determining Participant E's ADR for the plan year ending October 31, 2006, is $15,000 ($16,600 in elective deferrals for the current plan year, less $1,600 in catch-up contributions).

(iii) The ADP test is run for Plan R (after excluding the $1,600 in elective deferrals in excess of the section 401(a)(30) limit), but Plan R needs to take corrective action in order to pass the ADP test. After applying the rules of section 401(k)(8)(C) to allocate the total excess contributions determined under section 401(k)(8)(C), the maximum deferrals that may be retained by any highly compensated employee under Plan R (the ADP limit) is $14,800.

(iv) Under paragraph (d)(2)(ii) of this section, elective deferrals that exceed the section 401(a)(30) limit under Plan R are also subtracted from Participant E's elective deferrals under Plan R for purposes of applying the rules of section 401(k)(8). Accordingly, for purposes of correcting the failed ADP test, Participant E is treated as having contributed $15,000 of elective deferrals in Plan R. The amount of elective deferrals that would have to be distributed to Participant E in order to satisfy section 401(k)(8)(C) is $200 ($15,000 minus $14,800), which is less than the excess of the applicable dollar catch-up limit ($5,000) over the elective deferrals previously treated as catch-up contributions under Plan R for the taxable year ($1,000). Under paragraph (d)(2)(iii) of this section, Plan R must retain Participant E's $200 in elective deferrals and is not treated as failing to satisfy section 401(k)(8) merely because the elective deferrals are not distributed to Participant E.

(v) Even though Participant E's elective deferrals for calendar year 2006 have exceeded the section 401(a)(30) limit, Participant E can continue to make elective deferrals during the last 2 months of the calendar year, since Participant E's catch-up contributions for the taxable year are not taken into account in applying the section 401(a)(30) limit for 2006. Thus Participant E can make an additional contribution of $200 ($15,000 minus ($16,000 minus $1,200)) without exceeding the section 401(a)(30) for the calendar year and without regard to any additional catch-up contributions. In addition, Participant E may make additional catch-up contributions of $3,800 (the $5,000 applicable dollar catch-up limit for 2006, reduced by the $1,200 ($1,000 plus $200) of elective deferrals previously treated as catch-up contributions during the taxable year). The $3,800 of catch-up contributions will not be taken into account in the ADP test for the plan year ending October 31, 2007.

Example 7. (i) Participant F, who is 58 years old, is a highly compensated employee who earns $100,000 per year. Participant F participates in a section 401(k) plan, Plan S, for the first 6 months of the year and then transfers to another section 401(k) plan, Plan T, sponsored by the same employer, for the second 6 months of the year. Plan S limits highly compensated employees' elective deferrals to 6% of compensation for the period of participation, but permits catch-up eligible participants to defer amounts in excess of 6% during the plan year, up to the applicable dollar catch-up limit for the year. Plan T limits highly compensated employees' elective deferrals to 8% of compensation for the period of participation, but permits catch-up eligible participants to defer amounts in excess of 8% during the plan year, up to the applicable dollar catch-up limit for the year. Participant F earned $50,000 in the first 6 months of the year and deferred $6,000 under Plan S. Participant F also deferred $6,500 under Plan T.

(ii) As of the last day of the plan year, Participant F has $3,000 in elective deferrals under Plan S that exceed the employer-provided limit of $3,000. Under Plan T, Participant F has $2,500 in elective deferrals that exceed the employer-provided limit of $4,000. The total amount of elective deferrals in excess of employer-provided limits, $5,500, exceeds the applicable dollar catch-up limit by $500. Accordingly, $500 of the elective deferrals in excess of the employer-provided limits are not catch-up contributions and are treated as regular elective deferrals (and are taken into account in the ADP test). The determination of which elective deferrals in excess of an applicable limit are treated as catch-up contributions is permitted to be made in any manner that is not inconsistent with the manner in which such amounts were actually deferred under Plan S and Plan T.

Example 8. (i) Employer X sponsors Plan P, which provides for matching contributions equal to 50% of elective deferrals that do not exceed 10% of compensation. Elective deferrals for highly compensated employees are limited, on a payroll-by-payroll basis, to 10% of compensation. Employer X pays employees on a monthly basis. Plan P also provides that elective contributions are limited in accordance with section 401(a)(30) and other applicable statutory limits. Plan P also provides for catch-up contributions. Under Plan P, for purposes of calculating the amount to be treated as catch-up contributions (and to be excluded from the ADP test), amounts in excess of the 10% limit for highly compensated employees are determined at the end of the plan year based on compensation used for purposes of ADP testing (testing compensation), a definition of compensation that is different from the definition used under the plan for purposes of calculating elective deferrals and matching contributions during the plan year (deferral compensation).

