

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 52

[EPA-R03-OAR-2007-0479; FRL-8466-1]

**Approval and Promulgation of Air
Quality Implementation Plans; Virginia;
Amendments Extending the
Applicability of Four Consumer and
Commercial Product Regulations to
the Fredericksburg Volatile Organic
Compound (VOC) 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 extends the applicability of four consumer and commercial product regulations—Portable Fuel Container Spillage, Mobile Equipment Repair and Refinishing Operations, Architectural and Industrial Maintenance Coatings, and Consumer Products—to the Fredericksburg VOC Emissions Control Area. These amendments are necessary to implement VOC contingency measures within the Fredericksburg VOC Emissions Control Area. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before October 12, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2007-0479 by one of the following methods:

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

B. *E-mail:* powers.marilyn@epa.gov.

C. *Mail:* EPA-R03-OAR-2007-0479, Marilyn Powers, Acting 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-2007-0479. 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: Ellen Wentworth, (215) 814-2034 or by e-mail at wentworth.ellen@epa.gov.

SUPPLEMENTARY INFORMATION: On May 14, 2007, the Virginia Department of Environmental Quality (VADEQ) submitted a formal revision to its SIP. This SIP revision consists of amendments to 9 VAC 5 Chapter 20, Part I, Administrative, 9 VAC 5-20-21, Documents Incorporated by Reference, and amendments to 9 VAC 5 Chapter 40, Part II, Emission Standards, Articles 42, 48, 49, and 50.

I. Background

Chapter 40 of Virginia's Regulations for the Control and Abatement of Air Pollution contains a number of rules used to enforce control measures designed to attain and maintain the ozone air quality standard. The geographic applicability of these rules is defined by establishing VOC and NO_x emissions control areas in a list located in 9 VAC 5-20-206. The Commonwealth of Virginia's regulations establish VOC and nitrogen oxide (NO_x) emissions control areas to provide the legal mechanism to define the geographic areas in which Virginia implements control measures to attain and maintain the air quality standards for ozone. The emissions control areas may or may not coincide with the nonattainment areas found in 9 VAC 5-20-204, depending upon the necessity of the planning requirements. Most of the Chapter 40 regulations automatically apply within all of the VOC emissions control areas. Some Chapter 40 rules (Articles 4, 36, 37, and 53) have provisions that apply only to certain existing VOC and NO_x emission control areas. Other Chapter 40 regulations were originally adopted to apply only within certain emission control areas.

The original ozone air quality standard was a 1-hour standard. Three VOC and NO_x emission control areas, Northern Virginia, Hampton Roads, and Richmond, were established in Virginia in order to implement control measures to attain the 1-hour ozone air quality standard. On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour standard. On April 30, 2004 (69 FR 23858), EPA designated and classified areas for the 8-hour ozone national ambient air quality standards (NAAQS). For most areas, these designations became effective June 15, 2004. EPA designated, as nonattainment, any area violating the 8-hour ozone NAAQS based upon the air quality data for the three years of 2001-2003. These were the most recent three years of data available at the time EPA designated 8-hour areas. The 8-hour standard replaced the 1-hour standard on June 15, 2005 (69 FR 23996). Accordingly, the Virginia State Air Pollution Control Board promulgated the State 8-hour ozone nonattainment areas that took effect on August 25, 2004. In order to implement control measures to attain and maintain the air quality standards for ozone, the Board proposed to expand the VOC and NO_x emissions control areas in 9 VAC 5-20-206, and extend

the geographic applicability of the VOC and NO_x regulatory rules in Chapter 40 of the regulations into the new 8-hour nonattainment areas. On March 2, 2007 (72 FR 9441), EPA published a final rulemaking which established a new Fredericksburg VOC Emissions Control Area, consisting of Spotsylvania County and Fredericksburg City, and expanded the Richmond and Hampton Roads VOC and NO_x Emission Control Areas. On December 23, 2005 (70 FR 76165) EPA redesignated the 8-hour Fredericksburg nonattainment area to attainment for the 8-hour NAAQS. This revision consists of regulation amendments that extend the applicability of four consumer and commercial product regulations into the new Fredericksburg VOC Emissions Control Area. These amendments are necessary to implement VOC contingency measures of the maintenance plan for the Fredericksburg VOC Emissions Control Area.

II. Summary of the SIP Revision

The May 14, 2007 SIP revision contains amendments to 9 VAC 5–20–21, which incorporate by reference, two additional test methods and procedures needed for 9 VAC 5 Chapter 40, Article 49, Architectural and Industrial Maintenance Coatings. These are the American Society for Testing and Materials (ASTM) D3912–95, “Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants;” and the American Society for Testing and Materials (ASTM) D 4082–02, “Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants.”

