

As of the date of this announcement, the Agency intends to proceed with the meeting as announced; however, unforeseen circumstances may result in a postponement. Therefore, members of the public planning to attend this meeting are advised to contact Pam Smith, U.S. EPA, OAQPS, Information Transfer and Program Integration Division (MD-12), Research Triangle Park, North Carolina 27711; telephone (919) 541-0641 or E-mail: smith.pam@epa.gov, to confirm the February 2-3, 1999 meeting location and dates.

SUPPLEMENTARY INFORMATION: The EPA's preliminary thinking about seating arrangements is that seating around a discussion table will be reserved for 40-45 people divided equally among representatives from: (1) the industrial sector, (2) the public interest groups, (3) State and local governments or agencies, and (4) the Federal government. The EPA does not anticipate that it will be able to provide more than one seat at the table for each industrial sector. There will be additional seating, theater style, in the meeting room, available on a first come first served basis, for about 50 people. To the extent possible, everyone who wishes to speak or make a presentation will have an opportunity. An agenda will be provided at the meeting. If you plan to attend the meeting, please E-mail or call Pam Smith, at E-mail address smith.pam@epa.gov or telephone number (919) 541-0641, by January 28. Please also indicate whether you plan to give a presentation.

Dated: January 15, 1999.

Bruce C. Jordan,

Deputy Director, Office of Air Quality Planning and Standards.

[FR Doc. 99-1645 Filed 1-25-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX86-1-7351b; FRL-6208-4]

Approval and Promulgation of Implementation Plans, Texas; Reasonably Available Control Technology for Emissions of Volatile Organic Compounds (VOC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is taking direct final action on demonstrations submitted by Texas on January 10, 1996, that

Reasonably Available Control Technology (RACT) is in place on sources in the following source categories: Volatile Organic Liquid (VOL) Storage, Synthetic Organic Chemical Manufacturing Industry Reactor and Distillation Processes and Plastic Parts coating. Also EPA is taking direct final action on revisions to the Texas Rules for the control of VOC emissions that the State submitted between 1995 and 1997. Finally, for most of the measures given limited approval in the May 22, 1997 **Federal Register** (62 FR 27964), this direct final action converts the limited approval to a full approval.

In the Rules and Regulations section of this **Federal Register**, we are approving the State's State Implementation Plan (SIP) revision as a direct final rule without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no relevant adverse comments, we will not take further action on this proposed rule. If we receive relevant adverse comments, EPA will withdraw the direct final rule and it will not take effect. We will address all relevant public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action must do so at this time.

DATES: Written comments must be received by February 25, 1999.

ADDRESSEES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7214.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Building F, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Guy R. Donaldson, of the EPA Region 6 Air Planning Section at the above address, telephone (214) 665-7242.

SUPPLEMENTARY INFORMATION: For further information, please see the

information provided in the direct final action of the same title that is located in the "Rules and Regulations" section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: December 10, 1998.

Sam Becker,

Acting Regional Administrator, Region 6.

[FR Doc. 99-1651 Filed 1-25-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA024-5037; FRL-6223-6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Reasonably Available Control Technology for Major Sources of Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing conditional limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision establishes and requires the implementation of reasonably available control technology (RACT) on major sources of nitrogen oxides (NO_x) in the northern Virginia portion of the Metropolitan Washington D.C. serious ozone nonattainment area. The intended effect of this action is to propose conditional limited approval of Virginia regulations to impose RACT on major sources of NO_x.

DATES: Comments must be received on or before February 25, 1999.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. 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, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and

the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, (215) 814-2092. Or by e-mail at gaffney.kristeen@epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

I. Background

On November 9, 1992, the Commonwealth of Virginia submitted a revision to its State Implementation Plan (SIP). This SIP revision consisted of regulations to establish reasonably available control technology (RACT) requirements on major sources of nitrogen oxides (NO_x) in the northern Virginia portion of the Metropolitan Washington D.C. serious ozone nonattainment area. The Commonwealth submitted additional materials to supplement the November 9, 1992 SIP revision on December 11, 1992 and again on April 11, 1998. This action is being taken under section 110 of the Clean Air Act (the Act).

