

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart G—Colorado

■ 2. Section 52.332 is amended by adding paragraph (u) to read as follows:

§ 52.332 Control strategy: Particulate matter.

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(u) Revisions to the Colorado State Implementation Plan, PM₁₀ Revised Maintenance Plan for Steamboat Springs, as adopted by the Colorado Air Quality Control Commission on December 15, 2011, State effective on January 30, 2012, and submitted by the Governor's designee on May 11, 2012. The revised maintenance plan satisfies all applicable requirements of the Clean Air Act.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2014-0494; FRL-9921-71-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revisions to the State Implementation Plan Approved by EPA Through Letter Notice Actions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action on administrative changes to the Virginia State Implementation Plan (SIP) which EPA had previously approved through a Letter Notice action. The revision will allow the Commonwealth of Virginia to submit SIP revision requests to EPA via electronic submission, with a caveat. EPA has approved this revision which allows electronic submission of SIP revision requests from Virginia. The Commonwealth will continue to supply additional paper copies as currently described in, and in accordance with, the requirements of the Clean Air Act (CAA) until such time as EPA amends the Federal regulations to allow sole electronic submissions of SIP requests.

EPA has determined that this action falls under the “good cause” exemption

in the Administrative Procedure Act (APA), which authorizes agencies to dispense with public participation and which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA).

DATES: This action is effective January 21, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2014-0494. All documents in the docket are listed in the 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 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: Sharon McCauley, (215) 814-3376, or by email at mccauley.sharon@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is taking final action on administrative changes to the Virginia SIP. On February 11, 2014, the Commonwealth of Virginia submitted a SIP revision requesting that EPA allow for the electronic transmission of SIP requests from the Commonwealth. EPA determined that the revision was a minor SIP revision without any substantive changes and complied with applicable requirements of the CAA and EPA regulation concerning transmission of SIP revisions as long as the Commonwealth continued to submit paper copies as referenced in 40 CFR part 51.103 until such time that EPA has implemented planned regulatory changes which will allow for sole electronic submission of SIP requests. EPA had approved this revision with the caveat as described above through Letter Notice to Virginia dated July 17, 2014 consistent with the procedures outlined in EPA's Notice of Procedural Changes on SIP processing published on January 19, 1989 at 54 FR 2214 and

consistent with the procedures outlined in an April 6, 2011 memo from Janet McCabe, Deputy Assistant Administrator for the Office of Air and Radiation, regarding Regional Consistency for the Administrative Requirements for State Implementation. A copy of this memo is included within the Docket for this SIP revision. Today's action completes the July 17, 2014 administrative amendment to the SIP by amending 40 CFR 52.2420(c) to include new terms for defining certified mail and mail by the Commonwealth of Virginia.

II. EPA Action

EPA is taking final action on administrative changes to the Virginia SIP. EPA has determined that today's action falls under the “good cause” exemption in the section 553(b)(3)(B) of the APA which, upon finding “good cause,” authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided in the APA). With respect to the SIP revision described above, today's administrative action simply codifies provisions which are already in effect as a matter of law in Federal and state programs. Under section 553 of the APA, an agency may find good cause where procedures are “impractical, unnecessary, or contrary to the public interest.” Public comment for this administrative action is “unnecessary” because the revisions are administrative and non-substantive in nature. Immediate notice of this action in the **Federal Register** benefits the public by providing the public notice of the updated Virginia SIP. Approval of these revisions will ensure consistency between the Commonwealth and Federally-approved rules. EPA has determined that these changes will not relax the SIP or adversely impact air emissions.

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 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 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. 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 March 23, 2015. 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 which approves electronic transmittal submission of SIP revision requests from the Commonwealth of Virginia 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 16, 2014.
William 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 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 adding the entry in the chart below as the last entry for “Terms Defined” under State citation 5–10–20. The additional 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]
9 VAC 5, Chapter 10 General Definitions [Part 1]				
5–10–20 ..	Terms Defined	08/28/13	[01/21/15] [Insert Federal Register citation].	Terms Added—Certified Mail, Mail.

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**ENVIRONMENTAL PROTECTION
 AGENCY**

40 CFR Part 52

[EPA–R03–OAR–2014–0342; FRL–9921–66–Region 3]

**Approval and Promulgation of
 Implementation Plans; Pennsylvania;
 Pennsylvania Regional Haze State
 Implementation Plan Revision—
 Particulate Matter Best Available
 Retrofit Technology Limit for the
 Cheswick Power Plant in Allegheny
 County**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Pennsylvania State Implementation Plan (SIP) submitted by the Commonwealth of Pennsylvania through the Pennsylvania Department of Environmental Protection (PADEP). This SIP revision addresses an error in the Best Available Retrofit Technology (BART) requirements for Boiler Number 1 of the Cheswick Generating Station (Cheswick) in Allegheny County. EPA is approving the portion of Pennsylvania’s SIP revision addressing the particulate matter (PM) BART requirements as it is in accordance with the requirements of

the Clean Air Act (CAA) and EPA’s rules for BART.

DATES: This final rule is effective on February 20, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2014–0342. All documents in the docket are listed in the 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 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 Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by email at shandruk.irene@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located

across a broad geographic area and emit fine particles (*e.g.*, sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.*, sulfur dioxide (SO₂), nitrogen oxides (NO_x), and in some cases, ammonia (NH₃) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter (PM_{2.5}), which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. Section 169A of the CAA establishes as a national goal the “prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution” and requires SIPs for states whose emissions may reasonably be anticipated to cause or contribute to visibility impairment in Class I areas to contain emission limits, compliance schedules and other measures as may be necessary to make reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. A regional haze SIP generally must include, among other measures, source-specific BART emission limits for each source subject to BART. A detailed discussion of the requirements of the regional haze program can be found in our earlier notice proposing action on Pennsylvania’s regional haze SIP. *See* 77 FR 3984 (January 26, 2012).

On December 20, 2010, PADEP submitted revisions to the Pennsylvania SIP to address regional haze