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[FR Doc. 04–28355 Filed 12–28–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2004–VA–0004; FRL–7853–1]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Excess Volatile Organic Compound and Nitrogen Oxides Emissions Fee Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Virginia's (Virginia) State Implementation Plan (SIP) for ozone. The rule requires major stationary sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) in the Virginia portion of the Metropolitan Washington D.C. Severe Ozone Nonattainment Area to pay a fee to the state if the area fails to attain the one-hour national ambient air quality standard for ozone by November 15, 2005. The fee must be paid beginning in 2006, and in each calendar year thereafter, until the area is redesignated to attainment for the pollutant ozone. Virginia submitted this rule on April 19, 2004, pursuant to the requirements of Section 110 of the Clean Air Act.

DATES: This rule is effective on February 28, 2005 without further notice, unless EPA receives adverse written comment by January 28, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–VA by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *morris.makeba@epa.gov.*

D. Mail: R03–OAR–2004–VA, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. 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 RME ID No. R03–OAR–2004–VA. 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.docket.epa.gov/rmepub/,* 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov websites are 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 RME or 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 RME index at *http://www.docket.epa.gov/rmepub/.* 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 RME 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 material to be incorporated by reference are available at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW, Room B108, Washington, DC 20460. 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: Catherine L. Magliocchetti, (215) 814–2174, or by e-mail at *magliocchetti.catherine@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA. This supplementary information is organized as follows.

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I. What Final Action Is EPA Taking?

EPA is approving a revision to Virginia's ozone SIP. The SIP revision requires major stationary sources of VOC and NO_X in the Virginia portion of the Metropolitan Washington D.C. Severe Ozone Nonattainment Area (Area) to pay a fee to the Commonwealth if the Area fails to attain the national ambient air quality standard (NAAQS) for ozone by November 15, 2005. The fee must be paid beginning in 2006 and in each calendar year thereafter, until the Area is redesignated to attainment for ozone. The payment is due by August 31 of each year.

We are approving this rule because it is consistent with the requirements of the Clean Air Act (Act).

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipates no adverse comment, since no comments were received during the state's regulatory process. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on February 28, 2005 without further notice unless EPA receives adverse comment by January 28, 2005. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all

public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. Who Has To Pay These Fees?

This rule applies to major stationary VOC and NO_X sources located in the Virginia portion of the Metropolitan Washington DC Severe Ozone Nonattainment Area. At this time, the counties of Arlington, Fairfax, Loudon, and Prince William; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park in Virginia are part of the Area, and are subject to this rule. Any owner of a major VOC or NO_X stationary source, which is a stationary source that emits or has the potential to emit 25 tons or more per year of VOC or NO_X, within the severe ozone nonattainment area is subject to this rule.

III. How Are the Fees Calculated?

The fee is initially set at $5,000 per ton of VOC or NO_X emitted by the source during the previous calendar year in excess of 80% of the baseline amount. The fee is to be adjusted annually, beginning in 1991, by the percentage by which the consumer price index has been adjusted. The baseline is the lower of the source's actual or allowable VOC or NO_X emissions during calendar year 2005. Virginia may calculate the baseline amount using a period of more than one year, provided the determination is consistent with Federal requirements.

IV. Is Virginia Required To Adopt an Excess Emission Fee Rule?

Under sections 182(d)(3), 182(e), and 185 of the Clean Air Act (the Act), states are required to adopt an excess emissions fee regulation for ozone nonattainment areas classified as severe or extreme. This SIP revision requires major stationary sources of VOC in the nonattainment area to pay a fee to the state if the area fails to attain the standard by the attainment date set forth in the Act. In Virginia, the Northern Virginia area that is part of the Metropolitan Washington, DC ozone nonattainment area is classified as severe.

Section 182(f) of the Act requires states to apply the same requirements to major stationary sources of oxides of nitrogen (NO_X) as are applied to major stationary sources of VOC.

V. What Are the Exceptions to This Rule?

As per section 185 of the Clean Air Act, the Commonwealth's SIP revision provides for an exception of the fee during any year that is treated as an extension year under section 181(a)(5) of the Clean Air Act.

VI. What Impact Do Virginia's Privilege and Immunity Statutes Have on This Rule?

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 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.

VII. 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 (Public Law 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 February 28, 2005. 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 approval of the Commonwealth of Virginia's Excess VOC and NOx Emission Fee SIP revision, as required under Section 185 and 182(f) of the Clean Air Act, 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 14, 2004.

