

planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This final rule would have no such effect on State, local, or Tribal governments, or on the private sector.

#### Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

#### Regulatory Flexibility Act

The initial and final regulatory flexibility analyses requirements of section 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. The State homes referenced in this final rule are State government entities under the control of State governments. All State homes are owned, operated and managed by State governments except for a small number that are operated by entities under contract with State governments. These contractors are not small entities. Therefore, this final rule is also exempt, pursuant to 5 U.S.C. 605(b), from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles are 64.005, Grants to States for Construction

of State Home Facilities; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019.

#### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the **Federal Register** for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on July 7, 2011, for publication.

#### List of Subjects in 38 CFR Part 51

Administrative practice and procedure, Claims, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Dated: August 16, 2011.

#### Robert C. McFetridge,

*Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.*

For the reasons stated in the preamble, VA amends 38 CFR part 51 as follows:

#### PART 51—PER DIEM FOR NURSING HOME CARE OF VETERANS IN STATE HOMES

■ 1. The authority citation for part 51 continues to read as follows:

**Authority:** 38 U.S.C. 101, 501, 1710, 1741–1743, 1745.

■ 2. Amend § 51.210 by:

■ a. In paragraph (d), removing “or parents all of whose children died while serving in the armed forces” and adding, in its place, “, or parents any of whose children died while serving in the Armed Forces”.

■ b. Revising the authority citation at the end of the section.

The revision reads as follows:

#### § 51.210 Administration.

\* \* \* \* \*

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743, 8135; Pub. L. 111–246)

[FR Doc. 2011–21292 Filed 8–19–11; 8:45 am]

**BILLING CODE 8320–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R03–OAR–2011–0195; FRL–9453–6]

### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revisions to Clean Air Interstate Rule Emissions Trading Program

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The revision, which amends the Virginia Clean Air Interstate Rule (CAIR) trading program, is comprised of technical corrections and revisions to the definition of a cogeneration unit to ensure the Commonwealth's CAIR trading program is consistent with federal CAIR requirements. This action is being taken under the Clean Air Act (CAA).

**DATES:** *Effective Date:* This final rule is effective on September 21, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2011–0195. All documents in the docket are listed in the <http://www.regulations.gov> Web site. 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:** Marilyn Powers, (215) 814–2308, or by e-mail at [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA. On September 27, 2010, the Commonwealth of Virginia Department of Environmental Quality (VADEQ) submitted a revision to its SIP, including technical corrections and revisions to the definition of a

cogeneration unit to ensure the Commonwealth's CAIR trading program is consistent with Federal CAIR requirements.

### I. Background

EPA approved Virginia's CAIR trading program on December 28, 2007 (72 FR 73602). In the notice of proposed rulemaking (NPR) for Virginia's CAIR trading program (72 FR 54385, September 25, 2007), EPA noted that it believed that Virginia clearly intended to replace the CAIR Federal Implementation Plan (FIP) with a State plan based on the CAIR model rule that would allow subject sources to participate in the EPA-administered regional CAIR trading program. However, EPA also noted that there were some provisions of Virginia CAIR regulations 9 VAC 5 Chapter 140, Parts II, III, and IV that could be interpreted in a way that might be inconsistent with the Commonwealth's intent. EPA determined that VADEQ's interpretations of these provisions, provided in its letter dated September 12, 2007, clarified the language of the Virginia regulations and were consistent with having the EPA-administered CAIR trading program become effective in Virginia. However EPA recommended, and VADEQ agreed to, promulgation of clarifying amendments to these provisions at the Commonwealth of Virginia's earliest opportunity.

Also, in a rulemaking dated October 19, 2007 (72 FR 59190), EPA changed the definition of "cogeneration unit" in CAIR, the CAIR model cap and trade rule, and the CAIR FIP with respect to the calculation methodology for the efficiency standard of a cogeneration unit, therefore Virginia was required to modify its CAIR SIP to be consistent with the revised Federal definition.

### II. Summary of SIP Revision

On September 27, 2010, VADEQ submitted a SIP revision that amended Virginia's CAIR regulations. The SIP revision incorporates the clarifying revisions specified in the September 25, 2007 NPR proposing approval of Virginia's CAIR regulations and the changes to the definition of "cogeneration unit" made in EPA's revised CAIR rulemaking dated October 19, 2007. On May 26, 2011 (76 FR 30600), the NPR was published for public comment. Other specific requirements and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

### 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 Arequired 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 the Virginia CAIR revisions submitted on September 27, 2010 as a revision to the Virginia SIP. The revisions are consistent with CAIR requirements.

#### A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. 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 CAA; 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 21, 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 approving revisions to Virginia’s CAIR trading program 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, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 3, 2011.