(ii) Participant A, a highly compensated employee, is a catch-up eligible participant under Plan P with deferral compensation of $10,000 per monthly payroll period. Participant A defers 10% per payroll period for the first 10 months of the year, and is allocated a matching contribution each payroll period of $500. In addition, Participant A defers an additional $4,000 during the first 10 months of the year. Participant A then reduces deferrals during the last 2 months of the year to 5% of compensation. Participant A is allocated a matching contribution of $250 for each of the last 2 months of the plan year. For the plan year, Participant A has $15,000 in elective deferrals and $5,500 in matching contributions.

(iii) A's testing compensation is $118,000. At the end of the plan year, based on 10% of testing compensation, or $11,800, Plan P determines that A has $3,200 in deferrals that exceed the 10% employer provided limit. Plan P excludes $3,200 from ADP testing and calculates A's ADR as $11,800 divided by $118,000, or 10%. Although A has not been allocated a matching contribution equal to 50% of $11,800, because Plan P provides that matching contributions are calculated based on elective deferrals during a payroll period as a percentage of deferral compensation, Plan P is not required to allocate an additional $400 of matching contributions to A.

(i) *Effective date*—(1) *Statutory effective date.* Section 414(v) applies to contributions in taxable years beginning on or after January 1, 2002.

(2) *Regulatory effective date.* Paragraphs (a) through (h) of this section apply to contributions in taxable years beginning on or after January 1, 2004.

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: June 27, 2003.

Pamela F. Olson,

Assistant Secretary (Tax Policy).

[FR Doc. 03–17226 Filed 7–7–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA127–5064; FRL–7523–2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia Nitrogen Oxides Budget Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia which consists of its nitrogen oxides (NO_X) allowance trading program for large electric generating and industrial units, with the exception of the programs's NO_X allowance banking provisions, which EPA is conditionally approving. The effect of this action is to approve the Virginia NO_X Budget Trading Program, with conditions on the approval of its allowance banking provisions, because the program substantively addresses the requirements of Phase I of the NO_X SIP Call which will significantly reduce ozone transport in the eastern United States.

EFFECTIVE DATE: This final rule is effective on August 7, 2003.

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; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 12, 2002 (67 FR 68542), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of Virginia's NO_X Budget Trading Program, with the exception of its NO_X allowance banking provisions, for which EPA proposed conditional approval. The formal SIP revision was submitted by the Virginia Department of Environmental Quality (VADEQ) on June 25, 2002 to address the requirements of the NO_X SIP Call Phase I. Virginia's SIP revision to address the NO_X SIP Call Phase I consists of the addition of 9 VAC Chapter 140, part I—NO_X Budget Trading Program. Detailed descriptions of this SIP revision, the general NO_X SIP Call requirements, and EPA's rationale for approving Virginia's NO_X Budget Trading Program while conditionally approving the program's allowance banking provisions were provided in the November 12, 2002 NPR and will not be restated here. The terms of the conditional approval require that Virginia revise its banking provision to amend the flow control trigger date from 2006 to 2005, and submit the amendment as a SIP revision within one year from the effective date of today's final rulemaking action.

On May 13, 2003, the VADEQ submitted a letter to EPA committing to adopt the necessary regulatory amendment to 9 VAC 5 Chapter 140 to change the flow control date from 2006 to 2005. In the May 13, 2003 letter, the VADEQ also commits to submit this regulatory amendment as a SIP revision as expeditiously as possible but no later than one year from the effective date of EPA's final conditional approval of its NO_X Budget Trading Program's allowance banking provisions. The May 13, 2003 letter from the Commonwealth has been included in the administrative record (docket) of this final rulemaking.

Six comment letters were received; all comments pertained to EPA's proposed conditional approval of Virginia's NO_X allowance banking provisions. The comments opposed EPA's requirement that full approval of these provisions is conditioned upon Virginia revising the flow control trigger date from 2006 to 2005. A summary of the comments and EPA's responses is provided in Section II below.

II. Public Comments and EPA Responses

Comment: All commenters disagreed with EPA's proposed approval of Virginia's NO_X SIP Rule conditioned on adoption of a 2005 flow control date. The commenters expressed support for the 2006 flow control date currently in Virginia's rule.

EPA's Response: The NO_X SIP Call includes a limitation (referred to as ''flow control'') on the use of banked allowances for compliance with the requirement to hold allowances covering emissions. EPA rejects the commenters' claims and maintains that approval of Virginia's NO_X SIP Call rule should be conditioned on establishing 2005 as the earliest ozone season (referred to as the ''flow control date'') for which the limitation on use of banked allowances may be triggered.

