

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52****[EPA-R03-OAR-2007-0287; FRL-8777-5]****Approval and Promulgation of Air Quality Implementation Plans; Virginia; Northern Virginia Reasonably Available Control Technology Under the 8-Hour Ozone National Ambient Air Quality Standard****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 Virginia. This SIP revision consists of a demonstration that the Virginia portion (Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park; Counties of Arlington, Fairfax, Loudoun, and Prince William) of the Washington, DC-MD-VA area meets the requirements of reasonably available control technology (RACT) for oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOCs) set forth by the Clean Air Act (CAA). This SIP revision demonstrates that all requirements for RACT are met either through: Certification that previously adopted RACT controls in Virginia's SIP that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and that they continue to represent RACT for the 8-hour implementation purposes; a negative declaration demonstrating that no facilities exist in the Virginia portion of the Washington, DC-MD-VA area for certain control technology guideline (CTG) categories; and a new RACT determination for a specific source. This action is being taken under the CAA.

**DATES:** Written comments must be received on or before April 20, 2009.**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2007-0287 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail*: [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. *Mail*: EPA-R03-OAR-2007-0287, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery*: At the previously listed EPA Region III address. Such

deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2007-0287. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Gregory Becoat, (215) 814-2036, or by e-mail at [becoat.gregory@epa.gov](mailto:becoat.gregory@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

Ozone is formed in the atmosphere by photochemical reactions between VOC, NO<sub>x</sub>, and carbon monoxide (CO) in the presence of sunlight. In order to reduce ozone concentrations in the ambient air, the CAA requires all nonattainment areas to apply controls on VOC/NO<sub>x</sub> emission sources to achieve emission reductions.

Since the 1970s, EPA has consistently interpreted RACT to mean the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility. *See, e.g.*, 72 FR 20586 at 20610 (April 25, 2007). Section 182 of the CAA sets forth two separate RACT requirements for ozone nonattainment areas. The first requirement, contained in section 182(a)(2)(A) of the CAA, and referred to as RACT fix-up, requires the correction of RACT rules for which EPA identified deficiencies before the CAA was amended in 1990. On March 31, 1994 (59 FR 15117), EPA published a final rulemaking notice approving the Commonwealth of Virginia's SIP revision in order to correct the Commonwealth's VOC RACT regulations and establish and require the implementation of revised SIP regulations to control VOCs.

The second requirement, set forth in section 182(b)(2) of the CAA, applies to moderate (or worse) ozone nonattainment areas and attainment areas in the ozone transport region (OTR) established pursuant to section 184 of the CAA. These areas are required to implement RACT controls on all major VOC and NO<sub>x</sub> emission sources and on all sources and source categories covered by a control technology guideline (CTG) issued by EPA. On March 12, 1997 (62 FR 11332), EPA published a final rulemaking notice approving the Commonwealth of Virginia's SIP revision as meeting the CTG RACT provisions of the CAA. Further details of Virginia's RACT requirements can be found in a Technical Support Document (TSD) prepared for this rulemaking.

The counties of Fairfax, Loudoun, Prince William, and Arlington, as well as the cities of Fairfax, Alexandria, Manassas, Manassas Park, and Falls Church, Virginia (collectively referred to in this notice as Northern Virginia), along with Stafford County, Virginia, Washington, DC, and portions of

southern Maryland, are part of the OTR. The OTR is established by section 184 of the CAA. Under the 1-hour ozone NAAQS, these jurisdictions, including Stafford County, Virginia, Washington, DC, and portions of southern Maryland were originally classified as part of the Metropolitan Washington serious 1-hour ozone nonattainment area (Washington 1-hour Area) (56 FR 56694 at 56844, November 6, 1991).

