

publication of the final conditional rulemaking. These conditions are:

(1) Pennsylvania certify that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements (including those subject to 25 Pa. Code section 129.93(b)(1)) currently known to PADEP; or

(2) Demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions, as defined in the final rulemaking.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA025-5033; FRL-5977-9]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia—Prevention of Significant Deterioration Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the Commonwealth of Virginia's State Implementation Plan (SIP) under which the Commonwealth will be implementing the Prevention of Significant Deterioration of Air Quality program (PSD program) pursuant to its own SIP regulations. The Commonwealth had been implementing the PSD program under the terms of an EPA delegation to the Commonwealth of the authority to implement the Federal PSD regulations. Under the PSD program those constructing new major sources of a criteria air pollutant in areas that are attainment for the National Ambient Air Quality Standards (NAAQS) set for that pollutant, or constructing major modifications to such sources in such areas, must demonstrate that emissions from those sources will not cause violations of the NAAQS, or significantly deteriorate air quality beyond specified ambient increments, and that the emissions will be controlled by Best Available Control Technology (BACT). Additional provisions relevant to Class I areas may also apply.

EFFECTIVE DATE: This final rule is effective on April 22, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection

Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Ray Chalmers, U.S. EPA Region III, Air Protection Division, Permits & Technology Assessment Section (3AP11), 841 Chestnut Building, Philadelphia, PA. Phone: (215) 566-2061. Internet:

"Chalmers.Ray@epamail.epa.gov".

SUPPLEMENTARY INFORMATION:

I. Background

In a series of submittals, the Virginia Department of Air Pollution Control (DAPC), now known as the Department of Environmental Quality (VDEQ), submitted the elements for a revision to its State Implementation Plan (SIP) that would establish a program for the prevention of significant deterioration of air quality (PSD) for the review and permitting of new major sources and major modifications (the PSD program). On January 24, 1996, EPA proposed to disapprove or, in the alternative, to conditionally approve Virginia's PSD SIP revision. (61 FR 1880). EPA proposed disapproval because, in the agency's view, the Commonwealth's limitation of access to state judicial appeal (also known as standing) of permitting actions was inconsistent with the agency's interpretation that existing law and regulations require an opportunity for state judicial review under approved PSD SIPs by permit applicants and affected members of the public. In EPA's proposed rule, comment was solicited on the agency's view that a limited judicial review did not meet the minimum requirements for standing required for PSD SIP programs under the Clean Air Act (CAA) and EPA's implementing regulations.

Alternatively, if the agency determined after reviewing public comment that provisions for judicial standing were unnecessary, EPA proposed to conditionally approve Virginia's PSD SIP. EPA determined that Virginia was still required to amend the Commonwealth's PSD regulations that existed at the time of the proposed rule to include revised increments for particulate matter (PM) as promulgated by EPA on June 3, 1993, and EPA's revised "Guidelines for Air Quality Models", promulgated on July 20, 1993. More detailed information on EPA's

proposed rulemaking actions and an analysis of Virginia's PSD regulations can be found in the proposed rule published on January 24, 1996 (61 FR 1880) and the Technical Support Document for the proposed rule.

II. Analysis

Subsequent to the publication of EPA's proposed rule on Virginia's PSD program, the deficiencies noted above were corrected. Regarding judicial standing in Virginia, EPA published a December 5, 1994, final rule in which EPA disapproved Virginia's Title V operating permits program for, among other things, the failure to provide adequate judicial standing. (59 FR 62324). Virginia appealed this decision before the Fourth Circuit Court of Appeals, which affirmed EPA's disapproval, 80 F.3d 869 (1996), and Virginia subsequently appealed its case to the U.S. Supreme Court. On January 21, 1997, the Supreme Court decided not to hear Virginia's case. In preparation for this eventuality, Virginia had previously adopted revised and acceptable judicial standing provisions, at sections 10.1-1318, 10.1-1457, and 62.1-44.29 of the Code of Virginia, but specified that the revised provisions would become effective only if Virginia's suit against EPA was unsuccessful. The Supreme Court's refusal to take Virginia's appeal has caused Virginia's revised judicial standing provisions to become effective, and Virginia's standing provisions are now fully acceptable. Virginia's revised standing law now provides judicial standing to any person who "meets the standard for judicial review of a case or controversy pursuant to Article III of the United States Constitution." It further provides that "a person shall be deemed to meet such standard if: (i) Such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court." This new standard is consistent with the standard for Article III standing articulated by the Supreme Court in *Lujan v. Defenders of Wildlife*, 112 S. Ct. 2130 (1992). Consequently, EPA has determined that Virginia's standing provisions meet the requirements of the CAA and 40 CFR 51.166.

