to also apply for RACT III. Therefore, the Board has revised the definitions of major NO_x emitting facility and major VOC emitting facility in this final-form rulemaking to clarify that the applicability thresholds for Bucks, Chester, Delaware, Montgomery or Philadelphia County for purposes of §§ 129.96—129.100 and 129.111—129.115 are 100 TPY for NO_x emissions and 50 TPY for VOC emissions.

A commentator asked why sources subject to § 129.74 were not excluded from the proposed rulemaking as they were in RACT II. In response, the Board has revised § 129.111(a) and (b) in this final-form rulemaking to include § 129.74 in the list of excepted sections. Section 129.74 implements RACT requirements and RACT emission limitations consistent with the EPA’s applicable Control Techniques Guidelines (CTG) (EPA 453/R-08-004, 2008/09 Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials) and sources subject to § 129.74 are exempted from the major source RACT requirements in §§ 129.96—129.100 and §§ 129.111—129.115.

§ 129.112. Presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule.

Subsection (b)

A commentator commented that proposed § 129.112 did not address the presumptive requirements for process heaters between 20—50 million Btu/hour and asked if it is the Department’s intention that these units be subject to case-by-case RACT under RACT III, similar to RACT II.

The Board has amended final-form § 129.112(b)(1)(i) and (ii) to add “or process heater.”

Subsection (c)

IRRC and a commentator suggested that “flare” be added to the list of equipment that must be installed, operated and maintained in accordance with manufacturer’s specifications and with good operating practices under § 129.112(c)(8) if the revision would improve clarity.

The Board has amended proposed § 129.112(c)(8) in this final-form rulemaking to add the word “flare.”

Some commentators commented that the Board has only adopted “good operating practices” for electric arc furnaces (EAF) and suggested that the Department and the Board should revise the TSD to include an analysis of RACT requirements for electric arc furnaces. Another commentator commented that steel producing facilities might improve their air emissions performance through more stringent RACT standards and suggested that the Department consider a meaningful work practices plan to control coke oven emissions from leaking doors, lids, offtake piping and charging of coke oven batteries as well as a leak detection and repair program for VOCs.

In response to comments regarding RACT III requirements for steel producing facilities, the Department explained that it evaluated several EAFs as part of case-by-case determinations for RACT II. The Department determined that no NO_x or VOC emissions control for EAF is technically feasible. This is because EAF do not use combustion and are batch processes. Since there is no combustion, methods used to alter NO_x and VOC emissions cannot be employed as they would for a combustion source. Therefore, the Board has determined that a numerical RACT emissions limitation for either NO_x or VOC emissions from an EAF is not appropriate. The Board finds that the applicable presumptive RACT requirement of “good operating practices” is consistent with previous RACT determinations and is appropriate for EAF in this Commonwealth. Additional information can be found in Section IV(L) of the Department’s TSD for this final-form rulemaking.

Due to the nature and complexity of certain sources, such as steel mills and coke ovens, it is not appropriate to establish presumptive RACT requirements or RACT emissions limitations. See 44 FR 53761, 53762-53763 (September 17, 1979); see also 57 FR 18070, 18073--18074 (April 28, 1992). Owners and operators of sources with no presumptive RACT requirements or RACT emissions limitations are required to submit a case-by-case proposal for an alternative RACT requirement or RACT emissions limitation (alternative RACT proposal). If the facility is in Allegheny County, the alternative RACT proposal is submitted to and reviewed by the Allegheny County Health Department (ACHD).

Case-by-case proposals for alternative RACT requirements or RACT emissions limitations submitted to ACHD must be submitted by the Department to the EPA as a SIP revision. These proposals must meet the same requirements and undergo the same SIP review process as alternative RACT proposals submitted to the Department. Additionally, the Department provides support to ACHD during the review of alternative RACT proposals.

Subsection (e)—Municipal Solid Waste Landfills

A commentator requested that proposed § 129.112(e) be amended to reflect recent changes in applicable Federal regulations published in the *Federal Register* on May 21, 2021, effective June 21, 2021, pertaining to the adoption of the Federal Plan for municipal solid waste landfills that commenced construction on or before July 17, 2014, and landfills that are constructed, reconstructed or modified on or after July 18, 2014.

The Board believes that the commentator is referring to the EPA final rule published at 86 FR 27756 on May 21, 2021. The Board has revised final-form section 129.112(e) to incorporate the updated Federal regulations at 40 CFR Part 62, Subpart OOO (relating to Federal plan requirements for municipal solid waste landfills that commenced construction on or before July 17, 2014 and have not been modified or reconstructed since July 17, 2014). The Board notes that § 129.113(e)(2) requires a municipal solid waste landfill constructed, reconstructed or modified on or after July 18, 2014, to comply with the New Source Performance Standards in 40 CFR Part 60, Subpart XXX (relating to standards of performance for municipal solid waste landfills that commenced construction, reconstruction, or modification after July 17, 2014), which are adopted and incorporated by reference in § 122.3 (relating to adoption of standards).

Subsection (f)—Municipal Waste Combustors

The EPA commented that the prior NO_x emission standard for municipal waste combustors in § 129.97 is proposed to be reduced from 180 ppmvd to 150 ppmvd. The Department's analysis determined that additional controls (for example, selective catalytic reduction/selective non-catalytic reduction (SCR/SNCR)) were technically or economically infeasible, or both. However, the EPA commented that the record does not explain what measures will be necessary for the sources to meet the new limits and does not demonstrate that 150 ppmvd is the lowest rate that is technically and economically feasible. Several of the sources appear to be capable of operating at lower emission rates. The EPA asked that the Department explain what analysis was performed to determine that 150 ppmvd is RACT for these units. Several commentators commented that the Department should set a lower limit for this source category.

The limit for MWCs in § 129.97 is 180 ppmvd. The Board has revised proposed § 129.112(f) from 150 ppmvd NO_x @ 7% oxygen to a more stringent limit of 110 ppmvd NO_x @ 7% oxygen in this final-form rulemaking based on the Department's review of information provided by commentators during the public comment period as well as the Department's review of available stack test emissions data. The supporting analysis is found in Section IV(E) of the Department's TSD for this final-form rulemaking.

Another commentator commented that the proposed rulemaking establishes no process for considering whether an individual source can achieve a stronger and more protective limit and weakens the standard by allowing the owner or operator of a municipal waste combustor to meet the presumptive limit through facility or system-wide averaging, which the commentator claimed poses a particular threat to environmental justice areas. The commentator requested the Board correct this.