The Washington 1-hour Area had certain RACT requirements under section 182 for VOC and NO<sub>x</sub>. Section 182(b)(2) of the CAA required the Commonwealth of Virginia to implement RACT on all sources and source categories covered by a CTG issued by EPA. Point sources with the potential to emit 50 tons per year or more of VOCs or 100 tons per year or more of NO<sub>x</sub> that were not covered by a CTG were also required to implement RACT. As a result of failure to meet the attainment date of November 15, 1999, the Metropolitan Washington area was reclassified from serious to severe nonattainment area for the 1-hour standard (68 FR 3410, January 24, 2003). As a result of the reclassification, the Commonwealth of Virginia was required to perform RACT evaluations on point sources with the potential to emit 25 tons per year for either VOC (62 FR 11334, March 12, 1997) or NO<sub>x</sub> (69 FR 48150, August 9, 2004). *See also* 66 FR 8, January 2, 2001; 69 FR 54578, September 9, 2004; 69 FR 59812, October 6, 2004; 69 FR 54600, September 9, 2004.

The Washington 1-hour Area is also part of the OTR. The OTR is established by section 184 of the CAA. Areas in the OTR are subject to OTR-specific RACT requirements. Section 184(b)(1)(B) of the CAA requires the implementation of RACT with respect to all sources of VOC covered by a CTG. Additionally, section 184(b)(2) of the CAA requires the implementation of major stationary source requirements as if the area were a moderate nonattainment area on any stationary source with a potential to emit at least 50 tons per year of VOC or 100 tons per year of NO<sub>x</sub>. However, the Washington 1-hour Area satisfies the section 184 RACT requirements because section 182 requirements are more stringent as a result of reclassification to a severe nonattainment area for the 1-hour standard; therefore, no additional measures for the implementation of

RACT are applicable (68 FR at 3425, January 24, 2003).

Under the 8-hour ozone NAAQS, the Washington 1-hr Area, with the exception of Stafford County, was designated and classified as a moderate nonattainment area, and is therefore subject to the CAA RACT requirements in section 182(b) (69 FR 23858, April 30, 2004). Virginia is required to submit to EPA a SIP revision that demonstrates how the Commonwealth meets the RACT requirements under the 8-hour ozone standard in Northern Virginia.

EPA requires under the 8-hour ozone NAAQS that states meet the CAA RACT requirements, either through a certification that previously adopted RACT controls in their SIP approved by EPA under the 1-hour ozone NAAQS represent adequate RACT control levels for 8-hour attainment purposes, or through the establishment of new or more stringent requirements that represent RACT control levels. *See Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline (Phase 2 Rule)* 70 FR 71612, 71655, November 29, 2005. Sections 172(c)(1) and 182(b)(2) of the CAA require that all SIPs satisfy the NO<sub>x</sub> and VOCs RACT requirements that apply in areas that have not attained the NAAQS for ozone. *See* 42 U.S.C. 7502(c)(1), 42 U.S.C. 7511a(b)(2), and 42 U.S.C. 7511a(f). EPA has determined that States that have RACT provisions approved in their SIPs for 1-hour ozone nonattainment areas have several options for fulfilling the RACT requirements for the 8-hour ozone NAAQS. If a State meets certain conditions, it may certify that previously adopted 1-hour ozone RACT controls in the SIP continue to represent RACT control levels for purposes of fulfilling 8-hour ozone RACT requirements. Alternatively, a State may establish new or more stringent requirements that represent RACT control levels, either in lieu of or in conjunction with a certification.

As set forth in the preamble to the Phase 2 Rule, a certification must be accompanied by appropriate supporting information such as consideration of

information received during the public comment period and consideration of new data (70 FR at 71655). This information may supplement existing RACT guidance documents that were developed for the 1-hour standard, such that the State's SIP accurately reflects RACT for the 8-hour ozone standard based on the current availability of technically and economically feasible controls. Establishment of new RACT requirements will occur when states have new stationary sources not covered by existing RACT regulations, or when new data or technical information indicates that a previously adopted RACT measure does not represent a newly available RACT control level. Another 8-hour ozone NAAQS requirement for RACT is to submit a negative declaration if there are no CTG sources or major sources of VOC and NO<sub>x</sub> emissions in lieu of or in addition to a certification.