Section 182(f) of the Act requires states to submit rules to implement RACT on major sources of NO_x in ozone nonattainment areas designated as moderate or above and throughout the Ozone Transport Region. The definition of major source is determined by the classification of the nonattainment area and whether or not it is located in the Ozone Transport Region. A portion of Northern Virginia is part of the Metropolitan Washington D.C. serious ozone nonattainment area and that same portion of Virginia is in the Ozone Transport Region. Therefore, sources in the Northern Virginia portion of the Washington D.C. nonattainment area which emit or have the potential to emit 50 tons or more of NO_x per year are considered major and are subject to the NO_x RACT requirements of the Act.

On November 9, 1992, the Virginia Department of Environmental Quality (VADEQ) submitted a revision to its SIP consisting of adopted regulations to impose NO_x RACT on major sources in the northern Virginia nonattainment area. The VADEQ supplemented its November 1992 submittal on December 11, 1992. On August 11, 1998, the VADEQ made a submittal to EPA withdrawing certain provisions of the November 9, 1992 submittal, and forwarding revisions that corrected typographical errors and recodified and renumbered one of the relevant regulations, Appendix T [now 9 VAC 5-40-311].

II. Description of the SIP Revision Submittal

The November 9, 1992 submittal consisted of revisions to Virginia Regulation (VR) 120-01, Part IV, Emission Standards for General Process Operations (Rule 4-4) and to Appendix T, entitled "Reasonably Available Control Technology Guidelines for Stationary Sources of Nitrogen Oxides". Rule 4-4 was amended to insert a new section, 120-04-0408, entitled "Standard for nitrogen oxides". To accommodate the insertion of section 120-04-0408, the revision also renumbered the previously existing sections 120-04-0408 through 120-04-0418, inclusive, as sections 120-04-0409 through 120-04-0419, inclusive. On April 11, 1998, the VADEQ submitted a revised version of Appendix T to correct a technical error in the Virginia Register version of the final rule dated November 30, 1992. This error was corrected by Virginia in the Virginia Register on June 23, 1997. On April 11, 1998, the Commonwealth submitted the corrected version of Appendix T. In addition to the typographical correction, the Commonwealth also recodified Appendix T and renumbered it as 9 VAC 5-40-311.

Section 120-04-0408, entitled "Standard for nitrogen oxides" has five subsections:

Subsection (A) prohibits owners or other persons of affected facilities from permitting or causing NO_x emissions in excess of that resulting from using RACT.

Subsection (B) requires that compliance with RACT under subsection (A) be that defined in Appendix T [now 9 VAC 5-40-311] unless the source owner demonstrates otherwise to the satisfaction of the Virginia Air Pollution Control Board (the Board).

Subsection (C) defines which facilities are subject to the rule. NO_x RACT applies to all stationary sources located in the Northern Virginia Emissions Control Area that have a theoretical potential to emit of 50 tons per year or greater of NO_x. Subsection (C) also provides guidance on the calculation of "theoretical potential to emit" for determining applicability of 120-04-0408.

Subsection (D) requires owners of facilities subject to subsection (A) to notify the Board of applicability status, to commit to making a determination of what constitutes RACT and to submit a schedule to the Board for making this determination. Compliance with RACT is to be achieved as expeditiously as

practicable but no later than May 31, 1995.

Subsection (E) requires owners of facilities subject to subsection (B) to notify the Board of applicability status, to commit to accepting an applicable standard in Appendix T or to submit a demonstration of RACT, and to provide a schedule for submitting that demonstration no later than January 1, 1994. Compliance with RACT is to be achieved as expeditiously as practicable but no later than May 31, 1995.

Appendix T [now 9 VAC 5-40-311] consists of four sections:

Section A—General states that RACT required by section 120-04-0408 is as defined in this section for certain source types unless approved otherwise by the Board.

Section B—Definitions defines various terms. The following terms are defined: "capacity factor", "combustion modification", "combustion unit", "fossil fuel", "fuel burning equipment", "fuel burning equipment installation", "gas turbine", "heat input", "incinerator", "internal combustion engine", "process heater", "rated capacity", "refuse derived fuel", "steam generating unit", and "total capacity".

