

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR ]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
*	*	*	*	*
<b>[45 CSR] Series 39</b>	<b>Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides</b>			
*	*	*	*	*
Section 45–39–15 .....	Delegation by CAIR Designated Representative and Alternate CAIR Designated Representative.	5/1/08	8/4/09, 74 FR 38536.	
*	*	*	*	*
<b>[45 CSR] Series 41</b>	<b>Control of Annual Sulfur Dioxides Emissions</b>			
*	*	*	*	*
(e) EPA-approved nonregulatory and quasi-regulatory material.				
Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
State of West Virginia Transportation Conformity Requirements.	Entire State .....	04/12/07	5/2/08, 73 FR 24175.	Memoranda of Understanding between EPA, FHWA, FTA, State of West Virginia, and six Metropolitan Planning Organizations.

[FR Doc. 2010–32452 Filed 12–27–10; 8:45 am]  
BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R03–OAR–2008–0073; FRL–9243–5]**

**Approval and Promulgation of Air Quality Implementation Plans; Virginia; Amendments to Ambient Air Quality Standards for Particulate Matter**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision consists of amendments to the Commonwealth of Virginia’s ambient air quality standards for particulate matter (PM). This action is being taken under the Clean Air Act (CAA).

**DATES:** *Effective Date:* This final rule is effective on January 27, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2008–0073. All documents in the docket are listed in the <http://www.regulations.gov> website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (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 for public inspection 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:** Gregory Becoat, (215) 814–2036, or by e-mail at [becoat.gregory@epa.gov](mailto:becoat.gregory@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On November 17, 2008 (73 FR 67825), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of amendments to the Commonwealth’s existing ambient air quality standards for particulate matter in 9VAC5 Chapter 30. The formal SIP revision was submitted by the Commonwealth of Virginia on January 7, 2008. EPA received no comments on the proposal to approve Virginia’s SIP revision. However, regulation 9VAC5–30–65E included an incorrect reference of the **Federal Register** document for the annual and 24-hour PM<sub>2.5</sub> NAAQS that were established by the EPA on July 18, 1997 as 62 FR 28856 instead of 62 FR 38652. On September 29, 2010, EPA received a correction to the regulation (9VAC5 Chapter 30) that contains the ambient air quality standards set out in 40 CFR 50. The SIP revision made the necessary correction to reference the **Federal Register** document appropriately.

**II. Summary of SIP Revision**

The Commonwealth’s SIP revision to the Virginia Regulations for the Control

and Abatement of Air Pollution: 9VAC5 Chapter 30—Ambient Air Quality Standards incorporates the annual and 24-hour PM<sub>2.5</sub> national ambient air quality standards that were established by the EPA on July 18, 1997 and on October 17, 2006. The revision is consistent with the national ambient air quality standards. The SIP revision amends the PM<sub>2.5</sub> standard to add the new 24-hour standard of 35 µg/m<sup>3</sup>, retains the current 24-hour standard of 65 µg/m<sup>3</sup> during the transition to the new standard, adds transitional language to clarify implementation of these standards, and removes obsolete language referencing the annual PM<sub>10</sub> standard. The SIP revision also adds new reference conditions.

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

### IV. Final Action

EPA is approving the amendments to the existing air quality standards for particulate matter in 9VAC5 Chapter 30 as a revision to the Virginia SIP.

## 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 February 28, 2011. 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. This action, amending ambient air quality standards for particulate matter, 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, Nitrogen dioxide, Particulate

matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 14, 2010.

**W.C. Early,**

*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 (c) is amended by revising the entries for 5–30–60 and 5–30–65, and adding entries 5–30–15 and 5–30–66 to read as follows:

**§ 52.2420 Identification of plan.**

*	*	*	*	*
			(c)	*

**EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES**

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
<b>9VAC5, Chapter 30</b>	<b>Ambient Air Quality Standards [Part III]</b>			
5–30–15	Reference Conditions	8/1/07	12/28/10 [Insert page number where the document begins].	Added section.
5–30–60	Particulate Matter (PM <sub>10</sub> )	8/1/07	12/28/10 [Insert page number where the document begins].	Removed PM <sub>10</sub> annual standard.
5–30–65	Particulate Matter (PM <sub>2.5</sub> )	8/1/07	12/28/10 [Insert page number where the document begins].	Removed PM <sub>10</sub> standard.
5–30–66	Particulate Matter (PM <sub>2.5</sub> )	8/1/07	12/28/10 [Insert page number where the document begins].	Added section.
*	*	*	*	*

\* \* \* \* \*  
 [FR Doc. 2010-32487 Filed 12-27-10; 8:45 am]  
 BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2010-0857; FRL-9243-6]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County's Adoption of Control Techniques Guidelines for Large Appliance and Metal Furniture; Flat Wood Paneling; Paper, Film, and Foil Surface Coating Processes; and Revisions to Definitions and an Existing Regulation

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Pennsylvania State Implementation Plan (SIP). These SIP revisions include amendments to the Allegheny County Health Department (ACHD) Rules and Regulations, Article XXI, Air Pollution Control, and meet the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) standards for the following categories: Large appliance and metal furniture; flat wood paneling; and paper, film, and foil surface coating processes. These amendments will reduce emissions of volatile organic compounds (VOC) from large appliance and metal furniture; flat wood paneling; and paper, film, and foil surface coating processes. Therefore, this revision will help Pennsylvania attain and maintain the national ambient air quality standard (NAAQS) for ozone. This action is being taken under the Clean Air Act (CAA).

**DATES:** This rule is effective on February 28, 2011 without further notice, unless EPA receives adverse written comment by January 27, 2011. 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-2010-0857 by one of the following methods:

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

B. E-mail: [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

C. Mail: EPA-R03-OAR-2010-0857, Marilyn Powers, Acting Associate

Director, Office of Air Program Planning, Mailcode 3AP30, 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-2010-0857. 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 Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105 or the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

**FOR FURTHER INFORMATION CONTACT:** Irene Shandruk, (215) 814-2166, or by e-mail at [shandruk.irene@epa.gov](mailto:shandruk.irene@epa.gov).

**SUPPLEMENTARY INFORMATION:** On July 23, 2010, the Pennsylvania Department of Environmental Protection (PADEP) submitted to EPA a SIP revision concerning the adoption of the EPA CTGs for large appliance and metal furniture; flat wood paneling; and paper, film, and foil surface coating processes.

#### I. Background

Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACT), including RACT for sources of emissions. Section 182(b)(2)(A) provides that for certain nonattainment areas, States must revise their SIPs to include RACT for sources of VOC emissions covered by a CTG document issued after November 15, 1990 and prior to the area's date of attainment.

CTGs are intended to provide State and local air pollution control authorities information that should assist them in determining RACT for VOCs from various sources, including large appliance coatings, metal furniture coatings, flat wood paneling coatings, and paper, film, and foil coatings. In developing these CTGs, EPA, among other things, evaluated the sources of VOC emissions from this industry and the available control approaches for addressing these emissions, including the costs of such approaches. Based on available information and data, EPA provided recommendations for RACT for VOCs from large appliance coatings, metal furniture coatings, flat wood paneling coatings, and paper, film, and foil coatings.

In December 1977, EPA published CTGs for large appliance coatings (EPA-450/2-77-034), surface coating of metal furniture (EPA-450/2-77-032), and surface coating of paper (EPA-450/2-77-008). In June 1978, EPA published a CTG for flat wood paneling coatings (EPA-450/2-78-034). These CTGs discuss the nature of VOC emissions from these industries, available control