percent threshold shall be deemed ''disproportionate.''

**Neva Watson,**

*Attorney, Legislative.*

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**BILLING CODE 7710–12–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[R03–OAR–2005–VA–0006; FRL–7913–5]**

## Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Emission Standards for Solvent Cleaning Operations Using Non-Halogenated Solvents

**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 revision consists of regulatory modifications intended to clarify the applicability of the solvent metal cleaning operations using non-halogenated solvents provisions. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on July 18, 2005, without further notice, unless EPA receives adverse written comment by June 16, 2005. 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 Regional Material in EDocket (RME) ID Number R03–OAR–2005–VA–0006 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/*. RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *campbell.dave@epa.gov*.

D. Mail: R03–OAR–2005–VA–0006, Dave Campbell, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. 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 RME ID No. R03–OAR–2005–VA–0006. 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.docket.epa.gov/rmepub/*, 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are 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 RME or 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 RME index at *http://www.docket.epa.gov/rmepub/*. 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 RME 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:** Ellen Wentworth, (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On January 24, 2003 (68 FR 3410), EPA reclassified the Metropolitan Washington, DC ozone nonattainment area (DC area) from ''serious'' to ''severe'' for the one-hour ozone standard. As a severe nonattainment area, the DC area, which comprises the states of Maryland, portions of Virginia and the District of Columbia, is now required to meet the requirements of section 182(d) of the CAA and attain the standard by November 15, 2005. As a result of the reclassification to severe nonattainment, the DC area must implement additional control measures and submit SIP revisions for post-1999 rate of progress (ROP) plans, revisions to contingency measures and revisions to the area's attainment demonstration.

As a part of Virginia's strategy to meet its portion of the necessary emission reductions, the Commonwealth adopted new measures to control volatile organic compound (VOC) emissions from four additional source categories, including a regulation to control emissions from solvent metal cleaning operations.

### II. Summary of SIP Revision

On February 23, 2004, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision consisted of four new regulations added to 9 VAC 5, Chapter 40, amendments to one existing article of 9 VAC 5 Chapter 20, and amendments to 9 VAC 5, Chapter 20 to incorporate by reference additional test methods and procedures. The revision also included amendments to section B of 9 VAC 5–40–3260 (Rule 4–24) pertaining to emissions standards for solvent metal cleaning operations using non-halogenated solvents. This action addresses Rule 4–24 only. The remaining portions of the submittal have been the subject of separate rulemaking actions.

On June 9, 2004 (69 FR 32277), EPA published a direct final rulemaking action approving the Commonwealth's solvent metal cleaning operations regulation for the Northern Virginia portion of the Metropolitan DC ozone nonattainment area (Northern Virginia Area) into the SIP. This regulation was based on the Ozone Transport Commission's (OTC) model rule. The Virginia solvent metal cleaning regulation entitled, ''Emission Standards for Solvent Metal Cleaning Operations in the Northern Virginia VOC Emission Control Area'' (Rule 4–

47), applies to solvent metal cleaning operations in the Northern Virginia Area only.

As a part of the February 23, 2004, submittal, the Commonwealth of Virginia amended the applicability provisions in section B of 9 VAC 5–40–3260, ''Emission Standards for Solvent Metal Cleaning Operations Using Halogenated Solvents' (Rule 4–24), to clarify that this regulation does not apply to sources in the Northern Virginia Area. Sources located in the Northern Virginia Area are subject to the provisions found in ''Emission Standards for Solvent Metal Cleaning Operations in the Northern Virginia VOC Emission Control Area'' (Rule 4–47).

## III. General Information Pertaining to SIP Submittals From the Commonwealth of Virgina

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: (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 Clean Air Act, 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 Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

## IV. Final Action

EPA is approving the Commonwealth of Virginia's amendment to the regulations pertaining to solvent metal cleaning operations using non-halogenated solvents, submitted on February 23, 2004. 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 July 18, 2005, without further notice unless EPA receives adverse comment by June 16, 2005. 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 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 (Public Law 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.*).

*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 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 rule 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 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 July 18, 2005. 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, regarding amendments to the Commonwealth of Virginia's solvent metal cleaning operations using non-halogenated solvents, 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 6, 2005.

**Donald S. Welsh,**

*Regional Administrator, 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 by revising the entry for ''5–40–3260'' under Chapter 40, Part II, Article 24 to read as follows:

**§ 52.2420 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

| State citation (9 VAC 5) | Title/subject | State effective date | EPA approval date | Explanation [former SIP citation] |
|---|---|---|---|---|
| * * * * * | | * | | * |
| **Chapter 40 Existing Stationary Sources** | | | | |
| * * * * * | | * | | * |
| Part II Emission Standards | | | | |
| * * * * * | | * | | * |
| **Article 24 Emission Standards for Solvent Metal Cleaning Operations Using Non-Halogenated Solvents (Rule 4–24)** | | | | |
| 5–40–3260 | Applicability and Designation of Affected Facility | 3/24/04 | 5/17/05 [Insert page number where the document begins] | |
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[FR Doc. 05–9781 Filed 5–16–05; 8:45 am]

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