

determined and published on a daily basis in a widely-available medium, such as a newspaper of general circulation;

(iv) No less frequently than annually, independent auditors must prepare financial statements of the foreign corporation that include balance sheets (statements of assets, liabilities, and net assets) and statements of income and expenses, and those statements must be made available to the public;

(v) The foreign corporation is supervised or regulated as an investment company by a foreign government or an agency or instrumentality thereof;

(vi) The foreign corporation has no senior securities authorized or outstanding, including any debt other than in de minimis amounts;

(vii) Ninety percent or more of the gross income of the foreign corporation for its taxable year is passive income, as defined in section 1297(a)(1) and the regulations thereunder; and

(viii) The average percentage of assets held by the foreign corporation during its taxable year which produce passive income or which are held for the production of passive income, as defined in section 1297(a)(2) and the regulations thereunder, is at least 90 percent.

(2) *Anti-abuse rule.* If a foreign corporation undertakes any action with a principal purpose of manipulating the net asset value of a class of its shares in order to reduce the United States tax under section 1296 of one or more of its shareholders, the class of shares will not qualify as marketable stock for purposes of paragraph (d)(1) of this section.

(e) [Reserved]

(f) *Special rules for regulated investment companies (RICs)*—(1) *General rule.* In the case of any RIC which is offering for sale or has outstanding any stock of which it is the issuer and which is redeemable at net asset value, its stock in any passive foreign investment company which it owns directly or indirectly, as defined in sections 958(a) (1) and (2), shall be treated as marketable stock owned by that RIC for purposes of section 1296.

(2) [Reserved]

(g) *Effective date.* This section applies to shareholders whose taxable year ends on or after the date these regulations are published as final regulations in the **Federal Register** for stock in a foreign corporation whose taxable year ends with or within the shareholder's taxable year. In addition, shareholders may elect to apply these regulations to any taxable year beginning after December 31, 1997, for stock in a foreign corporation whose taxable year ends

with or within the shareholder's taxable year.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99-1666 Filed 2-1-99; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-941-86]

RIN 1545-AI33

Withdrawal of Guidance Under Section 1291 Relating to Mark to Market Elections for RICs

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of proposed regulations.

SUMMARY: This document withdraws § 1.1291-8 of the notice of proposed rulemaking that was published in the **Federal Register** on April 1, 1992, providing guidance under the passive foreign investment company (PFIC) rules relating to the mark to market election for regulated investment companies (RICs) that are shareholders of PFICs.

DATES: Section 1.1291-8 of the proposed regulations published at 57 FR 11024 (April 1, 1992) is withdrawn February 2, 1999.

FOR FURTHER INFORMATION CONTACT:

Robert Laudeman of the Office of Associate Chief Counsel (International), Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224. Telephone (202) 622-3840, not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 1992 (57 FR 11024), the IRS issued proposed regulations providing, in part, an election under which certain RICs could mark to market their stock in certain PFICs. In the Taxpayer Relief Act of 1997 Congress enacted section 1296(e)(2) of the Internal Revenue Code, which allows certain RICs to elect to mark to market their PFIC stock. Accordingly, the IRS is withdrawing proposed regulations § 1.1291-8. Future guidance will be issued providing rules for all PFIC shareholders, including RICs, on how to mark to market certain PFIC stock.

Drafting Information

The principal author of this withdrawal notice is Robert Laudeman, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in developing the withdrawal notice.

List of Subjects in Part 1

Income taxes, Reporting and recordkeeping requirements.

Partial Withdrawal of Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, § 1.1291-8 of the proposed amendments to 26 CFR part 1 published at 57 FR 11024, April 1, 1992, is withdrawn.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA112-4084; FRL-6229-2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Nitrogen Oxides Allowance Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision implements Pennsylvania's portion of the Ozone Transport Commission's (OTC) September 27, 1994 Memorandum of Understanding (MOU) including a regional nitrogen oxides (NO_x) cap and trade program that will significantly reduce NO_x emissions generated within the Ozone Transport Region (OTR). The intended effect of this action is to propose approval of Pennsylvania's regulations implementing Phase II of the OTC's MOU to reduce nitrogen oxides.

DATES: Written comments must be received on or before March 4, 1999.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air

Protection Division, EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103 and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, PA 17105.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814-2178, or by e-mail at fernandez.cristina@epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On December 19, 1997, the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision to its State Implementation Plan (SIP). The revision consists of amendments to Title 25 of the Pennsylvania Code including Chapter 121.01—Definitions and Chapter 123—NO_x Allowance Requirements.