## II. Summary of SIP Revision

On October 23, 2006, the Virginia Department of Environmental Quality (VADEQ) submitted a revision to its SIP that addresses the requirements of RACT under the 8-hour ozone NAAQS set forth by the CAA. Virginia's SIP revision is consistent with the process in the Phase 2 Rule preamble, and satisfies the requirements of RACT set forth by the CAA under the 8-hour ozone NAAQS. Virginia's SIP revision satisfies the 8-hour RACT requirements through (1) certification that previously adopted RACT controls in Virginia's SIP that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and continues to represent RACT for the 8-hour implementation purposes; (2) a negative declaration demonstrating that no facilities exist in the Virginia portion of the Washington, DC-MD-VA area for the applicable CTG categories; and (3) a new RACT determination for a single source.

### A. VOC CTG RACT Controls

Virginia's Regulations codified at 9 VAC 5 Chapter 40, contain the Commonwealth's CTG VOC RACT controls that were implemented and approved in the Virginia SIP under the 1-hour ozone NAAQS. Table 1 lists Virginia's VOC RACT controls, which Virginia is certifying as meeting the 8-hour RACT requirements.

TABLE 1—VIRGINIA'S CTG VOC RACT CONTROLS

Regulation (9 VAC 5)	Existing Stationary Sources—40 CFR 52.2420 (c)			
	Title of regulation	State effective date	Federal Reg- ister date for SIP approval	Citation
5-40-460 .....	Emission Standards for Synthesized Pharmaceutical Products Manufacturing Operations.	02/1/02	03/3/06	71 FR 10838.
5-40-610 .....	Emission Standards for Rubber Tire Manufacturing Operations .....	04/17/95	04/21/00	65 FR 21315.
5-40-1400 .....	Emission Standards for Petroleum Refinery Operations .....	04/17/95	04/21/00	65 FR 21315.
5-40-3290 .....	Emission Standards for Solvent Metal Cleaning Operations Using Non-Halogenated Solvents.	04/1/97	11/3/99	64 FR 59635.
5-40-3590 .....	Emission Standards for Large Appliance Coating Application Systems	04/17/95	04/21/00	65 FR 21315.
5-40-3740 .....	Emission Standards for Magnet Wire Coating Application Systems .....	04/17/95	04/21/00	65 FR 21315.
5-40-3890 .....	Emission Standards for Automobile and Light Duty Truck Coating Application Systems.	04/17/95	04/21/00	65 FR 21315.
5-40-4040 .....	Emission Standards for Can Coating Application Systems .....	04/17/95	04/21/00	65 FR 21315.
5-40-4190 .....	Emission Standards for Metal Coil Coating Application Systems .....	04/17/95	04/21/00	65 FR 21315.
5-40-4340 .....	Emission Standards for Paper and Fabric Coating Application Systems.	04/17/95	04/21/00	65 FR 21315.
5-40-4490 .....	Emission Standards for Vinyl Coating Application Systems .....	04/17/95	04/21/00	65 FR 21315.
5-40-4640 .....	Emission Standards for Metal Furniture Coating Application Systems	04/17/95	04/21/00	65 FR 21315.
5-40-4790 .....	Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems.	04/17/95	04/21/00	65 FR 21315.
5-40-4940 .....	Emission Standards for Flatwood Paneling Coating Application Systems.	04/17/95	04/21/00	65 FR 21315.
5-40-5080 .....	Flexographic, Packaging Rotogravure, and Publication Rotogravure Printing Lines.	04/1/96	03/12/97	62 FR 11334.
5-40-5230 .....	Emission Standards for Petroleum Liquid Storage and Transfer Operations—Stage I Vapor Control Systems—Gasoline Service Stations.	02/1/02	03/3/06	71 FR 10838.
5-40-5230 .....	Emission Standards for Petroleum Liquid Storage and Transfer Operations—Tank Truck Gasoline Loading Terminals.	02/1/02	03/3/06	71 FR 10838.
5-40-5230 .....	Emission Standards for Petroleum Liquid Storage and Transfer Operations—Bulk Gasoline Plants.	02/1/02	03/3/06	71 FR 10838.
5-40-5230 .....	Emission Standards for Petroleum Liquid Storage and Transfer Operations—Petroleum Liquids in Fixed Roof Tanks.	02/1/02	03/3/06	71 FR 10838.
5-40-5230 .....	Emission Standards for Petroleum Liquid Storage and Transfer Operations—Petroleum Liquid Storage in External Floating Roof Tanks.	02/1/02	03/3/06	71 FR 10838.
5-40-5230 .....	Emission Standards for Petroleum Liquid Storage and Transfer Operations—Gasoline Tank Trucks and Vapor Collection Systems.	02/1/02	03/3/06	71 FR 10838.
5-40-5510 .....	Emission Standards for Asphalt Paving Operations .....	04/17/95	04/21/00	65 FR 21315.
5-40-6840 .....	Emission Standards for Solvent Metal Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area.	03/24/04	06/09/04	69 FR 32277.

Virginia also submitted a negative declaration certifying that the following VOC CTG sources do not exist in

Northern Virginia and therefore there is no need for Virginia to adopt CTGs for these sources. Table 2 lists VOC CTG

sources in Virginia's negative declaration.

TABLE 2—VOC CTG SOURCES FOR WHICH NO APPLICABLE FACILITIES EXIST IN NORTHERN VIRGINIA

Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment.  
Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners.  
Control of Volatile Organic Compound Emissions from Manufacture of High Density Polyethylene, Polypropylene, and Polystyrene Resins.  
Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants.  
Control of Volatile Organic Compound fugitive Emission from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment.  
Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry.  
SOCMI Distillation and Reactor Processes.  
Wood Furniture.  
Shipbuilding/repair.  
Aerospace.

#### B. Source-specific RACT Controls

Table 3 lists Virginia's source-specific RACT controls, that were implemented

and approved into the Virginia SIP under the 1-hour ozone NAAQS, which Virginia is certifying as meeting the 8-

hr RACT requirements for VOC and/or NO<sub>x</sub>.

TABLE 3—SOURCE-SPECIFIC RACT CONTROLS

Facility name	State effective date	Pollutant	Federal Register date	Citation
Pentagon Utilities Plant .....	05/17/00	NO <sub>x</sub> .....	01/02/01	66 FR 8.
Washington Gas Light Company .....	04/03/98	NO <sub>x</sub> .....	01/02/01	66 FR 8.
Dominion Virginia Power-Possum Point Power Station <sup>1</sup> .....	n/a	NO <sub>x</sub> .....	n/a	n/a.
	06/12/95	VOC .....	01/02/01	66 FR 8.
Mirant-Potomac River Power Plant <sup>1</sup> .....	n/a	NO <sub>x</sub> .....	n/a	n/a.
	05/08/00	VOC .....	01/02/01	66 FR 8.
United States Marine Base—Quantico .....	05/24/00	NO <sub>x</sub> .....	01/02/01	66 FR 8.
U.S. Army—Fort Belvoir .....	05/16/00	NO <sub>x</sub> .....	01/02/01	66 FR 8.
Noman M. Cole, Jr. Pollution Control Plant .....	12/23/99	NO <sub>x</sub> .....	01/02/01	66 FR 8.
Covanta—Alexandria .....	07/31/98	NO <sub>x</sub> .....	01/02/01	66 FR 8.
Covanta—Fairfax .....	04/03/98	NO <sub>x</sub> .....	01/02/01	66 FR 8.
Transco—Station 185 .....	09/05/96	NO <sub>x</sub> .....	01/02/01	66 FR 8.
Michigan Cogeneration Systems, Inc .....	05/10/00	NO <sub>x</sub> .....	01/02/01	66 FR 8.
	05/10/00	VOC .....	01/02/01	66 FR 8.
CNG Service Company .....	05/22/00	NO <sub>x</sub> .....	01/02/01	66 FR 8.
	05/22/00	VOC .....	01/02/01	66 FR 8.
Columbia Gas Transmission Corporation .....	05/23/00	NO <sub>x</sub> .....	01/02/01	66 FR 8.
Prince William County Department of Public Works .....	04/16/04	NO <sub>x</sub> .....	09/09/04	69 FR 54581.

