health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule for limited approval of the SIP revision submitted on February 12, 2007 and the full approval of the SIP revision submitted on December 16, 2003 for facilities located or locating in nonattainment areas for Virginia nonattainment new source review does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: June 17, 2008.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. E8–14625 Filed 6–26–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–0521; FRL–8686–2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Virginia Major New Source Review, Prevention of Significant Deterioration (PSD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to amendments to Virginia's existing new source review permit program for owners of sources located or locating in prevention of significant deterioration (PSD) areas which were submitted to EPA on October 10, 2006. EPA is proposing limited approval of these changes to the PSD program, because while the SIP revision submitted by the Commonwealth strengthens the SIP, it does not fully meet the current Federal requirements for the allowable lookback period under the definition of ''baseline actual emissions''. This action is being taken under the Clean Air Act (CAA or the Act). In a separate action, EPA will address changes made by Virginia to its nonattainment new source review (NNSR) permit program, submitted on February 12, 2007.

DATES: Written comments must be received on or before July 28, 2008.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0521 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail: campbell.dave@epa.gov*.

C. *Mail:* EPA–R03–OAR–2007–0521, David Campbell, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–0521. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Sharon McCauley, (215) 814–3376, or by e-mail at *mccauley.sharon@epa.gov*.

SUPPLEMENTARY INFORMATION: On October 10, 2006, the Commonwealth of Virginia submitted a revision to its SIP for approval of amendments to Virginia's existing New Source Review permit program for owners of sources locating in PSD areas.

I. Background

On December 31, 2002, the U.S. EPA published revisions to the Federal PSD and NNSR regulations (67 FR 80186), effective March 3, 2003. These changes to the Federal NSR regulations were reconsidered with minor changes on November 7, 2003 (68 FR 63021) and collectively, these two final actions are called the ''2002 New Source Review (NSR) Reform Rules''.

The 2002 NSR Reform Rules made changes to five areas of the NSR programs. In summary, the 2002 Rules: (1) Provide a new method for determining the baseline actual emissions; (2) adopt an actual-to-projected actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with plant-wide applicability limits to avoid having a significant emissions increase that triggers the requirements of the major NSR program; (4) provide a new applicability provision for emissions units that are designated clean units; and (5) exclude pollution control projects (PCPs) from the definition of ''physical change or change in the method of operation.'' The November 7,

2003 notice of final action added a definition for ''replacement unit'' and clarified an issue regarding the Plant-wide Applicability Limitation (PALs) baseline calculation procedures for newly constructed units.

On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit ruled in *New York* v. *EPA,* 413 F.3d 3 (DC Cir. June 24, 2005) that EPA lacked the authority to promulgate the Clean Unit provisions, and the Court requested that EPA vacate that portion of the 2002 Federal regulation, codified at 40 CFR 52.21(x), as contrary to the statute. Also, the Court determined that EPA lacked the authority to create PCP exceptions from NSR and vacated those parts of the 1991 and 2002 rules, codified at 40 CFR 52.21(b)(32) and 52.21(z), as contrary to the statute.

As stated in the December 31, 2002 ''NSR Reform'' rulemaking, State and local permitting agencies were required to adopt and submit revisions to their part 51 permitting programs, implementing the minimum program elements of that rulemaking no later then January 2, 2006 (67 FR 80240). With this submittal, Virginia requests approval of program revisions to satisfy this requirement. In addition, Virginia has updated their stationary source permit regulations in Chapter 50, Article 4, to conform to the new NSR regulatory program and translated the Federal NSR requirements into their regulatory text in Chapter 80, Article 8 in a manner that is consistent with State regulatory development procedures.

On October 13, 2006, EPA Region III received a revision request to the Virginia SIP from the Virginia Department of Environmental Quality (VADEQ). The October 13, 2006, 2006 SIP revision request consisted of changes to Legislative Rule 9 VAC 5 Chapter 50 Article 4—Stationary Sources, 9 VAC 5 Chapter 80 Article 6—Permits for New and Modified Stationary Sources, and 9 VAC 5 Chapter 80 Article 8—Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration. These rules were adopted by the Commonwealth of Virginia State Air Pollution Control Board on June 21, 2006 and became effective September 1, 2006. The Commonwealth adopted the regulations in order to meet the relevant plan requirements of 40 CFR 51.166.

II. Summary of SIP Revision

What is being addressed in this document?

