List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: March 2, 2017.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

Dated: March 1, 2017.

Catherine McCabe,

Acting Regional Administrator, Region II.

[FR Doc. 2017–07826 Filed 4–17–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0052; FRL–9961–50-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Major New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Commonwealth of Virginia state implementation plan (SIP). The revisions amend Virginia's major source New Source Review (NSR) regulations to make them consistent with the federal program. EPA is proposing to approve these revisions to the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before May 18, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0052 at *http://www.regulations.gov,* or via email to *miller.linda@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814–2117, or by email at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The CAA's NSR programs are preconstruction review and permitting programs applicable to new and modified stationary sources of air pollutants regulated under the CAA. The NSR programs of the CAA include a combination of air quality planning and air pollution control technology program requirements. Briefly, section 109 of the CAA requires EPA to promulgate primary national ambient air quality standards (NAAQS) to protect public health and secondary NAAQS to protect public welfare. Once EPA sets those standards, states must develop, adopt, and submit to EPA for approval a SIP that contains emissions limitations and other control measures to attain and maintain the NAAQS. Pursuant to section 110, each SIP is required to contain a preconstruction review program for the construction and modification of any stationary source of air pollution to assure that the NAAQS are achieved and maintained; to protect areas of clean air; to protect air quality-related values (such as visibility) in national parks and other areas; to assure that appropriate emissions controls are applied; to maximize opportunities for economic development consistent with the preservation of clean air resources; and, to ensure that any decision to increase air pollution is made only after full public consideration of the consequences of the decision. Section 172 of the CAA requires a permit program in areas which are not attaining the NAAQS, and section 173 provides the specific requirements for that permit program.

On October 16, 2015, the Virginia Department of Environmental Quality (VADEQ), on behalf of the Commonwealth of Virginia, submitted a formal revision to the Virginia SIP. The SIP revision consists of amendments to the preconstruction permit requirements under VADEQ's major NSR permit program. The revision affects sources subject to VADEQ's Prevention of Significant Deterioration (PSD) program, which applies in areas which are in attainment with (or unclassifiable for) the NAAQS, as well as affecting sources subject to its nonattainment NSR permit program, applicable in areas not in attainment with the NAAQS. By letter dated March 1, 2017, VADEQ officially withdrew a small and specific portion of the October 16, 2015 submittal from consideration for approval into the Virginia SIP. A copy of the letter has been included in the docket for this action. Further discussion of the withdrawal is provided in section II.A of this notice.

II. Summary of SIP Revision and EPA Analysis

Generally, the October 16, 2015 SIP submittal revision (as amended March 1, 2017) (hereinafter referred to as the 2015 NSR SIP Revision) is intended to make the Virginia Administrative Code regulations at 9VAC5 consistent with the federal NSR program at 40 CFR 51.165 and 51.166. The specific changes to 9VAC5 are intended to: (1) Allow the use of a 10-year lookback period to calculate pre-change emissions for sources other than electric utility steam generating units (EGUs); (2) Allow the use of different lookback periods for different regulated NSR pollutants; (3) Extend the effective period for plantwide applicability limits (PALs) to 10 years; and, (4) Allow replacement units to be treated as existing units, and thus provide the ability to use baseline actual and projected actual emissions when determining applicability. Additionally, there are a number of minor changes which are strictly administrative in nature, consisting of small grammatical revisions, or re-numbering. EPA is proposing to approve VADEQ's 2015 NSR SIP Revision as a revision to the Virginia SIP because it meets the federal requirements of 40 CFR 51.165 and 51.165, and CAA sections 110(a) and 173. Additionally, the revisions are in accordance with section 110(l) of the CAA because they will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement.

