

(e) *Determination of use during periods of out-of-residence care.* If a taxpayer has become physically or mentally incapable of self-care and the taxpayer sells or exchanges property that the taxpayer owned and used as the taxpayer's principal residence for a period aggregating at least 1 year during the 5-year period preceding the sale or exchange, the taxpayer is treated as using the property as the taxpayer's principal residence for any period of time during the 5-year period in which the taxpayer owns the property and resides in any facility (including a nursing home) licensed by a State or political subdivision to care for an individual in the taxpayer's condition.

(f) *Sales of remainder interests—(1) In general.* A taxpayer may elect to have the section 121 exclusion apply to gain from the sale or exchange of a remainder interest in the taxpayer's principal residence.

(2) *Limitations—(i) Sale or exchange of any other interest.* If a taxpayer elects to exclude gain from the sale or exchange of a remainder interest in the taxpayer's principal residence, the section 121 exclusion will not apply to a sale or exchange of any other interest in the residence that is sold or exchanged separately.

(ii) *Sales to related parties.* Paragraph (f)(1) of this section will not apply to a sale or exchange by any person who bears a relationship to the taxpayer which is described in section 267(b) or 707(b).

(3) *Election.* The taxpayer makes the election under this paragraph (f) by filing a return for the taxable year of the sale or exchange that does not include the gain from the sale or exchange of the remainder interest in the taxpayer's gross income.

(g) *No exclusion for expatriates.* The section 121 exclusion will not apply to any sale or exchange by an individual if the treatment provided by section 877(a)(1) (relating to the treatment of expatriates) applies to the individual.

(h) *Election to have section not apply.* A taxpayer may elect to have the section 121 exclusion not apply to a sale or exchange of property. The taxpayer makes the election by filing a return for the taxable year of the sale or exchange that includes the gain from the sale or exchange of the taxpayer's principal residence in the taxpayer's gross income.

(i) *Residences acquired in rollovers under section 1034.* If a taxpayer acquires property (section 121 property) in a transaction that qualifies under section 1034 for the nonrecognition of gain realized on the sale or exchange of another property (section 1034 property)

and later sells or exchanges the section 121 property, in determining the period of the taxpayer's ownership and use of the sold or exchanged section 121 property, the taxpayer may include the periods that the taxpayer owned and used the section 1034 property as the taxpayer's principal residence (and each prior residence taken into account under section 1223(7) in determining the holding period of the 1034 property).

#### § 1.121–5 [Removed]

**Par. 3.** Section 1.121–5 is removed.

**Par. 4.** Section 1.1398–3 is added to read as follows:

#### § 1.1398–3 Treatment of section 121 exclusion in individuals' title 11 cases.

(a) *Scope.* This section applies to cases under chapter 7 or chapter 11 of title 11 of the United States Code, but only if the debtor is an individual.

(b) *Definition and rules of general application.* For purposes of this section, section 121 exclusion means the exclusion of gain from the sale or exchange of a debtor's principal residence available under section 121.

(c) *Estate succeeds to exclusion upon commencement of case.* The bankruptcy estate succeeds to and takes into account the section 121 exclusion with respect to the property transferred into the estate.

(d) *Effective date.* This section is applicable for sales or exchanges that occur on or after the date these regulations are published as final regulations in the **Federal Register**.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 00–25482 Filed 10–6–00; 8:45 am]

**BILLING CODE 4830–01–U**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[VA 4053; FRL–6883–5]

#### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of VOC and NO<sub>x</sub> RACT Determinations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Commonwealth of Virginia's State Implementation Plan (SIP) which would establish reasonably available control technology (RACT) requirements for 16 major sources of

volatile organic compound (VOC) and/or nitrogen oxide (NO<sub>x</sub>) emissions.

**DATES:** Written comments must be received on or before November 9, 2000.

**ADDRESSES:** Written comments may be mailed to Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, 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 at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Ray Chalmers, at (215) 814–2061, or by e-mail at [chalmers.ray@epa.gov](mailto:chalmers.ray@epa.gov). Please note that while questions and requests for the Technical Support Document (TSD) prepared in support of this rulemaking may be submitted via e-mail, any comments on the proposed action must be submitted, in writing, to the Region III address as indicated above.

#### SUPPLEMENTARY INFORMATION:

#### I. Background Information Regarding RACT Requirements

Pursuant to sections 182 and 184 of the Clean Air Act (CAA), States are required to implement RACT for major sources of volatile organic compounds (VOCs) and/or nitrogen oxides (NO<sub>x</sub>) emissions which are: (1) Located in those areas which have not attained the National Ambient Air Quality Standard for ozone (ozone nonattainment areas) which are designated in 40 CFR part 81 as having moderate or above nonattainment problems; or (2) located in the ozone transport region (OTR), which was established by section 184 of the CAA. A source is defined as major if its VOC and/or NO<sub>x</sub> emissions exceed specified levels, defined in sections 182 and 184 of the CAA, which vary depending upon the ozone air quality designation of the area where the source is located, and on whether or not the source is located in the OTR.

Pursuant to the CAA's requirements, the Commonwealth of Virginia (the Commonwealth) submitted revisions to its SIP consisting of regulations pertaining to RACT requirements for major NO<sub>x</sub> and VOC sources located in ozone nonattainment areas and in its portion of the OTR. The Commonwealth's regulation pertaining to RACT requirements for major NO<sub>x</sub> sources, for which EPA granted

conditional limited approval on April 28, 1999 (64 FR 22789), provides that sources with steam generating units, process heaters, or gas turbines either accept specified RACT limits for these units or request case-by-case RACT determinations for them. The regulation also provides that sources with other types of emission units must obtain case-by-case RACT determinations for those units.

