Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number and title for this proposed rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the **Federal Register** for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on May 19, 2011, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Government programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing home care, Veterans.

Dated: May 20, 2011.

William F. Russo,

Deputy Director, Office of Regulations Policy & Management, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to revise 38 CFR part 17 as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

§ 17.1001 [Amended]

2. Amend § 17.1001 by removing paragraph (a)(5).

§ 17.1002 [Amended]

3. Amend § 17.1002 by removing the words "or in part" in paragraph (h).

§ 17.1004 [Amended]

4. Amend § 17.1004 as follows:

a. Remove paragraph (d)(1).

b. Redesignate paragraphs (d)(2), (d)(3) and (d)(4) as new paragraphs (d)(1), (d)(2) and (d)(3), respectively.

c. Add paragraph (f) immediately following paragraph (e).

d. Add an information collection approval parenthetical at the end of the section.

The additions read as follows:

§ 17.1004. Filing claims.

* * * * *

(f) Notwithstanding paragraph (d) of this section, VA will provide retroactive payment or reimbursement for emergency treatment received by the veteran on or after July 19, 2001, but more than 90 days before [*the effective date of the final rule*], if the claimant files a claim for reimbursement no later than 1 year after [*the effective date of the final rule*].

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0620.)

5. Amend § 17.1005 by adding paragraphs (c) and (d), to read as follows:

§ 17.1005. Payment limitations.

* * * * *

(c) If an eligible veteran under § 17.1002 has contractual or legal recourse against a third party that would only partially extinguish the veteran's liability to the provider of emergency treatment then:

(1) VA will be the secondary payer;

(2) Subject to the limitations of this section, VA will pay the difference between the amount VA would have paid under this section for the cost of the emergency treatment and the amount paid (or payable) by the third party; and

(3) The provider will consider the combined payment under paragraph (c)(2) of this section as payment in full and extinguish the veteran's liability to the provider.

(d) VA will not reimburse a claimant under this section for any deductible, copayment or similar payment that the veteran owes the third party.

* * * * *

[FR Doc. 2011–13015 Filed 5–25–11; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0195; FRL–9311–8]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revisions to Clean Air Interstate Rule Emissions Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The revision, which amends the Virginia Clean Air Interstate Rule (CAIR) trading program, is comprised of technical corrections and revisions to the definition of a cogeneration unit to ensure the Commonwealth's CAIR trading program is consistent with Federal CAIR requirements. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 27, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0195 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.*

C. *Mail:* EPA–R03–OAR–2011–0195, Cristina Fernandez, Associate Director, Office of Air Quality 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–2011–0195. 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 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: Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On September 27, 2010, the Commonwealth of Virginia Department of Environmental Quality (VADEQ) submitted a revision to its SIP, including technical corrections and revisions to the definition of a cogeneration unit to ensure the Commonwealth's CAIR trading program is consistent with Federal CAIR requirements.

I. Background

EPA approved Virginia's CAIR trading program on December 28, 2007 (72 FR 73602). In the notice of proposed rulemaking (NPR) for Virginia's CAIR trading program (72 FR 54385, September 25, 2007), EPA noted that it believed that Virginia clearly intended to replace the CAIR Federal Implementation Plan (FIP) with a State plan based on the CAIR model rule that would allow subject sources, non-EGUs from its Nitrogen Oxides (NO_X) SIP Call budget trading program, and opt-in units meeting the CAIR opt-in criteria to participate in the EPA-administered regional CAIR trading program. However, EPA also noted that there were some provisions of Virginia CAIR regulations 9 VAC 5 Chapter 140, Parts II, III, and IV that could be interpreted in a way that might be inconsistent with the Commonwealth's intent. These provisions pertain to definitions associated with Virginia's participation in the regional CAIR trading program, definitions associated with the State's decision to bring its non-EGUs from its NO_X SIP Call budget trading program into the CAIR trading program, and a definition of the term "most stringent state or Federal NO_X emissions limitation" that is based upon the model rule but had been expanded by the Commonwealth to include the situation where more than one fuel is allowed by a permit. EPA determined that VADEQ's interpretations of these provisions, provided in its letter dated September 12, 2007, clarified the language of the Virginia regulations and were consistent with having the EPA-administered CAIR trading program become effective in Virginia. However EPA recommended, and VADEQ agreed to, promulgation of clarifying amendments to these provisions at the Commonwealth's earliest opportunity.

Also, in a rulemaking dated October 19, 2007 (72 FR 59190), EPA changed the definition of "cogeneration unit" in CAIR, the CAIR model cap and trade rule, and the CAIR FIP with respect to the calculation methodology for the efficiency standard of a cogeneration unit. The revised methodology excluded energy input from biomass, making it more likely that units co-firing biomass would be able to meet the efficiency standard and qualify for the cogeneration exemption allowed by CAIR. This change to the Federal requirements was made subsequent to Virginia's adoption of its CAIR regulations, therefore Virginia is required to revise its CAIR regulations to incorporate the changes to the definition of cogeneration unit to allow the exemption for biomass units to apply to sources in the Commonwealth.

II. Summary of SIP Revision

On September 27, 2010, VADEQ submitted a SIP revision that amended Virginia's CAIR regulations. The SIP revision incorporates the clarifying revisions specified in the September 25, 2007 NPR proposing approval of Virginia's CAIR regulations and the changes to the definition of "cogeneration unit" made in EPA's revised CAIR rulemaking dated October 19, 2007. The submission also included several other technical or administrative corrections to these regulations.

The SIP revision applies to the CAIR NO_X Annual Trading Program (9 VAC5 Chapter 140, Part II), the CAIR NO_X Ozone Season Trading Program (9 VAC 5 Chapter 140, Part III), and the CAIR SO_2 Annual Trading Program (9 VAC 5 Chapter 140, Part IV). The provisions of regulations 5–140–1010, 5–140–2010, and 5–140–3010 relating to "Purpose," and the definitions of "CAIR NO_X Annual Trading Program," "CAIR NO_X Ozone Season Trading Program," "CAIR SO_2 Trading Program," and "permitting authority" in regulations 5–140–1020, 5–140–2020, and 5–140–3020 are amended to clarify that the Commonwealth's CAIR sources are full participants in the EPA-administered regional CAIR trading programs and that the Virginia CAIR programs are not trading programs only for sources geographically located within the borders of the Commonwealth. The definition of "most stringent state or Federal NO_X emissions limitation" in regulations 5–140–1020, 5–140–2020, and 5–140–3020 is amended to clarify that the primary fuel, where it is not designated in the permit, is the fuel that would result in the lowest emission rate. Additionally, the provisions of regulations 5–140–1020, 5–140–2020, and 5–140–3020 are amended to reflect the changes to the definition of "cogeneration unit" that were made to the Federal CAIR program described previously.

III. 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, 1998, 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, 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.

III. Proposed Action

EPA is proposing to approve the Virginia SIP revision amending the Commonwealth's CAIR regulations codified at 9 VAC5 Chapter 140, Parts I, II, and III, which was submitted on September 27, 2010. EPA's analysis shows that the revisions are consistent with Federal CAIR requirements. 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 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 CAA. 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 approving Virginia revisions to its CAIR trading program 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, Sulfur oxides.

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

Dated: May 9, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–13068 Filed 5–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2011–0081; FRL–9312–1]

RIN 2060–AQ69

Response To Petition From New Jersey Regarding SO_2 Emissions From the Portland Generating Station

AGENCY: Environmental Protection Agency (EPA).