Section C—Definition of reasonably available control technology defines emission limits as RACT for steam generating units, process heaters and gas turbines and requires RACT to be demonstrated on a daily basis. Section C of VAC 5-40-311 also exempts certain source categories and/or applicability thresholds for source categories from the requirement to demonstrate RACT under subsection 120-04-0408 (B). On August 11, 1998, VADEQ withdrew subdivisions C.3.a. and C.3.c. of section C. of 9 VAC 5-40-311 (formerly Appendix T) from its SIP revision submittal pending before EPA. Therefore, the provisions of subdivisions C.3.a. and C.3.c. of 9 VAC 5-40-311 are not being considered for approval as part of the Virginia SIP.

Section D—Emission Allocation System—On August 11, 1998, VADEQ withdrew section D of 9 VAC 5-40-311 (formerly section IV of Appendix T) from its SIP revision submittal pending before EPA. Therefore, the provisions of section D of 9 VAC 5-40-311 are not being considered for approval as part of the Virginia SIP.

III. EPA's Evaluation of the SIP Revision

A. Applicability

The provisions of section 120-04-0408, Standard for Nitrogen Oxides, apply to all sources in the Northern Virginia Emissions Control Area having

a theoretical potential to emit 50 or more tons per year of NO_x. The Northern Virginia Emissions Control Area consists of the counties of Arlington, Fairfax, Loudoun, Prince William and Stafford, and the cities of Alexandria, Fairfax, Falls Church, Manassas and Manassas Park. The geographical coverage of the Northern Virginia Emissions Control Area is the same as the Virginia portion of the designated Metropolitan Washington

D.C. ozone nonattainment area. Virginia's section 120-04-0408 covers the same area as that required by section 182(f) of the Act for the Virginia portion of the Washington D.C. ozone nonattainment area, and meets the requirements for approval.

B. Presumptive RACT Emission Limits for Steam Generating Units/Process Heaters and Gas Turbines

Section C of 9 VAC 5-40-311 (formerly Appendix T) establishes

presumptive RACT emission limits for steam generating units, process heaters and gas turbines. Subdivision C.1.a. sets limits for steam generating units and process heaters with a rated capacity of 100 or greater million British Thermal Units per hour (MMBTU/hr) as indicated in Table 1, below.

TABLE 1

Fuel type	Face* and tangential firing	Cyclone firing	Stokers
Coal—wet bottom	1.0 lbs/MMBTU .....	.55 lbs/MMBTU	N/A.
Coal—dry bottom .....	.38 lbs/MMBTU	N/A .....	.4 lbs/MMBTU.
Oil or Gas or both .....	.25 lbs/MMBTU .....	.43 lbs/MMBTU	N/A
Gas only .....	.20 lbs/MMBTU	N/A	N/A

*Includes wall, opposed and vertical firing methods.

Subdivision C.1.b. of 9 VAC 5-40-311 (formerly Appendix T) sets presumptive RACT limits for gas turbines. All limits for gas turbines are expressed in terms of dry volume corrected to 15 percent oxygen. RACT for gas-fuel, simple or combined cycle turbines, is 42 parts per million dry volume (ppmvd) of NO_x. RACT for oil-fueled simple or combined cycle units, is 65 ppmvd NO_x when the fuel bound nitrogen content is less than 0.015 percent and a limit of 77 ppmvd when the fuel bound nitrogen content is greater than or equal to 0.015 percent.

Subdivision C.2. of 9 VAC 5-40-311 requires that compliance with the limits set in C.1.a. and b. shall be met on a daily basis. EPA is proposing to approve the provisions of C.1.a. and b. and C.2. of 9 VAC 5-40-311 (formerly Appendix T) as RACT for utility boilers, process heaters and gas turbines.