A. Baseline Actual Emissions

NSR applicability is determined by comparing the pre-change emissions of the project to the post-change emissions and determining whether the net increase is ''significant.'' For new units, pre-change (baseline) emissions are

zero. For modified units, sources must calculate baseline actual emissions (BAE). For sources other than EGUs, the federal PSD and nonattainment NSR regulations provide for the calculation of BAE using ''. . . the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the reviewing authority . . .'' *See* 40 CFR 51.165(a)(1)(xxxv)(B) and 51.166(b)(47)(ii). VADEQ's currently approved BAE definitions, codified at 9VAC5–80 sections 1615C (PSD) and 2010C (nonattainment NSR), provide for a 5-year lookback period. The 2015 NSR SIP Revision includes VADEQ's revised definitions of BAE to provide for a 10-year lookback period for non EGUs, consistent with the federal counterpart.

When EPA originally approved the 5-year lookback into VADEQ's nonattainment NSR and PSD programs, limited approval was granted. *See* 73 FR 62893, 62897 (October 22, 2008). The previous definitions of BAE at 9VAC5–80 sections 1615C and 2010C in VADEQ's June 27, 2008 SIP submittals included the 5-year lookback which EPA found approvable, despite being different from the federal lookback period. However, VADEQ's regulations at the time in sections 1615C and 2010C also included provisions for the use of a different time period to calculate BAE if it was found to be more representative of normal operations. In our October 22, 2008 final rulemaking notice, EPA raised concerns that this provision could allow for the use of a lookback period that extended beyond the ten years allowed by the federal programs for PSD and NSR. However, EPA noted that because VADEQ had affirmed that it was not its intention to extend the lookback period beyond ten years, a limited approval was justified. *See* 73 FR at 62898. In VADEQ's 2015 NSR SIP Revision submittal, the provision allowing for the use of a different lookback period if it was found to be more representative of normal operations was struck from the definition of BAE at 9VAC5–80 section 1615C, making it consistent with the federal counterpart. However, that provision was inadvertently left in the definition of BAE in the version of 9VAC5–80 section 2010C for NSR. By letter dated March 1, 2017, VADEQ officially withdrew from EPA's consideration for inclusion into the SIP the portion of the definition of BAE at section 2010C stating, ''The board will allow the use of another time period upon a determination that it is more representative of normal source operation.'' Thus, EPA finds the revised definition of BAE at 9VAC5–80 section 2010C (with the provision for a different lookback period stricken) fully approvable as the definition is consistent with federal CAA requirements. EPA expects that the sentence withdrawn from the SIP submittal will be removed from the Virginia Code as soon as practicable as Virginia affirmed in its March 1, 2017 letter, and that VADEQ will implement its NSR program consistent with the approved SIP and the federal requirements for NSR in the interim. With this approval, EPA would also remove its prior limited approval for these regulations.

Finally, the federal requirement for calculating BAE for PSD and NSR provide for the use of different 24-month periods for different regulated NSR pollutants. *See* 40 CFR 51.165(a)(1)(xxxv)(B)(4) and 51.166(b)(47)(ii)(c). Under VADEQ's currently SIP-approved BAE definitions at 9VAC5–80 sections 1615C and 2010C, and 9VAC5–85 section 50, sources were required to use the same 24-month period for all regulated NSR pollutants. VADEQ has revised these provisions to allow for the use of different 24-month periods for different regulated NSR pollutants for both PSD and NSR and has submitted these revised definitions in 9VAC5–80 sections 1615C and 2010C and 9VAC5–85 section 50 in its 2015 NSR SIP Revision to be consistent with the federal requirements relating to different lookback periods for different regulated NSR pollutants. Because these revisions are consistent with federal definitions in 40 CFR 51.165 and 51.166 for using different 24-month periods for different regulated NSR pollutants, EPA finds these additional revisions in 9VAC5–80 sections 1615C and 2010C and 9VAC5–85 section 50 approvable in accordance with CAA requirements.