First, allowing 2006 to be the flow control date in Virginia could result in an unfair advantage for units in the Commonwealth over units in other states with an earlier flow control date. EPA has approved NO_X Budget Trading Program rules under the NO_X SIP Call for 15 other states and the District of Columbia. None of the approved rules provide for a flow control date later than 2005.[1] The flow control limitation on use of banked allowances is triggered for an upcoming ozone season if the total amount of banked allowances held in allowance accounts as of the allowance transfer deadline (November 30 or, if it is not a business day, the next business day) for the prior ozone season exceeds 10 percent of the total trading budgets for all state programs for the upcoming ozone season. For the 2005 ozone season, banked allowances held for Virginia's units or by Virginia companies as of November 30, 2004 could be a contributing factor for triggering flow control in 2005 for all states with trading programs that are in effect. If Virginia units were to be a factor in triggering flow control in 2005, but would not be subject to the flow control limitation on use of banked allowances in 2005, those Virginia units would have an unfair advantage over units in the other states with a flow control date earlier than 2006.[2]

Further, should a 2006 flow control date be approved for Virginia, this would allow some companies to circumvent the earlier flow control dates established by other states. A company with affected units in both Virginia and a state with an earlier flow control date would be particularly advantaged in this regard. Such a company could circumvent the earlier flow control date by exchanging banked allowances held for its units in the state with the earlier flow control date for 2005 allowances held for its units in Virginia. All of these banked allowances could be used in Virginia in 2005 without application of flow control. However, a company with only units in states with earlier flow control dates could also circumvent, to some extent, the flow control provisions of those states. To the extent that the latter company could purchase 2005

[1] In approving trading program rules for Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, and Rhode Island, EPA approved flow control dates of 2004. The NO_X SIP Call established May 1, 2003 as the commencement date for the NO_X Budget Trading Program and required the flow control provisions to apply starting in the second year (2004) of the program. 40 CFR 51.121(b)(1)(ii) and (b)(2)(ii)(E). EPA's approval of the 2004 flow control date was based on the NO_X SIP Call. (EPA notes that it erroneously approved 2005 as the flow control date for Pennsylvania, whose program also begins in 2003.) Subsequently, the United States Court of Appeals for the District of Columbia Circuit established May 31, 2004 as the commencement date for the NO_X Budget Trading Program, and so 2005 became the second year of the program, and the mandated flow control date, for state trading programs starting in 2004. While § 51.121 and Part 96 were not revised, EPA has implemented the new flow control date through the notice and comment rulemakings for approval of the SIPs. EPA approved 2005 as the flow control date for states (*i.e.*, Alabama, Illinois, Indiana, Kentucky, North Carolina, South Carolina, and West Virginia) whose programs begin in 2004. EPA also has outstanding a proposed approval of a 2005 flow control date for Tennessee and a proposed approval for Ohio with the understanding that a 2005 flow control date will be adopted.

[2] Although EPA approved several state trading programs with a 2004 flow control date (*see* n.1), those states will not be disadvantaged by the fact that the other states have a 2005 flow control date. This is because 2005 is the earliest year that flow control is likely to be triggered for states with a 2004 flow control date. For 2004, the calculation for triggering flow control is the total number of banked allowances in accounts as of December 1, 2003 (*i.e.*, only the unused allowances allocated for 2003 plus the compliance supplement pool allowances for those states with trading programs beginning in 2003) divided by the total trading budgets for the states with programs in effect in 2004 (*i.e.*, virtually all states in the NO_X SIP Call region). Because, for this calculation for 2004, the number of states reflected in the numerator is so much smaller than the number of states reflected in the denominator, 2005 is effectively the flow control date for all states whose programs begin in 2003.

allowances and sell banked allowances, it could also avoid the application of the flow control limitation in 2005. In short, allowing a 2006 flow control date for Virginia would allow erosion of the effectiveness of flow control for states with a flow control date before 2006 and would provide for an unfair advantage to some companies.[3]

Comment: A number of commenters asserted that the 2006 flow control date adopted by Virginia is supported by the rationale in the preamble of the January 18, 2000 Section 126 rule (Part 97), the accompanying December 1999 response-to-comments document, and the preamble of the April 30, 2002 revision of Part 97 for extension of the flow control date. Commenters also stated that the possibility of different dates under different programs would not affect the trading program and that Part 96 should not be relied on for determination of approvability of the flow control date.