C. Compliance

Subsections 120-04-0408 (D) and (E) require compliance with RACT as expeditiously as practicable but not later than May 31, 1995. This meets the corresponding requirement under section 182(f) of the Act and is approvable. The following sections of Virginia's general provisions are cross-referenced and apply to all sources subject to NO_x RACT: 120-04-0413 Compliance; 120-04-0414 Test methods and procedures; 120-04-0415 Monitoring; 120-04-016 Notification, records and reporting; 120-04-0417 Registration; 120-04-0418 Facility maintenance or malfunction; and 120-04-0419 Permits. These provisions are all SIP approved, and, therefore, section 120-04-0408 satisfies appropriate

requirements for record-keeping, monitoring and compliance.

D. Exempted Sources

Provisions found at subdivision C.3.b. of 9 VAC 5-40-311 (formerly Appendix T) exempt any steam generating unit, gas turbine, or process heater with an annual capacity factor of less than five percent from the requirement to demonstrate RACT.

However, within three months following any calendar year in which the capacity factor exceeds five percent, a source becomes subject to subsection 120-04-0408 (A) or (B)—which require compliance with a RACT limit set presumptively or on a case-by-case basis—and the owner must make the notification and submittal required under subsection 120-04-0408 (D) or (E)—which require notification of applicability status. In this case, the compliance date is two years after the Board approves the schedule submitted by the source owner. Provisions of subdivision C.3.b. also provide that time periods in which a stand-by unit is used to provide replacement services for a unit being altered to comply with RACT are not to be included in the determination of the annual capacity factor for the stand-by unit.

Provisions found at subdivision C.3.d. of 9 VAC 5-40-311 (formerly Appendix T) exempt any stationary internal combustion engine with a rated capacity of less than 450 horsepower output from the requirement to demonstrate RACT.

Provisions found at subdivision C.3.e. of 9 VAC 5-40-311 (formerly Appendix T) exempt any incinerator with a maximum capacity of less than 50 tons

of waste per day from the requirement to demonstrate RACT.

Provisions found at subdivision C.3.f. of 9 VAC 5-40-511 (formerly Appendix T) exempt any incinerator or thermal or catalytic oxidizer used exclusively as air pollution control equipment from the requirement to demonstrate RACT.

Provisions found at subdivision C.3.g. of 9 VAC 5-40-311 exempt any generator used solely to supply emergency power to buildings during periods when normal power supplies are interrupted and during periods of scheduled maintenance from the requirement to demonstrate RACT.

In a memorandum from G.T. Helms of the Office of Air Quality Planning & Standards (OAQPS) to the Regional Air Branch Chiefs, dated January 1, 1995, entitled "De Minimis Values for NO_x RACT", EPA provides guidance and technical data that may be used to evaluate de minimis levels for various categories of NO_x sources. Traditionally, regulatory agencies have typically included exemptions for very small emission units in volatile organic compound (VOC) RACT rules. The reason for the exemption is that control requirements at very small units are generally not reasonable, considering technological and economic feasibility. In the process of adopting rules to meet the NO_x RACT requirements of the Clean Air Act, many states have included exemptions in their state rules for very small or infrequently used NO_x emission sources similar to the VOC rule exemptions. Total annual emissions from certain units at a facility, such as small incinerators, emergency generators and peaking units, may be so

small that it is clear that no controls are reasonably available for such units. Based on the description of de minimis level of NO_x emissions from small units, EPA agrees that it is reasonable to exclude the source categories as provided in subdivisions C.3.b, C.3.d, C.3.e, C.3.f, and C.3.g of 9 VAC 5-40-311 (formerly Appendix T) of Virginia's regulations from RACT requirements.

E. Generic Provisions

Rule 120-04-0408 requires certain sources to comply with the applicable emission limits established in Appendix T (now known as 9 VAC 5-40-311); or to apply to the Board for an alternative emission limit through a source-specific RACT determination process. The emission limits of section C of 9 VAC 5-40-311 do not cover all categories of NO_x sources. Section C specifically enacts emission limits for boilers/steam generating units, process heaters and gas turbines. Other source categories, such as incinerators, reciprocating internal combustion engines, cement manufacturing and iron/steel manufacturing are not covered in 9 VAC 5-40-311.

