

TABLE 2.—PM-10 NONATTAINMENT MILESTONES—Continued

Date	Event
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. On the date of enactment of the 1990 CAA Amendments, PM-10 areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated nonattainment by operation of law and classified pursuant to section 188(a).
December 10, 1993	Section 189(a)(1)(C) requires that PM-10 nonattainment areas implement all reasonably available control measures (RACM) by this date.

#### IV. Stationary and Executive Order Reviews

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.*).

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 rule 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).

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 April 28, 2003. 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 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, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 3, 2003.

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—[AMENDED]

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 paragraph (c)(302)(i)(A)(3), to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(302) \* \* \*

(i) \* \* \*

(A) \* \* \*

(3) Rule 420 adopted on November 11, 1985, and amended on August 13, 2002.

\* \* \* \* \*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[VA085/086/089/102/103-5046a; FRL-7455-7]

**Approval and Promulgation of Air Quality Implementation Plans; Virginia; Reorganization of and Revisions to Administrative and General Conformity Provisions; Documents Incorporated by Reference; Recodification of Existing SIP Provisions; Correction**

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

**ACTION:** Direct final rule; correcting amendment.

**SUMMARY:** This document corrects errors in the amendatory instructions of a final rule pertaining to the chart listing Virginia regulations which EPA has incorporated by reference into the Virginia SIP.

**EFFECTIVE DATE:** March 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Harold A. Frankford, (215) 814-2108 or

by e-mail at [frankford.harold@epamail.epa.gov](mailto:frankford.harold@epamail.epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” or “our” are used we mean EPA. On January 7, 2003 (68 FR 663), we published a final rulemaking action announcing corrections to the chart in 40 CFR 52.2420(c) summarizing the approved SIP rules. As stated 68 FR 663 at page 666, the intent of these amendatory instructions was to correct

typographical errors by renumbering these entries with the correct regulatory citations. After reviewing the chart published on page 666, we have determined that this action provided an incomplete list of entries which EPA had intended to correct. In addition to those entries listed in 68 FR 663 at 666, EPA had intended to correct the following entries originally published on April 21, 2000 (65 FR 21315), as described below:

Federal Register page (65 FR)	Entry	Column title	Description of correction
21322 .....	5-20-305	State Effective Date .....	Replace “2/1/97” with “7/1/97”
21323 .....	5-40-311	Title/Subject .....	Replace “Dioxide” with “Oxides”
21342 .....	5-91-20	State Effective Date .....	Replace “1/1/98” with “1/24/97”
	5-91-20	Explanation [Former SIP Citation] .....	Revise the existing note regarding the term “Northern Virginia program area”

In this document on page 667, an amendatory instruction (2.d.) inadvertently removed entries 5-9-150, 4-91-450 and 4-91-460 from this chart. Another amendatory instruction (2.f.) contained a typographical error to the citation identifying entry 4-40-450. As stated in 68 FR 663 at page 666, the intent of these amendatory instructions was not to remove these entries from the chart, but merely to correct typographical errors by renumbering these entries with the correct regulatory citations, as described below:

1. Replace entry “4-40-450” with “5-40-450.”
2. Replace entry “5-9-150” with “5-91-150.”
3. Replace entry “4-91-450” with “5-91-450.”
4. Replace entry “4-91-460” with “5-91-460.”

However, the rule chart published in the January 7, 2003 action omitted these new entries which were meant to replace these incorrect entries. This action corrects the chart in 40 CFR 52.2420(c) by removing the incorrect chart entries and adding the correct chart entries in their place.

Also, on page 667 amendatory instructions 2.e. and 2.g. were incorrect. As a result, the corrections as described on page 666 to entry 5-80-10 and the title for “Chapter 160 General Conformity Rules” were not made to the rule chart at page 668. This action provides the correct amendatory instructions.

Finally, this action corrects typographical errors published in the rule chart for 68 FR 663 at page 668 to the headings “Chapter 10” and “Chapter 20” and to the notes found in the respective “Explanation [Former SIP Citation]” columns for entries 5-10-10 and 5-10-20.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today’s rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

**Statutory and Executive Order Reviews**

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and is therefore 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)). Because the agency has made a “good cause” finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of

UMRA. This rule also does 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), nor will it 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 governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This rule does not impose an

information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of March 10, 2003. EPA will submit a report containing this rule 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**. This correction to 40 CFR 52.2420(c) for Virginia is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: February 14, 2003.

**Donald S. Welsh,**

*Regional Administrator, EPA 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. In § 52.2420, the table in paragraph (c) is amended:

a. Under Chapter 10 by revising the "Chapter 10" heading and entries 5–10–10 and 5–10–20.

b. Under Chapter 20 by revising the "Chapter 20" heading and entry 5–20–205.

c. Under Chapter 40 by removing entry 4–40–450, adding entry 5–40–450, and revising entry 5–40–311.

d. Under Chapter 80 by removing entry 5–80–10/Article 6 and adding entry 5–80–10.

e. Under Chapter 91 by removing entries 5–9–150, 4–91–450, and 4–91–460; adding entries 5–91–150, 5–91–450, and 5–91–460; and revising entry 5–91–20.

f. Under chapter 160 by revising the "Chapter 160" heading.

