

**SUMMARY:** EPA is taking direct final action to approve a revision to the Commonwealth of Virginia State Implementation Plan (SIP). The revision consists of Virginia's state operating permit program. EPA is approving this revision in accordance with the requirements of sections 110 and 112 of Clean Air Act.

**DATES:** This rule is effective on August 26, 2003 without further notice, unless EPA receives adverse written comment by July 28, 2003. 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:** Comments should be addressed to Mr. David Campbell, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to [campbell.dave@epa.gov](mailto:campbell.dave@epa.gov) or to <http://www.regulations.gov>. To submit comments, please follow the detailed instructions listed in Part VI of the Supplementary Information section. 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:** David Campbell, (215) 814-2196, or by e-mail at [campbell.dave@epa.gov](mailto:campbell.dave@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On April 13, 1998, the Commonwealth of Virginia submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a regulation to implement a state operating permit program that provides a procedural and legal basis for the issuance of federally enforceable operating permits. On October 1, 1999, Virginia also requested approval of its state operating permit program pursuant to section 112(l) of the Clean Air Act.

Federally enforceable state operating permits (FESOPs) may be used to establish emission standards and other source-specific regulatory requirements for stationary sources of air pollution. FESOPs are frequently employed by permitting authorities to accomplish one or more of the following objectives: To designate a source as a synthetic

minor source with regard to applicability of federal requirements and standards, such as new source review; to combine a source's requirements under multiple permits into one permit; to implement emissions trading requirements; to cap the emissions of a source contributing to a violation of any air quality standard; or, to establish a source-specific emission standard or other requirements necessary to implement the federal Clean Air Act or state air statutes and regulations.

On February 23, 1993, EPA approved a revision to Virginia's SIP at 40 CFR 52.2420(c)(94) (currently cited as 40 CFR 53.2465(c)(94) pertaining to the Commonwealth's state operating permit program, previously Virginia Regulations for the Control of Air Pollution Part VIII, Section 120-08-04 (currently cited as 9 VAC 5-80-40.) (See, 58 FR 10982.) This state operating permit program allowed for the issuance of federally enforceable state operating permits or FESOPs. All sources of air pollution in Virginia with emissions above identified threshold levels were required to obtain a state operating permit. State operating permits under this program were considered federally enforceable if they were subject to the public participation provisions of the program.

In its April 13, 1998 SIP revision request, Virginia is seeking to replace the state operating permit program approved by EPA at 40 CFR 52.2465(c)(94) with a new permit program. In fact, Virginia has repealed 9 VAC 5-80-40. (However, state operating permits issued in accordance with this version of the permit program will remain federally enforceable, if applicable, until the permit expires or Virginia issues a superseding permit.) The new state operating permit program that is the subject of this action is fundamentally very similar to the previous permit program. The main distinction is that for most stationary sources of air pollution the new program is voluntary rather than compulsory.

**II. Evaluation of State Operating Permit Program Under Section 110 of the Act**

On June 28, 1989, EPA amended the definition of "federally enforceable" to clarify that terms and conditions contained in state-issued operating permits are federally enforceable for purposes of limiting a source's maximum potential emission rates or potential-to-emit (PTE). This is true provided that the state's operating permit program is approved into the SIP under section 110 of the Clean Air Act

as meeting certain conditions, and provided that the permit conforms to the requirements of the approved program. The conditions for EPA approval discussed in the June 28, 1989 notice establish five criteria for approving a state operating permit program. (See, 54 FR 27274-27286.) The following describes each of the criteria for approval of a state operating permit program for the issuance of federally enforceable operating permits for purposes of limiting a source's PTE and how the Virginia's SIP submittal satisfies those criteria.

*Criterion 1. The state operating permit program (i.e., the regulations or other administrative framework describing how such permits are issued) must be submitted to and approved by EPA as a SIP revision.* On April 13, 1998, the Commonwealth of Virginia submitted an administratively and technically complete SIP revision request for approval of its state operating permit program. The permit program, 9 VAC 5-80-800 through 1040, provides the framework for permit issuance.

*Criterion 2. The SIP revision must impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits (or subsequent revisions of the permit made in accordance with the approved operating permit program) and provide that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA.* The permit program explicitly requires, at 9 VAC 5-80-850.G, that permits issued under the program ensure that the permittee shall adhere to all terms and conditions contained in its permit. The general provisions of the permit program at 9 VAC 5-80-820.F establish that permits are considered "federally enforceable" only if they meet the requirements of the permit program and of EPA's underlying regulations. The list of requirements includes those criteria discussed in this document. Furthermore, the permit program's definitions of "enforceable as a practical matter" and "federally enforceable" require that permit terms must meet EPA's minimum criteria for federal enforceability, including public participation and practical enforceability requirements.

*Criterion 3. The state operating permit program must require that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any applicable limitations and requirements contained in the SIP, or enforceable under the SIP, and that the program*