

standard promulgated under subsection (b) [of section 104].” Section 104(c)(2)(D) of the CPSIA provides, in relevant part, that section 104(c) of the CPSIA applies to any person who “owns or operates a public accommodation affecting commerce (as defined in section 4 of the Federal Fire Prevention and Control Act of 1974 (FFPCA) (15 U.S.C. 2203)” (emphasis added). Section 4 of the FFPCA defines a place of public accommodation as “any inn, hotel, or other establishment not owned by the Federal Government that provides lodging to transient guests, *except that such term does not include an establishment treated as an apartment building for purposes of any State or local law or regulation or an establishment located within a building that contains not more than 5 rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment*” (emphases added). 15 U.S.C. 2203(7). The FFPCA contains the same exclusion from public accommodation as do the ADA and CRA; in other words, all three statutes exclude an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment. The FFPCA, like the VGB Act, is a statute intended to promote public safety. Further, the FFPCA’s definition is used in the CPSIA, a statute which is administered by the CPSC. Parties familiar with the CPSC may already be familiar with the definition of “public accommodation” as used in the CPSIA. Thus, the Commission believes it is appropriate to enforce the same interpretation of the phrase “public accommodation” in the VGB Act as used in the CPSIA, especially given the similar public safety goals of the statutes.

#### List of Subjects in 16 CFR Part 1450

Consumer protection, Infants and children, Law enforcement.

#### C. Conclusion

For the reasons stated above, the Commission proposes to amend chapter II of title 16 of the Code of Federal Regulations by adding a new part 1450 to read as follows:

#### PART 1450—VIRGINIA GRAEME BAKER POOL AND SPA SAFETY ACT REGULATIONS

Sec.

1450.1 Scope.

1450.2 Definitions.

**Authority:** 15 U.S.C. 2051–2089, 86 Stat. 1207; 15 U.S.C. 8001–8008, 121 Stat. 1794

#### § 1450.1 Scope.

This part pertains to the Virginia Graeme Baker Pool and Spa Safety Act, (“Act”), 15 U.S.C. 8001 *et seq.*, which is designed to prevent child drowning, drain entrapments and eviscerations in pools and spas.

#### § 1450.2 Definitions.

(a) *Public accommodations facility* means an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor.

(b) [Reserved.]

Dated: March 4, 2010.

**Todd A. Stevenson,**

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–5130 Filed 3–12–10; 8:45 am]

**BILLING CODE 6355–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R03–OAR–2010–0039; FRL–9127–3]

#### Approval and Promulgation of Air Quality Implementation Plans; Delaware; Control of Nitrogen Oxide Emissions From Industrial Boilers and Process Heaters at Petroleum Refineries

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Delaware. The revision adds a new section, Section 2—Control of Nitrogen Oxide Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries to Delaware’s Regulation No. 1142/SIP Regulation No. 42— Specific Emission Control Requirements for controlling nitrogen oxide (NO<sub>x</sub>) emissions from industrial boilers. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before April 14, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0039 by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *E-mail:* [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. *Mail:* EPA–R03–OAR–2010–0039, Cristina Fernandez, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2010–0039. EPA’s policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental

Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19901.

**FOR FURTHER INFORMATION CONTACT:** Gregory Becoat, (215) 814-2036, or by e-mail at [becoat.gregory@epa.gov](mailto:becoat.gregory@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On November 17, 2009, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a revision to its SIP for an amendment to Regulation No. 1142/SIP Regulation No. 42—Specific Emission Control Requirements. This SIP revision added a new section, Section 2—Control of Nitrogen Oxide Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries. The regulation was adopted in order to require new and/or additional controls on industrial boilers and process heaters with heat input capacities of equal to or greater than 200 million British thermal units per hour (mmBTU/hr) at petroleum refining facilities and to help Delaware attain and maintain the national ambient air quality standards (NAAQS) for the 1997 8-hour ozone standard by 2010.

**II. Summary of SIP Revision**

Regulation No. 1142/SIP Regulation No. 42 establishes applicability and compliance dates to any industrial boiler or process heater with a maximum heat input capacity of equal to or greater than 200 mmBTU/hr, which is operated or permitted to operate within a petroleum refinery facility (except for any Fluid Catalytic Cracking Unit carbon monoxide (CO) boiler). Regulation No. 1142/SIP Regulation No. 42 establishes NO<sub>x</sub> emission limitations for any industrial boiler or process heater with a maximum heat input capacity of equal to or greater than 200 mmBTU/hr, which is operated or permitted to operate within a petroleum refinery facility. The regulation also requires compliance with monitoring, recordkeeping, and reporting requirements.

**III. Proposed Action**

EPA is proposing to approve the amendment to Delaware's SIP revision Regulation No. 1142/SIP Regulation No. 42—Specific Emission Control Requirements submitted on November 17, 2009. This regulation will help to reduce NO<sub>x</sub> emissions from Delaware's large industrial boilers and process

heaters that are located at petroleum refineries and help Delaware attain and maintain the NAAQS for the 1997 8-hour ozone standard by 2010. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

**IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 Clean Air Act; 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 Delaware's amendment to add a new section, Section 2—Control of Nitrogen Oxide Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries to Regulation No. 1142/SIP Regulation No. 42—Specific Emission Control Requirements, 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, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: February 25, 2010.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2010-5583 Filed 3-12-10; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 100210083-0085-01]

**RIN 0648-AY67**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Commercial King and Spanish Mackerel Fisheries of the Gulf of Mexico; Control Date**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Advanced notice of proposed rulemaking; request for comments.

**SUMMARY:** This notice announces that the Gulf of Mexico Fishery Management Council (Council) is considering additional management measures to further limit the number of participants or levels of participation in the commercial king and Spanish mackerel components of the coastal migratory pelagic fishery operating in the exclusive economic zone (EEZ) of the Gulf of Mexico. If such management