This action removes AD 2000–03–19. Removal of AD 2000–03–19 will not preclude FAA from issuing another action in the future, nor will it commit us to any course of action in the future.

Regulatory Impact

Does this action involve a significant rule or regulatory action? Since this action only removes an AD, it is not an AD and, therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Removal

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2000–03–19, Amendment 39–11578 (65 FR 7717, February 16, 2000).

Issued in Kansas City, Missouri, on December 19, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–32935 Filed 12–29–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 66

[USCG 2000–7466]

RIN 2115–AF98

Allowing Alternatives to Incandescent Light in Private Aids to Navigation

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule; withdrawal.

SUMMARY: On October 4, 2000, the Coast Guard published a direct final rule that notified the public of the Coast Guard's intent to remove the requirement to use only tungsten-incandescent lighting for private aids to navigation. This would have enabled private industry and owners of private aids to navigation to take advantage of recent changes in lighting technology-specifically, to use lanterns based on light-emitting diodes (LEDs). Because we received an adverse comment objecting to this rule, we withdraw the rule.

DATES: The direct final rule published at 65 FR 59124 on October 4, 2000, is withdrawn; the withdrawal is made as of January 3, 2001.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2000–7466 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this direct final fule, call Dan Andrusiak, G–OPN–2, U.S. Coast Guard, telephone 202–267–0327. For questions on viewing material in the docket, call Dorothy Beard, Chief of Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Discussion of Comment

On October 4, 2000, the Coast Guard published [65 FR 59124] a direct final rule. We received one comment, which expressed the following issues of concern: Absent standards for the performance of LEDs, the reliability of private aids to navigation might decrease; absent such standards, the color of many ''white'' LEDs might not conform to current standards; the rule does not provide for a backup source, such as a lampchanger; and the rule does not address the degradation of output over time. The comment indicated that, unless the rule resolves these issues, the performance and reliability of private aids to navigation might suffer.

A comment counts as adverse if it challenges a rule's underlying premise or approach, or explains why the rule would be ineffective or unacceptable, or otherwise inappropriate, without a change. This comment counts as adverse.

The Coast Guard has decided to withdraw the rule at this time so it can consider the issues raised by the adverse comment and can consider ways to resolve these issues.

Dated: December 26, 2000.

Terry M. Cross,

U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 00–33456 Filed 12–28–00; 10:26 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA 5056; FRL–6922–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of VOC and NO_X RACT Determinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. The revisions impose reasonably available control technology (RACT) on 16 major sources of volatile organic compounds (VOCs) and/or nitrogen oxides (NO_X) located in the Virginia portion of the Metropolitan Washington, D.C. ozone nonattainment area. The intent of this action is to approve the Commonwealth's SIP revision requests in accordance with the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on February 1, 2001.

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, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Ray Chalmers, at (215) 814–2061, or by e-mail at chalmers.ray@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182 and 184 of the Clean Air Act (CAA), States are required to implement RACT for major sources of VOCs and/or NO_X which are: (1) Located in those areas which have not attained the National Ambient Air Quality Standard for ozone (ozone nonattainment areas) which are classified 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_X emissions exceed specified

levels, defined in sections 182 and 184 of the CAA, which vary depending upon the ozone air quality designation and classification of the area where the source is located, and 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_X and VOC sources located in ozone nonattainment areas including its portion of the OTR.

The Commonwealth's regulation pertaining to RACT requirements for so called non-CTG major VOC sources (a non-CTG source is defined as one not otherwise required to comply with RACT under a SIP-approved regulation developed pursuant to an EPA-issued Control Technique Guideline (CTG) for a specific source category) was approved by EPA on March 12, 1997 (62 FR 11332). This regulation provides for the subject non-CTG major sources of VOC sources to obtain case-by-case RACT determinations. The Commonwealth's regulation pertaining to RACT requirements for major NO_X 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. When EPA granted conditional limited approval of the Commonwealth's NO_X RACT regulation, EPA established the condition that the Commonwealth was required to submit its case-by-case RACT determinations for NO_X sources to EPA for approval as source-specific SIP revisions.

This final rulemaking action pertains to the Commonwealth's case-by-case RACT SIP submittals for 16 sources. The Commonwealth's SIP submittals consist of operating permits and/or consent agreements which contain the RACT requirements for each source, as well as supporting documentation. In some cases these submittals contain both RACT and non-RACT related requirements. EPA is acting on only those portions of the submittals which pertain to RACT requirements. The 16 sources, 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 below, entitled, ''VIRGINIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES.''