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 § 52.2420, the table in paragraph (c) is amended by revising the paragraph title and paragraph heading, and adding entries for ''Code of Virginia'' and ''Section 10.1–1316.1A. Through D.'' at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) *EPA-Approved Regulations and Statutes*

EPA–APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
Code of Virginia				
Section 10.1–1316.1A. Through D	Severe ozone nonattainment areas; fees.	7/1/04	12/29/04	Provision authorizes the Department of Environmental Quality (DEQ) to collect Federal penalty fees from major stationary sources if the nonattainment area does not attain the ozone standard by the statutory attainment date.

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[FR Doc. 04–28357 Filed 12–28–04; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 20, and 43

[WC Docket No. 04–141; FCC 04–266]

Local Telephone Competition and Broadband Reporting

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission extends and modifies the FCC Form 477 local competition and broadband data gathering program, established by the Commission's *Data Gathering Order* published Wednesday, April 12, 2000, 65 FR 19675.

DATES: The rules in this document contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

Compliance date: September 1, 2005. Providers subject to the requirements and regulations adopted herein shall complete and file the amended FCC Form 477 on the compliance date and semiannually thereafter.

FOR FURTHER INFORMATION CONTACT: Ellen Burton, Assistant Chief, James Eisner, Senior Economist, or Thomas J. Beers, Deputy Chief, Industry Analysis and Technology Division, Wireline Competition Bureau, at (202) 418–0940. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at (202) 418–0214, or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (Order) in WC Docket No. 04–141, adopted on November 9, 2004, and released on November 12, 2004. The full text of this document is available on the Commission's Web site Electronic Comment Filing System and for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The full text of the NPRM may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Room CY–B402, 445 Twelfth Street, SW., Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or through *www.bcpiweb.com*.

Paperwork Reduction Act

This Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to OMB for review under section 3507(d) of the PRA.

Summary of the Report and Order

1. In this Order, we adopt rules and a standardized form to improve our Form 477 local competition and broadband data gathering program, including extending the program for five years beyond its currently designated sunset in March 2005, eliminating existing reporting thresholds, and gathering more granular data from service providers. The information collected in the Form 477 program helps the Commission and the public understand the extent of local telephone competition and broadband deployment, which is important to the nation's economic, educational, and social well-being. The improvements we adopt here, which include some but not all of the modifications proposed in our recent *Data Collection NPRM*, are necessary to ensure that the Commission can continue to effectively evaluate broadband and local competition developments as they affect all Americans. At the same time, we have acted to minimize, wherever possible, the administrative burdens imposed on reporting entities by the modified Form 477 program.

2. The *Data Gathering Order* established a reporting program (using the FCC Form 477) to collect basic information about two critical areas of the communications industry: the deployment of broadband services and the development of local telephone service competition. The Commission concluded that collecting this information would materially improve its ability to develop, evaluate, and revise policy in these rapidly changing areas and provide valuable benchmarks for Congress, the Commission, other policy makers, and consumers. Since adoption of the Form 477 in 2000, broadband service providers and local telephone service providers have reported data ten times, and we have issued regular reports based in significant part on this information. In the *Data Gathering Order*, the Commission adopted a sunset provision pursuant to which the collection program terminates after five years (*i.e.*, in March 2005) unless the Commission acts to extend it.

3. Form 477 includes separate sections on broadband deployment, local telephone service competition, and mobile telephone service provision. In the *Data Gathering Order*, the Commission required entities to report only when they meet or exceed defined reporting thresholds, and, then, to complete only those portions of the form for which they meet or exceed the reporting thresholds. The Commission required entities that meet a threshold to file data on a state-by-state basis. The Commission also required facilities-based providers of broadband connections and local exchange carriers (LECs) to report lists of the Zip Codes in which they serve end users, for each state for which they complete a form. In the case of broadband connections, reporting entities include incumbent and competitive LECs, cable companies, operators of terrestrial and satellite wireless facilities, municipalities, and any other facilities-based provider of broadband connections to end users.

4. In the *Data Collection NPRM*, we proposed to: (1) Extend the data collection for an additional five years; (2) modify Form 477 to collect more-detailed information about broadband connection speeds and the localized deployment of broadband technologies; (3) collect information about subscribership to bundled local and interstate long distance telephone services; and (4) eliminate or revise those local telephone service questions that elicit imprecise or infrequently used information. We also invited comment on whether we should eliminate or lower the current reporting thresholds; modify our policies for publishing or sharing Form 477 data; require filers to categorize broadband connections according to the information transfer rates observed by end users; and require filers to report numbers of broadband connections in service by Zip Code or technology, or, alternatively, by Zip Code, technology, and speed.

5. We have considered the record of this proceeding, including comment about reporting burdens associated with current Form 477 reporting requirements, potential burdens associated with additional reporting requirements proposed or otherwise noticed for discussion in the *Data Collection NPRM*, and potential burdens associated with alternatives suggested by the parties, as well as our experience with the Form 477 to date. As discussed below, in this Order we: (1) Extend the Form 477 program for five years beyond