

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2005-VA-0017; FRL-8026-7]

#### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Emission Standards for Consumer Products in the Northern Virginia Volatile Organic Compound Emissions Control Area

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to the emission standards for consumer products sold and used in the Northern Virginia volatile organic compound (VOC) emissions control area. This action is being taken under the Clean Air Act (CAA or the Act).

**DATES:** Written comments must be received on or before March 2, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2005-VA-0017 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. E-mail: *morris.makeba@epa.gov*.

C. Mail: EPA-R03-OAR-2005-VA-0017, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, 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-2005-VA-0017. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *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 *www.regulations.gov* or e-mail. The *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 *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 *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 *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:** Rose Quinto, (215) 814-2182, or by e-mail at *quinto.rose@epa.gov*.

**SUPPLEMENTARY INFORMATION:** On October 25, 2005, the Virginia Department of Environmental Quality (VADEQ) submitted a formal revision to its State Implementation Plan (SIP). This SIP revision consists of (1) amendments to 9 VAC 5 Chapter 20, Part I, Administrative, 9 VAC 5-20-21, Documents Incorporated by Reference; and (2) new regulation 9 VAC 5 Chapter 40, Part II, Emission Standards, Article 50—Consumer Products, 9VAC 5-40-7240 through 9 VAC 5-40-7360.

#### I. Background

The standards and requirements contained in Virginia's consumers products rule are based on the Ozone Transport Commission (OTC) model rule. The OTC consumer products model rule is based on the existing rules

developed by the California Air Resources Board, which were analyzed and modified by the OTC workgroup to address VOC reduction needs in the Ozone Transport Region (OTR). The OTR consists of Delaware, Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, the District of Columbia, and Virginia.

#### II. Summary of SIP Revision

Amendments to 9 VAC 5-20-21 incorporate by reference additional test methods and procedures needed for 9 VAC 5 Chapter 40, Consumer Products: (1) 40 CFR 59 Subpart C, National Volatile Organic Compound Emission Standards for Consumer Products; (2) American Society for Testing and Materials (ASTM) D86-01, Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure, 2001; (3) ASTM D4359-90, Standard Test Method for Determining Whether a Material Is a Liquid or a Solid, 2000; (4) ASTM E260-96, Standard Practice for Packed Column Gas Chromatography, 2001; (5) South Coast Air Quality Management District Rule 1174, Ignition Method Compliance Certification Protocol, February 28, 1991; (6) California Air Resources Board (CARB) Test Method 310 (including Appendices A and B), Determination of VOCs in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products, July 18, 2001; (7) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 1, section 94503.5, Article 2, sections 94509 and 94511, Article 4, sections 94540-94555, 2003; and (8) American Furniture Manufacturer Association Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines, January 2001.

Virginia's consumer products rule (9 VAC 5 Chapter 40) applies only to sources in the Northern Virginia VOC emissions control area designated in 9 VAC 5-20-206. This rule limits VOC emissions from consumer products such as adhesives, adhesive removers, aerosol products (like cooking and dusting sprays), air freshener, antiperspirants and deodorants, facial toners and astringents, waxes and polishes (for cars and floors, etc.), tile cleaners, tar removers, bug sprays, rug cleaners, charcoal lighter fluid, disinfectants, cosmetics and soaps. The compliance date for this rule is July 1, 2005.

Rule 9 VAC 5 Chapter 40 applies to any person who sells, supplies, offers for sale, or manufactures consumer products that contain VOC. Exempted from the rule is any consumer product

