PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart S—Kentucky

■ 2. Section 52.920(e), is amended by adding new entries at the end of the table for ''Huntington-Ashland 8-Hour Ozone Section 110(a)(1) Maintenance Plan for the 1997 8-hour ozone standard'', ''Lexington Section 110(a)(1) Maintenance Plan for the 1997 8-hour ozone standard'', and ''Edmonson County Section 110(a)(1) Maintenance Plan for the 1997 8-hour ozone standard'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA—APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanations
*	*	*	*	
Huntington—Ashland Section 110(a)(1) Maintenance Plan for the 1997 8–Hour Ozone Standard.	A portion of Greenup County.	5/27/2008	3/25/2008 [Insert citation of publication].	
Lexington Section 110(a)(1) Maintenance Plan for the 1997 8–Hour Ozone Standard.	Fayette and Scott Counties.	5/27/2008	3/25/2008 [Insert citation of publication].	
Edmonson County Section 110(a)(1) Maintenance Plan for 1997 8–Hour Ozone Standard.	Edmonson County	5/27/2008	3/25/2008 [Insert citation of publication].	

[FR Doc. E9–6601 Filed 3–24–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2009–0093; FRL–8779–8]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Volatile Organic Compound Reasonably Available Control Technology for Reynolds Consumer Products Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Virginia's State Implementation Plan (SIP). This revision pertains to a State operating permit containing terms and conditions for the control of emissions of volatile organic compounds (VOCs) from Reynolds Consumer Products Company located in Richmond, Virginia. The submittal is for the purpose of meeting the requirements for reasonably available control technology (RACT) in order to implement the maintenance plan for the Richmond 8-hour ozone maintenance area. EPA is approving the revision to the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on May 26, 2009 without further notice, unless EPA receives adverse written comment by April 24, 2009. 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 Docket ID Number EPA–R03–OAR–2009–0093 by one of the following methods:

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

B. E-mail: fernandez.cristina@epa.gov.

C. *Mail:* EPA–R03–OAR–2009–0093, Cristina Fernandez, Chief, Air Quality Planning, 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–2009–0093. 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.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 *http://www.regulations.gov* or e-mail. The *http://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 *http://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 *http://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 *http://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: Irene Shandruk, (215) 814–2166, or by e-mail at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

RACT is the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available with the consideration of technological and economic feasibility. *See, e.g.*, 72 FR 20586 at 20610 (April 25, 2007). When the Richmond area was originally designated as an ozone nonattainment area under the 1-hour standard, it was classified as moderate and thereby had to meet the non-CTG RACT requirements of section 182 of the CAA. As part of the 1-hour ozone attainment plan, one of the sources located in the area identified as being subject to non-CTG RACT was Reynolds Metals Company. The company's Richmond Foil Plant produces aluminum foil by rolling aluminum into very thin sheets. VOC emissions at this plant come from lubricants used on 16 foil rolling mills.

The Reynolds Consumer Products Company located in Richmond, Virginia underwent RACT analysis, and a consent order was issued to the facility on December 18, 1987. The order was then submitted to EPA as a SIP revision, and approved into the Commonwealth's SIP on August 20, 1990 (55 FR 33904).

On September 22, 2004, under the new 8-hour ozone standard, the Richmond area was classified as a marginal nonattainment area. On September 20, 2006, the Virginia Department of Environmental Quality (VADEQ) formally submitted a request to redesignate the Richmond area from nonattainment to attainment for the 8-hour ozone NAAQS. On September 25, 2006, the VADEQ submitted a maintenance plan for the Richmond area as a SIP revision to ensure continued attainment. The redesignation request and maintenance plan were approved on June 1, 2007 (72 FR 30485). Section 107(d)(3)(E) of the CAA stipulates that for an area to be redesignated, EPA must approve a maintenance plan that meets the requirements of Section 175A. All applicable nonattainment area requirements remain in place. The plan includes a demonstration that emissions will remain within the 2005 levels for a 10-year period by keeping in place key elements of the current federal and state regulatory programs, including case-by-case RACT requirements for the area. Because the Richmond area in which this facility is located has continuously been classified as either a nonattainment or a maintenance area, the RACT requirements remain in effect and a change to the facility's RACT requirements necessitates a change to the SIP.

II. Summary of SIP Revision

On October 20, 2008, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision consists of a State operating permit containing terms and conditions for the control of emissions of VOCs from Reynolds Consumer Products Company located in Richmond, Virginia. The submittal is for the purpose of meeting the requirements for RACT in order to implement the maintenance plan for the Richmond 8-hour ozone maintenance area.

Reynolds seeks the option of using less expensive and more readily available materials should the need arise due to recent costs and availability of the currently used material. A State operating permit, intended to replace the consent order for the facility, has been submitted to ensure compliance with the non-CTG RACT requirements.

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 CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state

plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving Virginia's Reynolds Consumer Products Company State operating permit SIP revision for the purpose of meeting the requirements for RACT in order to implement the maintenance plan for the Richmond 8-hour ozone maintenance area.

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 May 26, 2009 without further notice unless EPA receives adverse comment by April 24, 2009. 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 the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the 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 May 26, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking.

This action approving Virginia's SIP revision pertaining to a State operating permit containing terms and conditions for the control of emissions of VOCs from the Reynolds Consumer Products Company may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: February 24, 2009.

William T. Wisniewski,

Acting Regional Administrator, Region III.

■ 40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR 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 (d) is amended by adding the entry for Reynolds Consumer Products Company at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED SOURCE-SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
*	*	*	*	*
Reynolds Consumer Products Company.	Registration No. 50534	10/1/08	03/25/09 [Insert page number where the document begins].	52.2420(d)(12)

* * * * *

[FR Doc. E9–6663 Filed 3–24–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2003–0074; FRL–8785–4]

RIN 2060–AG21

Performance Specification 16 for Predictive Emissions Monitoring Systems and Amendments to Testing and Monitoring Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to promulgate Performance Specification (PS) 16 for predictive emissions monitoring systems (PEMS). Performance Specification 16 provides testing requirements for assessing the acceptability of PEMS when they are initially installed. Currently, there are no Federal rules requiring the use of PEMS; however, some sources have obtained Administrator approval to use PEMS as alternatives to continuous emissions monitoring systems (CEMS). Other sources may desire to use PEMS in cases where initial and operational costs are less than CEMS and process optimization for emissions control may be desirable. Performance Specification 16 will apply to any PEMS required in future rules in 40 CFR Parts 60, 61, or 63, and in cases where a source petitions the Administrator and receives approval to use a PEMS in lieu of another emissions monitoring system required under the regulation. We are also finalizing minor technical amendments.

DATES: This final rule is effective on April 24, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0074. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Performance Specification 16 for Predictive Emission Monitoring Systems Docket, Docket ID No. EPA–OAR–2003–0074, EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday excluding legal holidays. The docket telephone number is (202) 566–1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Mr. Foston Curtis, Air Quality Assessment Division, Office of Air Quality Planning and Standards (E143–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–1063; fax number (919) 541–0516; e-mail address: *curtis.foston@epa.gov.*

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I. Does This Action Apply to Me?

Predictive emission monitoring systems are not currently required in any Federal rule. However, they may be used under certain New Source Performance Standards (NSPS) to predict nitrogen oxides emissions from small industrial, commercial, and institutional steam generating units. In some cases, PEMS have been approved as alternatives to CEMS for the initial 30-day compliance test at these facilities. Various State and Local regulations are incorporating PEMS as an emissions monitoring tool. The major entities that are potentially affected by Performance Specification 16 and the amendments to the subparts are included in the following tables. Performance Specification 16 will neither apply to existing PEMS nor those covered under Subpart E of 40 CFR part 75.

Regulated Entities. Categories and entities potentially affected include the following: