



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2014-0816; FRL- 9931-29-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
Virginia; Consumer and Commercial Products and Mobile Equipment Repair and
Refinishing Operations**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision consists of amendments to Virginia's regulation for consumer and commercial products in order to apply provisions pertaining to portable fuel containers, consumer and commercial products, architectural and industrial maintenance coatings, adhesives, adhesive primers, sealants, and sealant primers to the Richmond volatile organic compound (VOC) Emissions Control Area. The revision also consists of amendments to Virginia's regulation for existing stationary sources to apply provisions pertaining to mobile equipment repair and refinishing operations in the Richmond VOC Emissions Control Area. EPA is approving these revisions to the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-

R03-OAR-2014-0816. All documents in the docket are listed in the www.regulations.gov website. 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 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: Leslie Jones Doherty, (215) 814-3409 or by e-mail at jones.leslie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 16, 2015 (80 FR 13510), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. In the NPR, EPA proposed approval of revisions to Virginia's consumer and commercial products and mobile equipment repair and refinishing operations regulations. The formal SIP revision was submitted by the Commonwealth of Virginia on April 10, 2014.

II. Summary of SIP Revision

The SIP revision consists of amendments to 9VAC5 Chapter 45 - Consumer and Commercial Products in order to apply provisions pertaining to portable fuel containers, consumer and

commercial products, architectural and industrial maintenance coatings, adhesives, adhesive primers, sealants, and sealant primers to the Richmond VOC Emissions Control Area. This revision also amends Article 48 of 9VAC5 Chapter 40 - Existing Stationary Sources to apply provisions pertaining to mobile equipment repair and refinishing operations in the Richmond VOC Emissions Control Area. Also, the SIP revision includes revised compliance dates for Chapters 40 and 45 and retains in Chapter 45 a temporary exemption for the manufacture and distribution of single-ply roof membrane adhesives and sealants. Other specific requirements and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

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. 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.

IV. Final Action

EPA is approving the amendments to Virginia's regulations for consumer and commercial products and mobile equipment repair and refinishing operations as a revision to the Virginia SIP.

V. Incorporation by Reference

In this rulemaking action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Virginia Department of Environmental Quality (VADEQ) Regulations described in amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

VI. 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 (Public Law 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 **[Insert date 60 days after date of publication in the Federal Register]**. 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 pertaining to Virginia's control of VOC emissions from commercial and consumer products and mobile equipment repair and refinishing operations 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, Ozone, Volatile organic compounds.

Dated: July 9, 2015.

William 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 (c) is amended by:

A. In the entries for Chapter 40, Part II, Article 48, revise Sections 5-40-6970 and 5-40-7050 and add 5-40-6975 in numerical order.

B. In entries for Chapter 45, Part II, Article 1, revise Sections 5-45-70 and 5-45-90; Article 2 Sections 5-45-160, 5-45-170 and 5-45-240; Article 3 Section 5-45-310; Article 4 Sections 5-45-400, 5-45-420, 5-45-430 and 5-45-480; Article 5 Sections 5-45-520, 5-45-530 and 5-45-580; and Article 6 Sections 5-45-620, 5-45-630, 5-45-650 and 5-45-700.

The revisions and additions read as follows:

§ 52.2420 Identification of plan.

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(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

| State citation | Title/subject | State effective date | EPA approval date | Explanation [former SIP citation] |
|--|--|----------------------|--|--|
| * * * * * | | | | |
| 9 VAC 5, Chapter 40 Existing Stationary Sources (Part IV) | | | | |
| * * * * * | | | | |
| Part II Emission Standards | | | | |
| Article 48 Emission Standards for Mobile Equipment Repair and Refinishing (Rule 4-48) | | | | |
| ***** | | | | |
| 5-40-6970 | Applicability and designation of affected facility | 10/01/13 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Revision extends the applicability to include the Richmond VOC Emissions Control Area. |
| * * * * * | | | | |
| 5-40-6975 | Exemptions | 10/01/13 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Added. |
| * * * * * | | | | |
| 5-40-7050 | Compliance schedules | 10/01/13 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Amended. |
| * * * * * | | | | |
| 9 VAC 5, Chapter 45 Consumer and Commercial Products | | | | |
| * * * * * | | | | |
| Part II Emission Standards | | | | |
| Article 1 Emission Standards For Portable Fuel Containers And Spouts Manufactured Before August 1, 2010 | | | | |
| * * * * * | | | | |
| 5-45-70 | Exemptions | 10/01/13 | [Insert date of publication in the Federal Register] [Insert Federal | Amended. |