In response to a commentator's request, the Board declines to make any revisions to this final-form rulemaking. The Department explained that it is appropriate to set presumptive RACT requirements and RACT emissions limitations for certain source categories, including MWCs, in this final-form rulemaking. A presumptive limit is set at a level that, when met, assures that the Commonwealth's RACT obligation under the CAA has been met. See *NRDC v. EPA*, 571 F.3d 1245, 1253-1255 (D.C. Cir. 2009). With respect to the ability for owners and operators to use systemwide NO_x averaging, the Board finds that the Department has adequately explained the ability and limitations for owners and operators to use systemwide averaging in responses to Comments 99 and 100 of the comment and response document. NO_x emissions averaging plans or alternative RACT proposals are submitted to the Department for review and approval, denial or modification in accordance with § 129.113(g) and (i). The NO_x emissions averaging plan or alternative RACT proposal approval or modification and the Department's proposed actions are subject to public review and comment at the State level before being finalized by the Department. If approved and issued by the Department as an operating permit modification, the NO_x emissions averaging plan or alternative RACT proposal must be submitted by the Department to the EPA as a revision to the Commonwealth's SIP. The local county agencies in Allegheny County and Philadelphia County follow a similar process.

Another commentator commented that SNCR control technology cannot be employed at some municipal waste combustor facilities due to the type of technology employed there and noted that the Department determined that retrofitting with SNCR is economically infeasible. In response, the Board notes that § 129.112(f) has been amended by the Board from the proposed 150 ppmvd NO_x @ 7% oxygen to 110 ppmvd NO_x @ 7% oxygen in this final-form rulemaking. The NO_x emission rate of 110 ppmvd @ 7% oxygen on a 24-hour averaging period for large MWCs was recommended by the OTC SAS MWC workgroup in its June 2021 "Municipal Waste Combustor Workgroup Report" and is supported by the Department's cost-effectiveness analysis. If an owner or operator cannot meet the presumptive emission limit, the owner or operator has the option to submit a case-by-case proposal for an alternative RACT emission limitation under § 129.114.

Subsection (g)(1)—Combustion Units or Process Heaters

IRRC and other commentators asked the Board to explain in the Preamble of this final-form rulemaking the rationale for using an operating day to measure emission limits for coal-waste plants for an operating day under § 129.112(g)(1)(viii), instead of a 30-day rolling average.

In response, the Board finds that the proposed use of an operating day is appropriate. Based on continuous emissions monitoring data for the years 2018—2020, the Department determined that circulating fluidized bed boilers (CFBs) can meet the presumptive NO_x RACT emissions limitation on a daily basis including periods of start-up, shutdown and low load operation. The owner or operator has the option to submit a case-by-case proposal for an alternative RACT emission limitation under final-form § 129.114 if they believe that the presumptive RACT limitation cannot be met at all times. Please see Section IV(F) of the Department's TSD for this final-form rulemaking.

A commentator commented that start-up and periods of low load operations should be exempted from the presumptive NO_x RACT requirement for circulating fluidized bed boilers firing primarily coal refuse.

The Board finds that presumptive RACT requirements must be enforceable limits and apply at all times, including periods of start-up, shutdown and low load operation, which is consistent with the EPA's 2015 SSM Policy, available at: [Emissions During Periods of Startup, Shutdown, & Malfunction \(SSM\) | US EPA](#)

Commentators commented that the presumptive NO_x RACT emissions limit for circulating fluidized bed boilers primarily firing anthracite waste such as culm should be the same rate as those primarily firing bituminous waste such as gob.

The Board agrees with the commentators. The RACT emission limitation for a CFB combustion unit with a rated heat input equal to or greater than 250 million Btu/hour firing waste products of coal mining, physical coal cleaning and coal preparation operations that contain coal, matrix material, clay and other organic and inorganic material is 0.16 lb. NO_x/million Btu heat input when firing primarily bituminous waste such as gob and 0.16 lb. NO_x/million Btu heat input when firing primarily anthracite waste such as culm.

Another commentator commented that the proposed rulemaking should be amended to include a lowered presumptive NO_x emissions limit for coal-fired EGUs without the problematic inlet-temperature loophole from RACT II; and that the Commonwealth's "case-by-case approach" for coal plant NO_x RACT determinations, involving a "top-down analysis," is inappropriate for several reasons. The commentator recommended that the Commonwealth set a new NO_x RACT standard for its coal-fired power plants that incorporates a 0.07 lb NO_x/million Btu emission limit, avoids control inlet temperature-based exemptions, and includes a short term, 24-hour emission limit at least as low as 0.125 lb NO_x/million Btu.

The commentator's suggestion that the Board establish a presumptive RACT limit for coal-fired electric generating units is outside the scope of this rulemaking. Nothing in the CAA or regulations thereunder mandates that the Commonwealth establish a presumptive RACT limit for coal-fired power plants as suggested by the commentator. The CAA provides States with "broad authority to determine the methods and particular control strategies they will use to achieve the [CAA] statutory requirements." See *BCCA Appeal Group v. EPA*, 355 F.3d 817, 822 (5th Cir. 2003). The determination of RACT and the corresponding emission rate ensuring the proper application and operation of RACT may vary from source to source due to source configuration, retrofit feasibility, operating procedures, raw materials, and other technical or economic characteristics of a source or group of sources. Memorandum from Roger Strelow, Assistant Administrator for Air and Waste, USEPA, to Regional Administrators I-X, "Guidance for determining Acceptability of SIP Regulations in Non-Attainment Areas" (December 9, 1976) at 2, available at: https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19761209_strelow_ract.pdf; see also *Nat'l Steel Corp., Great Lakes Steel Div. v. Gorsuch*, 700 F.2d 314, 322–323 (6th Cir. 1983).

For some categories of sources, the EPA has promulgated CTGs and alternative control techniques documents (ACTs) to assist states in determining what control techniques meet the RACT requirement; states may opt to require alternative controls rather than following the CTGs. See *NRDC v. EPA*, 571 F.3d 1245, 1253-1254 (D.C. Cir 2009). The ACTs issued under section 183 of the CAA (42 U.S.C.A. § 7511b), such as the EPA’s 1994 Alternative Control Techniques Document for Utility Boilers, do not establish presumptive levels of control. *Id.* Moreover, simply because other states have chosen to establish presumptive RACT limits for their coal-fired EGUs does not mean that the Commonwealth is required to do so or that the limits selected are appropriate. See Memorandum from William T. Harnett, Director, Air Quality Policy Division, USEPA, to Regional Air Division Directors, “RACT Qs & As – Reasonably Available Control Technology (RACT): Questions and Answers” (May 18, 2006), at 1 and 3, available at: https://www.epa.gov/sites/production/files/201608/documents/ract_and_nsps_1dec1988.pdf (A State may elect to select to establish “beyond-RACT controls” for policy reasons).

Although the Department is under no obligation to establish presumptive RACT requirements and RACT emissions limitations for a specific source category, the Department may do so when the Department determines that a source category contains emission units that are similar enough in nature that the emission units in the source category can be regulated by a consistent emissions limitation or requirement. However, based on the varying sizes, various operating scenarios and conditions, and other varying factors for coal-fired EGUs in this Commonwealth, the Department determined that it is appropriate for owners and operators of large coal-fired combustion units to obtain case-specific RACT determinations. Through these case-by-case submittals, the Department will be reviewing advances in technology. See *NRDC v. EPA*, 71 F.3d 1245 (D.C. Cir 2009). This position is supported by the EPA at 44 FR 53761, 53762-53763 (September 17, 1979), regarding State Implementation Plans, General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas-Supplement (on Control Techniques Guidelines) and at 57 FR 18070, 18073-18074 (April 28, 1992), regarding State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental. See also 57 FR 55620 (November 25, 1992), regarding State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, at page 55624, paragraph 3.4, “VOC and NO_x Emissions.”

The Department previously submitted case-by-case submittals under §§ 129.91—129.95 (RACT I) to the EPA to meet the Commonwealth’s RACT obligations under the CAA for the 1979 and 1993 1-hour ozone NAAQS. The Department is currently conducting case-by-case determinations under §§ 129.96—129.100 (RACT II) for existing coal-fired combustion units with SCR systems as a result of the United States Court of Appeals for the Third Circuit’s decision in *Sierra Club v. EPA*, 972 F.3d 290 (3d Cir 2020). (“Sierra Club”). In *Sierra Club*, the Third Circuit noted that older coal plants may elect to submit source-specific RACT proposals under § 129.99. *Id.* at 296.

The Department determined that the best method to comply with the Third Circuit’s decision in *Sierra Club* is through requiring the owner or operator of each coal-fired combustion unit affected by the Court’s decision to submit case-by-case RACT determinations in accordance

with the procedures in § 129.92(a)(1)—(5) and (b), which includes a top-down analysis due to variability in operation and control device configuration. A top-down RACT analysis ranks the technically feasible air pollution control technologies from most effective control to least effective control. Each technically feasible air pollution control technology is then analyzed for economic feasibility (cost analysis). The highest ranking technically feasible air pollution control technology that is economically feasible is the air pollution control technology that is selected for installation and operation on the source.

Subsection (g)(2)—Combustion Turbines

IRRC and a commentator asked the Board to explain in the preamble to this final-form rulemaking the rationale for establishing 85 ppmvd NO_x as a presumptive RACT emission limitation under proposed § 129.112(g)(2)(iii)(A) and whether existing technology allows for that level of compliance.

In response to IRRC and the commentator's comment, the Board has amended the source categories for turbines by separating and adding an additional group for turbines in the 1,000 bhp—4,100 bhp size range in this final-form rulemaking. The emission limit of concern is now in final-form § 129.112(g)(2)(iv)(A). The Department explained that in its review of the comments on the proposed rulemaking, it analyzed additional information provided by a turbine manufacturer as well as additional stack test data, and determined that existing technology does not allow for installation of additional control technology and, therefore, does not provide for the level of control proposed by the Board. The Board has revised the presumptive standard in the final-form rulemaking to 120 ppmvd NO_x @ 15% oxygen.

A commentator requested modifying the bhp size range for simple cycle or regenerative cycle combustion turbines in § 129.112(g)(2)(iii) and (iv) from 3,000 bhp to 4,100 bhp to alleviate alternative RACT submittals for the Centaur® 40 4000 rating, which does not have a DLNC technology option and, therefore, is unable to meet the proposed 42 ppmvd NO_x level.

The Department reviewed the information provided by the commentator regarding the available turbines located in this Commonwealth. The information demonstrated that turbines with a rating less than 4,100 bhp cannot consistently meet the proposed 42 ppmvd NO_x standard. Therefore, the Board has revised proposed § 129.112(g)(2)(iii) in this final-form rulemaking to revise the size ranges for simple cycle or regenerative cycle combustion turbines. The size threshold of 3,000 bhp in proposed § 129.112(g)(2)(iii) for simple cycle or regenerative cycle combustion turbines has been amended in this final-form rulemaking to 4,100 bhp. Further, the Board notes that proposed § 129.112(g)(2)(iii) is renumbered as final-form § 129.112(g)(2)(iv).

The Board has renumbered proposed § 129.112(g)(2)(iv) in this final-form rulemaking to § 129.112(g)(2)(v). Renumbered § 129.112(g)(2)(v) is further amended in this final-form rulemaking to establish the applicable presumptive RACT emissions limitations for the owner or operator of a simple cycle or regenerative cycle combustion turbine with a rated output equal to or greater than 4,100 bhp (rather than the proposed rated output of 3,000 bhp) and less than 60,000 bhp. No changes are made to the applicable presumptive RACT emission limitations from proposed § 129.112(g)(2)(iv)(A)—(D) to final-form § 129.112(g)(2)(v)(A)—(D).

A commentator suggested splitting the source category for § 129.112(g)(2)(i) to add a source category for combined cycle and combined heat and power turbines for equal to and greater than 1,000 bhp to less than 4,100 bhp and modify the current source category to range from greater than 4,100 bhp to less than or equal to 180 megawatts (MW).

Proposed § 129.112(g)(2)(i) established the applicable presumptive RACT emissions limitations for the owner or operator of a combined cycle or combined heat and power combustion turbine with a rated output equal to or greater than 1,000 bhp and less than 180 MW. The Board has amended § 129.112(g)(2)(i) in this final-form rulemaking to establish the applicable presumptive RACT emissions limitations for the owner or operator of a combined cycle or combined heat and power combustion turbine with a rated output equal to or greater than 1,000 bhp and less than 4,100 bhp (rather than less than 180 MW). Section 129.112(g)(2)(i)(A) is amended from proposed to this final-form rulemaking to delete the proposed limitation of 42 ppmvd NO_x @ 15% oxygen and add the limitation of 120 ppmvd NO_x @ 15% oxygen. Section 129.112(g)(2)(i)(C) is amended from proposed to this final-form rulemaking to delete the limitation of 96 ppmvd NO_x @ 15% oxygen and add the limitation of 150 ppmvd NO_x @ 15% oxygen. These limits are consistent with the presumptive NO_x RACT emission limitations for the simple cycle or regenerative cycle combustion turbines in final-form § 129.112(g)(2)(iv).

The commentator also requested the NO_x emissions level for the newly created category match the level requested for simple cycle turbines in § 129.112(g)(2)(iii) at 150 ppmvd NO_x.

Proposed § 129.112(g)(2)(iii)(A) is amended in this final-form rulemaking to revise the applicable presumptive RACT emission limitation for simple cycle or regenerative cycle combustion turbines when firing natural gas or a noncommercial gaseous fuel. Based on the Department's review of the information provided by the commentator as well as the Department's review of available stack test emissions data, the Board has revised the presumptive NO_x RACT emissions limitation of 85 ppmvd @ 15% oxygen to 120 ppmvd @ 15% oxygen. Please also see Section IV(G) of the Department's TSD for this final-form rulemaking.

Further, the Board has renumbered proposed § 129.112(g)(2)(iii)(A) in this final-form rulemaking as § 129.112(g)(2)(iv)(A).

Subsection (g)(3)—Stationary Internal Combustion Engines

IRRC and some commentators commented that the proposed rulemaking included a typographical error where it states a lower NO_x limit for rich burn engines of 0.6 gram/bhp-hr (for all engine sizes); the TSD indicates 2.0 gram/bhp-hr for all units regardless of horsepower.

The Board has revised the final-form rulemaking to correct this typographical error. The proposed limit of 0.6 gram NO_x/bhp-hr in § 129.112(g)(3)(iv)(A) has been revised to a limit of 2.0 gram NO_x/bhp-hr.

Subsection (g)(4)—Combustion Unit or Process Heater Firing Multiple Fuels

IRRC and a commentator questioned how the owner or operator of a unit firing multiple fuels can comply with the requirements of § 129.112(g)(4) if beneficially reused process gases are used as fuels. IRRC asked the Board to explain in the preamble to this final-form rulemaking how this provision will be implemented.

In response to IRRC and the commentator's comment, the Department did not have sufficient data for other fuels to determine a presumptive NO_x RACT emission limitation for this source category. Therefore, the owner or operator of a source firing a fuel not covered under the presumptive RACT emission limitations is required to submit a case-by-case proposal for an alternative RACT emissions limitation in accordance with final-form § 129.114(b) or § 129.114(c). The owner or operator may propose a method of compliance similar to the calculation in final-form § 129.112(g)(4)(i) as part of the case-by-case RACT proposal.

Subsection (e)—Glass Melting Furnaces

A commentator stated that RACT III would indirectly revoke important components of the existing glass melting furnace regulations regarding allowable emissions during start-up, shutdown and idling, and the provisions for alternative limits, claiming that the provisions of this final-form rulemaking would effectively impose a zero emissions limit for NO_x during these periods. The commentator commented that the proposed RACT III rulemaking should not override and essentially rescind other currently applicable regulations without recognition and notice of the effect of the proposed rulemaking and without any explanation by the Board as to the rationale and basis for doing so.

Each time the EPA revises a NAAQS under section 109 of the CAA, the Commonwealth is required to meet the applicable RACT requirements for covered sources under sections 182 and 184 of the CAA (42 U.S.C.A. §§ 7511a and 7511c). These duties are charged to the Department and the Board, respectively, under the APCA. See for example, 35 P.S. §§ 4004, 4004.2 and 4005. The Department determined that certain provisions, including § 129.303(a), in the existing glass melting furnace regulations preclude §§ 129.301—129.310 from meeting the presumptive standards in § 129.112(i) for the 2015 8-hour ozone NAAQS. The EPA also expressed concerns regarding the certification of §§ 129.301—129.310 as RACT for the 1997 and 2008 8-hour ozone NAAQS; §§ 129.301—129.310 were not approved as RACT in the Commonwealth's SIP by the EPA for the 1997 and 2008 8-hour ozone NAAQS. See 76 FR 52283 (August 22, 2011). Under the final-form rulemaking, the owner or operator of a glass melting furnace source that cannot meet the presumptive limit in § 129.112(i) may opt to submit a case-by-case proposal under § 129.114. Certification of § 129.112(i) as RACT for glass melting furnaces for the 2015 8-hour ozone NAAQS will be presumed to certify RACT for glass melting furnaces for the 1997 and 2008 8-hour ozone NAAQS.

RACT requirements and RACT emissions limitations are applicable at all times, including start-up, shutdown and idling. The presumptive NO_x RACT limits for glass melting furnaces are in units of pounds of NO_x per ton of glass pulled. The Board disagrees with the commentator that the presumptive NO_x RACT emissions limitation effectively imposes a zero emissions limit for

NO_x during start-up, shutdown and idling. During times when glass is not being pulled, the emissions in terms of pounds of NO_x per ton of glass pulled is undefined, not zero. The RACT limit is therefore only practically applicable at times when glass is being pulled. If an owner or operator cannot meet a presumptive RACT emission limit, the owner or operator may submit a case-by-case proposal for an alternative RACT emission limitation.

RACT emission limitations must be enforceable to be approvable by the EPA as a SIP revision. Exemptions from emission limitations during periods of start-up, shutdown and malfunction (SSM) existed in a number of other States' regulations, some of which exemptions were adopted and approved into those States' SIPs by the EPA many years ago. Court decisions have previously held that under the CAA, such exemptions are not allowed in SIPs. See, for example, *Sierra Club et al. v. Jackson*, No. 3:10-cv-04060-CRB (N.D. Cal.). In response to these court decisions, on June 12, 2015, the EPA published a final rule to restate and update the EPA's SSM Policy applicable to SIPs and to ensure States have plans in place that are fully consistent with the CAA and court decisions concerning emissions during periods of SSM operations. See 80 FR 33840 (June 12, 2015) (2015 SSM final action). The 2015 SSM final action embodies the EPA's updated SSM Policy as it applies to SIP provisions. The SSM Policy provides guidance to states for compliance with CAA requirements for SIP provisions applicable to excess emissions during SSM events. On October 9, 2020, the EPA issued a memorandum of guidance providing that exemption provisions for SSM may be permissible in SIPs under certain circumstances. On September 30, 2021, the EPA issued a memorandum withdrawing the previous October 9, 2020, guidance and reinstated the agency's prior policy in the 2015 SSM final action that SSM exemptions in SIPs are inconsistent with the CAA.

