

**Subpart V—Maryland**

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding the entry for the Attainment Demonstration for the

1997 8-Hour Ozone National Ambient Air Quality Standard and its Associated Motor Vehicle Emissions Budgets at the end of the table to read as follows:

**§ 52.1070 Identification of plan.**  
\* \* \* \* \*  
(e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Additional explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Attainment Demonstration for the 1997 8-Hour Ozone National Ambient Air Quality Standard and its Associated Motor Vehicle Emissions Budgets.	Maryland-Philadelphia-Wilmington-Atlantic City Moderate Nonattainment Area.	06/04/07	10/29/12 [ <i>Insert page number where the document begins</i> ].	

■ 3. In § 52.1076, paragraph (z) is added to read as follows:

**§ 52.1076 Control strategy plans for attainment and rate-of-progress: Ozone.**  
\* \* \* \* \*

(z) EPA approves the attainment demonstration portion of the attainment plan for the 1997 8-hour ozone NAAQS for the Philadelphia Area submitted as a revision to the State Implementation Plan by the Secretary of the Maryland

Department of the Environment on June 4, 2007. EPA also approves the 2009 motor vehicle emissions budgets associated with the attainment demonstration for Cecil County, Maryland.

**TRANSPORTATION CONFORMITY BUDGETS FOR THE MARYLAND PORTION OF THE PHILADELPHIA AREA**

Type of control strategy SIP	Year	VOC (TPD)	NO <sub>x</sub> (TPD)
Attainment Demonstration .....	2009	7.3	2.2

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BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R03–OAR–2012–0444; FRL–9746–3]

**Approval and Promulgation of Air Quality Implementation Plans; Virginia; Fredericksburg 8-Hour Ozone Maintenance Area Revision to Approved Motor Vehicle Emissions Budgets**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving the Commonwealth of Virginia’s State Implementation Plan (SIP) revision submitted by the Virginia Department of Environmental Quality (VADEQ) on September 26, 2011. The SIP revision updates the 2009 and 2015 motor vehicle emission budgets (MVEBs) in the Fredericksburg 8-Hour Ozone Maintenance Area (Fredericksburg Area) by replacing the previously approved MVEBs with budgets developed using EPA’s Motor Vehicle Emissions Simulator emissions model (MOVES2010a). The revised MVEBs

continue to demonstrate maintenance of the 1997 8-hour national ambient air quality standard (NAAQS) for ozone. This action is being taken under the Clean Air Act (CAA).

**DATES:**

*Effective Date:* This final rule is effective on November 28, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0444. All documents in the docket are listed in the [www.regulations.gov](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 [www.regulations.gov](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 email at [becoat.gregory@epa.gov](mailto:becoat.gregory@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On August 6, 2012 (77 FR 46672), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of the Virginia SIP revision that updates the 2009 and 2015 MVEBs in the Fredericksburg Area by replacing the previously approved MVEBs with budgets developed using MOVES2010a. By EPA’s finalizing the proposed approval, the newly submitted MOVES2010a MVEBs will replace the existing, MOBILE6.2-based budgets in Virginia’s SIP and must then be used in future transportation conformity analyses for the Fredericksburg Area according to the transportation conformity rule. See 40 CFR 93.118. The previously approved budgets will no longer be applicable for transportation conformity purposes. Additionally, with the approval of the MOVES2010a-based MVEBs, the regional transportation conformity grace period for not using MOVES2010a for the pollutants included in these budgets will end for the Fredericksburg Area on the effective date of this final approval. See 75 FR 9411, 9414 (March 2, 2010) for

background on MOVES2010a and Section II.C for details. EPA received no comments on the NPR to approve Virginia's SIP revision.

## II. Summary of SIP Revision

On September 26, 2011, the Commonwealth of Virginia through VADEQ submitted a SIP revision with MVEBs based on MOVES2010a for the years 2009 and 2015 to help ensure that the Fredericksburg Area can demonstrate transportation conformity using MOVES2010a MVEBs once the grace period expires as discussed in more detail in the NPR.

States that revise their existing SIPs to include MVEBs based on MOVES2010a must show that the SIP continues to meet applicable requirements with the new level of motor vehicle emissions contained in the budgets. EPA has determined that the Fredericksburg Area maintenance plan continues to serve its intended purpose with the MOVES2010a-based MVEBs and that the budgets meet the adequacy criteria in the conformity rule at 40 CFR 93.118(e)(4).

## III. Final Action

EPA is approving the MOVES2010a-based MVEBs submitted by Virginia for use in determining transportation conformity in the Fredericksburg Area because the submitted budgets will continue to keep emissions below the attainment level and maintain air quality and continue to demonstrate maintenance of the 1997 8-hour ozone NAAQS. On the effective date of this rulemaking, the submitted MOVES2010a-based MVEBs will replace the existing, MOBILE6.2-based budgets in the Fredericksburg 8-Hour Ozone Maintenance Plan and will be used in future transportation conformity analyses for the Fredericksburg Area. The previously approved MOBILE6.2-based budgets will no longer be applicable for transportation conformity purposes. The following table compares the nitrogen oxide (NO<sub>x</sub>) MVEBs developed using MOBILE6.2 to the inventories developed using MOVES2010a.