| State citation | Title/subject | State effective date | EPA approval date | Explanation [former SIP citation] |
|---|---|----------------------|---|--|
| | | | <u>Register citation]</u> | |
| * * * * * | | | | |
| 5-45-90 | Standard for volatile organic compounds | 10/01/13 | <u>[Insert date of publication in Federal Register]</u> <u>[Insert Federal Register citation]</u> | Amended. |
| * * * * * | | | | |
| Article 2 Emission Standards For Portable Fuel Containers And Spouts Manufactured On Or After August 1, 2010 | | | | |
| 5-45-160 | Applicability | 10/01/13 | <u>[Insert date of publication in Federal Register]</u> <u>[Insert Federal Register citation]</u> | Revision extends the applicability to include the Richmond VOC Emissions Control Area. |
| 5-45-170 | Exemptions | 10/01/13 | <u>[Insert date of publication in the Federal Register]</u> <u>[Insert Federal Register citation]</u> | Amended. |
| * * * * * | | | | |
| 5-45-240 | Compliance schedules | 10/01/13 | <u>[Insert date of publication in the Federal Register]</u> <u>[Insert Federal Register citation]</u> | Amended. |
| * * * * * | | | | |
| Article 3 Emission Standards For Consumer Products Manufactured Before August 1, 2010 | | | | |
| * * * * * | | | | |
| 5-45-310 (Except for subsection B) | Standard for volatile organic compounds | 10/01/13 | <u>[Insert date of publication in the Federal Register]</u> <u>[Insert Federal Register citation]</u> | Amended. |
| * * * * * | | | | |
| Article 4 Emission Standards For Consumer Products Manufactured On or After August 1, 2010 | | | | |
| 5-45-400 | Applicability | 10/01/13 | <u>[Insert date of publication in the Federal Register]</u> | Revision extends the applicability to |

| State citation | Title/subject | State effective date | EPA approval date | Explanation [former SIP citation] |
|---|---|----------------------|--|--|
| | | | <u>[Insert Federal Register citation]</u> | include the Richmond VOC Emissions Control Area. |
| * * * * * | | | | |
| 5-45-420 | Definitions | 10/01/13 | <u>[Insert date of publication in the Federal Register]</u> <u>[Insert Federal Register citation]</u> | Amended. |
| 5-45-430 (Except for subsection B) | Standard for volatile organic compounds | 10/01/13 | <u>[Insert date of publication in the Federal Register]</u> <u>[Insert Federal Register citation]</u> | Amended. |
| * * * * * | | | | |
| 5-45-480 | Compliance schedules | 10/01/13 | <u>[Insert date of publication in the Federal Register]</u> <u>[Insert Federal Register citation]</u> | Amended. |
| * * * * * | | | | |
| Article 5 Emission Standards For Architectural And Industrial Maintenance Coatings | | | | |
| 5-45-520 | Applicability | 10/01/13 | <u>[Insert date of publication in the Federal Register]</u> <u>[Insert Federal Register citation]</u> | Revision extends the applicability to include the Richmond VOC Emissions Control Area. |
| 5-45-530 | Exemptions | 10/01/13 | <u>[Insert date of publication in the Federal Register]</u> <u>[Insert Federal Register citation]</u> | Amended. |
| * * * * * | | | | |
| 5-45-580 | Compliance schedules | 10/01/13 | <u>[Insert date of publication in the Federal Register]</u> <u>[Insert Federal Register citation]</u> | Amended. |
| * * * * * | | | | |
| Article 6 Emission Standards For Adhesives And Sealants | | | | |

| State citation | Title/subject | State effective date | EPA approval date | Explanation [former SIP citation] |
|-----------------------|---|-----------------------------|--|--|
| 5-45-620 | Applicability | 10/01/13 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Revision extends the applicability to include the Richmond VOC Emissions Control Area. |
| 5-45-630 | Exemptions | 10/01/13 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Amended. |
| * * * * * | | | | |
| 5-45-650 | Standard for volatile organic compounds | 10/01/13 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Amended. |
| * * * * * | | | | |
| 5-45-700 | Compliance schedules | 10/01/13 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Amended. |
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[FR Doc. 2015-18609 Filed: 8/3/2015 08:45 am; Publication Date: 8/4/2015]