

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, 1998 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 CAA, 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 CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Proposed Action

EPA is proposing to approve the Virginia SIP revision that clarifies and recodifies provisions covering case-by-case RACT, as well as adds the 1997 8-hour ozone standard requirements to the Commonwealth’s regulations. EPA views the administrative changes and re-codifications as non-substantive, as they do not affect the scope of the currently approved Virginia SIP, and consequently, cannot interfere with timely attainment or progress towards

attainment of a NAAQS, nor interfere with any other provision of the CAA. However, regulation 9 VAC 5–40–7420F. and G. incorrectly cross-references the Commonwealth’s VOC regulations at 9 VAC 5–40–7390, instead of its nitrogen oxides regulation at 9 VAC 5–40–7410. The Commonwealth is in the process of correcting the cross-references in this regulation and will submit the correction to EPA. EPA does not intend to finalize this action until after the Commonwealth formally submits the corrected versions of 9 VAC 5–40–7420F. and G. to EPA as part of this SIP revision. EPA does not intend to reopen the comment period before taking final action on this SIP revision. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to amendments to Virginia’s case-by-case RACT determinations, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 22, 2009.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. E9–26340 Filed 11–2–09; 8:45 am]

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FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 02–15]

Passenger Vessel Financial Responsibility

AGENCY: Federal Maritime Commission.

ACTION: Termination of proposed rulemaking.

SUMMARY: The Commission has determined to terminate the Proposed Rulemaking published on October 31, 2002, in FMC Docket No. 02–15. The Proposed Rule would have amended the Commission’s passenger vessel regulations at 46 CFR Part 540, which implement the statutory requirement to provide proof of passenger vessel financial responsibility.

ADDRESSES: Address all comments and inquiries concerning this termination to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North

Capitol Street, NW., Room 1046, Washington, DC 20573-0001, (202) 523-5725, E-mail: secretary@fmc.gov.

FOR FURTHER INFORMATION CONTACT:

Peter J. King, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1018, Washington, DC 20573-0001, (202) 523-5740, E-mail: generalcounsel@fmc.gov.

SUPPLEMENTARY INFORMATION:

By Notice of Proposed Rulemaking published October 31, 2002, 67 FR 66352, the Commission proposed amendments to its passenger vessel regulations at 46 CFR Part 540. These regulations implement the statutory requirement to provide proof of passenger vessel financial responsibility under Sections 2 and 3 of Public Law 89-777, now recodified at 46 U.S.C. 44101-44103. The proposed amendments would have: eliminated the current ceiling on required performance coverage; adjusted the amount of coverage required by providing for consideration of the obligations of credit card issuers; provided for the use of Alternative Dispute Resolution (ADR), including the Commission's ADR program, in resolving passenger performance claims; revised the application form, and made other technical changes. By reason of the scope of the changes proposed, the Commission sought to revise and republish in their entirety the Commission's passenger vessel operator (PVO) rules at 46 CFR Part 540.

The Commission's proposed rule elicited a broad range of comments from many sectors of the cruise industry. Comments were received from cruise lines, travel agents, individual ports servicing the cruise industry, state ports councils; and from the surety industry, banking industry and the credit card companies as well as trade associations representing these sectors of the industry. Comments were submitted both to the Commission and also to the Office of Management and Budget. In recognition of broad public interest in the rulemaking, the Commission initially extended the comment period for receiving written submissions and ultimately convened a public hearing to accept oral comments. Comments and status updates continued to be received by the Commission through April 2004.

Written and oral comments revealed wide-spread differences of opinion on both questions of fact and law with respect to the proposed rule, with particular aspects supported (or opposed) by one trade sector or another. More than 5 years have now passed since the Commission last received comments on the proposed rule. The

record in this proceeding has effectively become stale, failing to account for changes in the industry that include, but are not limited to, the recent economic downturn that has greatly impacted most segments of the domestic and world economies. The Commission has determined that the record amassed in prior years is no longer legally sufficient to sustain contemporary efforts to either adopt or propose new alternatives to the Commission's financial responsibility requirements for PVOs.

For these reasons, the Commission has decided to terminate the Notice of Proposed Rulemaking published on October 31, 2002, 67 FR 66352. Should the Commission decide to move forward with revising its passenger vessel regulations, the industry will be provided further opportunity to submit comments.

By the Commission.

Karen V. Gregory,
Secretary.

[FR Doc. E9-26402 Filed 11-2-09; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R7-ES-2009-0049]

[MO 9221050083-B2]

[RIN 1018-AW32]

Endangered and Threatened Wildlife and Plants; Listing the British Columbia Distinct Population Segment of the Queen Charlotte Goshawk Under the Endangered Species Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the British Columbia distinct population segment (DPS) of the Queen Charlotte goshawk (*Accipiter gentilis laingi*) as threatened, except on the Queen Charlotte Islands (a significant portion of the DPS's range), where we propose to list the goshawk as endangered, under the Endangered Species Act of 1973, as amended (Act). This proposal, if made final, would extend the Act's protection to this subspecies in British Columbia, Canada, on Vancouver Island and the surrounding smaller islands, the Queen Charlotte Islands, and the coastal mainland west of the Coast Mountains. The Service seeks data and comments from the public on this proposal.

DATES: We will consider comments received on or before January 4, 2010. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by December 18, 2009.

ADDRESSES: You may submit comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R7-ES-2009-0049; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT:

Steve Brockmann, Juneau Fish and Wildlife Field Office, 3000 Vintage Blvd. Suite 201, Juneau, AK 99801; telephone (907) 780-1181; fax (907) 586-7154.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposal will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or suggestions from other government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments regarding:

- (1) Biological information, population status, commercial trade, or other relevant data concerning any threat (or lack thereof) to this subspecies,
- (2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

- (a) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (b) Overutilization for commercial, recreational, scientific, or educational purposes;
- (c) Disease or predation;
- (d) The inadequacy of existing regulatory mechanisms; or
- (e) Other natural or manmade factors affecting its continued existence.

- (3) The appropriate conservation status for the British Columbia DPS of the Queen Charlotte goshawk, and

- (4) Specific information on the areas identified as significant portions of the