On October 10, 2000 (65 FR 60141), EPA published a notice of proposed rulemaking (NPR) proposing to approve the Commonwealth's RACT SIP submittals for these 16 sources. At the time of this proposal, EPA provided a description of the Commonwealth's RACT determinations and our rationale for proposing to approve them. EPA received comments on the October 19, 2000 proposed approval from the EarthJustice Legal Defense Fund, an environmental group. EPA summarizes the comments and provides its responses to them in Section II of this document.

VIRGINIA—VOC AND NO_X 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.	VOC
CNG Transmission Corp.—Leesburg Compressor Station.	Loudoun	5/23/00	Natural Gas Compressor Station	NO_X 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_X and VOC
Michigan Cogeneration Systems, Inc.—Fairfax County I–95 Landfill Facility.	Fairfax	5/12/00	Landfill Gas Fired Electric Power Generation.	NO_X and VOC
Metropolitan Washington Airports Authority—Ronald Reagan Washington National Airport.	Arlington	5/22/00	Airport	NO_X
Nomen M. Cole, Jr., Pollution Control Plant.	Fairfax	4/27/00	Wastewater Treatment Plant with Sewage Sludge Incinerators.	NO_X
Ogden Martin Systems of Alexandria/Arlington, Inc.	Arlington	9/14/98	Municipal Waste Combustion Plant	NO_X
Ogden Martin Systems of Fairfax, Inc	Fairfax	8/31/98	Municipal Waste Combustion Plant	NO_X
U.S. Department of Defense—Pentagon Reservation.	Arlington	5/19/00	Pentagon Office Building	NO_X
Potomac Electric Power Company—Potomac River Generating Station.	Alexandria	9/3/98 (NO_X) 5/9/00 (VOC)	Electric Power Plant	NO_X and VOC
United States Marine Corps.—Quantico Base.	Prince William and Stafford	5/25/00	Marine Corps. Base	NO_X
Transcontinental Gas Pipe Line Corporation—Compressor Station #185.	Prince William County	5/5/97	Natural Gas Compressor Station	NO_X
U.S. Army Garrison—Fort Belvoir	Fairfax	5/17/00	Fort Belvoir Army Base	NO_X
Virginia Power—Possum Point Plant	Prince William County	8/31/00 (NO_X) 4/2/96 (VOC)	Electric Power Plant	NO_X and VOC
Washington Gas Light Company—Springfield Operations Center.	Fairfax	5/20/98	Natural Gas Fired Cogeneration Plant	NO_X

II. Public Comments and EPA's Responses

A. General Comments Pertaining to All of the RACT SIP Submittals

Comment: The commenter notes that RACT is defined as ''the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility,'' and asserts that the Commonwealth failed to demonstrate that the proposed emissions limits meet this test. The commenter also asserts that the EPA had failed to adequately evaluate the Commonwealth's submittals.

EPA's Response: EPA disagrees with these comments. Under the Commonwealth's EPA approved RACT regulations a sources which is required to obtain a case-by-case RACT determination, or which chooses to exercise the option of requesting such a determination, are required to submit RACT proposals to the Commonwealth, and the Commonwealth is then obligated to either approve or disapprove the submittal. Of the sources to which this rulemaking pertains, Cellofoam North America, Nomen M. Cole Pollution Control Plant, Ogden Martin Systems, Inc. (Alexandria Plant), Ogden Martin Systems, Inc. (Fairfax Plant), Potomac Electric Power Company's Potomac River Station, Transcontinental Gas, Virginia Power's Possum Point Plant, and Washington Gas Light Company submitted proposed RACT determinations to the Commonwealth, and supported their determinations by providing RACT analyses of the technological and economic feasibility of controls. The Commonwealth affirmed in its SIP revision submittals for these companies that it had reviewed the companies' proposed RACT determinations and their supporting analyses and had determined them to be acceptable as RACT. By reviewing these companies' RACT proposals/analyses and determining them to be acceptable as RACT, the Commonwealth met its obligations under its SIP-approved RACT regulations. The sources' RACT proposals and analyses are in the Commonwealth's public record for these SIP revisions and in EPA rulemaking docket approving them. The Commonwealth imposed RACT for all of these sources, except for Potomac Electric Power Company's Potomac River Station (for VOC), and Virginia Power's Possum Point Plant (for NO_X), in Consent Agreements. In these Consent Agreements the Commonwealth documented that it had met with and/or corresponded with all of these sources regarding their RACT proposals prior to approving them as RACT determinations. In the cases of the Potomac Electric Power Company's Potomac River Station (for VOC), and of Virginia Power's Possum Point Plant (for NO_X), the Commonwealth established RACT requirements through permits, and in these cases the Commonwealth provided a ''Statement of Basis'' and/or a ''RACT Review Memorandum'' in which it set forth the basis for its RACT determinations.

With regard to the other sources to which this rulemaking pertains, the Commonwealth initially interpreted the CAA's provisions for RACT as there being no need to impose RACT for sources or emissions units which it had recently permitted, because it had required that those sources to meet Best Available Control Technology (BACT) requirements. The EPA informed the Commonwealth that a RACT does apply for these sources. The Commonwealth did, therefore, issue case-by-case RACT determinations for these sources and emission units. Also, the Commonwealth's regulation requiring RACT for NO_X sources, as it was originally promulgated, did not require a NO_X RACT demonstration for any steam generating unit, process heater or gas turbine with a rated capacity of less than 100 MMBTU/ hour, or for any combustion unit with a rated capacity of less than 50 MMBTU/hour. When the EPA approved Virginia's regulation requiring RACT for NO_X emitting sources, these provisions were not among those which EPA approved. Accordingly, the Commonwealth issued RACT determinations for these sources. For many of these sources, the Commonwealth provided its own RACT analyses for its RACT determination. In certain cases, the Commonwealth's submittal provided both its own rationale for its RACT determination and the RACT proposal and analysis submitted by the source. In all of these cases where the Commonwealth not only made the RACT determination but performed and provided some or all of the RACT analyses supporting the determination, the Commonwealth set forth the basis for its RACT determination in a ''Statement of Basis'' and/or a ''RACT Review Memorandum.'' Of the sources to which this rulemaking action pertains, the Commonwealth made RACT determinations and provided a RACT analysis supporting its RACT determinations for CNG Transmission Corporation, Columbia Gas Transmission Company, the District of Columbia's Lorton Prison, Michigan Cogeneration Systems, Inc., the Metropolitan Washington Airport Authority's National Airport, the U.S. Department of Defense's Pentagon Building, the Potomac Electric Power Company's Potomac River Station (for VOC), the Quantico Marine Corps. Base, the U.S. Army Garrision at Fort Belvoir, and Virginia Power's Possum Point Plant (for NO_X).

With regard to the comment that EPA has an independent obligation to determine whether the control strategies for each source meet the Clean Air Act's requirements. EPA believes it has fulfilled this obligation. EPA disagrees that it is required to perform a new and independent RACT analysis for the sources to which this rulemaking pertains. EPA did, however, review the Commonwealth's RACT SIP submittals to determine if the RACT determinations appeared to be reasonable and well supported. EPA's commitment to assuring the adequacy of the Commonwealth's submittals is evidenced by the fact that when the Commonwealth held public hearings and requested comments on its proposed case-by-case RACT SIPs for the sources to which this rulemaking action applies, EPA submitted written comments to the public records. The Commonwealth summarized EPA's comments and provided its responses. The summary of public comments the Commonwealth received and its responses were included in formal SIP revisions submittals for these requested RACT SIP revisions, and as such are included in EPA's rulemaking docket for this rulemaking action.

Comment: The commenter states that the CAA ''required compliance by all of the sources for which the Commonwealth had submitted case-by-case RACTs by May 31, 1995, and is concerned that EPA might be approving an extension of this compliance date.

EPA's Response: The Commonwealth's EPA-approved RACT regulations, found at 9 VAC 5–40–300 and 310, require all sources for which the CAA requires RACT to be in compliance by the May 31, 1995 deadline specified in the CAA.[1] Virginia has not extended the Act's compliance

[1] Consistent with the Act, the Commonwealth's RACT regulations require facilities in the Northern Virginia Emissions Control Area which have a theoretical potential to emit of 50 tons per year (TPY) or greater of NO_X or VOCs to comply by May 31, 1995. To obtain additional emission reductions beyond those mandated by the Act, the Commonwealth also required VOC sources with a theoretical potential to emit 25 TPY or greater, but less than 50 TPY, to apply RACT. The Commonwealth set a compliance deadline for these sources of May 31, 1996.

date for those major sources mandated to comply by May 31, 1995, and by approving the Commonwealth's case-by-case SIP revisions, EPA is not approving an extension of this deadline. To the extent that Virginia's consent agreements and permits require additional reductions beyond the mandated compliance deadline for meeting RACT, these requirements are not considered to be part of the RACT determinations.

Comment: The commenter notes that public hearings are required for all SIP revisions, and asks whether or not proper hearings were held with respect to the Commonwealth's RACT SIP submittals.

EPA's Response: The Commonwealth has met all of the CAA's requirements for amending its SIP. Included in each of Virginia's RACT SIP submittals is its formal certification that it provided public notice and held public hearings. The Commonwealth also provided a copy of the public hearing notice, a summary of any comments it received, and its response to those comments in each of the SIP submittals for these sources.