On February 6, 1997 Virginia submitted to EPA an Attorney General's Opinion affirming that the revised standing law would go into effect on

February 15, 1997. This action on the part of the Commonwealth corrects any deficiency in standing that might have been determined by EPA as a result of reviewing public comment on this issue. The Commonwealth also submitted revised regulations on March 20, 1997 that corrected the deficiencies identified with the proposed conditional approval. Since the deficiencies identified in EPA's proposed rule no longer exist, EPA is taking action to fully approve Virginia's PSD program as a SIP revision.

After making its original PSD submittal to EPA on December 17, 1992, in 1995 Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege law, Va. Code § 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The privilege does not extend to documents or information that are: (1) Generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On December 29, 1997, the Office of the Attorney General provided a legal opinion that states, with regard to the Privilege law, that the Commonwealth is "required by Federal law to have full authority to enforce" the PSD program, "both civilly and criminally," therefore, "all aspects of Virginia's environmental laws and regulations that are necessary to implement and enforce its PSD program in a manner that is no less stringent than its Federal counterpart are necessarily "required by law." Thus, "[r]egarding § 10.1-1198, documents or information needed for civil or criminal

enforcement under the PSD program could not be privileged * * *"

Virginia's Immunity law, Va. Code § 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's December 29, 1997 opinion states that the quoted language renders this statute inapplicable to PSD enforcement.

Thus, EPA has determined that Virginia's Privilege and Immunity legislation will not preclude the Commonwealth from enforcing its PSD program consistent with the CAA's requirements.

III. Response to Comments

EPA received comments supporting EPA's proposed disapproval of the Commonwealth's PSD SIP from environmental, public interest, and legal action organizations, and from private citizens. Each of these groups and citizens stressed that EPA should not approve Virginia's PSD SIP because Virginia had not provided all interested and qualified parties with the legal standing to challenge PSD permitting actions in State courts or through administrative appeal. EPA also received adverse comment related to the proposed disapproval from the Commonwealth of Virginia and several groups representing business and industrial sources. The latter alternatively indicated their support of the proposed conditional approval.

Although EPA solicited comment on whether or not legal standing should be grounds for disapproving Virginia's PSD program, Virginia's adoption of revised standing provisions, as noted above, eliminates the need to consider this issue prior to taking a final rulemaking action on the PSD SIP. Therefore, EPA is not commenting or otherwise announcing a decision on this matter at this time.

One environmental group commented in favor of EPA's disapproval of the Commonwealth's PSD SIP because it believed that the Commonwealth's Air Board was "unprepared to assume responsibility for implementation of the state's PSD program in the absence of a large EPA presence * * * 40 CFR part 51 and section 110 of the Clean Air Act establish criteria by which EPA is to evaluate and approve a State Implementation Plan. EPA has determined that the Commonwealth has

met the requirements of section 110 and 40 CFR part 51 and has the resources and necessary authority to carry out a PSD program. In fact, the Commonwealth has been implementing the Federal PSD program since 1981 under an EPA delegation of authority. Should EPA identify deficiencies in the Commonwealth's PSD program whereby the Commonwealth can no longer demonstrate that its program meets the criteria established under section 110 of the Clean Air Act and the regulations in part 51, EPA has the authority to withdraw its approval.