The revisions read as follows:

**§ 52.2420 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA-APPROVED VIRGINIA REGULATIONS**

State citation (9 VAC 5)	Title/Subject	State effective date	EPA approval date	Explanation [former SIP citation]
<b>Chapter 10—General Definitions—[Part I]</b>				
5–10–10 .....	General .....	1/1/98	1/7/03, 68 FR	120–01–01 Sections 5–10–10A, B and C are revised.
5–10–20 .....	Terms Defined— .....	1/1/98	2/26/03 and FR page citation	Terms Added—Public hearing; Regulations for the Control and Abatement of Air Pollution, Regulation of the Board, These regulations: Terms Revised—Good Engineering Practice, Person, Volatile organic compound: Terms Deleted (moved to 9 VAC 5–170–20)—Administrative Process Act, Air quality maintenance area, Confidential information, Consent agreement, Consent order, Emergency special order, Order, Special order, Variance.
*	*	*	*	* * *
<b>Chapter 20—General Provisions—[Part II]</b>				
*	*	*	*	* * *
5–20–205 .....	Prevention of Significant Deterioration Areas.	7/1/97	3/23/98, 63 FR 13795	Former Appendix L—Effective 2/1/92.

EPA-APPROVED VIRGINIA REGULATIONS—Continued

State citation (9 VAC 5)	Title/Subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
<b>Chapter 40—Existing Stationary Sources—[Part IV]</b>				
*	*	*	*	*
<b>Part II—Emission Standards</b>				
*	*	*	*	*
Article 4—General Process Operations—[Rule 4–4]				
*	*	*	*	*
5–40–311 .....	Reasonably available control technology guidelines for stationary sources of nitrogen oxides.	7/1/97	4/28/99, 64 FR 22792	52.2420(c)(132) Exceptions: 311C.3.a, C.3.c,D.
*	*	*	*	*
Article 5—Synthesized Pharmaceutical Products Manufacturing Operations—[Rule 4–5]				
*	*	*	*	*
5–40–450 .....	Standard for Volatile Organic Compounds.	4/17/95	4/21/00, 65 FR 21320	120–04–0503
*	*	*	*	*
<b>Chapter 80—Permits for Stationary Sources</b>				
5–80–10 .....	New and Modified Stationary Sources.	4/17/95	4/21/00, 65 FR 21320	120–08–01
*	*	*	*	*
<b>Chapter 91—Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area</b>				
<b>Part I—Definitions</b>				
*	*	*	*	*
5–91–20 .....	Terms Defined .....	1/24/97	9/1/99, 64 FR 47670	Note: The term “Northern Virginia program area” is revised, effective 1/1/98, to exclude Fauquier County.
<b>Part II—General Provisions</b>				
*	*	*	*	*
5–91–150 .....	Availability of Information .....	1/24/97	9/1/99, 64 FR 47670	
*	*	*	*	*
<b>Part VI—Inspection Procedures</b>				
*	*	*	*	*
5–91–450 .....	Fuel test evaporative pressure test and gas cap pressure and test procedure.	1/24/97	9/1/99, 64 FR 47670	
5–91–460 .....	Fuel system evaporative purge test procedure.	1/24/97	9/1/99, 64 FR 47670	
*	*	*	*	*
<b>Chapter 160—General Conformity Rules</b>				
*	*	*	*	*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[KS 173-1173a; FRL-7455-9]

#### Approval and Promulgation of Implementation Plans; State of Kansas

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking final action to approve a State Implementation Plan (SIP) revision submitted by the state of Kansas. This revision is a new regulation entitled "Prevention of Significant Deterioration of Air Quality" (PSD) and will replace the existing state PSD regulation. This rule was last adopted as a state rule in 1990; therefore, this revision adopts by reference Federal PSD regulations, as in effect on July 1, 2000. The effect of this approval is to ensure Federal enforceability of the state air program rules and to maintain consistency between the state-adopted rules and the approved SIP.

**DATES:** This direct final rule will be effective April 28, 2003, unless EPA receives adverse comments by March 28, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the *Federal Register* informing the public that the rule will not take effect.

**ADDRESSES:** Comments may be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Heather Hamilton at (913) 551-7039.

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is being addressed in this document?  
Have the requirements for approval of a SIP revision been met?  
What action is EPA taking?

#### What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

#### What Is the Federal Approval Process for a SIP?

In order for State regulations to be incorporated into the Federally-enforceable SIP, States must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a State-authorized rulemaking body.

Once a State rule, regulation, or control strategy is adopted, the State submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the State submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All State regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP.

Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual State regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given State regulation with a specific effective date.

#### What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the State regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

#### What Is Being Addressed in This Document?

This action approves the adoption of State rule K.A.R. 28-19-350, Prevention of Significant Deterioration of Air Quality, and approves the rescission of the existing rule sections K.A.R. 28-19-17a through 28-19-17q which comprised the prior body of Kansas' Prevention of Significant Deterioration of Air Quality regulations. K.A.R. 28-19-17 is being revised in order to provide a cross-reference to the new regulations. This revision adopts by reference 40 CFR 52.21, as in effect on July 1, 2000, with the exceptions of 52.21(a); 52.21(f) through (h); 52.21(m)(l)(v); 52.21(q); 52.21(s) through (u); and 52.21(w).

The proposed changes to the State Prevention of Significant Deterioration (PSD) program clarify that the following Federal changes have been adopted by the Kansas PSD Program: (1) Adoption of the PM10 (particulate matter with a nominal aerodynamic diameter of 10 micrometers or less) increment; (2) adoption of provisions regarding calculating actual emissions for electric utility steam generating units; (3) adoption of provisions relating to clean coal technology; (4) adoption of provisions relating to pollution control projects at existing electric utility steam generating units; (5) adoption of the significance level for non-methane organic compounds at municipal solid waste landfills; and (6) adoption of the significance levels for organics, metals and acid gases from municipal waste combustors. This action also allows the opportunity to renumber the PSD rules to further the ongoing renumbering of the Kansas Air Quality Regulations.

This regulation was adopted by the Kansas Department of Health and Environment on October 30, 2002, and became effective on November 22, 2002.

#### Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the