manufactured in the Northern Virginia VOC emissions control area for shipment and use outside of this area. The rule does not apply to a manufacturer or distributor who sells, supplies, or offers for sale a consumer product that does not comply with the VOC standards as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of the Northern Virginia VOC emissions control area, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to the Northern Virginia VOC emissions control area. The rule sets specific VOC content limits in percent VOCs by weight for consumer products with a compliance date of July 1, 2005. Exemptions from the VOC content limits are listed in the rule. The rule also contains requirements for the following consumer products: (1) Products requiring dilution, (2) ozone depleting compounds, (3) aerosol adhesives, (4) antiperspirants or deodorants, (5) charcoal lighter materials, and (6) floor wax strippers. Alternative control plans (ACP) are also provided by allowing responsible parties the option to voluntarily enter into separate ACP agreements for the consumer products mentioned above. Criteria for innovative products exemption and requirements for waiver requests are listed in the rule. In addition, the rule contains administrative requirements for labeling and reporting as well as test methods for demonstrating compliance. The test methods used to test coatings must be the most current approved method at the time testing is performed.

### 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 (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. Proposed Action

EPA's review of this material indicates that the standards and requirements contained in the Virginia's consumer products rule, 9 VAC 5 Chapter 40, are consistent with the OTC model rule. EPA is proposing to approve the Virginia SIP revision submitted on October 25, 2005 for the new regulation, 9 VAC 5 Chapter 40, and the amendments to 9 VAC 5-20-21 that incorporates by reference test methods and procedures needed for 9 VAC 5 Chapter 40. The implementation of this rule will result in the reduction of VOC emissions from consumer products in the Northern Virginia VOC emissions control area. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed 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 government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed 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. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) 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 proposed rule pertaining to the emission standards for consumer products in the Northern Virginia VOC emissions control area, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: January 23, 2006.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. E6-1210 Filed 1-30-06; 8:45 am]

**BILLING CODE 6560-50-P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### 49 CFR Part 604

[Docket No. FTA-2005-22657]

**RIN 2132-AA85**

#### Charter Service

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of intent to form a negotiated rulemaking advisory committee.

**SUMMARY:** Pursuant to the direction contained in the Joint Explanatory Statement of the Committee of Conference, for section 3023(d), Condition on Charter Bus Transportation Service of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005, FTA is establishing a committee to develop, through negotiated rulemaking procedures, recommendations for improving the regulation regarding prohibition of FTA grant recipients from providing charter bus service. The committee will consist of persons who represent the interests affected by the proposed rule, i.e., charter bus companies, public transportation operators, and other interested parties. The purpose of this document is to invite interested parties to submit comments on the issues to be discussed and the interests and organizations to be considered for representation on the committee.

**DATES:** You should submit your comments or applications for membership or nominations for membership on the negotiated rulemaking committee early enough to ensure that the Department of Transportation's Docket Management System (DMS) receives them not later than March 2, 2006. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You should mention the docket number of FTA-2005-22657 in your comments or application/nomination for membership and submit them in writing to: Docket Management System (DMS), Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following Web address: <http://dms.dot.gov/submit/>.

You may call the Docket at 202-366-9324, and visit it from 10 a.m. to 5 p.m., Monday through Friday. You may read the comments received by DMS at <http://dms.dot.gov>.

Interested persons may view docketed materials on the internet at any time. To read docket materials on the internet, take the following steps:

1. Go to the DMS Web page of the Department of Transportation (<http://dms.dot.gov/>).
2. On that page, click on "simple search."
3. On the next page (<http://dms.dot.gov/search/>), type in the FTA-2005-22657, which is shown on the first page of this document.
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments and the comments are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments.

Accordingly, we recommend that you periodically check the Docket for new material.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth S. Martineau, Attorney-Advisor, Office of the Chief Counsel, Federal Transit Administration, 202-366-1936 ([elizabeth.martineau@fta.dot.gov](mailto:elizabeth.martineau@fta.dot.gov)). Her mailing address at the Federal Transit Administration is 400 Seventh Street, SW., Room 9316, Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Applicants for FTA assistance must formally agree that they will not provide charter service using equipment or facilities funded by FTA, unless there are no private charter operators willing and able to provide the charter service or another exception applies. This requirement is in law under 49 U.S.C. 5323(d) and regulations implementing the requirement are found in 49 CFR 604. The purpose is to ensure that