Comment: The commenter states that ''[t]he Act and EPA's guidance requires the SIP to include legally enforceable procedures to require continuous monitoring and recording of emissions,'' and concluded that ''EPA cannot approve the proposed SIP revision unless it includes monitoring requirements for each emission unit that fully comply with EPA rules and guidance, and that assure continuous compliance with all emission limits.''

EPA's Response: The Commonwealth's approved SIP does include the legally enforceable procedures to require continuous monitoring and recording of emissions which are required by 40 CFR 51.214. These requirements are found in Virginia's SIP-Approved Regulations for the Control and Abatement of Air Pollution at 9 VAC 5–40–40 and 5–40–41. All sources in the Commonwealth which are subject to RACT, including those which are issued consent decrees and or permits imposing case-by-case RACT under the Commonwealth's approved RACT regulations are subject to 9 VAC 5–40–40 and 5–40–41.

Comment: The commenter notes that ''Virginia is proposing to exempt specific emission units on the ground that they are exempt under the State's RACT rules,'' and concludes that this is not acceptable.

EPA's Response: Virginia's EPA-approved regulations requiring NO_X RACT do contain provisions exempting several types of sources considered to be low NO_X emitters from the requirement to obtain a NO_X RACT determination. These exemptions were discussed in detail in EPA's rulemaking approving the Commonwealth's NO_X RACT regulation (see EPA's January 26, 1999 proposed rule 64 FR 3893). That rulemaking also included EPA's rationale for approving those exemptions. EPA received no comments on its proposed rule approving the Commonwealth's NO_X RACT regulation. EPA published its final rule on April 28, 1999 and that approval was effective on May 28, 1999.

It is, therefore, neither timely nor appropriate to comment on the provisions of the Commonwealth's NO_X RACT regulations itself, including the exemption provisions, at the time EPA conducts rulemaking approve the case-by-case RACT determinations issued by the Commonwealth pursuant to that rule. It should be noted that emissions units for which a RACT determination is not required remain subject to the general requirements of the Commonwealth's regulations. One of those requirements, found at 9 VAC 5–20–180, is that ''at all times, including periods of startup, shutdown and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment or monitoring equipment, in a manner consistent with good air pollution control practice of minimizing emissions.''

Comment: As part of any SIP revisions incorporating the above rules, the state must provide commitments of adequate funding and personnel to implement and enforce the rules. 42 U.S.C. 7410(a)(2)(E); 40 CFR 51.280. The state must also detail a program for enforcement of the rules. 42 U.S.C. 7410(a)(2)(C). None of these requirements were addressed in [the] **Federal Register** notice or TSD.

EPA's Response: EPA disagrees with the commenter's assertion that states must provide such information with each SIP revision. Although 42 U.S.C. 7410(a)(2)(E) and 7410(a)(2)(C) do contain these provisions cited by the commenter, section 7410(a)(2)(H) is the statutory provision which governs requirements for individual plan revisions which States may be required to submit from time to time. There are no cross-references in section 7410(a)(2)(H) to either 7410(a)(2)(E) or 7410(a)(2)(C). Therefore, EPA concludes that Congress did not intend to require States to submit an analysis of adequate funding and enforcement with each subsequent and individual SIP revision submitted under the authority of section 7410(a)(2)(H). Similarly, 40 CFR part 51, Appendix V contains the list of information which States must submit with each plan revision in order for EPA to conduct a review of completeness under section 7410(k)(1). The list in part 51, Appendix V contains no cross-reference to or cite of the provisions of 40 CFR 51.280 as a criterion for determining completeness. Thus, in following Congress' intent, EPA has further determined that the requirements of 40 CFR 51.280 do not apply to each individually-submitted State plan revision. Nevertheless, EPA notes that Virginia had previously submitted such commitments as part of the 1982 SIP for the Northern Virginia portion of the Metropolitan Washington, DC Ozone Nonattainment area. In a final rulemaking action published on February 25, 1984 (49 FR 3063), EPA approved Virginia's financial and manpower resource commitments, after having proposed approval of these commitments on February 3, 1983 (48 FR 5124 at 5127). EPA is satisfied that the Commonwealth continues to have adequate funding and personnel to implement and enforce the current RACT rules. However, EPA does have the authority under the CAA to make findings regarding implementation failures or other SIP deficiencies and take appropriate action in such situations. Should EPA find that Virginia lacks adequate resources to pursue any violation of the ozone SIP, or if Virginia's enforcement response is inadequate, EPA will take appropriate action under its CAA authority.

B. Comments Pertaining to RACT Submittals for Specific Sources

Comment: The commenter questions the RACT determination for Columbia Gas Transmission Corporation's Loudoun County Compressor Station. The commenter notes that the Commonwealth's proposed limits for the gas turbines range from 76 to 142 ppmvd, and states that these are substantially higher than RACT limits set elsewhere. The commenter says that the Commonwealth has not shown that the lower limits achieved elsewhere are not reasonably achievable at this source.

EPA's Response: EPA disagrees with this comment. The Commonwealth addresses the issue in its ''RACT Review Memorandum'' contained in its SIP submittal. The Commonwealth states reports that on August 21, 1990, it had issued a State Air Pollution Control Board permit to install, modify, and operate to Columbia Gas Transmission Corp. to allow the modification of eight existing natural gas fired turbines, each rated at 14.46×10^6 BTU/hr, and one

natural gas-fired turbine, rated at 39.72 $\times 10^6$ BTU/hr. The Commonwealth states that it had determined when it issued this permit that the required controls and emission limits for the turbines were BACT. The Commonwealth states that it had concluded when it issued the permit that ''the low-NO_X combustion technology utilized in the turbines selected represents the state of the art in dry controls and that selective catalytic reduction, and steam or water injection would not be reasonable for a gas pipeline installation.'' The Commonwealth states that the control technology evaluation document supporting issuance of the 1990 permit had indicated that more advanced dry low NO_X controls would not be commercially available for four or five years. The Commonwealth determines that it was therefore ''reasonable to assume that had a RACT analysis been required and conducted for the facility at the time others were in 1993, the conclusion would have been the same as for the BACT analysis.'' The Commonwealth further states that while its BACT determination appears to have been valid, it was lacking a quantitative analysis of cost-effectiveness of alternative controls. The Commonwealth therefore cites its examination of EPA's Alternative Control Technology—NO_X Emissions from Stationary Gas Turbines document (EPA—453/R–93–007) which shows that two technologies might be cost effective for the larger Centaur T–4500 turbine. Steam and water injection is marginally cost effective, but the BACT analysis eliminated that option as infeasible for a rural gas-pipeline pumping station. The other possibility is a lean pre-mix combustor. The Commonwealth states that the Company provided information showing that the cost of retrofitting the larger turbine would have cost approximately $4,000 per ton of NO_X reduced, more than the Commonwealth considered reasonable. The cost of retrofitting the smaller turbines would have been even higher on a cost per ton of NO_X removed basis. EPA finds that the Commonwealth has adequately justified its RACT determination for s for this source.

Comment: The commenter believes that RACT requirements should always be expressed in terms of emission limits. The commenter therefore objects to the determinations that RACT for various types of combustion units located at the Metropolitan Washington Airports Authority's Ronald Reagan National Airport, the Nomen M. Cole, Jr., Pollution Control Plant, the U.S. Marine Corps' Quantico Base, the Transcontinental Gas Pipeline Corporation's Compressor Station #185, and the U.S. Army Garrison at Fort Belvoir consists of good management practices and operating procedures. The commenter also requests further details regarding the ''low emission combustion technology'' which had been specified as RACT for Transcontinental Gas Company's Station 185, what emissions limits were associated with it, and when it would be implemented.

EPA's Response: The Commonwealth determined that RACT for two incinerators at the Nomen M. Cole, Jr., Pollution Control Plant consists of operating the incinerators within specified temperature and percent oxygen ranges, and in accordance with good management practices and operating procedures. The Commonwealth established these RACT requirements because the Nomen M. Cole, Jr., Pollution Control Plant demonstrated that there are no technically and economically feasible controls for the incinerators. At Transcontinental Gas Company's Station 185 the Commonwealth determined that RACT for ten 2050 horsepower Ingersol Rand 412-KVS engines consisted of use of low emission combustion (LEC) technology. LEC technology consists of extensive modifications to an internal combustion engine which enable the engine to operate at a higher air to fuel ratio, which results in lower combustion temperatures and lower NO_X formation. A detailed discussion of LEC technology is provided in the EPA publication entitled, ''Alternative Control Techniques Document—NO_X Emissions from Stationary Reciprocating Internal Combustion Engines.'' The Commonwealth did not establish emission limits associated with implementation of this technology. However, EPA considers this acceptable given that LEC involves the physical modification of the engine itself, which will result in a permanent reduction in the each engine's physical potential to emit NO_X.

The Commonwealth determined that RACT for certain combustion units at the Metropolitan Washington Airports Authority's Ronald Reagan National Airport, the Marine Corps' Quantico Base, the Transcontinental Gas Pipeline Corporation Compressor Station 185, and the U.S. Army's Garrison at Fort Belvoir consisted of good management practices and operating procedures because of the small size of these units. EPA has approved RACT SIP regulations for other States in which NO_X RACT for small combustion units is defined as proper operation and maintenance or an annual evaluation and adjustment of the combustion process. For example, EPA has approved provisions in Pennsylvania's RACT SIP regulations which define RACT for combustion units with a rated heat input equal to or greater than 20 MMBTU/hour and less than 50 MMBTU/hour as an annual adjustment or tune-up on the combustion process, and which define RACT for combustion units with a rated heat input of less than 20 MMBTU/hour as proper operation and maintenance. EPA approved these provisions in Pennsylvania's RACT SIP regulations because Pennsylvania had provided information stating that there are no technically or economically feasible controls. As in the case of Pennsylvania, the Commonwealth's has determined that RACT consists an annual evaluation and adjustment of the combustion process and of proper operation and maintenance for combustion units with rated inputs of less than 50 MMBTU/hour.

Comment: The commenter states that EPA cannot lawfully approve the Commonwealth's RACT proposal pertaining to PEPCO's Alexandria Generating Station, because the proposal involves an emissions averaging plan in which emissions from the Alexandria Generating Station would be offset by reductions at two other PEPCO plants in Maryland. The commenter said that the Act requires RACT at each source within the nonattainment area, and does not allow companies to pick and choose which facilities will comply with RACT. The commenter also said that the proposal was not acceptable because Virginia would have no authority to enforce the emission limits established for the PEPCO sources located in Maryland. The commenter also objects to the averaging proposal on the basis that it assumes that the ''offsetting reductions'' at the Maryland power plants are ''surplus'' or ''excess'' reductions that are not otherwise needed. The commenter notes that the Washington area is delinquent in meeting the serious area attainment deadline, and still lacks an approved attainment SIP. The commenter states that ''If any additional emission reductions are achievable at the Maryland plants, they are needed to bring the area closer to attainment—they cannot be used to offset reductions that are otherwise mandated by the Act.''

EPA's Response: EPA disagrees with this comment. Under the Emission Trading Policy (see December 4, 1986, 51 FR 43814) stationary sources of criteria air pollutants located within the same nonattainment area may comply

with their requirements, including RACT, in the most cost effective manner via emissions trading. Under that policy, surplus emissions are those not otherwise required to meet an applicable emission limitation under the CAA. At the time RACT was required to be determined and complied with under the CAA, the Commonwealth and the State of Maryland made RACT determinations for these PEPCO facilities and negotiated a memorandum of understanding (MOU) to implement those determinations by means of a RACT averaging plan. The signed MOU provides for both the Commonwealth and Maryland to enforce the averaging plan. That MOU was formally submitted to EPA as part of the SIP revision. At such time as the need for additional reductions (beyond those that have been achieved by implementing the CAA's applicable Part D requirements) are determined to be necessary to demonstrate rate-of-progress and/or attainment in an ozone nonattainment area, a state has the flexibility to decide what additional control measures it shall implement to achieve those reductions. The comment implies that a state must revisit RACT to secure those reductions. EPA does not agree. More to the point, on December 15, 2000, EPA signed a final rule approving the one-hour ozone attainment demonstration SIP for the Metropolitan Washington, D.C. ozone nonattainment area and approved a compliance date extension to 2005.

Comment: The commenter objects to the Commonwealth's decision to establish RACT emissions limits for Boilers 3, 4, and 5 at Virginia Power's Possum Point Station which are consistent (in terms of allowable lbs of NO_X per million BTU heat input) with the limits in the Commonwealth's EPA approved RACT regulations. The commenter notes that the requirements in the Commonwealth's EPA approved RACT regulations which are applicable to Boilers 3, 4, and 5, which are specified in Table 4–4C of 9 VAC 5–40–311, are less stringent than currently-recognized RACT. The commenter also objects to the fact that the Commonwealth allowed compliance with the limits to be demonstrated through the use of 30 day averaging. The commenter notes that the EPA-approved RACT regulations require the use of daily averaging.

EPA's Response: With regard to the comments on the requirements of the SIP-approved NO_X regulation itself, its provisions were discussed in detail in EPA's rulemaking approving the Commonwealth's NO_X RACT regulation (see EPA's January 26, 1999 proposed rule 64 FR 3893). That rulemaking also included EPA's rationale for approving the regulation. EPA received no comments on its proposed rule approving the Commonwealth's NO_X RACT regulation. EPA published its final rule on April 28, 1999 and that approval was effective on May 28, 1999. It is, therefore, neither timely nor appropriate to comment on the provisions of the Commonwealth's NO_X RACT regulations itself.

The Commonwealth's regulations requiring sources of NO_X to obtain case-by-case RACT determinations required sources to be in compliance by May 31, 1995, and the Commonwealth's regulations are intended to reflect RACT as of that time. Accordingly, the Commonwealth's RACT SIP submittals also require RACT as of May 31, 1995. With respect to the averaging time used to demonstrate compliance, the Commonwealth requires that compliance by Boilers 3 and 4 be demonstrated through the use of daily averaging. For Boiler 5, the Commonwealth allows 30 day averaging. In its ''Statement of Basis'' for this SIP revision, the Commonwealth explains its reasons for allowing 30 day averaging for Boiler 5. The Commonwealth's Department of Environmental Quality (DEQ) submittal states that Unit #5 has historically been used only sparingly, during times of peak power demand. The DEQ further states that the continuous emissions monitors (CEMs) on the flue have shown that during the few times it has operated at full load, the unit has not demonstrated a continuous ability to meet the 0.25 lb-NO_X/10^6 BTU limit in 9 VAC 5–40–311. The Commonwealth's RACT analysis states that due to the infrequency of full load operation, if emissions and heat input were averaged over a 30 day period, the unit likely would meet the 0.25 limit. DEQ states that a daily review of an emission rate averaged over the previous 30 days, *i.e.*, a 30 day rolling average may be acceptable for a compliance demonstration with 9 VAC 5–40–311. It also states, however, in other instances its regulation has been interpreted to require a calendar day averaging period for a compliance demonstration, so a case-by-case specific analysis was required to justify that either a less stringent limit or a longer averaging period is in order. That analysis includes an examination of cost of getting fuel oil with a guaranteed lower fuel-bound nitrogen content than is currently burned. The analysis uses some conservative assumptions to show that the cost-to-benefit ratio is prohibitively excessive. Likewise, the Commonwealth's analysis determines that other control options, such as selective catalytic reduction (SCR), are too expensive for a reduction from 0.27 to 0.25 lb-NO_X/10^6 BTU, which is all that is required during the worst-case scenario, full load operation. EPA has reviewed this analysis and has determined that it complies with the requirements of the CAA.

III. Final Action

EPA is approving the Commonwealth of Virginia's case-by-case RACT SIP revision submittals for the 16 sources listed in the table found in Section I, above, entitled, ''VIRGINIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES'' as revisions to the Commonwealth's SIP.

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 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, 1997, 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, 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