<sup>1</sup> NO<sub>x</sub> SIP Call—These facilities in the Virginia portion of the Washington, DC-MD-VA 8-hour nonattainment area are subject to 9 VAC 5 Chapter 140 Regulation for Emissions Trading Part I NO<sub>x</sub> Budget Trading Program, often called the NO<sub>x</sub> SIP Call. These facilities may be recertified as meeting NO<sub>x</sub> RACT requirement based on the Phase 2 Rule and source-specific RACT controls, as well as their compliance with the NO<sub>x</sub> Budget Trading Program (9 VAC 5 Chapter 140). See Phase 2 Rule, 70 FR 71617, 71652, November 29, 2005.

A new RACT determination was performed for the Noman M. Cole Pollution Control Plant. Based on the results, the Noman M. Cole Pollution Control Plant's existing RACT determination of proper operation and good combustion practices can be recertified. Further details of the Commonwealth of Virginia's RACT determination can be found in a TSD prepared for this rulemaking.

### III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

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 Sec. 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 Law does not extend to documents or information (1) that are 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 January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. \* \* \*" The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 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 January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

### IV. Proposed Action

EPA is proposing to approve the Virginia SIP revision that addresses the requirements of RACT under the 8-hour ozone NAAQS, which was submitted on October 23, 2006. This SIP revision is

based on a combination of (1) certifications that previously adopted RACT controls in Virginia's SIP that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and continues to represent RACT for the 8-hour implementation purposes; (2) a negative declaration demonstrating that no facilities exist in the four county, five city area for the applicable CTG categories; and (3) a new RACT determination for a single source. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

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

In addition, this proposed rule, pertaining to the Virginia RACT under the 8-hour ozone NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

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

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

Dated: February 5, 2009.

**William T. Wisniewski,**

*Acting Regional Administrator, Region III.*

[FR Doc. E9-5839 Filed 3-18-09; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 090206149-9302-01]

**RIN 0648-AX57**

#### Fisheries of the Northeastern United States; Proposed 2009 Specifications for the Spiny Dogfish Fishery

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes specifications for the spiny dogfish fishery for the 2009 fishing year (FY) (May 1, 2009, through April 30, 2010). The implementing regulations for the Spiny Dogfish Fishery Management Plan (FMP) require NMFS to publish specifications for up to a period of 5 years and to provide an opportunity for public comment. The intent of this rulemaking is to specify the commercial

quota and other management measures, such as possession limits, to rebuild the spiny dogfish resource. NMFS proposes that the annual quota be set at 12 million lb (5,443.11 mt), and that the possession limits for dogfish be set at 3,000 lb (1.36 mt).

**DATES:** Public comments must be received no later than 5 p.m. eastern standard time on April 3, 2009.

**ADDRESSES:** You may submit comments, identified by RIN 0648-AX57, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>
- **Fax:** 978-281-9135, Attn: Jamie Goen

- **Mail:** Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2009 Dogfish Spex."

**Instructions:** All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jamie Goen, Fishery Policy Analyst, phone: 978-281-9220, fax: 978-281-9135.

**SUPPLEMENTARY INFORMATION:** Spiny dogfish were declared overfished by NMFS on April 3, 1998, and added to that year's list of overfished stocks in the *Report on the Status of the Fisheries of the United States*, prepared pursuant to section 304 of the Magnuson-Stevens