The May 14, 2007 revision also contains regulation amendments to 9 VAC 5 Chapter 40 that extend the applicability of four consumer and commercial product regulations into the new Fredericksburg VOC Emissions Control Area established in 9 VAC 5–20–206 (March 2, 2007, 72 FR 9441). These regulations presently apply only in the Northern Virginia VOC Emissions Control Area and were based on the Ozone Transport Commission (OTC) model rules. The OTC developed control measures into model rules for a number of source categories and estimated emission reduction benefits from implementing those model rules. These amendments to Chapter 40 are discussed below.

(1) Emission Standards for Portable Fuel Container Spillage, Article 42

Virginia's Portable Fuel Container Spillage regulation is being amended to apply within the new Fredericksburg VOC Emissions Control Area. At the

present time this regulation applies only to sources located in the Northern Virginia VOC Emissions Control Area (June 8, 2004, 69 FR 31893). The provisions of this regulation apply to any source or person who sells, supplies, offers for sale, or manufactures for sale portable fuel containers or spouts in the Northern Virginia and Fredericksburg VOC Emissions Control Areas designated in 9 VAC 5–20–206. The regulation does not apply to any portable fuel container or spout manufactured for shipment, sale and use outside of the Northern Virginia and Fredericksburg VOC Emission Control Areas. The regulation requires each portable fuel container or spout sold in the Northern Virginia and Fredericksburg VOC Emission Control Areas to meet the following requirements: (1) Have an automatic shut-off and closure device; (2) contain one opening for both filling and pouring; (3) meet minimal fuel flow rate based on nominal capacity; (4) meet a permeation standard; and (5) have a manufacturer's warranty against defects. The regulation includes exemptions, standards, testing procedures, recordkeeping, and administrative requirements. Compliance with the provisions of this regulation is required no later than January 1, 2008 in the Fredericksburg VOC Emissions Control Area.

(2) Emission Standards for Mobile Equipment Repair and Refinishing, Article 48

Virginia's Mobile Equipment Repair and Refinishing regulation is being amended to apply within the new Fredericksburg VOC Emissions Control Area. At the present time, this regulation applies only to sources located in the Northern Virginia VOC Emissions Control Area (June 24, 2004, 69 FR 35253). The provisions of this regulation apply to each mobile equipment repair and refinishing operation located in the Northern Virginia and Fredericksburg VOC Emissions Control Areas designated in 9 VAC 5–20–206. Certain provisions also apply to each person providing or selling affected coatings. The provisions of this regulation do not apply if the mobile equipment repair and refinishing operation is subject to Article 28 (9 VAC 5–40–3860 et seq.) of Chapter 40, Emission Standards for Automobile and Light Duty Truck Application Systems, or Article 34 (9 VAC 5–40–4760 et seq.) of Chapter 40, Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems. The provisions of this regulation also do not apply to persons applying the coatings

who do not receive compensation for the application of the coatings, and to mobile equipment repair and refinishing operations that use coatings required to meet military specifications (MILSPEC) where no other existing coating can be used that meets the provisions of this regulation. Also included in the regulation are definitions, standards for VOCs, compliance, test methods and procedures, monitoring, and reporting and recordkeeping requirements. Compliance with the provisions of this regulation is required no later than January 1, 2008 in the Fredericksburg VOC Emissions Control Area.

(3) Emission Standards for Architectural and Industrial Maintenance Coatings, Article 49

Virginia's Architectural and Industrial Maintenance (AIM) Coatings regulation is being amended to apply within the new Fredericksburg VOC Emissions Control Area. At the present time, this regulation applies only to sources located in the Northern Virginia VOC Emissions Control Area (May 12, 2005, 70 FR 24970). This regulation applies to any person who supplies, sells, offers for sale, or manufactures any architectural coating for use, as well as any person who applies or solicits the application of any architectural coating, located in the Northern Virginia and Fredericksburg VOC Emissions Control Areas designated in 9 VAC 5–20–206. The provisions of this regulation do not apply to the following: (1) Any architectural coating that is sold or manufactured for use exclusively outside of the Northern Virginia and Fredericksburg VOC Emission Control Areas, or for shipment to other manufacturers for reformulation or repackaging; (2) any aerosol coating product; or (3) any architectural coating that is sold in a container with a volume of one liter (1.057 quart) or less. The regulation is also being amended to add standards and definitions for six new coating categories: calcimine recoaters, conversion varnishes, concrete surface retarder, impacted immersion coatings; nuclear coatings; and thermoplastic rubber coating and mastic. These new coatings are listed in the Federal AIM regulation (63 FR 48848, September 11, 1998). Virginia's regulation sets specific VOC content limits in grams per liter for architectural and industrial maintenance coatings, and contains administrative requirements for labeling and reporting. There are a number of test methods that would be used to demonstrate compliance with this rule. Some of these test methods include those promulgated by EPA and published by the South Coast and Bay

Area Air Quality Management Districts of California, as well as the American Society for Testing and Materials. The test methods used to test coatings must be the most current approved method at the time testing is performed. Compliance with the provisions of this regulation is required no later than January 1, 2008 in the Fredericksburg VOC Emissions Control Area.

(4) Emission Standards for Consumer Products, Article 50

Virginia's Consumer Products Regulation is being amended to apply within the new Fredericksburg VOC Emissions Control Area. At the present time, this regulation applies only to sources located in the Northern Virginia VOC Emissions Control Area (January 30, 2007, 72 FR 4207). The rule applies to a person who sells, supplies, offers for sale, or manufactures consumer products that contain VOCs as defined in 9 VAC 5-10-20 throughout the Northern Virginia and Fredericksburg VOC Emissions Control Areas designated in 9 VAC 5-20-206. This regulation limits VOC emissions from consumer products such as adhesives, adhesive removers, aerosol products, air fresheners, 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. This regulation does not apply to any consumer product manufactured in the Northern Virginia and Fredericksburg VOC Emissions Control Areas designated in 9 VAC 5-40-7240 for shipment and use outside of these areas. The provisions also do 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 specified in 9 VAC 5-40-7270 A, as long as the manufacturer or distributor can demonstrate that both the consumer product is intended for shipment and use outside of the Northern Virginia and Fredericksburg VOC Emission Control Areas, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to those applicable VOC control areas. The regulation sets specific VOC content limits in percent VOCs by weight for consumer products. Exemptions from the VOC content limits are listed in the rule. Also included in the regulation are definitions, innovative products, standards and exemptions, requirements for waiver requests, administrative requirements for labeling and reporting, test methods for demonstrating

compliance, compliance schedules, alternative control plans, monitoring, and reporting and recordkeeping requirements. Compliance with the provisions of this regulation is required no later than January 1, 2008 in the Fredericksburg VOC Emissions Control Area. Article 49 is also being amended to revise the definition of "Automotive windshield washer fluid," to allow the higher VOC automotive windshield washer fluid standards to also be applied to some manual automotive windshield washing systems so that they may be used in winter.

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 is proposing to approve the Virginia SIP revision submitted on May 14, 2007 for regulation amendments to 9 VAC 5 Chapter 20 that incorporate by reference test methods and procedures needed for 9 VAC 5 Chapter 40, Article 49, Emission Standards for Architectural and Industrial Maintenance Coatings, and regulation amendments to Chapter 40 that extend the applicability of four consumer and commercial product regulations into the new Fredericksburg VOC Emissions

Control Area. These amendments are necessary to implement VOC contingency measures within the Fredericksburg 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 (Pub. L. 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 approves a state rule implementing a Federal standard.

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, extending the applicability of four consumer and commercial product regulations into the new Fredericksburg 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: August 30, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2005-SC-0004-200735; FRL-8466-3]

Approval and Promulgation of Implementation Plans; South Carolina; Prevention of Significant Deterioration and Nonattainment New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed conditional approval.

SUMMARY: EPA is proposing to partially approve, disapprove, and conditionally approve specific portions of the proposed revisions to the South Carolina State Implementation Plan (SIP) submitted by the State of South Carolina on July 1, 2005. The proposed revisions modify South Carolina’s Prevention of Significant Deterioration (PSD) program and provide for a new Nonattainment New Source Review (NNSR) program to be incorporated into the SIP. EPA’s proposal to partially approve and disapprove certain portions of the July 1, 2005, SIP submittal is consistent with section 110(k)(3) of the Clean Air Act (CAA). EPA’s proposal to conditionally approve other portions of the July 1, 2005, SIP submittal is consistent with section 110(k)(4) of the CAA. As part of the conditional approval, which applies only to the NNSR program, South Carolina will have twelve months from the date of EPA’s final conditional approval of the SIP revisions in which to revise its NNSR rules, as described herein, to be consistent with existing federal law.

In addition to the conditional approval of the NNSR program, EPA is proposing to approve one provision of South Carolina’s minor source permitting program, partially approve South Carolina’s PSD program, and disapprove two elements of South Carolina’s PSD and NNSR rules that relate to provisions that were vacated from the federal program by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) on June 24, 2005. The two elements vacated from the federal rules pertain to pollution control projects (PCPs) and clean units. These elements exist in the South Carolina rules in both the PSD and NNSR programs, and all references to PCPs and clean units in both programs are being proposed for disapproval. As part of the conditional approval of South Carolina’s NNSR program, South Carolina must commit to revise its rules to include