In addition, while EPA is approving the Commonwealth's PSD SIP, EPA recognizes that it has a responsibility to insure that all States properly implement their preconstruction permitting programs. EPA's approval of the Commonwealth's PSD program does not divest the Agency of the duty to continue appropriate oversight to insure that PSD determinations made by Virginia are consistent with the requirements of the CAA, EPA regulations, and the SIP. EPA's authority to oversee PSD program implementation is set forth in sections 113, 167, and 505(b) of the Act. For example, section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other enforcement action may be necessary to prevent construction of a major stationary source that does not "conform to the requirements of" the PSD program. Similarly, section 113(a)(5) provides for administrative orders and civil actions whenever EPA finds that a State "is not acting in compliance with" any requirement or prohibition of the Act regarding construction of new or modified sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan.

Enactment of Title V of the CAA and the EPA objection opportunity provided therein has added new tools for addressing deficient new source review decisions by states. Section 505(b) requires EPA to object to the issuance of a permit issued pursuant to Title V whenever the Administrator finds during the applicable review period, either on her own initiative or in response to a citizen petition, that the permit is "not in compliance with the requirements of an applicable requirement of this Act, including the requirements of an applicable implementation plan."

Regardless of whether EPA addresses deficient permits using objection authorities or enforcement authorities or

both, EPA cannot intervene unless the state decision fails to comply with applicable requirements. Thus, EPA may not intrude upon the significant discretion granted to states under new source review programs, and will not "second guess" state decisions. Rather, in determining whether a Title V permit incorporating PSD provisions calls for EPA objection under section 505(b) or use of enforcement authorities under sections 113 and 167, EPA will consider whether the applicable substantive and procedural requirements for public review and development of supporting documentation were followed. In particular, EPA will review the process followed by the permitting authority in determining best available control technology, assessing air quality impacts, meeting Class I area requirements, and other PSD requirements, to ensure that the required SIP procedures (including public participation and Federal Land Manager consultation opportunities) were met. EPA will also review whether any determination by the permitting authority was made on reasonable grounds properly supported on the record, described in enforceable terms, and consistent with all applicable requirements. Finally, EPA will review whether the terms of the PSD permit were properly incorporated into the operating permit.

IV. Today's Action

EPA is approving a SIP revision submitted by the Commonwealth of Virginia establishing a preconstruction permitting program for the prevention of significant deterioration as required by section 110 of the Clean Air Act. EPA is amending 40 CFR 52.2420 to incorporate this revision into Virginia's SIP. At the same time, EPA is withdrawing from Virginia's SIP the Federal PSD requirements which EPA incorporated into Virginia's SIP on August 7, 1980, and is withdrawing the Commonwealth's authority to implement these Federal PSD program requirements, an authority which EPA delegated to the Commonwealth on June 3, 1981. Accordingly, after the effective date of this final rule the Commonwealth will issue PSD permits under the authority of its SIP-approved program. The PSD permits which the Commonwealth issued prior to this rule under its delegated authority to implement the Federal PSD requirements continue in effect.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for

revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. 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 impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

C. 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 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 approval action being promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action approving the Commonwealth of Virginia's PSD SIP must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 1998. Filing a petition for reconsideration by the Administrator of this final rule approving the Commonwealth of Virginia's PSD SIP does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Commonwealth of Virginia's PSD SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: February 27, 1998.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraph (c)(123) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(123) Revisions to the Virginia Regulations for the Prevention of Significant Deterioration submitted on March 20, 1997 by the Department of Environmental Quality:

(i) Incorporation by reference.

(A) Letter of March 20, 1997 from the Department of Environmental Quality transmitting a SIP revision for regulations for the Prevention of Significant Deterioration.

(B) Letter of February 18, 1993 from the Department of Air Pollution Control transmitting a SIP revision for regulations defining the prevention of significant deterioration areas.

