

on appeal or in support of exceptions; and

(4) A concise argument clearly setting forth points of fact and of law relied upon in support of or in opposition to each exception taken, together with specific references to the parts of the record and the legal or other authorities relied upon.

(f) Unless permission is granted by the Judicial Officer no brief shall exceed 50 printed pages double spaced, using 12 point type.

(g) The Judicial Officer will extend the time to file briefs only upon written application for good cause shown. If the appeal brief or brief in support of exceptions is not filed within the time prescribed, the defaulting party may be deemed to have abandoned the appeal or waived the exceptions, and the initial or tentative decision shall become the final agency decision.

#### **§ 952.26 Judicial Officer.**

(a) The Judicial Officer is authorized:

- (1) To act as presiding officer;
- (2) To render tentative decisions;
- (3) To render final agency decisions;
- (4) To issue Postal Service orders for the Postmaster General;

(5) To refer the record in any proceeding to the Postmaster General or the Deputy Postmaster General for final agency decision;

(6) To remand a case to the presiding officer for consideration; and,

(7) To revise or amend these rules of practice.

(b) In determining appeals from initial decisions or exceptions to tentative decisions, the entire official record will be considered before a final agency decision is rendered. Before rendering a final agency decision, the Judicial Officer may order the hearing reopened for the presentation of additional evidence by the parties.

#### **§ 952.27 Motion for reconsideration.**

A party may file a motion for reconsideration of a final agency decision within 10 days after receiving it or within such longer period as the Judicial Officer may order. Each motion for reconsideration shall be accompanied by a brief clearly setting forth the points of fact and of law relied upon in support of said motion.

#### **§ 952.28 Orders.**

(a) If an order is issued which prohibits delivery of mail to Respondent it shall be incorporated in the record of the proceeding. The Recorder shall cause notice of the order to be published in the Postal Bulletin and cause the order to be transmitted to such postmasters and other officers and

employees of the Postal Service as may be required to place the order into effect.

(b) If an order is issued which requires Respondent to cease and desist from using certain representations for the purpose of obtaining money or property through the mail, it shall be incorporated in the record of the proceeding and a copy thereof shall be served upon Respondent or his or her or its agent by certified mail or by personal service, or if no person can be found to accept service, service shall be accomplished by ordinary mail to the last known address of Respondent or his or her or its agent. If service is not accomplished by certified mail, a statement, showing the time and place of delivery, signed by the postal employee who delivered the order, shall be forwarded to the Recorder.

#### **§ 952.29 Modification or revocation of orders.**

A party against which an order or orders have been issued may file an application for modification or revocation thereof. The Recorder shall transmit a copy of the application to the Chief Postal Inspector or his or her designee, who shall file a written reply within 10 days after filing or such other period as the Judicial Officer may order. A copy of the reply shall be sent to the applicant by the Recorder. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

#### **§ 952.30 Supplemental orders.**

When the Chief Postal Inspector or his or her designee, or the Chief Postal Inspector's designated representative shall have reason to believe that a person is evading or attempting to evade the provisions of any such orders by conducting the same or a similar enterprise under a different name or at a different address, he or she may file a petition with accompanying evidence setting forth the alleged evasion or attempted evasion and requesting the issuance of a supplemental order or orders against the name or names allegedly used. Notice shall then be given by the Recorder to the person that the order has been requested and that an answer may be filed within 10 days of the notice. The Judicial Officer, for good cause shown, may hold a hearing to consider the issues in controversy, and shall, in any event, render a final decision granting or denying the supplemental order or orders.

#### **§ 952.31 Computation of time.**

A designated period of time under these rules excludes the day the period

begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.

#### **§ 952.32 Official record.**

The hearing transcript together with all pleadings, orders, exhibits, briefs and other documents filed in the proceeding shall constitute the official record of the proceeding.

#### **§ 952.33 Public information.**

The Librarian of the Postal Service maintains for public inspection in the Library copies of all initial, tentative and final agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

#### **§ 952.34 Ex parte communications.**

The provisions of 5 U.S.C. 551(14), 556(d), and 557(d) prohibiting ex parte communications apply to proceedings under these rules of practice.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 2011-15518 Filed 6-21-11; 8:45 am]

**BILLING CODE 7710-12-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[EPA-R03-OAR-2011-0411; FRL-9321-5]

### **Approval and Promulgation of Air Quality Implementation Plans; Virginia; Adoption of the Revised Nitrogen Dioxide Standard**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Commonwealth of Virginia State Implementation Plan (SIP). The revisions add the new 1-hour nitrogen dioxide (NO<sub>2</sub>) standard at a level of 100 parts per billion (ppb) and update the list of Federal documents incorporated by reference. The Commonwealth of Virginia's SIP revisions for the national ambient air quality standards (NAAQS) for NO<sub>2</sub> are consistent with the Federal NO<sub>2</sub> standards. This action is being taken under the Clean Air Act (CAA).