B. Plantwide Applicability Limits (PALs)

Federal requirements for PALs include an effective period of ten years for the plantwide permit.[1] *See* 40 CFR 51.165(f) *et seq* and 51.166(w) *et seq.* VADEQ's currently-SIP approved regulations only provided for a 5-year effective period for such plantwide permits. The 2015 NSR SIP Revision includes amended versions of 9VAC–5–80 sections 1615C, 1865C(1)(f), 2010C, and 2144C(1)(f), as well as 9VAC5–85–50, to provide for a PAL effective period of ten years, consistent with the federal regulations providing for a ten-year PAL effective period. In addition, the 2015 NSR SIP Revision includes amended versions of 9VAC5–80 sections 1865E and 2144E and 9VAC5–85–55 to allow for the use of different 24-month periods for different regulated NSR pollutants when establishing PALs, consistent with the discussion in Section II.A of this notice. Because these amended regulations for PAL effective period and baseline calculations are now consistent with federal requirements for PALs in 40 CFR 51.165 and 51.166, EPA finds these amended provisions approvable for the Virginia SIP.

C. Replacement Units

Finally, the 2015 NSR SIP Revision submittal adds definitions of ''replacement unit,'' and amends the definitions of ''emissions unit,'' under 9VAC5–80 sections 1615C and 2010C and 9VAC5–85 section 50. The effect of these revisions is to allow replacement units to be treated as existing units when calculating pre- and post-change emissions for purposes of determining NSR applicability. VADEQ's definitions of ''replacement unit'' are consistent with their federal counterparts at 40 CFR 51.165(a)(1)(xxi) and 51.166(b)(32). VADEQ's amended definitions of ''emissions unit'' are now consistent with their federal counterparts at 40 CFR 51.165(a)(1)(vii) and 51.166(b)(7), as is VADEQ's approach to calculating pre- and post-change emissions for replacement units. Thus, EPA finds these new and amended provisions in the 2015 NSR SIP Revision approvable.

EPA finds the revisions to 9VAC5–80 sections 1615, 1865, 2010, and 2144 and 9 VAC5–85 sections 50 and 55 (including the changes discussed herein as well as the minor administrative changes for grammatical and numbering consistency) consistent with CAA section 110(l). None of the revisions interfere with any applicable requirement concerning attainment of any NAAQS nor interfere with reasonable further progress or any other applicable requirement of the CAA. As

[1] A PAL is a voluntary permit option that provides the ability to manage facility-wide emissions without triggering major NSR review. The flexibility provided under a PAL facilitates the ability to respond rapidly to changing market conditions while enhancing the environmental protection afforded under the program. If facility emissions remain below a plantwide actual emissions cap (that is, an actuals PAL), then a facility can avoid major NSR permitting process when making alterations to the facility or individual emissions units that would otherwise trigger NSR permitting. In return for this flexibility, facilities must monitor emissions from all emissions units under the PAL in addition to other recordkeeping and reporting requirements.

described in this rulemaking, the revisions to the Virginia Code in the 2015 NSR SIP Revision are consistent with federal requirements for PSD and NSR in 40 CFR 51.165 and 51.166. Because the revisions are consistent with federal requirements for PSD and NSR permitting programs which permit construction and modifications in accordance with permitting and emission limitation requirements and address definitions for BAE and PAL effective periods, EPA does not expect any interference with the NAAQS from these revisions.

III. Proposed Action

EPA's review of VADEQ's 2015 NSR SIP Revision submittal indicates that it is consistent with the CAA and all of its implementing regulations. Therefore, EPA is proposing to approve the October 16, 2015 submittal, as amended on March 1, 2017, as a revision to the Virginia SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

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 that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) 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 § 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 NSR 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.

V. Incorporation by Reference

In this proposed rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the VADEQ regulations regarding definition and permitting requirements discussed in Section II of this notice. EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and/or at the EPA Region III Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

VI. 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 approves 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule, pertaining to Virginia's preconstruction permitting requirements does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: March 21, 2017.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

[FR Doc. 2017–07820 Filed 4–17–17; 8:45 am]

BILLING CODE 6560–50–P

SURFACE TRANSPORTATION BOARD

49 CFR Chapter X

[Docket No. EP 664 (Sub-No. 3)]

Revisions to the Cost-of-Capital Composite Railroad Criteria

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: To better reflect the current marketplace, the Surface Transportation Board (Board) is proposing to update one of the screening criteria used to create the ''composite railroad'' for the Board's annual cost-of-capital determination. Specifically, the Board proposes that one of its screening criteria now require a company's stock to be listed on either the New York Stock Exchange (NYSE) or the Nasdaq Stock Market (NASDAQ), rather than be listed on either the NYSE or American Stock Exchange (AMEX), as the AMEX is no longer in existence.