A commentator also commented that the TSD provided by the Department inaccurately relied on the EPA's Cost Control Manual to estimate the cost of NO_x controls for glass melting furnaces and that the RACT III proposal is essentially silent on the rationale behind the imposition of presumptive RACT for glass melting furnaces.

In response, the Board finds based on explanation from the Department that the EPA Control Cost Manual is an accepted source for the determination of economic feasibility for NO_x control technologies. These determinations of economic feasibility are not dependent on the source type. In this case, presumptive RACT is established as a NO_x emissions limitation and does not mandate an emissions control strategy. For example, oxy-firing can be used to meet presumptive NO_x RACT emissions limitations without the necessity to install particulate emission control technology.

The Department evaluated cost information provided by the commentator, which in part, also relied on the EPA Control Cost Manual. The Department also reviewed the analysis for various emission control scenarios submitted by the commentator for the regional haze four-factor analysis, which is a separate requirement under section 169A of the CAA (42 U.S.C.A. § 7491) and implementing regulations. The Department determined that based on the information provided, the control devices included in the analysis are cost-effective as RACT for the control of NO_x emissions from glass melting furnaces. If an owner or operator cannot meet the presumptive RACT emission limit, the owner or operator may submit a case-by-case proposal for an alternative RACT emission limitation under final-form § 129.114.

Subsection (j)—Lime Kilns

A commentator requested that the Board revise the proposed rulemaking to once again include the specific lb NO_x/hr 30-operating day rolling average numerical limits associated with Graymont's Kiln 6, Kiln 7 and Kiln 8. The commentator noted that substantial system changes would have to occur to incorporate live production data into the well-established CEMS data management system with no environmental benefit.

The Board declines to revise this final-form rulemaking as requested by the commentator and disagrees that substantial changes would be needed to demonstrate compliance with the proposed standard. The amount of lime produced is a known quantity and can be added to the CEMS data management system. According to the Department, the calculation of a lb NO_x per ton of lime produced value is not unnecessarily burdensome.

Subsection (k)—Direct-Fired Heaters, Furnaces and Ovens

A commentator inquired why the new definition "combustion source" was not used in proposed § 129.112(k). The Board agrees with the commentator that the term "combustion source" can be included in § 129.112(k). The term "combustion source" specifically includes sources that produce heat or energy by direct heat transfer. Direct-fired heaters, furnaces and ovens produce heat or energy by direct heat transfer and are combustion sources. In contrast, a "combustion unit" is defined as a stationary equipment used to burn fuel primarily for the purpose of producing power or heat by indirect heat transfer. The Board has amended final-form § 129.112(k) to include the words "or other combustion source" after the words "direct-fired heater, furnace, oven."

IRRC and a commentator commented that the proposed rulemaking applies the same NO_x limit for a direct-fired heater, furnace or oven as the limit for indirect-fired furnaces established under RACT II. The commentator asked for clarification on the basis for this decision. IRRC asked the Board to include the rationale for this standard in the supporting documents and preamble submitted with this final-form rulemaking. The commentator requested that the Department provide additional information to support the proposed presumptive RACT requirement for direct-fired units and suggested that the Department should not require sources to redo case-by-case RACT determinations that were evaluated and approved in RACT II.

In response to the comment, the Board notes that presumptive RACT emissions limitations were not established in RACT II for direct-fired units. Under RACT II, owners and operators of direct-fired units were required to submit a case-by-case proposal for an alternative RACT emission limitation under § 129.99. The addition of presumptive NO_x RACT limitations for direct-fired units in the RACT III rulemaking gives owners and operators more flexibility to comply with RACT requirements and RACT emission limitations. If an owner or operator cannot meet the applicable presumptive RACT emissions limitation under RACT III, the owner or operator may submit a case-by-case proposal under § 129.114(d) for an alternative RACT emission limitation.

The owner or operator may also be able to submit an analysis under § 129.114(i) to the Department or appropriate approved local air pollution control agency to demonstrate that the RACT emission limitation approved under § 129.99(e) (RACT II) remains RACT for RACT III. The process provided under § 129.114(i) for eligible facilities is less resource intensive than preparing a case-by-case proposal under § 129.114(d) for an alternative RACT emission limitation.

§ 129.113. Facility-wide or system-wide NO_x emissions averaging plan general requirements.

IRRC and a commentator asked the Board to explain in the preamble of this final-form rulemaking why the ability of an owner or operator to file for an averaging plan under § 129.113 is contingent on one unit not being able to meet the NO_x RACT limit. The commentator noted that facility-wide and system-wide averaging plans should be able to be submitted at the discretion of the owner or operator to provide greater flexibility and still be protective of public health, safety and the environment. IRRC also asked the Board to explain in the preamble of this final-form rulemaking why the ability of an owner or operator to use system-wide averaging is limited to sources located in the same ozone nonattainment area.

The Board disagrees with the commentator that the owner and operator of an affected source may choose the emissions averaging compliance option without requiring the owner or operator to first demonstrate that the applicable presumptive RACT emissions limitation established for a certain source category cannot be met by the individual affected units. The averaging plan is provided as an alternative compliance option to meeting applicable source-specific presumptive RACT NO_x emissions limitations if one or more of the individual affected units cannot meet the applicable presumptive RACT NO_x emissions limitation. If all affected units can individually meet the applicable presumptive RACT NO_x emissions limitations, then no averaging plan is warranted.

System-wide averaging is required to be among sources under common control of the same owner or operator within the same ozone nonattainment area in order to conform to the CAA and the D.C. Circuit Court of Appeals ruling in *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009). See 83 FR 62998, 63007 (December 6, 2018); see also *South Coast Air Quality Management Dist. v. EPA*, 882 F.3d. 1138, 1154 (D.C. Cir. 2018). All areas located in unclassifiable/attainment areas in an OTR state are considered to be the same ozone nonattainment area. Allowing system-wide averaging to include units from different ozone nonattainment areas would have the potential to increase or keep emissions higher in separate maintenance areas for the ozone NAAQS. This would conflict with the anti-backsliding provisions of the CAA. Furthermore, compliance with the applicable presumptive RACT NO_x emissions limitations is the most cost-effective compliance method available to the owner and operator of an affected source. Submission of an averaging plan entails costs for developing the plan and submitting it to the Department.

