

basin to the northeast of the main facilities. This basin will be used to moor various spectator, participant and entertainment vessels. Entry or anchoring in the arena marine basin by nonparticipating vessels is prohibited, unless authorized by the Patrol Commander.

(d) *Effective period:* This section is effective from 3 p.m. until 11 p.m. on August 29, 2004.

Dated: August 16, 2004.

D.B. Peterman,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 04-19451 Filed 8-24-04; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA159-5083a; FRL-7805-7]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revision of Flow Control Date in Nitrogen Oxides Budget Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to convert a conditional approval in the Virginia State Implementation Plan (SIP) to a full approval. As required by the conditional approval, Virginia has submitted a SIP revision that pertains to the allowance banking provisions in Virginia's Nitrogen Oxides (NO_x) Budget Trading Program. The SIP revision changes the start date of flow control from 2006 to 2005. Flow control is a limitation on banked allowances that are used for compliance purposes, and is required to start in the second year of the trading program. It is triggered when the regionwide total of banked allowances exceeds a specified threshold. The year 2005 will be the second year of Virginia's NO_x Budget Trading program. EPA is approving this revision to Virginia's SIP in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on October 25, 2004 without further notice, unless EPA receives adverse written comment by September 24, 2004. 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 VA159-5083 by one of the following methods:

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

B. E-mail: morris.makeba@epa.gov

C. Mail: Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, 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. VA159-5083. EPA's policy is that all comments received will be included in the public docket without change, 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 [regulations.gov](http://www.regulations.gov) or e-mail. The Federal [regulations.gov](http://www.regulations.gov) website 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 [regulations.gov](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.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; 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:

I. Background

On July 8, 2003 (68 FR 40520), EPA published a final rulemaking notice (FRN) for the Commonwealth of Virginia. The FRN approved Virginia's NO_x Budget Trading Program, with the exception of its NO_x allowance banking provisions, which EPA conditionally approved. EPA's rationale for approving Virginia's NO_x Budget Trading Program while conditionally approving the program's allowance banking provisions were provided in the November 12, 2002 (67 FR 68542) notice of proposed rulemaking (NPR), and discussed in detail in EPA's response to public comments in the FRN and will not be restated here. The terms of the conditional approval required that Virginia revise its banking provisions by changing the flow control start date from 2006 to 2005, and submit the change as a SIP revision within one year from August 7, 2003, the effective date of the conditional approval.

II. Summary of SIP Revision

On June 23, 2004, the Virginia Department of Environmental Quality (VADEQ) submitted a formal revision to its SIP. The SIP revision pertained to Virginia's banking provision at 9 VAC 5-140-550, and changed the flow control start date from 2006 to 2005. Virginia's NO_x Budget Trading Program was implemented in 2004, therefore flow control will start in the second year of the program, which is consistent with the other states subject to the NO_x SIP Call. Virginia has therefore satisfied the terms of the conditional approval.

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.

III. Final Action

EPA is converting its conditional approval of the Commonwealth of Virginia SIP pertaining to its allowance banking provisions at 9 VAC 5-140-550 to a full approval. The SIP revision submitted by the State changes the flow control start date from 2006 to 2005. Virginia has therefore corrected the deficiency identified by EPA in its NO_x Budget Trading Program, and has satisfied all the terms of the conditional approval.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to convert the conditional approval to a full approval if adverse comments are filed. This rule will be effective on October 25, 2004 without further notice unless EPA receives adverse comment by September 24, 2004. 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.

IV. 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 (Pub. L. 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 October 25, 2004. 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 action approving the allowance banking provisions in Virginia's NO_x Budget Trading Program 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, Nitrogen dioxide, Ozone.

Dated: August 18, 2004.

Richard J. Kampf,

Acting Regional Administrator

■ 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 entry for 9 VAC 5, Chapter 140, section 5–140–550 to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) *EPA approved regulations.*

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* * *	* * *	* * *	* * *	* * *
Chapter 140	NO _x Budget Trading Program [Part I]			
Part I Emission Standards				
* * *	* * *	* * *	* * *	* * *
Article 6	NO _x Allowance Tracking System			
* * *	* * *	* * *	* * *	* * *
5–140–550	Banking	March 24,	August 25, 2004.	
* * *	* * *	* * *	* * *	* * *

§ 52.2450 [Amended]

■ 3. In § 52.2450, paragraph (c) is removed and reserved.

[FR Doc. 04–19432 Filed 8–24–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 141**

[OW–2003–0067; FRL–7805–5]

RIN 2040–AE62

National Primary Drinking Water Regulations: Analytical Method for Uranium

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve the use of three additional analytical methods for compliance determinations of uranium in drinking water. These methods use an inductively coupled plasma mass spectrometry (ICP–MS) technology that has gained wide acceptance in the analytical community. EPA believes that ICP–MS analytical methods could be more cost-effective, less labor-intensive or more sensitive than some of the technologies previously approved in the December 2000 Radionuclides rule. (65 FR 76708) This rule does not withdraw approval of any previously approved monitoring methods for uranium.

DATES: This rule is effective on August 25, 2004. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of August 25, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OW–2003–0067. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. 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 EDOCKET or in hard copy at the OW Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202)