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This 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 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 approves 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 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 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 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 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 rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 5, 2001. Filing a petition for reconsideration by the Administrator of this final rule 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's case-by-case RACT SIP revisions for 16 sources 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, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: December 15, 2000.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 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. In Section 52.2420, the table in paragraph (d) is amended by adding the entries for ''Cellofoam North America, Inc.—Falmouth Plant [Consent Agreement]'', ''CNG Transmission Corporation—Leesburg Compressor Station [Permit]'', ''Columbia Gas Transmission Company—Loudoun County Compressor Station [Permit]'', ''District of Columbia's Department of Corrections—Lorton Prison [Permit]'', ''Michigan Cogeneration Systems, Inc.—Fairfax County I–95 Landfill [Permit]'', ''Metropolitan Washington Airports Authority—Ronald Reagan Washington National Airport [Permit]'', ''Nomen M. Cole, Jr., Pollution Control Plant [Consent Agreement]'', ''Ogden Martin Systems of Alexandria/Arlington, Inc. [Consent Agreement]'', ''Ogden Martin Systems of Fairfax, Inc. [Consent Agreement]'', ''U.S. Department of Defense—Pentagon Reservation [Permit]'', ''Potomac Electric Power Company (PEPCO)—Potomac River Generating Station [Consent Agreement containing NO_X RACT requirements.]'', ''Potomac Electric Power Company (PEPCO)—Potomac River Generating Station [Permit containing VOC RACT requirements]'', ''United States Marine Corps.—Quantico Base [Permit]'', ''Transcontinental Gas Pipeline Corporation—Compressor Station #185 [Consent Agreement]'', ''U.S. Army Garrison at Fort Belvoir [Permit]'', ''Virginia Power (VP)—Possum Point Generating Station [Consent Agreement containing VOC RACT requirements]'', ''Virginia Power (VP)—Possum Point Generating Station [Permit containing NO_X RACT requirements]'', and ''Washington Gas Light Company—Springfield Operations Center [Consent Agreement]'' at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED VIRGINIA SOURCE-SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
* *	* *		*	* *
Cellofoam North America, Inc.—Falmouth Plant [Consent Agreement].	Registration #40696	8/10/1998	January 2, 2001 .. [page citation]	52.2420(d).
CNG Transmission Corporation—Leesburg Compressor Station [Permit].	Registration #71978	5/22/2000	January 2, 2001 .. [page citation]	52.2420(d).
Columbia Gas Transmission Company—Loudoun County Compressor Station [Permit].	Registration #72265	5/23/2000	January 2, 2001 .. [page citation]	52.2420(d).
District of Columbia's Department of Corrections—Lorton Prison [Permit].	Registration #70028	12/10/1999	January 2, 2001 .. [page citation]	52.2420(d).
Michigan Cogeneration Systems, Inc.—Fairfax County I–95 Landfill [Permit].	Registration #71961	5/10/2000	January 2, 2001 .. [page citation]	52.2420(d).
Metropolitan Washington Airports Authority—Ronald Reagan Washington National Airport [Permit].	Registration #70005	5/22/2000	January 2, 2001 .. [page citation]	52.2420(d).
Nomen M. Cole, Jr., Pollution Control Plant [Consent Agreement].	Registration #70714	12/13/1999	January 2, 2001 .. [page citation]	52.2420(d).
Ogden Martin Systems of Alexandria/Arlington, Inc. [Consent Agreement].	Registration #71895	7/31/1998	January 2, 2001 .. [page citation]	52.2420(d).
Ogden Martin Systems of Fairfax, Inc. [Consent Agreement].	Registration #71920	4/3/1998	January 2, 2001 .. [page citation]	52.2420(d).
U.S. Department of Defense—Pentagon Reservation [Permit].	Registration #70030	5/17/2000	January 2, 2001 .. [page citation]	52.2420(d).
Potomac Electric Power Company (PEPCO)—Potomac River Generating Station [Consent Agreement containing NO_X RACT requirements.].	Registration #70228	5/31/1998	January 2, 2001 .. [page citation]	52.2420(d). **Note:** the non-RACT related provisions found in subsections 2 and 3 of Section E are not incorporated by reference.
Potomac Electric Power Company (PEPCO)—Potomac River Generating Station Permit containing VOC RACT requirements].	Registration #70228	5/8/2000	January 2, 2001 .. [page citation]	52.2420(d).
United States Marine Corps.—Quantico Base [Permit].	Registration #70267	5/24/2000	January 2, 2001 .. [page citation]	52.2420(d).
Transcontinental Gas Pipeline Corporation—Compressor Station #185 [Consent Agreement].	Registration #71958	9/5/1996	January 2, 2001 .. [page citation]	52.2420(d).
U.S. Army Garrison at Fort Belvoir [Permit].	Registration #70550	5/16/2000	January 2, 2001 .. [page citation]	52.2420(d).
Virginia Power (VP)—Possum Point Generating Station [Permit containing NO_X RACT requirements].	Registration #70225	7/21/2000	January 2, 2001 .. [page citation]	52.2420(d).

EPA-APPROVED VIRGINIA SOURCE-SPECIFIC REQUIREMENTS—Continued

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
Virginia Power (VP)—Possum Point Generating Station [Consent Agreement containing VOC RACT requirements].	Registration #70225	6/12/1995	January 2, 2001 .. [page citation]	52.2420(d).
Washington Gas Light Company—Springfield Operations Center [Consent Agreement].	Registration #70151	4/3/1998	January 2, 2001 .. [page citation]	52.2420(d).

§ 52.5450 [Amended]

3. Section 52.2450(f) is removed and reserved.

[FR Doc. 00–33165 Filed 12–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–6925–5]

Clean Air Act Full Approval of Operating Permits Program in Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to fully approve the operating permits program submitted by the State of Washington. Washington's operating permits program was submitted in response to the directive in the Clean Air Act that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authority's jurisdiction. EPA granted interim approval to Washington's air operating permit program on November 9, 1994 (59 FR 55813); EPA repromulgated final interim approval on one issue, and a notice of correction for Washington's operating permits program, on December 8, 1995 (60 FR 62992). The state and local agencies that implement the Washington operating permits program have revised their programs to satisfy the conditions of the interim approval and this action approves those revisions.

DATES: This direct final rule is effective on March 5, 2001 without further notice, unless EPA receives adverse comment by February 1, 2001. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect. The public comments will be addressed in a subsequent final rule based on the proposed rule published in this **Federal Register**.

ADDRESSES: Copies of the State of Washington's submittal and other supporting information used in developing this final full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Denise Baker, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–8087.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. What Is the Title V Air Operating Permits Program?

The Clean Air Act (CAA) Amendments of 1990 required all state and local permitting authorities to develop operating permits programs that meet certain Federal criteria. In implementing the operating permits programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permits program is to improve enforcement by issuing each source a permit that consolidates all the applicable CAA requirements into a Federally enforceable document. By consolidating all the applicable requirements for a source in a single document, the source, the public, and regulators can more easily determine what CAA