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, section 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.

III. Proposed Action

EPA is proposing to approve Virginia’s Regulation for Emissions Trading, 9 VAC Chapter 140, part I—NOx Budget Trading Program submitted as a SIP revision on June 25, 2002, with the following exception: Virginia’s NOx allowance banking requirement for flow control is proposed to be conditionally approved. EPA proposes approval for Virginia’s NOx Budget Trading Program because it substantively satisfies the requirements of the NOx SIP Call. For Virginia’s NOx banking requirements to become fully approvable, Virginia must correct the deficiency identified in this action and submit the change as a SIP revision, by a date within one year from the final conditional approval, after which EPA will conduct rulemaking to fully approve the revision. If the condition is not met within the specified timeframe, EPA is proposing that the rulemaking will convert to a final disapproval.

IV. 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. For this reason, this action is also not subject to Executive Order 13211, “Federalism.” Therefore, EPA has determined that Significant Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)). This action merely proposes to approve 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). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 proposes to approve 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 19985, 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 12808 (61 FR 4720, 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 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 that pertains to Virginia’s NOx Budget Trading Program does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).
ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61
[FRL–7405–5]
RIN 2060–AJ87

National Emission Standard for Benzene Waste Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: We are proposing to amend the national emission standards for hazardous air pollutants (NESHAP) for benzene waste operations, promulgated on March 7, 1990 (55 FR 8346), under the authority of section 112 of the Clean Air Act (CAA). The amendments add an exemption for organic vapors routed to the fuel gas system and a new compliance option for tanks, and clarify the standards for containers.

In the Rules and Regulations section of this Federal Register, we are taking direct final action on the proposed amendments because we view this action as noncontroversial, and anticipate no adverse comment. We have explained our reasons for the amendments in the preamble to the direct final rule.

If we receive no adverse comment, we will take no further action on the proposed amendments. If we receive adverse comment, we will withdraw the direct final amendments and they will not take effect.

DATES: Comments must be received in writing by December 12, 2002.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services 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; the Air and Radiation Docket and Information Center, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 814–2174, or by e-mail at magliocchetti.catherine@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the “Rules and Regulations” section of this Federal Register publication.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this redesignation request, maintenance plan and emissions inventory for the CO nonattainment area in southwestern Pennsylvania, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: October 17, 2002.

Thomas C. Volfaggi,
Acting Regional Administrator, Region III.

[FR Doc. 02–28496 Filed 11–8–02; 8:45 am]

BILLING CODE 6560–50–P