I. Background

The Ozone Transport Commission (OTC) adopted a Memorandum of Understanding (MOU) on September 27, 1994, committing the signatory states to the development and proposal of a two phase region-wide reduction in nitrogen oxides (NO_x) emissions by 1999 and 2003, respectively. As reasonably available control technology (RACT) to reduce NO_x emissions was required to be implemented by May of 1995, the MOU refers to the reduction in NO_x emissions to be achieved by 1999 as Phase II; and the reduction in NO_x emissions to be achieved by 2003 as Phase III. The OTC states include Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, the northern counties of Virginia and the District of Columbia. All of the OTC states, with the exception of the Commonwealth of Virginia, signed the September 27, 1994 MOU. The OTC MOU requires a reduction in ozone season NO_x emissions from utility and large industrial combustion facilities within the Ozone Transport Region (OTR) in order to further the effort to achieve the health-based National Ambient Air Quality Standard (NAAQS) for ozone. In the MOU, the OTC states agreed to propose regulations for the control of NO_x emissions in accordance with the following guidelines:

1. The level of NO_x required would be established from a 1990 baseline emissions level.
2. The reduction would vary by location, or zone, and would be implemented in two phases utilizing a region wide trading program.

3. The reduction would be determined based on the less stringent of each of the following:

- a. By May 1, 1999, the affected facilities in the inner zone shall reduce their rate of NO_x emissions by 65% from baseline, or emit NO_x at a rate no greater than 0.20 pounds per million Btu. (This is a Phase II requirement.)
- b. By May 1, 1999, the affected facilities in the outer zone shall reduce their rate of NO_x emissions by 55% from baseline, or shall emit NO_x at a rate no greater than 0.20 pounds per million Btu. (This is a Phase II requirement.)
- c. By May 1, 2003, the affected facilities in the inner and outer zones shall reduce their rate of NO_x emissions by 75% from baseline, or shall emit NO_x at a rate no greater than 0.15 pounds per million Btu. (This is a Phase III requirement.)
- d. By May 1, 2003, the affected facilities in the Northern zone shall reduce their rate of NO_x emissions by 55% from baseline, or shall emit NO_x at a rate no greater than 0.20 pounds per million Btu. (This is a Phase III requirement.)

A Task Force of representatives from the OTC states, organized through the Northeast States for Coordinated Air Use Management (NESCAUM) and the Mid-Atlantic Regional Air Management Association (MARAMA), was charged with the task of developing a Model Rule that would implement the program defined by the OTC MOU. During 1995 and 1996, the NESCAUM/MARAMA NO_x Budget Task Force worked with EPA and developed a model rule as a template for OTC states to adopt their own rules to implement the OTC MOU. The model was issued May 1, 1996. The model rule was developed for the OTC states to implement the Phase II reductions called for in the MOU to be achieved by May 1, 1999. The model rule does not include the implementation of Phase III.

II. Summary of SIP Revision

Pennsylvania's Chapters 121.01 Definitions and 123—Nitrogen Oxides Allowance Requirements are based upon and are consistent with the "NESCAUM/MARAMA NO_x Budget Rule" issued in May 1, 1996. The model rule was developed by the states in the OTR using the EPA's economic incentive rules (59 FR 16690) which were published on April 7, 1994, as the general regulatory framework.

Pennsylvania Chapter 121.01 has been amended to include definitions for the terms used in Chapter 123—NO_x Allowances Requirements. Chapter 123—NO_x Allowances Requirements

and its Appendix A include reduction requirements to implement Phase II of the OTC's MOU. The regulations include provisions for a regional cap and trade program, and establish NO_x emission allowances for each NO_x control period beginning May 1, 1999 through the NO_x control period ending September 30, 2002. The budgeted sources and their NO_x allowances allocations are identified. Pennsylvania Chapter 123—NO_x Allowances Requirements is divided into twenty sections: (1) Purpose; (2) Source NO_x allowance requirements and NO_x allowance control period; (3) General NO_x allowance provisions; (4) Source authorized account representative requirements; (5) Allowance Tracking System (NATS) provisions; (6) NO_x allowance transfer protocol; (7) NO_x allowance transfer procedures; (8) Source emissions monitoring requirements; (9) Source emissions reporting requirements; (10) Source compliance requirements; (11) Failure to meet source compliance requirements; (12) Source operating permit provision requirements; (13) source recordkeeping requirements; (14) General NO_x allocation provisions; (15) Initial NO_x allowance NO_x allocations; (16) Source opt-in provisions; (17) New NO_x affected source provisions; (18) Emission reduction credit provisions; (19) Bonus NO_x allowance awards; (20) Audit. Appendix A to Chapter 123 is where the budgeted sources and their NO_x allowance allocations are identified.

III. Proposed Action

EPA is proposing to approve the Pennsylvania SIP revision for Chapter 121.01—Definitions and Chapter 123—NO_x Allowance Requirements, submitted on December 19, 1997 implementing Phase II of the OTC's MOU to reduce nitrogen oxides. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this document. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available upon request from the EPA Regional Office listed in the ADDRESSES section of this document.

IV. Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because it is not an economically significant regulatory

action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create

any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the proposed approval action does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action to approve Pennsylvania's NO_x Allowance Requirements regulations to implement Phase II of the OTC MOU.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: January 22, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

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