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 regulation does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* 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. Since this final grant rule contains legally binding requirements, it is subject to the Congressional Review Act, 5 U.S.C. 801 *et seq.,* and EPA will submit this rule in its report to Congress under the Act.

List of Subjects in 40 CFR Part 35

Environmental protection, Administrative practices and procedures, Environmental program grants, Water pollution control.

Dated: September 30, 2004.

Mike O. Leavitt,

Administrator.

■ EPA amends 40 CFR part 35 as follows:

■ 1. The authority citation for part 35, subpart A continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.;* 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 300f *et seq.;* 42 U.S.C. 6901 *et seq.;* 7 U.S.C. 136 *et seq.;* 15 U.S.C. 2601 *et seq.;* 42 U.S.C. 13101 *et seq.;* Pub. L. 104–134, 110 Stat. 1321, 1321–299 (1966); Pub. L. 105–65, 111 Stat. 1344, 1373 (1997).

Subpart A—Amended

■ 2. Section 35.162 is amended by revising paragraphs (c) introductory text and (c)(1) to read as follows:

§ 35.162 Basis for allotment.

* * * * *

(c) *Interstate allotment formula.* EPA will set-aside 2.6 percent of the funds appropriated for the Water Pollution Control State grant program for interstate agencies. The interstate agency Water Pollution Control grant allotment formula consists of two parts: a funding floor with provisions for periodic adjustments for inflation, and a variable allotment.

(1) *Funding Floor.* A funding floor is established for each interstate agency. Each interstate's funding floor for FY 2005 will be at least equal to its FY 2003 allotment. Beginning in FY 2006, the interstate funding floor will ensure that unless there is a decrease in the CWA section 106 state appropriation, each interstate will receive at a minimum, the same level of funding received in the previous fiscal year. The funding floor for each interstate agency will be adjusted for inflation when the funds appropriated for states under the Water Pollution Control State grant program increase from the preceding fiscal year. These adjustments will be made on the basis of the cumulative change in the Consumer Price Index (CPI), published by the U.S. Department of Labor, since the most recent year in which Water Pollution Control State grant funding increased. Inflation adjustments to the interstate agency funding floor will be capped at the lesser of the percentage of change in appropriated funds or the cumulative percentage change in the inflation rate. If the appropriation for states under the Water Pollution Control State grant program decreases in future years, the funding floor will be disregarded and all interstate agency allotments will be reduced by an equal percentage.

* * * * *

[FR Doc. 04–22523 Filed 10–6–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA156–5084a; FRL–7824–2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; NO_X RACT Determinations for Washington Gas Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Virginia State Implementation Plan (SIP). The revision consists of a reasonably available control technology (RACT) for the control of nitrogen oxides (NO_X) from Washington Gas Company, Ravensworth Station, Registration No. 72277, located in Fairfax County, Virginia. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on December 6, 2004 without further notice, unless EPA receives adverse written comment by November 5, 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 VA156–5084 by one of the following methods:

A. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online 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. VA156–5084. 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 or e-mail. The Federal 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 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; and Commonwealth of Virginia, Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Betty Harris, (215) 814–2168, or by e-mail at *harris.betty@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Commonwealth of Virginia submitted a formal revision on April 26, 2004 and a supplemental submittal on August 18, 2004 to its State Implementation Plan (SIP). The SIP revision consists of a RACT determination, contained in the permit to operate, for the control of NO_X from Washington Gas Company, Ravensworth Station, Registration No. 72277, located in Fairfax County, Virginia.

II. Summary of SIP Revision

Washington Gas Company, Ravensworth Station, Registration No. 72277

The Washington Gas Company owns and operates a peak shaving, propane storage facility in Springfield, Virginia (the Ravensworth Station). VADEQ submitted a permit to operate for Washington Gas Company to implement RACT requirements for ten (10) natural gas-fired, Ingersoll Rand Model engine-driven compressors, one natural gas-fired Caterpillar model electrical generator, three (3) natural gas-fired Erie City boilers, and one natural gas-fired Cleaver Brooks boiler.

Emissions Controls

The NO_X emissions from each of the compressor engines shall be controlled by a combination of engine tuning and good combustion practices. Good combustion practices shall involve the continuous operation of the engines at optimum performance by maintaining operating parameters within ranges established during tuning and performance testing events, which will reduce NO_X emissions. Prior to the tuning events, Washington Gas Company shall develop a tuning plan, which describes the activity to be involved in the tuning event. The plan shall provide the rationale for optimizing specific parameters and their significance in reducing NO_X. The plan shall be submitted to VADEQ at least 30 days prior to the performance test. NO_X emissions from the compressor engines, boilers and Caterpillar generator shall be controlled by proper operation and maintenance. Operators shall be trained in the proper operation of all such equipment. Washington Gas Company shall maintain records of the required training including a statement of time, place and nature of training provided. The gas company shall have available good written operating procedures and a maintenance schedule. These procedures shall be based on the manufacturer's recommendations, at minimum. All records required by this condition shall be kept on site and made available for inspection by VADEQ.

Emissions Limitations

A NO_X emission limit for each compressor engine will be established based on the results of the performance tests. The emission limits based on the performance test required, each compressor engine shall be operated and maintained in accordance with the manufacturers' specifications and, to the extent practicable, in manner consistent with good air pollution control practices for minimizing emissions. NO_X emissions from each boiler shall not exceed 0.20 lbs/MMBtu. NO_X emissions from the Caterpillar generator shall not exceed 1.5 g/bhp-hr.