**DATES:** This rule is effective on August 22, 2011 without further notice, unless EPA receives adverse written comment by July 22, 2011. 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 Docket ID Number EPA–R03–OAR–2011–0411 by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. E-mail: [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. Mail: EPA–R03–OAR–2011–0411, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, 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–2011–0411. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://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 <http://www.regulations.gov> or e-mail. The <http://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 <http://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 <http://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 <http://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:** Gregory Becoat, (215) 814–2036, or by e-mail at [becoat.gregory@epa.gov](mailto:becoat.gregory@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On March 4, 2011, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision consists of amendments pertaining to the ambient air quality standards for NO<sub>2</sub> and related reference conditions. The CAA specifies that EPA must re-evaluate the appropriateness of its various air quality standards every five years. As part of the process, EPA reviewed the latest research and determined that revised standards for NO<sub>2</sub> were necessary to protect public health. EPA revised the level of the primary standard by setting a new 1-hour NO<sub>2</sub> standard at a level of 100 parts per billion (ppb) in order to protect against adverse health effects associated with short-term exposure to NO<sub>2</sub>. EPA also retained the current annual average NO<sub>2</sub> standard of 53 ppb in order to protect against adverse health effects associated with long-term exposure to NO<sub>2</sub>. EPA promulgated the more stringent primary NAAQS for NO<sub>2</sub> on February 9, 2010 (75 FR 6474).

##### **II. Summary of SIP Revision**

On March 4, 2011, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision consists of amendments to the Commonwealth's existing regulations in order to update the list of appendices under documents incorporated by reference and to add the new primary 1-hour standard for NO<sub>2</sub>. The Commonwealth of Virginia's revision incorporates the revised NO<sub>2</sub> standard into the Code of Virginia (9VAC5 Chapter 30). This SIP revision amends regulation 5–30–70, “Oxides of nitrogen with nitrogen dioxide as the indicator” in order to specify that NO<sub>2</sub> is the indicator for oxides of nitrogen; limit the 53 ppb standard to the annual

primary standard and change the unit of measurement from annual arithmetic mean concentration to annual average concentration; add the new primary 1-hour standard of 100 ppb; specify reference methods used to measure the standard; and specify how the primary annual and 1-hour standard and the secondary standard are attained.

In addition, this SIP revision amends regulation 5–20–21, “Documents incorporated by reference” by adding the new Appendix S to the list of Federal documents incorporated by reference. Appendix S was added to 40 CFR part 50 when the revised NO<sub>2</sub> standard was promulgated on February 9, 2010 (75 FR 6474).

##### **III. 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. Virginias 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 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.

#### IV. Final Action

EPA is approving the Commonwealth of Virginia’s SIP revision that adds the new 1-hour NO<sub>2</sub> NAAQS and updates the list of Federal documents incorporated by reference. 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 August 22, 2011 without further notice unless EPA receives adverse comment by July 22, 2011. 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.

#### V. 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 August 22, 2011. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action

pertaining to the Commonwealth of Virginia's adoption of the revised NO<sub>2</sub> standard of 100 ppb 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, Reporting and recordkeeping requirements.

Dated: June 6, 2011.

**W.C. Early,**

*Acting, Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR 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 (c) is amended by revising the entry for Section 5–30–70. The table in paragraph (e) is amended by adding an entry for “Documents Incorporated by Reference” after the tenth existing entry for “Documents Incorporated by Reference.” The amendments read as follows:

#### § 52.2420 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

#### EPA—APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* * *	* * *	* * *	* * *	* * *
<b>9 VAC 5, Chapter 30 Ambient Air Quality Standards [Part III]</b>				
5-30-70	Oxides of nitrogen dioxide as the indicator.	8/18/10	6/22/11 [Insert page number where the document begins].	Sections A., D., and E. are modified. Sections B., C., F., and G. are added.
* * *	* * *	* * *	* * *	* * *
(e) * * *				
Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* * *	* * *	* * *	* * *
Documents Incorporated by Reference (9 VAC 5-20-21, Section E.1.a.(1)(s)).	Statewide	3/14/11	6/22/11 [Insert page number where the document begins].	Added section.
* * *	* * *	* * *	* * *	* * *

[FR Doc. 2011–15455 Filed 6–21–11; 8:45 am]

**BILLING CODE 6560–50–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R10–OAR–2010–1072; FRL–9321–4]

#### Approval and Promulgation of Implementation Plans; State of Idaho; Regional Haze State Implementation Plan and Interstate Transport Plan

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving portions of a State Implementation Plan (SIP)

revision submitted by the State of Idaho on October 25, 2010, as meeting the requirements of Clean Air Act (CAA) section 110(a)(2)(D)(i)(II) as it applies to visibility for the 1997 8-hour ozone and 1997 particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS). EPA is also approving portions of the revision as meeting certain requirements of the regional haze program, including the requirements for best available retrofit technology (BART).

**DATES:** *Effective Date:* This final rule is effective July 22, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2010–1072. All documents in the docket are listed on the <http://www.regulations.gov> Web

site. Although listed in the index, some information is not publicly available, *e.g.*, 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 <http://www.regulations.gov> or in hard copy at the State and Tribal Air Programs Unit, Office of Air Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA, 98101. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You