(C) Letter of January 13, 1998 from the Department of Environmental Quality transmitting a SIP revisions to the Virginia Administrative Code numbering system.

(D) The following provisions of the Virginia Regulations for the Control and Abatement of Air Pollution:

(1) Regulations for Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas, 9 VAC 5-80-1700 through 9 VAC 5-80-1970, published in the Virginia Register of Regulations on November 25, 1996, effective January 1, 1997.

(2) Appendix L to VR 120-01, renumbered as 9 VAC 5-20-205, Prevention of Significant Deterioration Areas, published in the Virginia Register of Regulations on December 2, 1991, effective January 1, 1992.

(ii) Additional material.

(A) Remainder of March 20, 1997 State submittal.

3. Section 52.2451 is revised to read as follows:

§ 52.2451 Significant deterioration of air quality.

(a) The requirements of sections 160 through 165 of the Clean Air Act are met since the plan includes approvable procedures for the Prevention of Significant Air Quality Deterioration.

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21(b) through (w) are hereby removed from the applicable

state plan for the Commonwealth of Virginia.

[FR Doc. 98-7305 Filed 3-20-98; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 64**

[CC Docket No. 94-129; FCC 97-248]

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers

AGENCY: Federal Communication Commission.

ACTION: Final Rule; establishment of effective date.

SUMMARY: The Commission's revised its rule on Subscriber Carrier Selection Changes. Section 64.1150(e)(4) and 64.1150(g) contained information collection requirements which shall become effective March 23, 1998.

EFFECTIVE DATE: The amendments to 47 CFR 64.1150(e)(4) and 64.1150(g) shall become effective March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Anita Cheng, Common Carrier Bureau, (202) 418-0960.

SUPPLEMENTARY INFORMATION: On July 14, 1997, the Commission adopted an order revising its subscriber carrier selection change rules, a summary of which was published in the **Federal Register**. See 62 FR 43477, August 14, 1997. Because the amendment to 47 CFR 64.1150(e)(4) and 64.1150(g) impose new or modified information collection requirements, they could not become effective until approved by the Office of Management and Budget ("OMB"). OMB approved these rule changes on January 27, 1998. The **Federal Register** summary stated that the Commission would publish a document establishing the effective date of the rule changes requiring OMB approval. This statement suggests that further action by the Commission is necessary to establish the effective date, notwithstanding the preceding statement in the summary that the rule changes imposing new or modified information collection requirements would become effective upon OMB approval. See 62 FR 43477, August 14, 1997. In order to resolve this matter in a manner that most appropriately provides interested parties with proper notice, the amendments to 47 CFR §§ 64.1150(e)(4) and 64.1150(g) shall

become effective March 23, 1998. This publication satisfies the statement that the Commission would publish a document establishing the effective date of the rule changes requiring OMB approval.

List of subjects in 47 CFR Part 64

Communications common carriers, consumer protection, telecommunications, Federal Communications Commission.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98-6982 Filed 3-20-98; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[I.D. 031398B]

Fisheries of the Exclusive Economic Zone Off Alaska; At-Sea Scales Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of program implementation.

SUMMARY: NMFS issues this notice of implementation of the At-Sea Scales Program for the groundfish fisheries off Alaska. The purpose of this action is to announce the dates on which NMFS will begin to accept requests from scale manufacturers that a model of scale be placed on the list of eligible at-sea scales and requests from vessel owners for a scale inspection.

DATES: Effective March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907-586-7228.

SUPPLEMENTARY INFORMATION:

On February 4, 1998, NMFS implemented the At-Sea Scales Program (63 FR 5835, February 4, 1998) establishing the requirements for scales approved by NMFS to weigh catch at sea. At the time the final rule was published, NMFS did not set a specific date to begin accepting requests that a scale be placed on the list of eligible at-sea scales under § 679.28(b)(1) and requests for a scale inspection under § 679.28(b)(2) because no vessels currently are required to weigh catch on scales approved under this program and because of uncertainty about the timing of staff and budget resources to