

February 7, 2012). This action incorporates the submitted rules into the PCAPCD and FRAQMD portions of the California SIP and makes them federally enforceable.

We are also making a technical amendment to 40 CFR 52.220 to remove a previous SIP rule, PCAPCD Rule 508, from the PCAPCD portion of the California SIP, consistent with EPA's final rule at 76 FR 44809 (July 27, 2011). As explained in the proposal for this 2011 rulemaking, both EPA and the District had intended for Rule 502 to replace the preexisting NSR program in Rule 508, which EPA had approved into the SIP in 1982. *See* 76 FR 28945 (May 19, 2011).<sup>1</sup> In the regulatory text codifying this final action, however, EPA incorporated Rule 502 into the SIP but neglected to remove Rule 508. *See* 76 FR at 44811. We are making a technical amendment to 40 CFR 52.220 to correct this error by removing Rule 508 from the PCAPCD portion of the California SIP. This technical amendment makes no change to the substance of our July 27, 2011 final action or to today's final limited approval and limited disapproval of amended PCAPCD Rule 502 and FRAQMD Rule 10.1.

#### IV. 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 approves State law as meeting Federal requirements, in part, and does not impose additional requirements beyond those imposed by State law. For that reason, this final 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.);

<sup>1</sup> EPA's Technical Support Document for this proposal stated incorrectly that Rule 508 had previously been approved into the SIP on May 18, 1981 at 46 FR 27115. *See* U.S. EPA, Region IX, Technical Support Document for EPA's Notice of Proposed Rulemaking for the California SIP, Placer County Air Pollution Control District, Rule 502 (New Source Review), May 6, 2011, at 1. The correct cite and date for this previous SIP action is 47 FR 29536 (July 7, 1982).

- 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 disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final rule 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

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 28, 2013.

Alexis Strauss,

*Acting Regional Administrator, Region IX.*

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for Part 52 continues to read as follows:

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

#### Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(52)(xiii)(G), (c)(80)(i)(G), (c)(416)(i)(C) and (c)(423)(i)(F) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(52) \* \* \*  
(xiii) \* \* \*

(G) Previously approved on July 7, 1982 in paragraph (c)(52)(xiii)(C) of this section and now deleted without replacement: Rule 508.

\* \* \* \* \*

(80) \* \* \*  
(i) \* \* \*

(G) Previously approved on June 23, 1982 in paragraph (c)(80)(i)(E) of this section and now deleted without replacement: Rule 508.

\* \* \* \* \*

(416) New and amended regulations were submitted on November 18, 2011, by the Governor's Designee.

(i) Incorporation by Reference.

(C) Placer County Air Pollution Control District.

(I) Rule 502, "New Source Review," as amended on October 13, 2011.

\* \* \* \* \*

(423) New and amended regulations were submitted on September 21, 2012, by the Governor's Designee.

(i) Incorporation by Reference.

(F) Feather River Air Quality Management District.

(I) Rule 10.1, "New Source Review," as amended on February 6, 2012.

\* \* \* \* \*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA-R03-OAR-2012-0451; FRL-9901-22Region 3]

#### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Section 110(a)(2) Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia pursuant to the Clean Air Act (CAA). Whenever new or revised

national ambient air quality standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. Virginia has made a submittal addressing the infrastructure requirements for the 2008 lead (Pb) NAAQS.

**DATES:** This final rule is effective on October 24, 2013.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2012-0451. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (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 through [www.regulations.gov](http://www.regulations.gov) or in hard copy 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. 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:** Ellen Schmitt, (215) 814-5787, or by email at [schmitt.ellen@epa.gov](mailto:schmitt.ellen@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Summary of SIP Revision**

On June 11, 2013 (78 FR 34970), EPA published a notice of proposed rulemaking action (NPR) for the Commonwealth of Virginia proposing approval of Virginia's March 9, 2012 submittal to satisfy several requirements of section 110(a)(2) of the CAA for the 2008 Pb NAAQS. The NPR proposed approval of the following infrastructure elements of section 110(a)(2): (A), (B), (C) (for enforcement and regulation of minor sources), (D)(i)(I), (D)(i)(II) (for the visibility protection portion), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M), or portions thereof necessary to implement, maintain, and enforce the 2008 Pb NAAQS. EPA is taking separate action on the portions of section

110(a)(2)(C), (D)(i)(II), and (J) as they relate to Virginia's prevention of significant deterioration (PSD) program and section 110(a)(2)(E)(ii) as it relates to section 128 (State Boards). Virginia did not submit section 110(a)(2)(I) which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1), and will be addressed in a separate process.