These sources are not subject to specific, "up-front" (i.e. immediately ascertainable) emission limitations. Instead, the regulations establish a process for the Commonwealth to review and approve individual RACT emission limitations proposed by the sources, which are then to be submitted to EPA as SIP revisions. Additionally, subsection 120-04-0408(B) of Virginia's rule allows sources subject to the presumptive limits in Appendix T (now known as 9 VAC 5-40-311) to propose alternative RACT on a case-by-case basis provided they submit the proposal by January 1, 1994. The proposal must include technical and economic support documentation for the proposed RACT and include a schedule for compliance as expeditiously as practical but no later than May 31, 1995.

The Act requires states to implement RACT on all major stationary sources. Process-oriented generic regulations, such as those submitted by Virginia, which do not include specific and ascertainable emission limitations for all major sources, do not by themselves provide standards for EPA to approve or disapprove as satisfying the definition of RACT. Therefore, the Act's RACT requirements are satisfied only after the specific limitations imposed by the Commonwealth on its major sources have been submitted to EPA as SIP revisions and approved by EPA as RACT for the subject sources.

In a November 7, 1996 policy memo from Sally Shaver, Director, Air Quality

Strategies and Standards Division of OAQPS, EPA issued guidance for approving state generic RACT regulations, like Virginia's, provided certain criteria are met. This guidance does not exempt any major source from RACT requirements but instead provides for a de minimis deferral of RACT only for the purposes of approving the state's generic RACT regulation. The de minimis deferral level is determined by using the 1990 NO_x emissions, excluding the utility boiler NO_x emissions. The remaining 1990 non-utility boiler emissions are then compared with the amount of non-utility NO_x emissions that have yet to have RACT approved into the SIP. Generally, EPA expects that all utility boiler RACTs will be approved prior to application of this de minimis deferral policy and possible conversion of the generic RACT conditional approval to full approval. EPA does not expect to defer more than 5% of the emissions calculated in this manner in order to fully approve Virginia's generic NO_x RACT regulation. In accordance with the November 1996 policy, EPA is requiring that all utility boiler RACT determinations be approved by EPA and all but a de minimis level of non-utility boiler RACT determinations be approved into the SIP before the limited approval can be converted to full approval. Full approval of a generic RACT regulation under this policy does not change the Commonwealth's statutory obligation to implement RACT for all major sources. No major NO_x source is being exempted from RACT requirements through this policy or today's rulemaking.

Because EPA has not received SIP revisions of source-specific RACT determinations for all major sources of NO_x subject to RACT under the Clean Air Act, EPA can at best, according to the November 7, 1996 policy memorandum, propose conditional limited approval of the NO_x RACT generic rule. In support of this proposed rulemaking, the Commonwealth committed in a letter dated April 11, 1998 to submit, as SIP revisions, RACT determinations for all sources subject to NO_x RACT within 12 months of EPA's final conditional approval of the generic rule.

F. Virginia's Audit Privilege Legislation

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 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 January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law 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. * * *" 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, 1997 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."

Thus, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its

program consistent with the federal requirements.

Terms of and Rationale for Conditional Approval

EPA is proposing conditional approval of Virginia's NO_x RACT regulations, based on the Commonwealth's commitment to submit for approval into the SIP, the case-by-case RACT proposals for all sources subject to RACT requirements currently known to the Virginia Department of Environmental Quality (VADEQ). The Commonwealth submitted this commitment in a letter to EPA, dated August 11, 1998. The case-by-case RACT proposals must be submitted by a date certain that is no later than 12 months after the effective date of EPA's final conditional approval.

To fulfill the conditions of this approval, the Commonwealth must, by no later than 12 months after the effective date of EPA's final conditional approval of the generic NO_x RACT SIP, (1) certify that it has submitted case-by-case RACT SIPs for all sources subject to the RACT requirements currently known to the Department; or (2) demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions (as described above). Once EPA has determined that the Commonwealth has satisfied this condition, EPA shall remove the conditional nature of its approval and the Virginia NO_x RACT regulations will, at that time, retain limited approval status. Should the Commonwealth fail to meet the conditions specified above, the final conditional limited approval of the NO_x RACT regulations SIP revision shall convert to a disapproval.