The Commonwealth's regulation pertaining to RACT requirements for major VOC sources, which EPA approved on March 12, 1997 (62 FR 11332), provides that subject sources obtain case-by-case RACT determinations.

When EPA granted conditional limited approval of the Commonwealth's RACT regulation applying to major NO<sub>x</sub> sources, EPA established the condition that the Commonwealth was required to submit its case-by-case RACT determinations

for NO<sub>x</sub> sources to EPA for incorporation into the Commonwealth's SIP.

**II. Description of the Commonwealth's RACT SIP Submittals**

The Commonwealth established case-by-case RACT requirements for sources which had requested RACT determinations pursuant to the provisions of the Commonwealth's RACT regulations. This proposed rulemaking action pertains to the Commonwealth's request that EPA revise the Commonwealth's SIP to include the Commonwealth's case-by-case RACT SIP submittals for 16 sources. The Commonwealth's submittals consist of operating permits and/or consent agreements which contain the RACT requirements for each source, as well as supporting documentation.

The 16 sources for which the Commonwealth submitted case-by-case

RACT determinations, their types and locations, the pollutants they emit for which RACT requirements are established, and the dates of the Commonwealth's RACT SIP submittals for them are listed in the table found in Section III below, entitled, "Proposed RACT SIP Revision Approvals." The emission limitations and other RACT requirements for each of these sources are discussed in the TSD prepared by EPA in support of this proposed action. The TSD is included in the administrative record for this rulemaking action, and is available upon request from the EPA Region III office listed in the ADDRESSES section of this document.

**III. Proposed RACT SIP Revision Approvals**

EPA is proposing to approve the Commonwealth of Virginia's RACT SIP revisions for the sources listed in the table, below:

VIRGINIA—VOC AND NO<sub>x</sub> RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source	County	Date of submittal	Source type	Major source pollutant
Cellofoam North America, Inc.—Falmouth Plant.	Stafford .....	9/22/98 .....	Polystyrene Insulation Production Plant.	NO <sub>x</sub>
CNG Transmission Corp.—Leesburg Compressor Station.	Loudoun .....	5/23/00 .....	Natural Gas Compressor Station.	NO <sub>x</sub> and VOC
Columbia Gas Transmission Corporation—Loudoun County Compressor Station.	Loudoun .....	5/24/00 .....	Natural Gas Compressor Station.	
District of Columbia's Department of Corrections—Lorton Prison.	Fairfax .....	4/20/00 .....	Prison .....	NO <sub>x</sub> and VOC
Michigan Cogeneration Systems, Inc.—Fairfax County I-95 Landfill Facility.	Fairfax .....	5/12/00 .....	Landfill Gas Fired Electric Power Generation.	NO <sub>x</sub> and VOC
Metropolitan Washington Airports Authority—Ronald Reagan Washington National Airport.	Arlington .....	5/22/00 .....	Airport .....	NO <sub>x</sub>
Nomen M. Cole, Jr., Pollution Control Plant	Fairfax .....	4/27/00 .....	Wastewater Treatment Plant with Sewage Sludge Incinerators.	NO <sub>x</sub>
Ogden Martin Systems of Alexandria/Arlington, Inc.	Arlington .....	9/14/98 .....	Municipal Waste Combustion Plant.	NO <sub>x</sub>
Ogden Martin Systems of Fairfax, Inc .....	Fairfax .....	8/31/98 .....	Municipal Waste Combustion Plant.	NO <sub>x</sub>
US Department of Defense—Pentagon Reservation.	Arlington .....	5/19/00 .....	Pentagon Office Building ....	NO <sub>x</sub>
Potomac Electric Power Company—Potomac River Generating Station.	Alexandria .....	9/3/98 (NO <sub>x</sub> ) .....	Electric Power Plant .....	NO <sub>x</sub> and VOC
United States Marine Corps.—Quantico Base.	Prince William and Stafford.	5/9/00 (VOC) .....		
Transcontinental Gas Pipe Line Corporation—Compressor Station # 185.	Prince William County.	5/25/00 .....	Marine Corps Base .....	NO <sub>x</sub>
U.S. Army Garrison—Fort Belvoir .....	Fairfax .....	5/5/97 .....	Natural Gas Compressor Station.	NO <sub>x</sub>
Virginia Power—Possum Point Plant .....	Prince William County.	5/17/00 .....	Fort Belvoir Army Base .....	NO <sub>x</sub>
	Fairfax .....	8/31/00 (NO <sub>x</sub> ) .....	Electric Power Plant .....	NO <sub>x</sub> and VOC
		4/2/96 (VOC) .....		
Washington Gas Light Company—Springfield Operations Center.	Fairfax .....	5/20/98 .....	Natural Gas Fired Cogeneration Plant.	NO <sub>x</sub>

**IV. General Information Pertaining to SIP Submittals From the Commonwealth**

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 Section 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, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Section 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 Section 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." 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 Clean Air Act, 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 Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

#### V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998).

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power

and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This proposed rule pertaining to RACT SIP revisions for 16 sources in Virginia does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

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

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

Dated: September 29, 2000.

**Bradley M. Campbell,**

*Regional Administrator, Region III.*

[FR Doc. 00-25931 Filed 10-6-00; 8:45 am]

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