**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 Chapter 140, Sections 5–140–1010, 5–140–1020, 5–140–1060, 5–140–2010, 5–140–2020, 5–140–3010, and 5–140–3020 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>9 VAC 5, Chapter 140 Regulation for Emissions Trading</b>				
*	*	*	*	*
<b>Part II NO<sub>x</sub> Annual Trading Program</b>				
<b>Article 1 CAIR NO<sub>x</sub> Annual Trading Program General Provisions</b>				
5–140–1010 .....	Purpose and Authority .....	3/18/09	8/22/11 [Insert page number where the document begins]	
5–140–1020 .....	Definitions .....	3/18/09	8/22/11 [Insert page number where the document begins]	
*	*	*	*	*
5–140–1060 .....	Standard Requirements ....	3/18/09	8/22/11 [Insert page number where the document begins]	
*	*	*	*	*
<b>Part III NO<sub>x</sub> Ozone Season Trading Program</b>				
<b>Article 1 CAIR NO<sub>x</sub> Ozone Season Trading Program General Provisions.</b>				
5–140–2010 .....	Purpose and Authority .....	3/18/09	8/22/11 [Insert page number where the document begins]	

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
5-140-2020 .....	Definitions .....	3/18/09	8/22/11 [Insert page number where the document begins]	
*	*	*	*	*
<b>Part IV SO<sub>2</sub> Annual Trading Program</b>				
<b>Article 1 CAIR SO<sub>2</sub> Trading Program General Provisions</b>				
5-140-3010 .....	Purpose and Authority .....	3/18/09	8/22/11 [Insert page number where the document begins]	
5-140-3020 .....	Definitions .....	3/18/09	8/22/11 [Insert page number where the document begins]	
*	*	*	*	*

\* \* \* \* \*  
 [FR Doc. 2011-21267 Filed 8-19-11; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[MD203-3119; FRL-9454-1]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; Update to Materials Incorporated by Reference**

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

**ACTION:** Final rule; administrative change.

**SUMMARY:** EPA is updating the materials submitted by Maryland that are incorporated by reference (IBR) into the Maryland State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the Maryland Department of the Environment (MDE) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the EPA Regional Office.

**DATES:** *Effective Date:* This action is effective August 22, 2011.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution

Avenue, N.W., Room Number 3334, EPA West Building, Washington, DC 20460; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**FOR FURTHER INFORMATION CONTACT:** Harold A. Frankford, (215) 814-2108 or by e-mail at [frankford.harold@epa.gov](mailto:frankford.harold@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The SIP is a living document which the State revises as necessary to address its unique air pollution problems. Therefore, EPA, from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and “Identification of plan” format are discussed in further detail in the May 22, 1997 **Federal Register** document. On November 1, 2004 (69 FR 69304), EPA published a document in the **Federal Register** beginning the new IBR procedure for Maryland. On February 2, 2006 (71 FR 5607), May 18, 2007 (72 FR 27957), March 11, 2008 (73 FR 12895), and March 19, 2009 (74 FR 11647), EPA published updates to the IBR material for Maryland.

Since the publication of the last IBR update, EPA has approved the following regulatory changes to the following Maryland regulations:

*A. Added Regulations*

1. COMAR 26.11.10 (Control of Iron and Steel Production Installations), regulation .05—1 (Control of Carbon Monoxide Emissions from Basic Oxygen Furnaces).

2. COMAR 26.11.19 (Volatile Organic Compounds from Specific Processes), regulations .09-1 (Control of VOC Emissions from Industrial Solvent Cleaning Operations Other Than Cold and Vapor Degreasing), .10-1 (Flexible Packaging Printing), and .33 (Control of Volatile Organic Compounds (VOCs) from Flat wood Paneling Coatings).

3. COMAR 26.11.28 (Clean Air Interstate Rule)—all regulations (.01 through .08).

*B. Revised Regulations*

1. COMAR 26.11.01.01 (General Administrative Provisions—Definitions), section .01B(17) (definition of “fuel burning equipment”).

2. COMAR 26.11.09 (Control of Fuel Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations), regulation .01B (removal of the definition of “fuel burning equipment”).

3. COMAR 26.11.19 (Volatile Organic Compounds from Specific Processes), regulations .06 (Large Appliance Coating), .07 (Paper, Fabric, Film, Foil, Vinyl, and Other Plastic Parts Coating), and .10 (Flexographic and Rotogravure Printing).

*C. Removed Regulations*

COMAR 26.11.10 (Control of Iron and Steel Production Installations), Regulation .06[2] (Carbon Monoxide).

**II. EPA Action**

In this action, EPA is doing the following: