reduced pursuant to § 1.704(b) for failing to reply to a rejection, objection, argument, or other request within three months of the date of mailing of the Office communication notifying the applicant of the rejection, objection, argument, or other request must be filed prior to the issuance of the patent. This time period is not extendable. Any request for reinstatement of all or part of the period of adjustment reduced pursuant to § 1.704(b) under this paragraph must also be accompanied by:
* * * * *

Date: March 25, 2013.

Teresa Stanek Rea,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 2013–07429 Filed 3–29–13; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0082; FRL–9795–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Transportation Conformity Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the State Implementation Plan (SIP) submitted by the Commonwealth of Virginia. This revision amends Virginia's transportation conformity requirements in order to be consistent with EPA's revised transportation conformity requirements. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on May 31, 2013 without further notice, unless EPA receives adverse written comment by May 1, 2013. 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–2013–0082, by one of the following methods:

A. *www.regulations.gov.* Follow the online instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov*

C. *Mail:* EPA–R03–OAR–2013–0082, Cristina Fernandez, 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–2013–0082. 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 Commonwealth's 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.*

SUPPLEMENTARY INFORMATION:

I. Background

Transportation conformity is required under section 176(c) of the CAA to ensure that Federally supported highway, transit projects, and other activities are consistent with (conform to) the purpose of the SIP. Conformity currently applies to areas that are designated nonattainment and those redesignated to attainment after 1990 (maintenance areas), with plans developed under section 175A of the CAA for the following transportation related criteria pollutants: ozone, fine particulate matter ($PM_{2.5}$) and coarse particulate matter (PM_{10}), carbon monoxide (CO), and nitrogen dioxide (NO_2). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS).

On March 14, 2012 (77 FR 14979), EPA promulgated various administrative amendments to the Federal transportation regulation. As a result of this rulemaking, under 40 CFR 51.390, Virginia is required to submit a SIP revision that establishes conformity criteria and procedures consistent with the transportation conformity regulation promulgated in 40 CFR part 93.

II. Summary of SIP Revision

In order to implement the Federal transportation conformity requirements, the Commonwealth of Virginia's regulation must reflect the recent revisions made to the Federal regulations. On October 1, 2012, the Virginia Department of Environmental Quality (VADEQ) submitted a revision to its SIP for Transportation Conformity purposes. The SIP revision consists of amendments to the Commonwealth Regulation for Transportation Conformity (9VAC5 Chapter 151). This SIP revision addresses provisions of the EPA Conformity Rule required under 40 CFR part 93. The revision amends 9VAC5–151–40, entitled ''General,'' in order to change the date of the specific version of the provisions incorporated by reference from 40 CFR part 93 (2010) in effect July 1, 2010 to 40 CFR part 93 (2012) in effect July 1, 2012. The SIP

revision also amends 9VAC5–151–70, entitled ''Consultation,'' in order to change conformity tests and methodologies for isolated rural nonattainment and maintenance areas as required by 40 CFR 93.109(n)(2)(iii) to those required by 40 CFR 93.109(g)(2)(iii).

EPA's review of Virginia's SIP revisions indicates that it is consistent with EPA's Conformity Rule. Virginia met the requirements under 40 CFR 51.390 to establish conformity criteria and procedures consistent with the transportation conformity regulation promulgated by EPA under 40 CFR part 93. In order to implement the Federal transportation conformity requirements, Virginia's regulation must reflect the most recent rulemaking promulgated by EPA on March 14, 2012 (77 FR 14979).

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) 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 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 SIP revision for transportation conformity, which was submitted on October 1, 2012. EPA is publishing this rule without prior proposal because EPA 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 31, 2013 without further notice unless EPA receives adverse comment by May 1, 2013. 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. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

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 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 31, 2013. 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 to approve the Virginia Transportation Conformity Regulation may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: March 20, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 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 Sections 5–151–40 and 5–151–70. The revised text reads 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]
*	*	*	*	*
Chapter 151 (9 VAC 5) Transportation Conformity				
*	*	*	*	*
Part III Criteria and Procedures for Making Conformity Determinations				
5–151–40	General	8/15/12	4/1/13 *[Insert page number where the document begins].*	
*	*	*	*	*
5–151–70	Consultation	8/15/12	4/1/13 *[Insert page number where the document begins].*	Section D.1.f. is amended.
*	*	*	*	*

* * * * *

[FR Doc. 2013–07384 Filed 3–29–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 22, 24, 27 and 90

[WT Docket Nos. 06–150, 01–309, 03–264, 06–169, 96–86, 07–166, CC Docket No. 94,102, PS Docket No. 06–229; FCC 13–29]

Service Rules for the 698–746, 747–762 and 777–792 MHz Bands; Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems; et al.

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Memorandum Opinion and Order on Reconsideration (MO&O) denies or dismisses petitions seeking reconsideration of certain decisions made by the Commission in the *700 MHz Second Report and Order,* relating to the 698–806 MHz Band, including decisions regarding performance requirements, the auction and competitive bidding rules, the open platform rules, public safety narrowband relocation procedures, and the decisions not to impose wholesale requirements, eligibility restrictions, and spectrum aggregation limits. This MO&O also dismisses as moot petitions for reconsideration of rules establishing a Public/Private Partnership between the Upper 700 MHz D Block (D Block) licensee and the Public Safety Broadband Licensee in the 763–768 MHz and 793–798 MHz bands.

DATES: Effective May 1, 2013.

FOR FURTHER INFORMATION CONTACT: Peter Trachtenberg at (202) 418–7369 or *peter.trachtenberg@fcc.gov,* Wireless Telecommunications Bureau, Spectrum and Competition Policy Division.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order on Reconsideration, WT Docket Nos. 06–150, 01–309, 03–264, 06–169, 96–86, 07–166, CC Docket No. 94,102, PS Docket No. 06–229; FCC 13–29, adopted February 28, 2013 and released March 1, 2013. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

I. Introduction

1. In this MO&O, the Commission addresses petitions that were filed seeking reconsideration of certain decisions made by the Commission in the *700 MHz Second Report and Order* at 72 FR 48814, Aug. 24, 2007, relating to the 698–806 MHz Band (herein, the 700 MHz Band).

II. Discussion

A. Performance Requirements

2. Below the Commission discusses the issues raised by petitioners with respect to the performance requirements that the Commission established in the *700 MHz Second Report and Order.* After careful consideration of the arguments raised in the petitions for reconsideration, the Commission denies the requests to modify the existing performance requirements.

1. Geographic-Based Coverage Requirements for CMA and EA Licenses

3. Blooston Rural Carriers (Blooston), MetroPCS Communications, Inc. (MetroPCS), and Rural Telecommunications Group, Inc. (RTG) filed petitions for reconsideration challenging various aspects of the geographic-based performance requirements.

4. The Commission denies the petitioners' requests to alter the geographic-based coverage requirements. First, the Commission is unpersuaded by Blooston's arguments that a geographic-based performance requirement on CMA licensees (*i.e.* licensees in Lower 700 MHz B Block) is arbitrary and unworkable and should be supplemented with the option of meeting a population-based benchmark. The Commission provided reasonable justifications for its decision to adopt a geographic-based build-out requirement for CMA and EA licenses, and the Commission finds nothing in the record to persuade it to change this decision. The Commission particularly noted that:

> [b]ecause [the Commission] adopt[s] smaller geographic license areas such as CMAs to facilitate the provision of service * * * in rural areas, [it] also adopt[s] performance requirements that are designed to ensure that such service is offered to consumers in these areas.

The Commission further found that:

> the uniqueness of the 700 MHz spectrum justifies the use of geographic benchmarks * * *.

Blooston argues that the Commission arbitrarily discriminated against CMA licenses by providing population-based requirements on both EA and REAG licensees. In fact, the Commission imposed identical geographic-based requirements on EA and CMA licenses, and it reasonably justified its decision to adopt a different approach for the much larger REAG licenses. Blooston argues that for some licenses, meeting the geographic-based benchmarks will be impractical, and offers analysis of nine CMAs out of the 734 in Lower 700 MHz B Block. For specific cases of hardship, however, providers can seek waiver relief. Blooston offers no evidence demonstrating that a geographic-based benchmark is inherently impractical in the usual case.

5. Indeed, the results of the auction of Lower 700 MHz B Block licenses provide further support for the reasonableness of the Commission's geographic-based performance requirements. In the *700 MHz Second Report and Order,* the Commission decided that, if those geographic-based requirements caused a reduction in the monetary value of the licenses to such an extent that bidding in the auction resulted in the Lower 700 MHz B Block failing to meet its applicable aggregate reserve price, the licenses for that block would be re-auctioned subject to population-based performance requirements. Thus, the Commission relied in part on the auction results as a final check on whether its geographic-based performance requirements were in the public interest. When the licenses were auctioned in Auction 73, the Commission received provisionally winning bids on 728 out of 734 Lower 700 MHz B Block licenses and the aggregate amount of the provisionally winning bids far exceeded the applicable aggregate reserve price. Accordingly, the Commission reaffirms the geographic-based coverage requirement for Lower 700 MHz B Block licensees and the Commission denies Blooston's request to add an optional population-based benchmark to Lower 700 MHz B Block. For similar reasons, the Commission rejects the requests of various commenters for a population-based buildout option for EA licensees.

6. The Commission also rejects arguments that the Commission should broaden the exclusions from the