EPA's Response: EPA first notes that, at the time Part 97 was promulgated, the potential existed that a number of states would be subject to the trading program under Section 126 as well as that a number of states would be subject to the trading program under the NO_X SIP Call. This was due to uncertainty as to whether all states would be able to establish SIP approved programs under the NO_X SIP Call. While the NO_X SIP Call established statewide NO_X emissions budgets, it allowed states the flexibility to adopt whatever NO_X control measures were shown to meet their respective budgets (including the option of participating in the NO_X Budget Trading Program based on the model rule in Part 96). The states in the NO_X SIP Call region chose to adopt, or are in the process of adopting, trading programs based on Part 96. As long as a state fully meets its obligations under the NO_X SIP Call, EPA does not intend to apply the Section 126 rule to units in that state. The existing rule provision withdrawing the Section 126 findings for any state is keyed to the NO_X SIP Call compliance date of 2003. EPA has already withdrawn the Section 126 findings for Connecticut, Maryland, New Jersey, and New York on that basis. EPA has proposed to revise the Section 126 rule to withdraw the Section 126 findings for states with a May 31, 2004 compliance date. 65 FR 16644 (Apr. 2, 2003). In short, Part 97 (including the later flow control date of 2006) will likely no longer apply to any states in the NO_X SIP Call region.[4] Only the NO_X SIP Call and Part 96 will likely be applicable.

Moreover, in light of this change in circumstances and upon reconsideration of the discussion in the January 18, 2000 and April 30, 2002 preambles for Part 97 (and echoed in the December 1999 response-to-comments document) concerning the flow control date, EPA concludes that such discussion is not complete and is no longer applicable. In the January 18, 2000 Part 97 preamble, EPA stated that it was extending the flow control date to 2005 in response to some sources' concern ''regarding the feasibility of installing the NO_X control equipment required . . . without any risk to electricity reliability'' and their resulting concern that ''there would not be enough allowances for compliance in the initial years of the Federal NO_X Budget Trading Program'' under Part 97. *See* 65 FR 2674, 2717 (Jan. 18, 2000). That preamble explained that those concerns had been ''heightened'' by the triggering of an analogous flow control requirement in the second year of the Ozone Transport Commission (OTC) NO_X trading program, the predecessor program in the Ozone Transport Region. *Id.*

However, the basis for any potential need for allowances to supplement the trading budget in the initial years of the NO_X SIP Call and Section 126 trading programs is that some units might experience difficulties in installing NO_X emission controls (*e.g.*, selective catalytic reduction (SCR) before the commencement of the programs and might need to use additional allowances to cover their emissions in the initial years of the programs until the installations are completed. [*See* 63 FR 57356, 57428–32 (Oct. 27, 1998) explaining that EPA addressed these concerns in establishing the compliance deadline, banking as limited by flow control, and the compliance supplement pool of 200,000 additional allowances]. The triggering of flow control in the second year (2000) of the OTC program provides no basis for ''heightened'' concern that units under the Section 126 program or the NO_X SIP Call program might have difficulties in installing NO_X controls and thus in meeting the compliance deadline. The OTC flow control was triggered in 2000 because of the presence of extra allowances (in addition to the amount allocated for 1999) awarded in 1999 for early reductions and because OTC units were able to install sufficient NO_X controls to meet the OTC program's 1999 compliance deadline. This is demonstrated by the fact that without the 24,635 early reduction allowances, the bank would not have exceeded 10% of the total trading budget and so would not have triggered flow control;[5] and the fact that, in 1999, total emissions for units participating in the OTC program were less than the total number of regular allowances allocated by states participating in that program.[6] Thus, contrary to the January 18, 2000 Part 97 preamble, the triggering of flow control in 2000 in the OTC program does not provide a logical basis for concluding that there will be a greater level of control-installation difficulties than already addressed in the NO_X SIP Call (which has a 2005 flow control date) and that the flow control date should therefore be extended to 2006.[7]

Further, there is an additional factor that was not considered in the January 18, 2000 and April 30, 2002 Part 97 preambles and that affects the applicability of the preamble rationale for the flow-control-date extension to the NO_X SIP Call. The likelihood of there being insufficient allowances in the initial years of the NO_X SIP Call trading program has been reduced because, in addition to the compliance supplement pool (which was considered in the January 18, 2000 Part 97 preamble and represents about 1/3 of the trading budget), the availability of allowances in those years has been effectively augmented by U.S. Court of Appeal's extension of the commencement of the program from May 1, 2003 to May 31, 2004. *See* Michigan v. EPA, 213 F.3d

[3] Companies in states with a 2004 flow control date are not similarly disadvantaged by the 2005 flow control date for the remaining states. *See* n. 2.

[4] EPA has proposed, but not finalized, revisions to the NO_X SIP Call concerning its application to Georgia and Missouri. All other states in the NO_X SIP Call region either have approved programs or are in the process of developing programs meeting NO_X SIP Call requirements. It seems likely that all states that are subject to the NO_X SIP Call will meet its requirements. In any event, Part 97 does not apply to Georgia and Missouri.

[5] The allowance bank as of November 30, 1999 equaled 43,585 allowances. If the 24,635 early reduction allowances had not been provided, the bank would have been 18,950 allowances, which would have been less than the flow control trigger level of 10% of the 2000 trading budget (*i.e.*, 10% of 195,401 allowances or 19,540 allowances). *See* 1999 and 2000 OTC NO_X Budget Program Compliance Reports (March 27, 2000 and May 9, 2001).

[6] Total emissions in 1999 for participating units in the OTC program were 174,843 tons, as compared to a total trading budget in 1999 of 194,103 allowances for participating states. *Id.*

[7] The January 18, 2000 Part 97 preamble also stated that the 2006 flow control date ''gives sources greater assurance that they will be able to use compliance supplement pool allowances for compliance and before such allowances expire.'' 65 FR 2717. As discussed in a subsequent comment, it is unlikely that compliance supplement pool allowances will expire before being used for compliance. Units in states with a 2005 flow control date can use all such allowances in 2004, before flow control applies.

663 (D.C. Cir. 2000), *cert. den.,* 121 S. Ct. 1225 (2001) (August 30, 2000 order amending June 22, 2000 order lifting stay of state's SIP submission deadline). Under the Court's decision, the first year for state trading programs commencing in 2004 includes only 4 months (May 31-September 30, 2004). Despite this, EPA retained the full ozone season trading budget for 2004 reflecting 5 months of emissions, an effective increase of about 20%.

Finally, one utility claimed that the 2005 flow control date will ''seriously impair the construction schedules to which * * * sources have already committed'' and ''could compromise their ability to achieve compliance during 2005.'' The commenter alleged that ''[u]tilities * * * have been planning outages and related construction activities based on the submittals by the state * * *'' However, the commenter failed to provide any support for these speculative claims, for example, by discussing any specific unit's NO_X control construction schedule, showing that such schedule requires reliance by the owner or operator on the use of banked allowances for compliance for 2005, and showing that such schedule and such reliance were based on there being a 2006 flow control date.

Moreover, it is difficult to see how companies could have reasonably relied on a 2006 flow control date in scheduling installation of controls. First, since 1998, the NO_X SIP Call has called for a 2004 (or 2005, after the Court-mandated compliance date delay) flow control date and every state has been developing, through a public notice and comment procedure, NO_X SIP Call rules aimed at avoiding application of the Section 126 rule with a later flow control date. Second, the January 18, 2000 Part 97 preamble reiterated that the NO_X SIP Call continued to have a 2005 flow control date. *See* 65 FR 2718. Third, except for Virginia and Ohio, no state's NO_X SIP Call rule used a 2006 flow control date, and the Virginia and Ohio NO_X SIP Call rules with a 2006 flow control date were not promulgated until mid-2002. In short, commenters fail to show that the rationale for extending the flow control date stated in the January 18, 2000 Part 97 preamble is applicable here or that utilities reasonably relied on such an extension in the NO_X SIP Call in setting compliance schedules.

Commenters also noted that, in the January 18, 2000 Part 97 preamble, EPA stated that a ''one-year difference'' in flow control dates for sources subject to the NO_X SIP Call and Section 126 trading programs ''will not interfere with the trading of NO_X allowances'' and that there is ''no need to restrict trading between'' sources in the two programs. 65 FR 2718; *see also* 67 FR 21522, 21526 (April 30, 2002). However, neither the January 18, 2000 nor the April 30, 2002 Part 97 preamble considered the problems discussed above that can result from some States having a later flow control date than other States. *See* response to comment concerning the potential for unfair advantage for some companies and the potential for erosion of the earlier flow control date provisions. The Part 97 preambles also did not address the issue of consistency with the general objective under the Clean Air Act of expeditious as practicable achievement of attainment. *See* response to comment concerning availability of 2006 date for any of the NO_X SIP Call states.

Comment: A number of commenters stated that revision of the Virginia rule to require a 2005 flow control date could have the effect of ''deeply discounting'' the compliance supplement pool should flow control be triggered in 2005.

EPA's Response: The compliance supplement pool may be used in the first two years of a state NO_X SIP Call trading program, and the compliance supplement pool allowances are treated as banked allowances for purposes of triggering and applying flow control. 40 CFR 51.121(b)(2)(iii)(D) and (E). While compliance supplement pool allowances in states with trading programs beginning in 2003 or 2004 may be subject to flow control in 2005, a unit has the flexibility to use those allowances for compliance before 2005 in lieu of regular allowances and thereby to avoid application of flow control to the compliance supplement pool allowances. EPA recognizes, of course, that such a strategy may result in regular allowances (*i.e.*, those allocated for 2003, in states with programs beginning in 2003, and for 2004) being banked and subject to flow control. However, whether compliance supplement pool or regular allowances are subject to flow control, that result was intended under the NO_X SIP Call.

In the NO_X SIP Call, EPA noted that banking of allowances may ''inhibit or prohibit achievement of the desired emissions budget in a given [ozone] season'' since the use of banked allowances for compliance for a specific ozone season may result in total emissions for affected units exceeding the trading budget for that ozone season. *See* 63 FR 25902, 25935 (May 11, 1998). The trading budget reflects the emission reductions mandated, and found to be highly cost effective, under the NO_X SIP Call in order to prevent significant contribution to nonattainment in downwind states. Flow control addresses the potential problem caused by banking by continuing to allow banking but discouraging the ''excessive use'' of banked allowances for compliance. *Id.; see also* 63 FR 57473. Excessive use of banked allowances is discouraged by requiring that banked allowances above a certain amount be used on a 2-allowances-for-1-ton-of-emissions basis. All other allowances are used for compliance on a 1-for-1 basis. Because of this difference in use for compliance, commenters apparently are claiming that application of flow control ''discounts'' the allowances subject to flow control.

However, the NO_X SIP Call not only required SIPs to include the flow control provisions, but also required that these provisions apply starting in the second year of the program, which was 2004 in the NO_X SIP Call and which became 2005 for many states after the Court's order delaying the commencement of the trading program. In short, the ''deep discount'' claimed by the commenters results from the intentional curbing under the NO_X SIP Call of excessive use of banked allowances and so that claim is not a basis for allowing a 2006 flow control date.[8]

Comment: A number of commenters believe that the 2006 date should be available to any of the NO_X SIP Call states.

EPA's Response: EPA disagrees. First, allowing all states to use 2006 as the flow control date would be contrary to the NO_X SIP Call, which, as discussed above, requires the flow control provisions to apply starting in the second year of the program.

Second, the Clean Air Act rests on an ''overarching'' principle that the national ambient air quality standards (NAAQS) be achieved as expeditiously as possible. *See* 63 FR 57449. For example, under section 181 of the Clean Air Act, the ''primary standard

[8] Some commenters made a related claim that a 2005 flow control date will discourage early reductions as compared to a 2006 flow control date. However, in establishing flow control in the NO_X SIP Call, EPA balanced the considerations for and against flow control, including the impact on early reductions, and determined a 2005 flow control date should be established. As discussed above, EPA maintains that the determination (and the underlying balancing of these considerations and the underlying rationale) in the Section 126 rule to set a later flow control date are not applicable here. Further, even with the possibility of triggering flow control in 2005, there is still an incentive to make early reductions and obtain compliance supplement pool allowances since, under flow control, the use of banked allowances for compliance is not barred but rather is on a 2-for-1 basis.

attainment date for ozone shall be as expeditiously as practicable but not later than [certain statutorily prescribed attainment dates].'' 42 U.S.C. 7511; *see also* 42 U.S.C. 7502(a)(2)(A). As discussed above, the state trading budgets under the NO_X SIP Call reflect the emission reductions mandated under the NO_X SIP Call in order to prevent significant contribution to nonattainment in downwind states. Flow control reduces the likelihood of total emissions in any given ozone season in the NO_X SIP Call region exceeding the total of the state trading budgets by more than 10% and in that way promotes achievement of attainment as expeditiously as practicable. The later the flow control date, the greater the number of ozone seasons that lack this provision preventing, or at least minimizing, excessive use of banked allowances and total emissions in excess of the state budgets. Moreover, emission reductions in 2005 and 2006 may both help some nonattainment areas achieve attainment and help some areas achieve reasonable further progress toward attainment. *See* 63 FR 57449–50.[9] The NO_X SIP Call balanced various factors, including the potential benefits of banking and the potential problems from excessive banking, and determined that flow control protection should begin in the second year of the trading program. *See* 63 FR 25934–44; and 40 CFR 51.121(b)(2)(iii)(D) and (E).[10] Allowing a later flow control date would run contrary to the overarching objective of expeditious as practicable attainment.[11]

Comment: A number of commenters suggested that if EPA continues to apply the NO_X SIP Call to Georgia and Missouri, and sets dates for the commencement of their emission control requirements (such as a trading program based on Part 96), those states will have flow control dates later than 2005 and that this supports allowing Virginia to have a flow control date later than 2005.