DATES: Comments are due by May 18, 2017. Reply comments are due by June 19, 2017.

ADDRESSES: Comments and replies may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E–FILING link on the Board's Web site, at *http://www.stb.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 664 (Sub-No. 3), 395 E Street SW., Washington, DC 20423–0001. Copies of written comments and replies will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT: Amy C. Ziehm, (202) 245–0391. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: One of the Board's regulatory responsibilities is to determine annually the railroad industry's cost of capital. The cost-of-capital figure represents the Board's estimate of the average rate of return needed to persuade investors to provide capital to the freight rail industry. This figure is an essential component of many of the Board's core regulatory responsibilities.

The Board calculates the cost of capital as the weighted average of the cost of debt and the cost of equity, with the weights determined by the railroad industry's capital structure (the fraction of capital from debt or equity on a market-value basis). *See Methodology to be Employed in Determining R.R. Indus.'s Cost of Capital,* EP 664, slip op. at 6 (STB served Jan. 17, 2008). The Board determines the railroad industry's cost of capital for a ''composite railroad,'' which is based on data from a sample of railroads. Pursuant to *Railroad Cost of Capital—1984,* 1 I.C.C.2d 989 (1985), the sample includes all railroads that meet the following criteria:

—The company is a Class I line-haul railroad; [1]

—If the Class I railroad is controlled by another company, the controlling company is primarily a railroad company and is not already included in the study frame; [2]

—The company's bonds are rated at least BBB by Standard & Poor's and Baa by Moody's;

—The company's stock is listed on either the NYSE or the AMEX; and

—The company has paid dividends throughout the review year. 1 I.C.C.2d at 1003–04; *see also R.R. Cost of Capital—2015,* EP 558 (Sub-No. 19), slip op. at 3 (STB served Aug. 5, 2016).

Proposed Rule

The Board proposes to revise the fourth screening criterion, which currently requires that a company's stock be listed on either the NYSE or the AMEX. The AMEX was acquired in October 2008 by NYSE Euronext, a now defunct Euro-American multinational financial services corporation that operated multiple securities exchanges. As a result, the Board's screening criteria used to determine the composite railroad should be updated to reflect the current marketplace. The Board therefore proposes that the fourth screening criterion be amended to remove the AMEX listing and instead require that a company's stock be listed on either the NYSE or the NASDAQ, the primary competitor to the NYSE.

The NASDAQ is a robust and reputable stock exchange, and the Board believes that it is a suitable replacement for the AMEX in the cost-of-capital determination. The NASDAQ is the world's second-largest stock exchange, behind only the NYSE, and the NYSE and NASDAQ combined account for the major portion of all equities trading in North America. When the Board's predecessor adopted the fourth screening criterion, it did so to ''insure the availability of stock price data.'' *Railroad Cost of Capital—1984,* 1 I.C.C.2d at 1004. By requiring applicable carriers to trade on either the NYSE or the NASDAQ, the Board would ensure the availability of stock price data for use in the Board's computation of the rail industry's cost of capital.[3] Therefore, the Board seeks public comment on its proposal to require the listing of a company's stock on either the NYSE or the NASDAQ for a railroad to be included in the composite group to determine the industry's cost of capital.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980

[1] For the definition of a Class I railroad, see fn. 4, *infra.*

[2] A company is considered to be primarily in the railroad business if at least 50% of its total assets are devoted to railroad operations. *Railroad Cost of Capital—1984,* 1 I.C.C.2d at 1003–04.

[3] For its 2015 cost of capital calculation, the Board waived its requirement that a company's stock be listed on either the NYSE or the AMEX, noting that CSX Corporation (CSX) transferred its stock exchange listing from the NYSE to the NASDAQ in 2015. *R.R. Cost of Capital—2015,* EP 558 (Sub-No. 19), slip op. at 2 n.5 (STB served Mar. 10, 2016).