The rationale supporting EPA's proposed action, including the scope of infrastructure SIPs in general, is explained in the NPR and the technical support document (TSD) accompanying the NPR and will not be restated here. The TSD is available online at [www.regulations.gov](http://www.regulations.gov), Docket ID Number EPA-R03-OAR-2012-0451. No comments were received on the NPR.

**II. 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 that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) 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 CAA, 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 CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

**III. Final Action**

EPA is approving the following section 110(a)(2) elements of Virginia's March 9, 2012 SIP revision: (A), (B), (C) (for enforcement and regulation of minor sources), (D)(i)(I), (D)(i)(II) (for the visibility protection portion), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L),

and (M), or portions thereof. EPA is taking separate action on the portions of section 110(a)(2)(C), (D)(i)(II), and (J) as they relate to Virginia's PSD program and section 110(a)(2)(E)(ii) as it relates to section 128 (State Boards). This action does not include section 110(a)(2)(I) which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1), and will be addressed in a separate process.

#### IV. Statutory and Executive Order Reviews

##### A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 CAA; 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 rule 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.

##### 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 action 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 25, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, which satisfies certain infrastructure requirements of section 110(a)(2) for the 2008 Pb NAAQS for the Commonwealth of 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, Incorporation by reference, Lead, Reporting and recordkeeping requirements.

Dated: August 29, 2013,

**W.C. Early,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 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 (e) is amended by adding the entry at the end of the table for Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS. The amendment reads as follows:

##### § 52.2420 Identification of plan.

\* \* \* \* \*

(e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS.	* Statewide ....	* 3/9/12	* 9/24/13 [ <i>Insert Federal Register page number where the document begins and date</i> ].	* This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C) (for enforcement and regulation of minor sources), (D)(i)(I), (D)(i)(II) (for the visibility protection portion), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M).

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[DE104-1103; FRL-9900-05-Region 3]

#### Approval and Promulgation of Air Quality Implementation Plans; Delaware; Update to Materials Incorporated by Reference

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; administrative change.

**SUMMARY:** EPA is updating the materials that are incorporated by reference (IBR) into the Delaware State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the EPA Regional Office.

**DATES:** This action is effective September 24, 2013.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue NW., Room Number 3334, EPA West Building, Washington, DC 20460; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**FOR FURTHER INFORMATION CONTACT:** Sharon McCauley, (215) 814-3376 or by email at [mccauley.sharon@epa.gov](mailto:mccauley.sharon@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The SIP is a living document which a state revises as necessary to address its unique air pollution problems. Therefore, EPA, from time to time, must take action on SIP revisions containing

new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997 **Federal Register** document. On December 7, 1998 (63 FR 67407), EPA published a document in the **Federal Register** beginning the new IBR procedure for Delaware. On June 21, 2004 (69 FR 34285), April 3, 2007 (72 FR 15839), April 17, 2009 (74 FR 17771), and May 2, 2011 (76 FR 24372), EPA published updates to the IBR material for Delaware.

Since the publication of the last IBR update, EPA has approved the following regulatory changes to the following Delaware regulations:

##### A. Added Regulations

1. 7 DNREC regulation 1141 (Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products), section 4.0 (Adhesives and Sealants).

2. 29 Del C. chapter 58 (Laws Regulating the Conduct of Officers and Employees of the State), sections 5804, 5805 (part), 5806 (part), 5812, 5813 (part), 5813A (part), and 5815 (part).

##### B. Revised Regulations

1. 7 DNREC regulation 1102 (Permits), appendix A.

2. 7 DNREC regulation 1124 (Control of Volatile Organic Compound Emissions), sections 2.0 (Definitions), 8.0 (Handling, Storage, and Disposal of Volatile Organic Compounds (VOCs)), 12.0 (Surface Coating of Plastic Parts), 13.0 (Automobile and Light-Duty Truck Coating Operations), 16.0 (Paper Coating), 19.0 (Coating of Metal Furniture), 20.0 (Coating of Large Appliances), 22.0 (Coating of Miscellaneous Metal Parts), 23.0 (Coating of Flat Wood Panelling), 37.0 (Graphic Arts Systems), 45.0 (Industrial Cleaning Solvents), and 47.0 (Offset Lithographic Printing and Letterpress Printing).

3. 7 DNREC regulation 1125 (Requirements for Preconstruction Review), sections 1.0 through Section 3.0.

4. 7 DNREC regulation 1142 (Specific Emission Control Requirements), section 2.0 (Control of NO<sub>x</sub> Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries).

## II. EPA Action

In this action, EPA is announcing the update to the IBR material as of July 1, 2013. EPA is also correcting typographical errors and omissions found in the following table entries of paragraph 52.420(c): 7 DNREC regulation 1124, sections 8.0, 23.0, and 37.0.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

## III. Statutory and Executive Order Reviews

### A. General Requirements

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

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- does not contain any unfunded mandate or significantly or uniquely