compile information in the course of an investigation which may not be relevant to a specific prosecution. It is impossible to determine in advance what information collected during an investigation will be important or crucial to the apprehension of fugitives. In the interests of effective law enforcement, it is necessary to retain such information in this system of records because it can aid in establishing patterns of criminal activity and can provide valuable leads for federal and other law enforcement agencies. This consideration applies equally to information acquired from, or collated or analyzed for, both law enforcement agencies and agencies of the U.S. foreign intelligence community and military community.

(7) From subsection (e)(2) because in a criminal, civil, or regulatory investigation, prosecution, or proceeding, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation, prosecution, or proceeding would be placed on notice as to the existence and nature of the investigation, prosecution, and proceeding and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, thorough and effective investigation and prosecution may require seeking information from a number of different sources.

(8) From subsection (e)(3) (to the extent applicable) because the requirement that individuals supplying information be provided a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants and endanger their lives, health, and physical safety. The individual could seriously interfere with undercover investigative techniques and could take appropriate steps to evade the investigation or flee a specific area.

(9) From subsection (e)(5) because the acquisition, collation, and analysis of information for law enforcement purposes from various agencies does not permit a determination in advance or a prediction of what information will be matched with other information and thus whether it is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can often only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators, intelligence analysts, and government attorneys to exercise their judgment in collating and analyzing information and would impede the development of criminal or other intelligence necessary for effective law enforcement.

(10) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement by revealing investigative techniques, procedures, evidence, or interest and interfering with the ability to issue warrants or subpoenas, and could give persons sufficient warning to evade investigative efforts.

(11) From subsection (g) because this subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

(12) In addition, exemption is claimed for this system of records from compliance with the following provisions of 5 U.S.C. 552a pursuant to the provisions of 5 U.S.C. 552a(k): subsections (c)(3), (d), (e)(1), to the extent that the records contained in this system are specifically authorized to be kept secret in the interests of national defense and foreign policy.

Dated: December 6, 2004.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 04–27237 Filed 12–10–04; 8:45 am]

BILLING CODE 4410–14–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA155–5081; FRL–7847–4]

Approval and Promulgation of Air Quality Implementation Plans; Virginia NO_X RACT Determinations for Two Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia (Virginia or the Commonwealth). The revisions consist of reasonably available control technology (RACT) determinations for the control of nitrogen oxides (NO_X) from two individual sources located in Fairfax County, Virginia; namely, the Central Intelligence Agency (CIA), and the National Reconnaissance Office (NRO). EPA is approving these revisions to establish and impose RACT requirements in accordance with the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on January 12, 2005.

ADDRESSES: 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; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 19 and 21, 2004, the Virginia Department of Quality (DEQ) submitted formal SIP revisions to establish RACT for two individual sources of NO_X located in Fairfax County, Virginia. The Virginia DEQ determined and imposed RACT under the Commonwealth's SIP-approved generic NO_X RACT regulations, 9 VAC 5–40–310 and 9 VAC 5–40–311. Generic RACT regulations are regulations that do not, themselves, specifically define RACT for a source or source category but instead establish procedures for imposing case-by-case RACT determinations. The Commonwealth's SIP-approved generic NO_X RACT regulations consist of the procedures DEQ uses to establish and impose RACT for subject sources of NO_X. Pursuant to the SIP-approved generic RACT rules, DEQ imposes RACT on each subject source in an enforceable document, usually a permit or order. The Commonwealth then submits these permits or orders to EPA for approval as source-specific SIP revisions. EPA approved Virginia's generic NO_X RACT regulations on April 28, 1999 (64 FR 22792).

On September 9, 2004 (69 FR 54574), EPA published a direct final rule (DFR) approving as SIP revisions DEQ-issued operating permits which establish and require RACT for the CIA (Operating Permit Registration No. 71757), and the NRO (Operating Permit Registration No. 71988). A detailed description of the RACT determinations and EPA's rationale for approving them were provided in the September 9, 2004 DFR and will not be restated herein. In accordance with direct final rulemaking procedures, on September 9, 2004 (69

FR 54600), EPA also published a companion notice of proposed rulemaking on these SIP revisions inviting interested parties to comment on the DFR. On October 12, 2004, EPA received adverse comment on its proposed approval. On November 4, 2004 (69 FR 64259), due to receipt of the adverse comment, EPA published a withdrawal of the DFR. A summary of the comment received and EPA's response to the comment are provided in section II of this document.

II. Public Comment and EPA Responses

Comment: The commenter, Clean Fuels Technology, Inc., submitted a spreadsheet with source testing data indicating that Alternative Diesel Oil Emulsion fuels can produce NO_X emission limits lower than those imposed by the DEQ for the CIA in Operating Permit Registration No. 71757, and the NRO in Operating Permit Registration No. 71988. The commenter states that the power levels of the test units are very similar to the units located at the CIA and NRO facilities in Fairfax County, Virginia. The commenter suggests in light of the information in the spreadsheet and the cost savings that could accrue to the use of fuels less costly than natural gas, that Alternative Diesel Oil Emulsion fuels be considered an applicable RACT for the control of NO_X emissions at the cited sources.

Response: EPA disagrees with the commenter. The CAA requires that a state determine and impose RACT for existing major sources of NO_X and VOCs located in ozone nonattainment areas and the Ozone Transport Region. Those RACT requirements are then to be submitted to EPA for approval into the SIP. EPA can only take action on a SIP revision as submitted by a state, and cannot, through its rulemaking action on a SIP revision, alter the state's submission to make its requirements more (or less) stringent. Therefore, even if EPA agreed that the commenter submitted convincing evidence that the SIP revision submitted by Virginia are not RACT for these facilities, EPA could not modify the SIP revision as requested by the commenter, but instead could only disapprove the SIP revision submitted by the Commonwealth.

With regard to the criteria EPA uses to determine whether to approve or disapprove RACT SIP revisions submitted by the Virginia DEQ pursuant to 9 VAC 5–40–310 and 9 VAC 5–40–311 we look to the requirements of the CAA and relevant EPA guidance.

In approving Virginia's NO_X RACT regulations, 9 VAC 5–40–310 and 9 VAC 5–40–311 (RACT Guidelines for Stationary Sources of NO_X), EPA, thereby, approved the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. In accordance with 9 VAC 5–40–310, subject facilities are required to submit a RACT plan proposal to the DEQ. The DEQ then evaluates that RACT plan and determines and imposes RACT. The DEQ submits each RACT determination to EPA for approval as a SIP revision. Pursuant to CAA requirements for SIP revisions, the DEQ conducts a public comment period and public hearing on its proposed SIP revision prior to submittal of the revisions to EPA. EPA reviews the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by the Commonwealth to verify and determine if they are consistent with the RACT requirements of the CAA and any relevant EPA guidance. Then EPA reviews the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then we may add additional EPA-generated analyses to the record of our rule to approve or disapprove the SIP revision. EPA's review of the Commonwealth of Virginia's submission of its RACT determination for the two individual sources imposed in DEQ operating permits indicate that the requirements of its SIP-approved NO_X RACT regulations 9 VAC 5–40–310 and 9 VAC 5–40–311 have been met.

While the commenter provides a spreadsheet of testing data from source testing performed at other units which indicates lower emission rates at those test units, and asserts that the test units' power levels are similar to the CIA's and NRO's Virginia-based units, the commenter did not submit any additional technical information regarding the comparability of the test units to the CIA's and NRO's units (*e.g.*, age, specific design, required operating schedules, comparison of emissions rates between the test units and the Virginia-based units when the later are burning natural gas versus diesel oil) to support its suggestion that Diesel Oil Emulsion fuels be considered RACT for the specific units located at the CIA's and NRO's Fairfax County, Virginia facilities. Nor did the commenter provide any information as to the availability and supply of Diesel Oil Emulsion fuels to these facilities. The commenter provided no data or information of any kind to support the comment that cost savings could accrue to the use of fuels less costly than natural gas. Finally, the commenter did not submit any justification or analysis to suggest that the RACT limits imposed by the Commonwealth are inconsistent with the its SIP-approved generic RACT regulations, the CAA or EPA guidance. Because the commenter has submitted no new information that would cause us to reconsider our analysis that accompanied the proposed rule, we continue to believe that analysis supports our approval of the NO_X RACT determinations imposed by the Virginia DEQ for the CIA's and NRO's facilities located in Fairfax County, Virginia.

III. Final Action

EPA is approving the Virginia DEQ's NO_X RACT requirements for the two individual sources located in Fairfax County, Virginia, namely, the Central Intelligence Agency, and the National Reconnaissance Office. EPA is approving these SIP revisions because DEQ established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The DEQ has also imposed record keeping, monitoring, and testing requirements on the two individual sources sufficient to determine compliance with the applicable RACT determinations.

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

(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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for two individual sources.

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 11, 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 action pertaining to the Virginia NO_X RACT Determinations for the Central Intelligence Agency and the National Reconnaissance Office, 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, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: December 6, 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 (d) is amended by adding entries for Central Intelligence Agency (CIA), George Bush Center for Intelligence and National Reconnaissance Office, Boeing Service Center at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(d) * * *

EPA—APPROVED SOURCE SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
*	*	*	*	*
Central Intelligence Agency (CIA), George Bush Center for Intelligence.	Registration No. 71757	04/16/04	12/13/04 [Insert page number where the document begins].	52.2420(d)(6)
National Reconnaissance Office, Boeing Service Center.	Registration No. 71988	04/16/04	12/13/04 [Insert page number where the document begins].	52.2420(d)(6)

[FR Doc. 04–27260 Filed 12–10–04; 8:45 am]

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