Virginia currently has an EPA-approved NSR program for new and modified sources. Today, EPA is proposing limited approval of the Virginia pre-construction permitting program as submitted on October 10, 2006 for sources located or locating in PSD areas. The submittal consists of rules titled ''Chapter 50, Article 4—Stationary Sources'' and ''Chapter 80, Article 8—Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (PSD)'' adopted June 21, 2006 and effective September 1, 2006. Virginia also submitted changes to 9 VAC Chapter 80 Article 6—Permits for New and Modified Stationary Sources as part of the SIP revision, however, Article 6 has not previously been approved as part of the Virginia SIP and EPA will not be taking any rulemaking action on this portion of the SIP submittal at this time. This limited approval action will revise the previously-approved versions of these rules as approved into the Virginia SIP on April 21, 2000 (65 FR 21315) and March 23, 1998 (63 FR 13795).

Copies of the revised Virginia rules, as well as the Technical Support Document (TSD), can be obtained from the Docket as discussed in the ''Docket'' Section above. A discussion of the notable Virginia rule changes that are proposed for inclusion into the SIP are included in the TSD and summarized below.

What are the program changes that EPA is proposing limited approval?

In its December 2002 regulatory action, EPA dramatically changed many aspects of the regulations governing the PSD and nonattainment NSR programs (together, as ''NSR''), aimed at providing much needed flexibility and regulatory certainty, and at removing barriers and creating incentives for sources to improve environmental performance through emissions reductions, pollution prevention, and improved energy efficiency.'' Virginia accepted the conceptual framework of EPA's NSR reform revisions but tailored the program to their State-specific objectives. EPA agrees that Virginia's regulations, while different in some limited respects, will not prevent companies from benefiting from most, if not all of the goals of NSR reform. In general, EPA has concluded that Virginia's regulations, overall, conform to the minimum program elements in 40 CFR 51.166 despite some variations in their rules from the federal program. These notable variations are described below and the explanation of EPA's proposed limited approval is described in Section III of this notice.

Notable Variations in Article 8 From the Federal Program

1. In the EPA regulations, the period used for establishing the baseline for each pollutant can be different for each pollutant. The Virginia regulations require that it be the same for all pollutants, except where extenuating circumstances would allow use of different baseline periods. This variation is acceptable to EPA.

2. The EPA regulations do not specify consequences where the owner determines there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and does not obtain a permit. The Virginia regulations specify how the state will act should the owner fail to make an accurate determination. EPA believes that this variation from the Federal rule has no impact on approvability or the Commonwealth's ability to achieve the goals of NSR reform and is acceptable to EPA.

Please note, the Commonwealth will soon be revising this Section of its regulations to reflect changes made in the EPA final rule dated December 14, 2007 providing improvements to EPA's New Source Review program regarding ''reasonable possibility'' in recordkeeping. EPA's final rule provided an explanation and more detailed criteria to clarify the ''reasonable possibility'' recordkeeping and reporting standard of the 2002 New Source Review Reform rule. The improvements provided in the December 14, 2007 rulemaking were to reflect the amendments found necessary to respond to the decision of the U.S. Court of Appeals for the DC Circuit in *New York* v. *EPA*, 413 F.3d 3 (DC Cir. 2005) (New York) which remanded this portion of the December 2002 regulations for EPA to provide an acceptable explanation for its ''reasonable possibility'' standard or to devise an appropriately supported alternative.

3. The EPA regulations exclude emission increases that could be accommodated and are unrelated to the project, including demand growth, from projected actual emissions. The Virginia regulations included this exclusion but have been revised in order to clarify the intent of the provision and ensure consistency in its application. This variation is acceptable to EPA.

4. The EPA regulations require owners to develop and maintain information to support their determination that a given project is not a part of a major modification that may result in a significant emissions increase. The Virginia regulations require advance notification of the availability of the information prior to beginning actual construction of the project. This variation is acceptable to EPA.

5. The EPA regulations establish Plantwide Applicability Limits (PALs) with a duration of 10 years; the Virginia regulations contain five-year durations for PALs. This variation is acceptable to EPA.

6. This SIP revision also includes other non-substantive changes to Virginia's PSD program. There was a need to update regulatory citations, making consistency revisions to the text to bring the regulations in the Commonwealth up to date. EPA's analysis has found that these non-substantative changes do not change any of the minimum regulatory requirements and are acceptable.

For an in-depth and full explanation of EPA's regulatory analysis of the Virginia PSD program, please review the TSD located in the Docket. EPA's position is that every element of NSR reform is present in Virginia's rules but some elements may be implemented in a way that allows the Commonwealth more scrutiny with respect to how NSR applies to a facility.

III. Limited Approval

Why is EPA proposing ''limited approval'' versus ''full approval'' of Virginia's NSR Reform regulations for PSD areas?

The Clean Air Act does not expressly provide for limited approvals, therefore EPA is using its gap-filling authority under section 301 (a) of the Act in conjunction with the section 110(k)(3) approval provision to interpret the Act to provide for this type of limited approval action. A key aspect of these limited approval actions is that they encompass the entire rule based on the fact that even with limitations, the approval of the entire rule will strengthen the Commonwealth's SIP. The primary advantage to using this limited approval is that it will make the Commonwealth's revision submittal Federally enforceable and will increase the SIP's potential to achieve additional reductions.

The following is an explanation for the limited approval of this SIP revision by EPA. In Virginia's regulations under 9 VAC 5–80–1615 a new definition was added to reflect the necessary changes to the program found in the 2002 Federal NSR Reform rule.

Virginia's definition for ''baseline actual emissions'' varies from the Federal definition at 40 CFR 51.166(b)(47) in two ways. First, for both electric generating units (EGUs) and non-EGUs, Virginia's rule allows the use of different baselines for different pollutants if the owner can demonstrate to the satisfaction of the State Air Pollution Control Board (Board) that a different baseline period for a different pollutant(s) is more appropriate due to extenuating circumstances. This is acceptable to EPA. However in the second instance, for non-EGUs, the 24-month baseline period must occur within the five-year period preceding the date the owner begins actual construction or the permit application is deemed complete, whichever is earlier, unless the Board allows a different time period that it deems is more representative of normal source operations. The allowance of a different or an extended time period by the Board is acceptable as it allows a time period past the more limiting 5-year period; however, the Commonwealth's regulations do not further restrict the Board from allowing a time period which could extend past the 10-year period currently provided in the federal NSR Reform rule.

The Virginia regulations, therefore, meet the general federal criteria for expanding the lookback period beyond the old requirement of the most recent 24-month period, and are thus equivalent to the federal requirement. The purpose of an extended lookback is to establish a period that is most representative of source operation. Establishment of the most representative operation not only enables sources to plan effective emissions control strategies, it also provides Virginia with more accurate information on which to base long-term air quality planning strategies. The 5-year lookback period can be seen to be more limiting or at times more restrictive than the Federal rule. Requiring a 5-year lookback instead of a 10-year lookback may, however, limit a source's potential to find a higher baseline. This could in turn restrict a source's ability to emit and is thus inherently more protective than the EPA regulations. As part of the October 10, 2006 SIP revision submittal, the Commonwealth provided a more detailed explanation of the 5-year lookback period.

Though it was not Virginia's intention to exceed the 10-year lookback period limitation, EPA's decision to propose limited approval is based on the Commonwealth's interpretation of its own regulations as provided in their Technical Support Document. EPA is relying on this interpretation of the regulations as noted above and in part, the basis for our limited approval. Furthermore, EPA would look unfavorably upon any use of discretion by Virginia that would allow for baselines that exceed a 10-year lookback period. EPA expects Virginia to correct the definition at 9 VAC 5–80–1615 by limiting the discretionary lookback period to 10 years. When Virginia makes this amendment, they will be eligible for consideration for full approval of its PSD program found in Article 8.

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 (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 PSD 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.

V. Proposed Action

EPA has determined that the amendments to Virginia's PSD permit program at Articles 4 and 8, as submitted on October 10, 2006 meet the minimum requirements of 40 CFR 51.166 and the Clean Air Act. This amendment is being proposed as a limited approval 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.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule for limited approval of the Virginia Major New Source review Reform for facilities located or locating in PSD areas does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: June 17, 2008.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. E8–14617 Filed 6–26–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2007–0998; FRL–8684–2]

Approval and Promulgation of State Implementation Plans: Washington; Vancouver Air Quality Maintenance Area; Second 10-Year Carbon Monoxide Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Washington. The Washington State Department of Ecology submitted the Vancouver Air Quality Maintenance Area Second 10-year Carbon Monoxide Maintenance Plan on April 25, 2007. In accordance with the requirements of the Federal Clean Air Act (the Act), EPA is proposing to approve Washington's revision because the State adequately demonstrates that the Vancouver Air Quality Maintenance Area will maintain air quality standards for carbon monoxide (CO) through the year 2016.

DATES: Comments must be received on or before July 28, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2007–0998, by any of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: vaupel.claudia@epa.gov.*
- *Mail:* Claudia Vergnani Vaupel, U.S. EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.