EPA is also proposing limited approval of Virginia's NO_x RACT regulations, VA Rule 120-08-0408, and the provisions of 9 VAC 5-40-311 (formerly Appendix T) as requested by the VADEQ. The current Virginia SIP does not contain a general requirement that all major sources of NO_x must implement RACT. While EPA does not believe that the Virginia generic NO_x RACT regulation satisfies the Act's RACT requirements as discussed previously in this notice, EPA is also proposing limited approval of the Virginia NO_x RACT regulations on the basis that they strengthen the SIP. The purpose of the proposed approval of the presumptive limits as RACT for these categories of sources of NO_x is for the limited purpose of strengthening the Virginia SIP by adding RACT standards for sources of NO_x in the Northern Virginia Emissions Control Area where none existed before.

Section 110(k)(4) of the Act allows EPA to propose conditional approval of the Virginia RACT regulations based on a commitment by the Commonwealth to adopt specific enforceable measures by a date certain but no later than 1 year after the effective date of EPA's final conditional approval. On August 11, 1998, Virginia submitted a letter to EPA committing to submit all case-by-case RACT determinations to EPA as SIP revisions within 12 months of final conditional, limited rulemaking, including those for sources covered by new source review permits, subject to the presumptive RACT limits, and previously exempted from the state regulations. Once EPA determines that the Commonwealth has satisfied the conditions in this notice, EPA shall remove only the conditional nature of its approval and the NO_x RACT regulations will, at that time, retain limited approval status. Once EPA has approved all of the case-by-case RACT proposals as SIP revisions, the limited approval will convert to full approval. Therefore, even after the conditional status of EPA's approval of Virginia's regulations is removed, VADEQ must still continue to submit, and have EPA approve into the Virginia SIP, RACT requirements for the remaining de minimis amount of emissions. Removal of the conditional status to limited approval status in no way changes VADEQ's statutory obligation to implement RACT for all major sources. Although EPA fully expects that Virginia will meet the conditions set forth in this notice, should Virginia fail to meet the conditions in this notice, EPA is proposing that the final conditional limited approval shall convert to a disapproval.

EPA is soliciting public comments on the issues discussed in this document. 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 the 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. Proposed Action

EPA is proposing conditional limited approval of the Commonwealth's NO_x RACT SIP submittal of November 9, 1992, as modified on December 11, 1992 and April 11, 1998. EPA is proposing

conditional limited approval of this SIP revision based on the commitment made by Virginia to submit all case-by-case RACT proposals for sources it is currently aware of as being subject to the major source NO_x RACT requirement, and because adding RACT standards for major sources of NO_x in the Northern Virginia Emissions Control Area where none existed before strengthens the SIP. On August 11, 1998, Virginia submitted a letter to EPA committing to submit all case-by-case RACT determinations to EPA as SIP revisions within 12 months of final conditional, limited rulemaking.

V. 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 sections 110 and 301, and subchapter I, part D of the CAA 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, I certify 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 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).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, I certify that this proposed disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

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 of Virginia's NO_x RACT regulations do 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone.

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

Dated: January 7, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99-1648 Filed 1-25-99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-6225-5]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Kansas City ozone maintenance area experienced a violation of the National Ambient Air Quality Standard (NAAQS) for ozone in 1995. In response to this violation, Kansas submitted revisions to its ozone maintenance plan. These revisions pertain to the implementation of control strategies to achieve reductions in volatile organic compound (VOC) emissions within the Kansas portion of the Kansas City ozone maintenance area. A major purpose of these revisions is to provide a more flexible approach to maintenance of acceptable air quality levels in Kansas City, while achieving emission reductions equivalent to those required by the previously approved plan.

The EPA is proposing to conditionally approve the 1998 revisions to the Kansas City ozone maintenance plan as a revision to the Kansas State Implementation Plan (SIP). Final approval is contingent upon Kansas' submission of additional, enforceable control measures.

In a separate **Federal Register** notice published today, the EPA is also proposing conditional approval of a similar plan submitted by the Missouri Department of Natural Resources to address the Missouri portions of the ozone maintenance area.