The EPA commented that proposed § 129.113(n) would add new language that specifies that averaging plans will be submitted to the EPA for approval. The EPA commented that proposed § 129.113(n) appears to be new language added by the Commonwealth to alert source owners and operators using an averaging plan that the averaging plan will be submitted to the EPA for approval. The EPA asked how the Department will determine whether the emissions from the

two sources in the averaging plan are less than if both sources complied with presumptive RACT as would be required under proposed § 129.113(d) and also asked whether the demonstration of compliance with this method would be part of a permit and enforceable.

While the EPA references in its comment two sources included in the averaging plan, the Board notes that the averaging plan could include more than two sources.

The final-form rulemaking requires that the aggregate NO_x emissions emitted by the air contamination sources included in the facility-wide or system-wide NO_x emissions averaging plan be less than or equal to the amount of NO_x emissions that would be emitted by the group of included sources if each source complied with the applicable NO_x RACT emissions limitation in § 129.112 on a source-specific basis. This demonstration is done on a mass basis consistent with the appropriate averaging period for each presumptive NO_x emissions limitation. The exact calculations may vary somewhat among the averaging plans, so the final-form rulemaking does not specify the precise details in order to preserve flexibility in differing circumstances. Each averaging plan will be reviewed by the Department on a case-by-case basis. The provisions of each averaging plan, including terms and conditions regarding compliance, will be included in a plan approval or operating permit. Those terms and conditions will be submitted to the EPA as a SIP revision.

§ 129.114. Alternative RACT proposal and petition for alternative compliance schedule.

The EPA commented that proposed § 129.114(a) seems to not allow coal-fired electric generating units (EGU) to request case-by-case determinations under RACT III because there is no presumptive RACT for this source category in proposed § 129.112. The EPA commented that the Department should clearly notify the public when publicly noticing proposed case-by-case RACT II permits for coal-fired EGUs with SCRs that it intends to use the same limits to satisfy RACT for the 2015 ozone NAAQS and that the RACT II comment period will be the last opportunity to comment on whether the RACT II limits also meet the RACT III requirements.

In response, the Board notes that a coal-fired combustion unit with a rated heat input greater than 250 million Btu/hour, including an EGU with SCR, has no presumptive NO_x RACT requirement or emission limitation specified in § 129.112. Therefore, § 129.114(a) is not applicable. Owners and operators of these large coal-fired combustion units are required to propose a NO_x RACT requirement or RACT emissions limitation under § 129.114(b).

The owners and operators of large coal-fired combustion units that are EGUs equipped with SCR were required to submit an alternative NO_x RACT proposal to satisfy the requirement of § 129.99. Therefore, these owners and operators will also submit an analysis under § 129.114(i) to demonstrate that their limitations issued under §§ 129.96—129.100 (RACT II) remain RACT for §§ 129.111—129.115. These analyses received under § 129.114(i) will be subject to public comment to meet the SIP public participation requirements under section 110 of the CAA and 40 CFR 51.102.

Another commentator commented that any technically feasible reductions would be nominal with high cost-effectiveness values and, as a result, the Department would create a need to process a significant number of alternative RACT petitions and will require significant resources.

The Board notes that presumptive RACT requirements and emission limitations were determined based on the technical and economic feasibility of emission control measures. The Department has developed an accompanying TSD for the source categories included in this final-form rulemaking. The Department expects that many owners and operators will benefit by complying with the presumptive RACT requirements and RACT emission limitations. If an owner or operator cannot meet a presumptive RACT requirement or RACT emissions limitation, the owner or operator may submit a case-by-case proposal for an alternative RACT emission limitation under § 129.114.

A commentator commented that cost-effectiveness values (dollar per ton of pollutant removed) arrived at in the Department's TSD evaluation for presumptive RACT are reasonable and should be used as a standard for case-by-case evaluations of alternative limitations.

The Board concludes it is not appropriate to use the cost-effectiveness dollars as the standard for case-by-case evaluations of alternative limits as recommended by the commentator. The Department explains that compliance costs may vary for each source or facility depending on the source size, type, operational limitations and which control option is selected by the owner and operator of the affected source or facility, the cost-effectiveness benchmarks used in the analysis of presumptive RACT requirements and RACT emissions limitations are not to be taken as absolute cost-effectiveness threshold limits to be applied to case-by-case analyses. The Department believes that it is not appropriate to apply the same cost-effectiveness benchmarks used to determine the presumptive RACT requirements and RACT emissions limitations across all sources undergoing a case-by-case analysis due to these varying factors.

§ 129.115. Written notification, compliance demonstration and recordkeeping and reporting requirements.

IRRC and other commentators commented that proposed § 129.115(b)(4) requires owners and operators of combustion units and process heaters to demonstrate compliance on a daily averaging period, which is a significant tightening of the presumptive limits for combustion units and process heaters when compared to the 30-operating day averaging period under § 129.97(g)(1) (RACT II). IRRC noted that commentators commented that presumptive limits cannot be met using a daily average under certain operating conditions, such as the startup of a unit. A commentator requested that the Commonwealth implement more stringent standards and require CEMS on existing emission sources.

The Department evaluated available and relevant continuous emissions monitoring data and determined that certain source categories using a CEMS, including combustion units and process heaters, are capable of meeting the presumptive NO_x RACT emissions limitations on a daily averaging basis. If an owner or operator of a subject source with a CEMS cannot meet the applicable presumptive RACT emissions limitation using a daily averaging basis, the owner or operator has the option to submit a case-by-case proposal for an alternative RACT emissions limitation.

Further, the Department notes that the regulations in §§ 129.96—129.100 (RACT II) established RACT requirements and RACT emission limitations to meet the Commonwealth’s RACT obligations under the CAA for the 1997 and 2008 8-hour ozone NAAQS. The 1997 8-hour ozone standard was set at 0.08 ppm and the 2008 8-hour ozone standard was set at 0.075 ppm. The regulations in §§ 129.111—129.115 are designed to achieve and maintain the more stringent 2015 8-hour ozone standard of 0.070 ppm. To meet the Commonwealth’s RACT obligations under the CAA for the 2015 8-hour ozone NAAQS, the Department determined that certain source categories should demonstrate compliance with the applicable RACT emissions limitations using a daily averaging period.

RACT implementation regulations and guidance issued by the EPA dictate that the standards and other requirements implemented be both technically and economically feasible. The Department believes that the monitoring, recordkeeping and reporting requirements included in this final-form rulemaking are sufficient to show compliance with the RACT III emissions standards and other requirements. The Board has amended § 129.115(f) from proposed rulemaking to this final-form rulemaking to further clarify that the existing monitoring and recordkeeping and reporting provisions of 25 Pa. Code Chapter 127 apply as well as those provisions as specified in the applicable plan approval or operating permit for the source or facility.

The Department explains that the preliminary analysis of the 2021 ambient air ozone season monitoring data shows that all ozone samplers in this Commonwealth are monitoring attainment of the 2015 8-hour ozone NAAQS except the Bristol sampler in Bucks County and the Philadelphia Air Management Services Northeast Airport sampler in Philadelphia County; all ozone samplers in this Commonwealth are projected to monitor attainment of the 2008 and 1997 8-hour ozone NAAQS. Implementing the daily averaging period is therefore appropriate to assist the Commonwealth in achieving and maintaining the 2015 8-hour ozone NAAQS.

The EPA commented that the RACT III proposed regulations have added language requiring the submission of information by every source subject to RACT that appears to address some of the missing information that caused difficulties for both the Department and the EPA in evaluating RACT II permits. For example, proposed § 129.115, entitled “Written notification, compliance demonstration and recordkeeping and reporting requirements,” requires that every source subject to RACT notify the state within 6 months of how it is going to comply with the RACT III requirements, and requires these sources to identify those air contamination sources that are [proposed § 129.115(a)(1)(i)] and those air contamination sources that are not [proposed § 129.115(a)(1)(ii)] subject to §§ 129.112—129.114. Proposed § 129.115(a)(4) also requires information on source description and how the owner or operator shall comply with RACT III or the reason a source is exemption from RACT III requirements.

In response to the EPA’s comment, the Board notes that the purpose of this notification provision in § 129.115(a) is for the Department to determine which facilities and sources are subject to RACT III requirements, which sources are exempt from RACT III requirements and if the owners and operators are complying with presumptive or case-by-case requirements. This notification is not meant to be a full RACT analysis.

Before an owner or operator of a facility can begin to construct, modify or operate a source, emissions unit or equipment emitting air contaminants in this Commonwealth, the owner or operator is required to obtain prior written approval from the Department's Air Quality Program as specified in 25 Pa. Code § 127.11 (relating to plan approval requirements). Thus, the Department is already aware of new and modified sources that have occurred since the implementation of RACT II due to this requirement for the owner and operator of the facility to obtain prior written approval from the Air Quality Program. Therefore, it is not necessary that the owner or operator submit this specific information as part of the written notification required by § 129.115(a).

G. Benefits, Costs and Compliance

Benefits

The Department estimates that implementation of the final-form control measures could reduce NO_x emissions by as much as 9,800 TPY from engines, turbines and municipal waste combustors and VOC emissions by as much as 825 TPY from engines and turbines. These reductions in NO_x and VOC emissions will benefit the health and welfare of the approximately 12.8 million residents and numerous animals, crops, vegetation and natural areas of this Commonwealth by reducing the amount of ground-level ozone air pollution. Reduced ambient concentrations of ground-level ozone reduce the incidences of hospital admissions for respiratory ailments, including asthma, and improve the quality of life for citizens overall. While children, the elderly and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to high levels of ambient ground-level ozone while engaged in activities that involve physical exertion.

Implementation of and compliance with the presumptive RACT limitations, RACT control measures and RACT requirements in this final-form rulemaking will allow this Commonwealth to make substantial progress in achieving and maintaining the 1997, 2008 and 2015 8-hour ozone NAAQS Statewide by reducing the levels of NO_x and VOC ozone precursor emissions that contribute to potential nonattainment of the 2015 8-hour ozone NAAQS. As a result, the final-form RACT control measures are reasonably necessary to attain and maintain the health-based and welfare-based 8-hour ozone NAAQS in this Commonwealth and to satisfy related CAA requirements.

The EPA estimated that the monetized health benefits of attaining the 2008 8-hour ozone NAAQS of 0.075 ppm range from \$8.3 billion to \$18 billion on a National basis by 2020. See Regulatory Impact Analysis; Final National Ambient Air Quality Standard for Ozone (EPA, July 2011). Prorating that benefit to this Commonwealth, based on population, results in a public health benefit of \$337 million to \$732 million. Similarly, the EPA estimated that the monetized health benefits of attaining the 2015 8-hour ozone NAAQS of 0.070 ppm range from \$1.5 billion to \$4.5 billion on a National basis by 2025. See Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone (EPA-452/R-15-007, September 2015). Prorating that benefit to this Commonwealth, based on population, results in a public health benefit of \$63 million to \$189 million. The Department is not stating that these estimated monetized health benefits would all be the result of implementing the final-

form RACT control measures, but the EPA estimates are indicative of the benefits to Commonwealth residents of attaining and maintaining the 1997, 2008 and 2015 8-hour ozone NAAQS through the implementation of control measures to reduce ozone precursor emissions in the aggregate from different source categories.

This final-form rulemaking may create economic opportunities for NO_x and VOC emission control technology innovators, manufacturers and distributors through an increased demand for new or improved air pollution control equipment. In addition, the owners and operators of regulated facilities may be required to install and operate an emissions monitoring system or equipment necessary for an emissions monitoring method to comply with this final-form rulemaking, thereby creating an economic opportunity for the emissions monitoring industry.

Compliance costs

Compliance costs will vary for each facility depending on which compliance option is chosen by the owners and operators of a facility. This final-form rulemaking includes two alternative compliance options: a provision allowing the owner and operator of an affected facility that cannot meet the applicable NO_x RACT or VOC RACT emission limitation to elect to meet the applicable NO_x RACT requirement or NO_x RACT emission limitation in § 129.112 by averaging NO_x emissions on either a facility-wide or system-wide basis as specified in final-form § 129.113; and a provision allowing the affected owner and operator to submit a case-specific RACT proposal for an alternative RACT requirement or RACT emission limitation to the Department for approval as specified in final-form § 129.114.

Under final-form § 129.113, the owner or operator of an affected major NO_x emitting facility that includes an air contamination source subject to a NO_x RACT requirement or emission limitation in § 129.112 that cannot meet the applicable presumptive NO_x RACT requirement or NO_x RACT emission limitation may elect to meet the requirement or emission limitation by averaging NO_x emissions on either a facility-wide or system-wide basis. System-wide emissions averaging must be among sources under common control of the same owner or operator in this Commonwealth and within the same nonattainment area.

Under final-form § 129.114, the owner or operator of an air contamination source that cannot meet the applicable presumptive RACT requirement or RACT emission limitation of § 129.112 may submit an alternative NO_x RACT requirement, NO_x RACT emission limitation, VOC RACT requirement or VOC RACT emission limitation to the Department or approved local air pollution control agency for review.

Further, the Department notes that final-form § 129.114(i) provides owners and operators with the opportunity to submit an analysis, where applicable, demonstrating that RACT II conditions remain RACT for the 2015 8-hour ozone standard. This is an administratively efficient and less resource intensive approach than conducting a full case-by-case analysis for an alternative RACT proposal. For the owners and operators of eligible subject sources, this approach will likely reduce the consulting costs that an owner or operator may choose to incur. Additionally, there is no fee due to the Department to submit an analysis under final-form § 129.114(i).

Under these alternative compliance provisions, the owner or operator is required to demonstrate to the Department's or approved local air pollution control agency's satisfaction that it is economically or technically infeasible to meet the applicable final-form NO_x RACT or VOC RACT emission limitation. The flexibility provided by these alternative compliance provisions may minimize compliance costs to the owner or operator of an affected facility.

The RACT emission limitations and RACT requirements established in this final-form rulemaking do not require the owner or operator of an affected facility to submit an application for amendments to an existing operating permit. These requirements will be incorporated when the permit is renewed if less than 3 years remain in the permit term, as specified under § 127.463(c) (relating to operating permit revisions to incorporate applicable standards). If 3 years or more remain in the permit term, the requirements will be incorporated as applicable requirements in the permit within 18 months of the date of promulgation of this final-form rulemaking, as required under § 127.463(b). Most importantly, § 127.463(e) specifies that “[r]egardless of whether a revision is required under this section, the permittee shall meet the applicable standards or regulations promulgated under the Clean Air Act within the time frame required by standards or regulations.” Consequently, upon promulgation as a final-form regulation, §§ 129.111—129.115 will apply to affected owners and operators irrespective of a modification to the operating permit. Therefore, the owner or operator shall comply with the applicable standards or regulations within the time frame specified by the final-form regulation even if the permit is not revised to incorporate the standard or regulation within the specified compliance time frame.

Compliance assistance plan

The Department will continue to educate and assist the public and the regulated community in understanding the requirements and how to comply with them after promulgation of this final-form rulemaking. The Department will also continue to work with the Department's provider of the Small Business Stationary Source Technical and Environmental Compliance Assistance services. These services are currently provided by the Environmental Management Assistance Program (EMAP) of the Pennsylvania Small Business Development Centers. The Department has partnered with EMAP to fulfill the Department's obligation to provide confidential technical and compliance assistance to small businesses as required by the APCA, section 507 of the CAA (42 U.S.C.A. § 7661f) and as authorized by the Small Business and Household Pollution Prevention Program Act (35 P.S. §§ 6029.201—6029.209).

In addition to providing one-on-one consulting assistance and onsite assessments, EMAP also operates a toll-free phone line to field questions from small businesses, as well as businesses wishing to start up in, or relocate to, this Commonwealth. EMAP operates and maintains a resource-rich environmental assistance web site and distributes an electronic newsletter to educate and inform small businesses about a variety of environmental compliance issues.

Due to the implementation date of January 1, 2023 required by the EPA's 2015 ozone standard implementation rule (see 83 FR 62998 (December 6, 2018); see also 40 CFR 51.1316(b)(3)), the Department will be conducting direct outreach to the regulated community well in advance of the

January 1, 2023, implementation date due to the short turnaround time between the expected promulgation date of this final-form rulemaking and the implementation date.

Paperwork requirements

The recordkeeping and reporting requirements for owners and operators of applicable sources under this final-form rulemaking are minimal because the records required align with the records already required to be kept for emission inventory purposes and for other Federal and State requirements. To minimize the burden of these requirements, the Department allows electronic submission of most planning, reporting and recordkeeping forms required by this final-form rulemaking.

H. Pollution Prevention

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the installation and operation of add-on air pollution controls, the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. Implementation of the final-form RACT requirements will allow the Department and approved local air pollution control agencies to maintain or further reduce the amounts of NO_x and VOC emissions from the regulated sources in this Commonwealth, sustain the gains made in healthful air quality by reducing the ambient concentrations of ground-level ozone air pollution formed from the emissions of NO_x and VOC and ensure continued protection of the environment and the public health and welfare of the citizens of this Commonwealth.

I. Sunset Review

This Board is not establishing a sunset date for this final-form rulemaking because it is needed for the Department to carry out its statutory authority. If published as a final-form rulemaking in the *Pennsylvania Bulletin*, the Department will closely monitor its effectiveness and recommend updates to the Board as necessary.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 14, 2021, the Department submitted a copy of the notice of proposed rulemaking, published at 51 Pa.B. 4333, to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the

Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on **DATE, 2022**, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on **DATE, 2022**, and approved this final-form rulemaking.

K. Findings of the Board

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), known as the Commonwealth Documents Law, and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) At least a 60-day public comment period was provided as required by law and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 51 Pa.B. 4333.

(4) These regulations are reasonably necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this order.

(5) These regulations are reasonably necessary to attain and maintain the ozone NAAQS and to satisfy related CAA requirements.

L. Order of the Board

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapters 121 and 129, are amended by amending § 121.1 and adding §§ 129.111—129.115 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this final-form regulation to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this final-form regulation to IRRC and the House and Senate Committees as required by the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

(d) The Chairperson of the Board shall certify this final-form regulation and deposit it with the Legislative Reference Bureau as required by law.

(e) This final-form regulation will be submitted to the EPA as a revision to the Commonwealth's SIP.

(f) This final-form regulation shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

RAMEZ ZIADEH, P.E.,
Acting Chairperson