FREDERICKSBURG MAINTENANCE AREA  
MOBILE SOURCE EMISSIONS COM-  
PARISON TONS NO<sub>x</sub> PER DAY

Year	MOBILE6.2 MVEB*	MOVES2010a
2004 .....	19.742	24.064
2009 .....	13.062	17.615
2015 .....	7.576	9.933

\* Includes conformity buffers.

## IV. 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 that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) 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 Virginia 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.

## V. Statutory and Executive Order Reviews

### 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 December 28, 2012. 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 Virginia’s 2009 and 2015 MVEBs in the Fredericksburg 8-Hour Area using MOVES2010a 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 11, 2012.

**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 (e) is amended by revising the entry for the 8-Hour Ozone Maintenance Plan for the Fredericksburg VA Area. The amendments read as follows:

**§ 52.2420 Identification of plan.**

\* \* \* \* \*

- (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
*	*	*	*	*
8-Hour Ozone Maintenance Plan for the Fredericksburg VA Area.	Spotsylvania and Stafford Counties; City of Fredericksburg.	9/26/11	10/29/12 [ <i>Insert page number where the document begins.</i> ]	Revised 2009 and 2015 motor vehicle emission budgets for NO <sub>x</sub> .
*	*	*	*	*

- 3. Section 52.2424 is amended by adding paragraph (c) to read as follows:

**§ 52.2424 Motor vehicle emissions budgets.**

\* \* \* \* \*

(c) EPA approves the following revised 2009 and 2015 motor vehicle emissions budgets (MVEBs) for the Fredericksburg 8-Hour Ozone Maintenance Area submitted by the

Virginia Department of Environmental Quality (VADEQ) on September 26, 2011:

Applicable geographic area	Year	Tons per day (TPD) NO <sub>x</sub>
Fredericksburg Area (Spotsylvania and Stafford Counties and City of Fredericksburg) .....	2009	17.615
Fredericksburg Area (Spotsylvania and Stafford Counties and City of Fredericksburg) .....	2015	9.933

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2012-0608; FRL-9745-7]

#### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Amendments to West Virginia's Ambient Air Quality Standards

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the West Virginia State Implementation Plan (SIP). The revision pertains to amendments of West Virginia's Legislative Rule, 45 CSR 8- Ambient Air Quality Standards. The amendments change the effective date of the incorporation by reference of the National Ambient Air Quality Standards (NAAQS) for sulfur oxides, nitrogen dioxide, lead, particulate matter and carbon monoxide as well as their monitoring reference and equivalent methods. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on December 28, 2012 without further notice, unless EPA receives adverse written comment by November 28, 2012. 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-2012-0608 by one of the following methods:

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

B. *Email: mastro.donna@epa.gov*.

C. *Mail: EPA-R03-OAR-2012-0608*, Donna Mastro, 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-2012-0608. 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 email. 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 email comment directly to EPA without going through *www.regulations.gov*, your email 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 West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

**FOR FURTHER INFORMATION CONTACT:** Asrah Khadr, (215) 814-2071, or by email at *khadr.asrah@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On June 6, 2012, the West Virginia Department of Environmental Protection (WVDEP) submitted a formal revision to its SIP pertaining to amendments of Legislative Rule, 45 CSR 8—Ambient Air Quality Standards. The SIP revision consists of a change in the effective date of the incorporation by reference of the NAAQS and their monitoring reference and equivalent methods. EPA had approved a previous revision of Legislative Rule 45 CSR 8 on September 12, 2012 (77 FR 56125).

## II. Summary of SIP Revision

This SIP revision is part of an annual submission by WVDEP to update their incorporation by reference of the National Primary and Secondary Ambient Air Quality Standards which are found at 40 CFR Part 50. The SIP revision also updates the incorporation by reference of the Ambient Air Monitoring Reference and Equivalent Methods which are found at 40 CFR Part 53. The amendments to the legislative rule include changes to section 45-8-1 (General) in which the filing and effective dates are changed to reflect the update of the legislative rule. They also include changes to section 45-8-3 (Adoption of Standards) in which the effective dates for the incorporation by reference of the National Primary and Secondary Ambient Air Quality Standards and the Ambient Air Monitoring Reference and Equivalent Methods are also changed to reflect the update of the legislative rule. The filing and effective dates of the legislative rule were updated and changed to May 1, 2012 and June 1, 2012 respectively. The effective date of the incorporation by reference of 40 CFR Part 50 and 40 CFR Part 53 changed from June 16, 2011 to June 1, 2012.

## III. Final Action

EPA is approving the amendments to Legislative Rule, 45 CSR 8—Ambient Air Quality Standards, into the West Virginia SIP. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate 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 December 28, 2012 without further notice unless EPA receives adverse comment by November 28, 2012. If EPA receives adverse comment, EPA will