Testing

The gas company shall conduct two sets of performance tests to measure NO_X emissions in the exhaust stack of one of each model of compressor engine. The first set of tests, to be conducted prior to the tuning event, shall be for the purpose of establishing a baseline NO_X emission rate for each unit tested. The second set of tests, to be conducted following the tuning event, shall be used to evaluate the effectiveness of the tuning event and to correlate specific engine operating parameters to emissions. The gas company shall submit an original and one copy of a test protocol at least 30 days prior to testing. Copies of the test results shall be submitted to VADEQ within 45 days after test completion. The gas company shall also prepare a report, which provides the parametric data collected, the correlation to NO_X emissions, and the selection of appropriate operating ranges to each operating parameter. The report shall be submitted to VADEQ along with the test report. The gas company shall perform tests to measure NO_X emissions in the exhaust stack of two of four boilers to demonstrate compliance with the emission limit. The gas company shall submit a copy of the test protocol at least 30 days prior to testing. The test results shall be submitted to VADEQ within 45 days after test completion and shall conform to the test report format.

On Site Records

The gas company shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit. These records shall include, but are not limited to the following:

a. The tuning plan.

b. The report detailing results of the tuning event, the parametric data collected, the correlation of operating parameters to emissions, and the selection of operating ranges of the parameters.

c. The performance test reports for the compressor engines, including the results of both pre- and post-tuning.

d. The performance test report for the boilers.

e. Records of compressor engine, boiler and Caterpillar generator operator training, maintenance schedules and record of maintenance performed.

These records shall be available for inspection by VADEQ and shall be current for the most recent five years.

III. EPA's Evaluation of the SIP Revisions

EPA is approving this SIP submittal because the Commonwealth established and imposed requirements in accordance with the criteria set forth in SIP-approved regulations for imposing RACT. The Commonwealth has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with these requirements.

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 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. Final Action

EPA is approving revisions to the Commonwealth of Virginia's SIP which establish and require NO_X RACT for Washington Gas Company, Ravensworth Station, located in Fairfax County, Virginia. 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 approve the SIP revision if adverse comments are filed. This rule will be effective on December 6, 2004 without further notice unless EPA receives adverse comment by November 5, 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.

VI. 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. 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 Washington Gas Company, Ravensworth Station, located in Fairfax County, Virginia.

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 December 6, 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, pertaining to the NO_X RACT for Washington Gas Company, Ravensworth Station, located in Fairfax County, Virginia, 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 28, 2004.

Thomas Voltaggio,

Acting, 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. Section 52.2420, the table in paragraph (d) is amended by adding entries for ''Washington Gas Company, Ravensworth Station'' at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED VIRGINIA SOURCE-SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
* * *	*	*	* *	
.....	.....		[Insert **Federal Register** page number where the document begins].	
Washington Gas Company, Ravensworth Station	Registration No. 72277.	04/16/04 08/11/04	10/06/04	52.2420(d)(6).

* * * * *

[FR Doc. 04–22360 Filed 10–5–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040112010–4114–02; I.D. 093004C]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Closure of the Eastern U.S./Canada Area and Prohibition of Harvesting, Possessing, or Landing of Yellowtail Flounder from the U.S./Canada Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure of the Eastern U.S./Canada Area and prohibition of harvesting, possessing, or landing of yellowtail flounder from the U.S./Canada Management Area.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has determined that 85 percent of the total allowable catch (TAC) of Georges Bank (GB) yellowtail flounder allocated to be harvested from the Western and Eastern U.S./Canada Areas has been harvested by October 1, 2004. To prevent the GB yellowtail flounder TAC allocation from being exceeded, the Regional Administrator is closing the Eastern U.S./Canada Area to all limited access NE multispecies days-at-sea (DAS) vessels, unless participating in a future approved Special Access Program (SAP) for which the TAC allocation for the target stock for that SAP has not been fully harvested. In addition, the Regional Administrator is prohibiting all limited access NE multispecies DAS vessels from harvesting, possessing, or landing GB yellowtail flounder from within the entire U.S./Canada Management Area, effective October 1, 2004.

DATES: Effective October 1, 2004, 2004, through April 30, 2005.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, (978) 281–9141, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the yellowtail flounder landing limit within the Western and Eastern U.S./Canada Areas are found at 50 CFR 648.85(a)(3)(iv)(C). The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area, under specific conditions. The TAC allocation for GB yellowtail flounder for the 2004 fishing year was specified at 6,000 mt in the final rule implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) (April 27, 2004, 69 FR 22906). Once 30 percent and/or 60 percent of the TAC allocations specified for the U.S./Canada Management Area are projected to have been harvested, the regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to modify or close access to the Eastern U.S./Canada Area to all limited access NE multispecies DAS vessels and prohibit all limited access NE multispecies DAS vessels from harvesting, possessing, or landing GB yellowtail flounder from the entire U.S./Canada Management Area to prevent over-harvesting the yellowtail flounder TAC allocation.

Based upon Vessel Monitoring System reports and other available information, the Regional Administrator has determined that 85 percent of the GB yellowtail flounder TAC of 6,000 mt has been harvested by October 1, 2004. Due to concerns regarding expected yellowtail flounder bycatch by vessels targeting groundfish other than yellowtail flounder within the U.S./Canada Management Area and the