EPA's Response: EPA rejects this claim as entirely speculative. In addressing whether and, if so, how to apply the NO_X SIP Call to Georgia and Missouri, EPA will address how to handle the flow control requirements and will take into account the problems discussed above that would result from some states having later flow control dates than other states.

III. Final Action

EPA is approving the Commonwealth of Virginia's Regulation for Emissions Trading, 9 VAC Chapter 140, part I—NO_X Budget Trading Program submitted as a SIP revision on June 25, 2002, with the following exception: the provisions of Virginia's NO_X allowance banking regulation set forth in 9 VAC 5–140–550 are conditionally approved. Except as noted, EPA is approving Virginia's NO_X Budget Trading Program because it substantively satisfies the requirements of the NO_X SIP Call Phase I. For Virginia's NO_X allowance banking provisions to become fully approvable, Virginia must correct the deficiency identified in this action and submit the change as a SIP revision within one year from the effective date of today's action. Because the VADEQ has begun the regulatory process to change the flow control trigger date from 2006 to 2005, and has provided a written commitment to EPA that the so revised regulation will be submitted as a SIP revision within the one year deadline, EPA will record, as soon as practicable after EPA's conditional approval becomes effective, the allowance allocations provided under Virginia's rule. If Virginia fails to fulfil its commitment, the conditional approval of the allowance banking provisions will convert to a disapproval, and EPA will, at that time, address the effect of that disapproval on the Commonwealth's NO_X Budget Trading Program.

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

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 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

[9] EPA notes that the NO_X SIP Call covers a larger number of states, and its emission limitations are aimed at preventing significant contribution to a larger number of states with nonattainment areas, than the Section 126 rule.

[10] In the January 18, 2000 Part 97 preamble, EPA stated that adoption of the third year of the program as the flow control date ''strikes an appropriate balance'' between concerns over the feasibility of installing controls by May 1, 2003 and the environmental goal of the program. 65 FR 2717. This is echoed in the December 1999 response-to-comments document (at 71), which stated that a 2006 flow control date will not ''jeopardize the environmental goal'' of this program. As discussed above, EPA maintains that the determination (and the underlying balancing of these considerations and the underlying rationale) in the Section 126 rule to set a later flow control date are not applicable here. *See, e.g.*, n.8.

[11] Commenters' claim that, since EPA does not expect flow control to be triggered in 2005, the potential effect of a 2006 flow control date on expeditious attainment should be ignored. This claim is without merit. Despite EPA's expectations, there is the potential for flow control to be triggered in 2005. In fact, commenters stated that they believe that such triggering in 2005 is ''relatively likely'; indeed, if they did not believe it might occur, they would not be objecting to a 2005 flow control date.

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. Statutory and Executive Order Reviews

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. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). 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 (Pub. L. 104–4). This rule also does not have tribal implications because it will 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). This action also does not have Federalism implications because it does 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). This action 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 ''Protection of Children from Environmental Health Risks and Safety Risks'' (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. 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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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 September 8, 2003. 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 Virginia's NO_X Trading Program, but conditionally approving its banking provisions, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: June 26, 2003.

Donald S. Welsh,

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 (c) is amended by adding the entry Chapter 140 to 9 VAC 5, to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP

State citation (9 VAC 5)	Title/Subject	State effective date	EPA approval date	Explanation (former SIP section)
*	*	*	*	*
Chapter 140	NO_x Budget Trading Program [Part I]			
	Part I.—Emission Standards			
Article 1	NO_x Budget Trading Program General Provisions			
5–140–10	Purpose	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–20	Definitions	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–30	Measurements, abbreviations, and acronyms	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–31	Federal Regulations Incorporated by reference	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–40	Applicability	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–50	Retired unit exemption	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–60	Standard requirements.	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–70	Computation of time	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–100	Authorization and responsibilities of the NO_X authorized representative.	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–110	Alternate NO_X authorized account representative.	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–120	Changing the NO_X authorized account representative and alternate NO_X authorized account Register representative; page changes in the owners and operators.	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–130	Account certificate of representation	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–140	Objections concerning the NO_X authorized account and representative.	7/17/02	*7/08/03 and Federal Register page citation]*	
Article 3	Permits			
5–140–200	General NO_X Budget permit requirements	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–210	Submission of NO_X Budget permit applications	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–220	Information requirements for NO_X Budget permit applications.	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–230	NO_X Budget permit contents	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–240	Effective date of initial NO_X Budget permit	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–250	NO_X Budget permit revisions	7/17/02	*7/08/03 and Federal Register page citation]*	
Article 4	Compliance Certification			
5–140–300	Compliance certification report	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–310	Permitting authority's and administrator's and action on compliance certifications.	7/17/02	*7/08/03 and Federal Register page citation]*	
Article 5	NO_X Allowance Allocations			
5–140–400	State trading program budget	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–410	Timing requirements for NO_X allowance allocations.	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–420	NO_X allowance allocations	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–430	Compliance Supplement Pool	7/17/02	*7/08/03 and Federal Register page citation]*	
Article 6	NO_X Allowance Tracking System			
5–140–500	NO_X Allowance Tracking System accounts	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–510	Establishment of accounts	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–520	NO_X Allowance Tracking System responsibilities of NO_X authorized account representative.	7/17/02	*7/08/03 and Federal Register page citation]*	

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5)	Title/Subject	State effective date	EPA approval date	Explanation (former SIP section)
5–140–530	Recordation of NO_X allowance allocations	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–540	Compliance	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–550	Banking	7/17/02	*7/08/03 and Federal Register page citation]*	Conditionally Approved
5–140–560	Account error	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–570	Closing of general accounts	7/17/02	*7/08/03 and Federal Register page citation]*	
Article 7		NO_X Allowance Transfers		
5–140–600	Scope and submission of NO_X allowance transfers.	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–610	EPA recordation	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–620	Notification	7/17/0	*7/08/03 and Federal Register page citation]*	
Article 8		Monitoring and Reporting		
5–140–700	General Requirements	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–710	Initial certification and recertification procedures.	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–720	Out of control periods	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–730	Notifications	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–740	Recordkeeping and reporting	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–750	Petitions	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–760	Additional requirements to provide heat input data for allocation purposes.	7/17/02	*7/08/03 and Federal Register page citation]*	
Article 9.		Individual Unit Opt-ins		
5–140–800	Applicability	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–810	General	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–820	NO_X authorized account representative	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–830	Applying for NO_X Budget opt-in permit	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–840	Opt-in process	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–850	NO_X Budget opt-in permit contents	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–860	Withdrawal from NO_X Budget Trading Program.	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–870	Change in regulatory status	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–880	NO_X allowance allocations to opt-in units	7/17/02	*7/08/03 and Federal Register page citation]*	
Article 10		State Trading Program Budget and Compliance Pool		
5–140–900	State trading program budget	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–910	Compliance supplement pool budget	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–920	Total electric generating unit allocations	7/17/02	*7/08/03 and Federal Register page citation]*	
5–140–930	Total non-electric generating unit allocations	7/17/02	*7/08/03 and Federal Register page citation]*	
*	*	*	*	*	*	*

* * * * *

■ 3. Section 52.2450 is amended by adding paragraph (c) to read as follows:

§ 52.2450 Conditional approval.

* * * * *

(c) Virginia's banking provision set forth in 9 VAC 5–140–550 under its NO_X SIP Trading program is approved with the following contingency: Virginia must correct the flow control trigger date from 2006 to 2005 and submit the

change as a SIP revision within one year from August 7, 2003.

[FR Doc. 03–17100 Filed 7–7–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[NE 178–1178a; FRL–7523–1]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing approval of revisions to the Nebraska State Implementation Plan (SIP) and Operating Permits Program. On September 7, 2001, and May 10, 2002, the state updated its air program rules to be consistent with Federal requirements, to revise definitions, and to clarify applicability, reporting, and monitoring requirements. Approval of these revisions will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's revised air program rules.

DATES: This direct final rule will be effective September 8, 2003, unless EPA receives adverse comments by August 7, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, or E-mail him at *kaiser.wayne@epa.gov.*

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is the part 70 Operating Permits Program?
What is being addressed in this document?
Have the requirements for approval of a SIP revision and part 70 program revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by us. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by us under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled ''Approval and Promulgations of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in the CAA.

What Is the Part 70 Operating Permits Program?

The CAA Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM_{10}; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state and local agencies operating permits program are also subject to public notice, comment, and our approval.

What Is Being Addressed in This Document?

The state of Nebraska has requested that we approve as a revision to the Nebraska SIP, part 70 Operating Permits Program and section 112(l) air toxics